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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JOSHUA KOVACOVSKY, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

WAREHOUSE SERVICES LOGISTICS, LLC,
a South Carolina limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: CIVSB2507157

*[Assigned for all purposes to the Hon.
Charlie L. Hill, Jr., Dept. S30-SBJC]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: February 25, 2027
Time: 8:30 a.m.
Dept.: S30-SBJC

Action Filed: March 12, 2025
Trial Date: None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, pursuant to California Rule of Court 3.769, on February 25, 2027 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department S30-SBJC of the Superior Court of the State of California, County of San Bernardino, located at 247 West Third Street, San Bernardino, California 92415, Plaintiff Joshua Kovacovsky (“Plaintiff”), as an individual and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed Stipulation of Settlement (“Settlement Agreement”) in this lawsuit, entered into between Plaintiff and Defendant Warehouse Services Logistics, LLC (“Defendant”);
2. Pursuant to Section 382 of the California Code of Civil Procedure, and for settlement purposes only, provisional certification of the Settlement Class, defined as follows:
All current and former non-exempt employees employed by Defendant Warehouse Services Logistics, LLC in California from June 12, 2021 through August 17, 2026 (the “Class Period”).
3. Preliminary appointment of Plaintiff Joshua Kovacovsky as the Class Representative;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Alexandra R. McIntosh of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for the Class Representative Service Award, settlement administration costs, payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq.*, and Class Counsel’s attorneys’ fees and costs;
6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator; and
7. Approval of the proposed Notice of Pendency of Class Action and Proposed Settlement (“Class Notice”) and the Notice of Estimated Individual Settlement Award (collectively, the “Notice Packet”), and entry of the proposed Order instructing the Notice Packet to be disseminated to the proposed Settlement Class in English and Spanish, as provided in the Settlement Agreement.

1 This motion is based on this notice of motion, the attached memorandum of points and
2 authorities, the declarations of Sean M. Blakely, Paul K. Haines, Alexandra R. McIntosh, Plaintiff
3 Joshua Kovacovsky, and Anthony Rogers of ILYM Group, Inc., and the exhibits attached thereto;
4 the pleadings and other papers filed in this action; and on any further oral or documentary
5 evidence or argument presented at the time of hearing. Given the multiplicity of issues addressed
6 herein, Plaintiff's memorandum of points and authorities necessitates exceeding the 20-page limit
7 set forth in California Rule of Court 3.764(c)(2). As this Motion is unopposed, Plaintiff
8 respectfully requests that the Court consider the entire Motion, which is 21 pages in length.

9
10 Respectfully submitted,

11 Dated: September 22, 2026

HAINES LAW GROUP, APC

12
13 By:



14 Sean M. Blakely
15 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Joshua Kovacovsky (hereinafter “Plaintiff”), as an individual and on behalf of
4 the proposed Settlement Class, respectfully requests that this Court preliminarily approve the
5 proposed Stipulation of Settlement (“Settlement Agreement” or “Settlement”),¹ entered into by
6 Plaintiff and Defendant Warehouse Services Logistics, LLC (“Defendant”) (collectively, the
7 “Parties”). Plaintiff’s primary allegations are that Defendant failed to properly calculate the
8 regular rate of pay thereby failing to pay all overtime wages owed, and failed to provide all legally
9 compliant meal and rest periods. As a result of these alleged violations, Plaintiff also brought
10 derivative claims for Defendant’s alleged failure to pay all final wages owed, failure to issue
11 accurate and compliant wage statements, and for civil penalties under the Private Attorneys
12 General Act (“PAGA”).

13 Plaintiff respectfully requests that this Court preliminarily approve this non-reversionary,
14 \$1,900,000.00 class action settlement on behalf of the following Settlement Class:

15 All current and former non-exempt employees employed by Defendant
16 Warehouse Services Logistics, LLC in California from June 12, 2021
through August 17, 2026 (the “Class Period”)

17 Based upon the data provided by Defendant, there are approximately 683 potential
18 Settlement Class members. After Court-approved deductions for Plaintiff’s Class Representative
19 Service Award, settlement administrator costs, the amount designated as PAGA civil penalties,
20 and attorneys’ fees and costs to Class Counsel, the remaining Net Settlement Amount (“NSA”)
21 is estimated to be no less than \$1,083,000.00. This results in an average Individual Settlement
22 Award of approximately **\$1,585.65**, which is an excellent result for Settlement Class members in
23 light of the significant litigation risks Plaintiff faced. Further, an additional \$17,500.00 will be
24

25 _____
26 ¹The Stipulation of Settlement ("Settlement") is attached to the Declaration of Sean M. Blakely
27 as Exhibit 1. The proposed Notice of Pendency of Class Action and Proposed Settlement and
28 Notice of Estimated Individual Settlement Award are attached to the Settlement as Exhibits A
and B, respectively. All defined terms in this motion have the same definition as that in the
Settlement.

1 paid to all current and former non-exempt employees who worked for Defendant in California
2 between March 12, 2024 and August 17, 2026 (the “PAGA Period”) (collectively, the “Aggrieved
3 Employees”) for the release of claims under PAGA. These payments will be made to
4 approximately 355 Aggrieved Employees, resulting in an average Individual PAGA Payment of
5 approximately \$49.30.

6 Significantly, Settlement Class members do not need to file a claim form in order to
7 receive an Individual Settlement Award, as all Settlement Class members who do not opt-out will
8 automatically receive a payment from the Settlement. This represents a fair and reasonable result
9 for the Settlement Class members, who will be agreeing to a release of only those claims that
10 were asserted in the operative complaint. *See* Settlement, § 2(A).

11 The proposed Settlement is well within the range of possible approval in light of the
12 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
13 and the monetary benefit to the Settlement Class members. For the reasons discussed herein,
14 Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

15 **II. SUMMARY OF THE LITIGATION**

16 **A. FACTUAL AND PROCEDURAL BACKGROUND**

17 Defendant is a provider of warehouse services and third-party logistics throughout the
18 United States, including California. *See* Declaration of Sean M. Blakely (“Blakely Decl.”), ¶ 8.
19 Plaintiff was employed by Defendant as a non-exempt Inventory and Claims Clerk from
20 approximately January 2013 until approximately February 2025. *See* Declaration of Joshua
21 Kovacovsky In Support of Approval of Class Action Settlement (“Kovacovsky Decl.”), ¶ 2. Like
22 all Settlement Class members, Plaintiff was employed by Defendant as a non-exempt employee
23 during the Class Period and was subject to Defendant’s allegedly unlawful wage and hour policies
24 and practices. *Id.*

25 On March 12, 2025, Plaintiff filed a Class Action Complaint in San Bernardino County
26 Superior Court, alleging Defendant failed to: (i) pay minimum wages; (ii) pay all overtime wages;
27 (iii) provide compliant meal periods; (iv) provide compliant rest periods; (v) furnish accurate
28 wage statements; (vi) pay all wages due upon separation of employment; and (vii) engaged in

1 unfair business practices. Blakely Decl., ¶ 9. On that same day, Plaintiff sent his PAGA notice
2 letter to Defendant and the LWDA. *Id.*; *see also* Exhibit 2 (LWDA Letter). On May 20, 2025,
3 Plaintiff filed a separate representative action for civil penalties under the PAGA in the matter
4 entitled *Joshua Kovacovsky v. Warehouse Services Logistics, LLC*, San Bernardino Superior
5 Court Case No. CIVSB2520525 (“PAGA Action”). As part of the Settlement, the Parties agreed
6 for Plaintiff to file a First Amended Class and Representative Action Complaint (“FAC”) in this
7 Action, adding an eighth cause of action for civil penalties under PAGA (Labor Code § 2698 *et*
8 *seq.*). *Id.* On July 29, 2026, the operative FAC was filed in this Action. *Id.*

9 **B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES**

10 **1. Regular Rate Violations**

11 Plaintiff asserts that Defendant paid employees shift differentials (evening shift and
12 weekend shift premiums) and other incentive pay but systematically failed to include the value of
13 those payments when calculating the regular rate of pay for overtime purposes. *See* Blakely Decl.,
14 ¶ 14. For example, employees received shift differentials for working an evening shift and for
15 working a weekend shift, however, Plaintiff alleges that these shift differentials were not included
16 in the calculation of employees’ regular rate of pay for overtime purposes, resulting in unpaid
17 overtime wages to Plaintiff and Settlement Class members. *Id.*

18 In response, Defendant argues that it properly calculated the regular of pay in accordance
19 with California law and paid all overtime wages owed to Settlement Class members. Blakely
20 Decl., ¶ 14. Defendant disputes Plaintiff’s allegations and maintains that it properly calculated
21 employees’ regular rates of pay in accordance with applicable law. *Id.* Defendant contends that
22 all compensation required to be included in employees’ regular rates of pay was properly
23 considered and denies that it maintained any policy or practice resulting in the alleged
24 underpayment of overtime wages. *Id.* Defendant further argues that individualized inquiries into
25 each employee’s payments would be necessary to determine which employees were actually
26 underpaid, precluding class treatment. *Id.*

27 **2. Rest Period Violations**

28 Plaintiff alleges that Defendant failed to authorize and permit all legally compliant off-

1 duty rest periods. *See* Blakely Decl., ¶ 15. Specifically, Plaintiff contends that Defendant required
2 its non-exempt employees to record all work activities, including the times they took their paid
3 rest periods. *Id.* Plaintiff asserts that these activity records show employees were not always able
4 to take a ten-minute rest period for every four hours work, or major fraction thereof. *Id.* Plaintiff
5 asserts that this was due to a heavy workload as Defendant expected employees to complete their
6 work assignments before taking a rest period. *Id.*

7 In response, Defendant argues it maintains lawful written rest period policies that
8 authorize and permit all required rest periods consistent with *Augustus v. ABM Sec. Servs.*, 2
9 Cal.5th 257 (2016). Blakely Decl., ¶ 15. Defendant contends that the activity records do not
10 definitively prove rest periods were denied, only that they were not separately logged. *Id.*
11 Defendant further argues the violation rate is overstated because some employees voluntarily
12 chose to forgo rest periods. *Id.* Defendant also argues that Plaintiff's rest period claim is not
13 amenable to class treatment, since individual inquiries would be required to determine which
14 employees failed to take rest periods, how many rest periods they failed to take, and the reasons
15 why each employee failed to take rest period(s) on a particular shift. *Id.*

16 **3. Meal Period Violations**

17 Plaintiff alleges that Defendant failed to provide legally compliant first meal periods such
18 that first meal periods were regularly late (commencing after the fifth hour of work) and/or short
19 (less than 30 minutes). *See* Blakely Decl., ¶ 17. Plaintiff also alleges that employee meal periods
20 were often interrupted as Defendant required employees to have their cellular phone on them
21 during their entire shift, including off-duty meal periods. *Id.* Plaintiff also asserts that Defendant
22 regularly failed to provide second meal periods when employees worked shifts in excess of 10.0
23 hours. *See* Blakely Decl., ¶ 16.

24 In response, Defendant argues it has maintained compliant written policies throughout the
25 Class Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 17.
26 Defendant further argues that its timekeeping records accurately reflect meal period compliance.
27 *Id.* Defendant further contends that it always provided employees the opportunity to take meal
28 periods and is not required to *ensure* they are taken. *Id.*; *see Brinker Rest. Corp. v. Superior Court*,

53 Cal.4th 1004, 1034 (2012). Thus, Defendant argues, any non-compliant meal periods were the result of lawful employee choice, rather than any policy and/or practice of Defendant. Blakely Decl., ¶ 17. Finally, Defendant maintains Plaintiff’s meal period claim is not suited for class certification, since individual inquiries would be needed to assess which employees, if any, took non-compliant or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a meal period on a particular shift. *Id.* As it pertains to second meal period, Defendant contends that for shifts between 10.0–12.0 hours, employees lawfully waived their second meal periods by mutual consent pursuant to Labor Code § 512(a). *See* Blakely Decl., ¶ 16.

4. Wage Statement, Waiting Time, and PAGA Penalties

As a result of these alleged wage and hour violations, Plaintiff asserts that Defendant failed to comply with its wage statement obligations, in violation of Labor Code § 226. Blakely Decl., ¶ 18. In addition, as a result of the unpaid wages and unpaid meal and rest period premiums alleged above, Plaintiff asserts that Defendant failed to pay all wages owed at the time of his separation of employment with Defendant. *Id.*, at ¶ 19. Finally, Plaintiff seeks civil penalties under the PAGA, based on the aforementioned claims. *Id.*, at ¶ 20.

In response, Defendant contends that any alleged wage statement violations could not be shown to be “knowing and intentional,” particularly given its good-faith defenses, that Plaintiff cannot show he or other employees “suffer[ed] injury” due to alleged wage statement violations, as required by Lab. Code § 226(e) for the imposition of penalties, and that the wage statements always accurately reflected amounts paid to employees. Blakely Decl., ¶ 18; *see also, Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1337 (2018) (“The purpose of section 226 is to ‘document the paid wages to ensure the employee is fully informed regarding the calculation of those wages’”).

Defendant further contends it attempted to pay all final wages owed to separating employees in good faith and within the statutory time limits, and invokes a good faith dispute defense under 8 Cal. Code Regs. § 13520. Blakely Decl., ¶ 19; *see also* 8 Cal. Code Regs. § 13520 (“[A] good faith dispute that any wages are due will preclude imposition of waiting time penalties

1 under Section 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer
2 presents a defense, based in law or fact which, if successful, would preclude any recovery on the
3 part of the employee.”). Defendant further asserts that Plaintiff’s waiting time penalty exposure
4 was grossly inflated as not every former employee experienced the alleged Labor Code violations.
5 Blakely Decl., ¶ 19.

6 Finally, Defendant contends that since Plaintiff’s PAGA claim is derivative of his
7 underlying wage claims, Plaintiff’s PAGA claim would fail with those claims. Blakely Decl., ¶
8 20; *see Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the underlying
9 causes of action fail, the derivative UCL and PAGA claims also fail”). Defendant further
10 maintains that given its good faith defenses, the Court would substantially reduce any PAGA
11 penalties awarded. Blakely Decl., ¶ 20; Lab. Code § 2699(e)(2) (authorizing reduction in PAGA
12 penalties in court’s discretion); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112,
13 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien, Inc.*, No. ED-CV-
14 10-1487-RGK (OPx), 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by
15 over 82%); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA
16 penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the
17 law).

18 **C. DISCOVERY AND MEDIATION**

19 The Parties engaged in substantial informal discovery and information exchange prior to
20 participating in two mediations. *See* Blakely Decl., ¶ 10. Through informal discovery and
21 information exchange, Defendant provided Plaintiff with timekeeping records and payroll records
22 for a 25% sampling of non-exempt employees employed during the Class Period. *Id.* Defendant
23 also produced its relevant wage and hour policies and an employee handbook, Plaintiff’s
24 personnel records, as well as relevant data points such as the number of non-exempt employees
25 and workweeks in the Class Period, and the number of non-exempt employees and pay periods
26 in the PAGA Period. *Id.* Plaintiff hired a labor economist with a Ph.D. in economics to assist
27 Plaintiff in conducting a comprehensive analysis and extrapolation of the payroll and timekeeping
28 data produced by Defendant to create a detailed exposure analysis for all claims at issue. *Id.* This

discovery allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Defendant's potential defenses. *Id.*

On May 4, 2026, the Parties participated in a full-day mediation session before Steve Serratore, Esq., a respected wage-and-hour mediator, during which the Parties exchanged divergent views on Defendant's liability and exposure valuations, their legal positions, and the likelihood of certification of Plaintiff's claims. Blakely Decl., ¶ 11. The Parties did not reach a settlement at the May 4, 2026 mediation and agreed to attend a second mediation session. *Id.* Prior to the second mediation session, Defendant produced timekeeping and payroll records for all non-exempt employees during the Class Period, as well as additional data points and other information. *Id.*

On June 18, 2026, the Parties attended a second full-day mediation with Mr. Serratore. Blakely Decl., ¶ 11. At the conclusion of the mediation, Mr. Serratore issued a mediator's proposal for a class-wide settlement, which was ultimately accepted by all Parties. *Id.* During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement Agreement now before the Court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves this settlement, Defendant will pay a Gross Settlement Amount ("GSA") of \$1,900,000.00. *See* Settlement, § 3. This Settlement is non-reversionary, and Settlement Class members will automatically receive their Individual Settlement Award unless they affirmatively opt-out. Settlement, §§ 3, 4. Defendant shall fund the GSA within 65 calendar days after the Effective Date (later of final approval order or resolution of any appeal). *Id.*, at § 3(B). The monetary terms of the Settlement are as follows:

• Gross Settlement Amount:	\$1,900,000.00
• Minus Court-approved attorneys' fees (35%):	\$665,000.00
• Minus Court-approved attorneys' costs (up to):	\$80,000.00
• Minus Class Representative Service Award:	\$10,000.00
• Minus amount set aside as PAGA penalties:	\$50,000.00
• <u>Minus Settlement Administrator costs (up to):</u>	\$12,000.00
Net Settlement Amount:	\$1,083,000.00
• PLUS 35% "PAGA Amount" to PAGA Employees:	\$17,500.00

Total Amount Paid to Settlement Class members: \$1,100,500.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for Court-approved attorneys' fees and costs, Plaintiff's Class Representative Service Award, the total amount designated as PAGA penalties, and settlement administration costs, the Settlement requires Defendant to pay a Net Settlement Amount of at least \$1,083,000.00 to all Settlement Class members who do not timely opt-out. *See* Settlement, § 4(A). The Settlement Administrator will calculate Individual Settlement Awards from the Net Settlement Amount based on each Settlement Class member's proportionate number of workweeks worked during the Class Period. *Id.*, § 4(B)(i). In addition to the Net Settlement Amount, Seventeen Thousand Five Hundred Dollars (\$17,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount," and each Aggrieved Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods worked during the PAGA Period. *Id.*, § 4(B)(ii).

According to Defendant's records, there are approximately 683 Settlement Class members. Blakely Decl., ¶ 13. Therefore, the average Individual Settlement Award from the Net Settlement Amount is projected to be approximately \$1,585.65. *Id.* There are approximately 355 Aggrieved Employees who worked during the PAGA Period. *Id.* Therefore, the average Individual PAGA Payment from the PAGA Amount is estimated to be approximately \$49.30. *Id.*

Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, §§ 9(C)-(D). Those Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement. *Id.*, § 2. Settlement Class members will have 180 days from the date the Individual Settlement Awards are mailed to cash their checks. *Id.*, § 4(E). In the event that there are any uncashed checks remaining after 180 days, any remaining funds will be transferred to Legal Aid Society of San Bernardino, the Parties' agreed-upon *cy pres* designee. *Id.*

///

1 **2. Attorneys' Fees and Costs, Service Award, and PAGA Payment**

2 At the time of seeking final settlement approval, Plaintiff will apply for a Class
3 Representative Service Award in the amount of \$10,000.00 for his service to the Settlement Class
4 and general release of all claims. Blakely Decl., ¶ 24; *see* Settlement, §§ 3(C)(3), 6. As will be
5 fully briefed at the time of final approval, Plaintiff's requested Class Representative Service
6 Award is intended to recognize the significant time and effort that Plaintiff expended on behalf
7 of the Settlement Class, including producing documents, providing factual information, attending
8 meetings with counsel, being available for mediation, and reviewing settlement documents, and
9 the significant risks Plaintiff undertook by serving as the named Plaintiff, and the fact that he
10 agreed to a general release of all claims subject to a waiver of Civil Code § 1542. Kovacovsky
11 Decl., ¶¶ 5-7; *see also* Blakely Decl., ¶ 24.

12 Class Counsel will also apply for an attorneys' fee award of up to 35% of the GSA
13 (currently estimated at \$665,000.00), and up to \$80,000.00 in reimbursement for actual litigation
14 costs. Blakely Decl., ¶ 23; *see* Settlement, §§ 3(C)(4), 5. Plaintiff submits that the requested fee
15 is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on
16 a purely contingent fee basis. Blakely Decl., ¶ 23. Class Counsel has incurred substantial
17 attorneys' fees conducting pre-filing investigation, analyzing Plaintiff's claims, conducting legal
18 research, conducting extensive informal discovery, reviewing Defendant's policies and extensive
19 timekeeping/payroll data, retaining an expert to assist in creating a comprehensive damages
20 model, preparing a mediation brief and attending two mediation sessions, negotiating the
21 settlement, and preparing the preliminary approval papers. *Id.* Class Counsel will also expend
22 future attorney time attending the hearing on this Motion, overseeing the Notice process, drafting
23 the Final Approval Motion and supporting documents, attending the Final Approval hearing, and
24 completing other tasks, such as fielding questions from Settlement Class members. *Id.*

25 Both California and federal courts have recognized that an appropriate method for
26 awarding attorneys' fees in class actions is to award a percentage of the "common fund" created
27 as a result of the settlement. *See Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016);
28 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001). Historically, courts have

1 awarded percentage fees in the range of 20% to 50%. *See* 4 Newberg on Class Actions § 14.6 (4th
2 Ed. 2013). Class Counsel submits that the request for attorneys’ fees is reasonable when viewed
3 as an overall percentage of the Settlement in light of the risks and work undertaken, the positive
4 results obtained for the class, and the efficiency with which Plaintiff conducted the litigation.
5 Blakely Decl., ¶ 23. Class Counsel will seek an award of attorneys’ fees when seeking final
6 approval.

7 Additionally, the parties have agreed to designate \$50,000.00 of the Gross Settlement
8 Amount as PAGA civil penalties, of which \$32,500.00 (65%) will be paid to the LWDA, with
9 the remaining \$17,500.00 (35%) for distribution to the Aggrieved Employees, as the PAGA
10 requires such penalties to be allocated per Labor Code § 2699(m). *See* Settlement, § 3(C)(5).
11 Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g.,*
12 *Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D.
13 Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
14 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
15 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
16 settlement).

17 **IV. ARGUMENT**

18 **A. PRELIMINARY APPROVAL IS WARRANTED**

19 California Rule of Court 3.769 conditions settlement of a class action on court approval,
20 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
21 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
22 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and
23 adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
24 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair,
25 adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly
26 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
27 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the
28 agreement taken as a whole is fair. *See, e.g., Hanlon*, 150 F.3d at 1027. There is an initial

1 presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class
2 counsel and with the assistance of an experienced wage and hour class action mediator. *See, e.g.,*
3 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

4 **1. Standard for Preliminary Approval**

5 The Court should consider the following factors when making a fairness determination:
6 “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further
7 litigation, the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
9 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
10 “[T]he court is free to engage in a balancing and weighing of factors depending on the
11 circumstances of each case.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001).
12 As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the
13 overall balance of factors.

14 **a. The Strength of Plaintiff’s Case**

15 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff
16 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
17 described above in section II.B., *supra*, Defendant presented multiple defenses to Plaintiff’s
18 claims, both on the merits and with respect to class certification. Thus, while Plaintiff was
19 prepared to litigate these claims through class certification, and ultimately trial, success was far
20 from certain.

21 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

22 Although the Parties engaged in significant informal discovery prior to two mediations,
23 the Parties still had significant formal discovery to complete had the matter not been settled.
24 *Blakely Decl.*, ¶ 22. This would have required the expenditure of substantial time and resources
25 by both Parties that would have very likely spanned several years. *Id.* Even if Plaintiff was to
26 certify the classes, the Parties would incur considerably more attorneys’ fees and costs through a
27 possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks
28 and the accompanying expense. *Id.*

1 **c. Risk of Maintaining Class Action Status**

2 Plaintiff has not yet filed his motion for class certification, and as such, the extent to which
3 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
4 was a risk that there would not be a certified class at the time of trial, or if there were, it would
5 consist of a significantly smaller group of employees than the proposed Settlement Class (either
6 due to a narrowing of the class definition in a Court order on a contested motion for class
7 certification, or through settlement agreements entered into by Defendant with individual class
8 members by way of *Pick-up-Stix* type settlement agreements²), and the expected recovery could
9 be significantly reduced, given the settlement amounts that are typically offered through the *Pick-*
10 *up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

11 **d. Amount Offered in Settlement Given Realistic Value of Claims**

12 This Settlement provides an exceptional recovery for the Settlement Class in the face of
13 disputed claims. After analyzing Defendant's produced data, Class Counsel and their retained
14 expert conducted a class-wide exposure analysis, forecasting the total expected recovery as
15 follows:

16 Regular Rate Violations: \$19,613

17 Plaintiff alleges that Defendant paid employees shift differentials (evening shift and
18 weekend shift premiums) but systematically failed to include the value of those shift differentials
19 when calculating the regular rate of pay for overtime purposes. *See* Blakely Decl., ¶ 14. Based on
20 Plaintiff's expert's analysis, this resulted in overtime underpayment of approximately \$28,843
21 during the Class Period. *Id.*

22 Defendant, however, argues that it properly calculated the regular of pay in accordance
23 with California law and paid all overtime wages owed to Settlement Class members. Blakely
24

25 ² In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
26 employer may enter into pre-certification settlement agreements with individual putative class
27 members in which the putative class members release claims for past unpaid wages and penalties
28 in exchange for consideration. The Court further held that such settlements could preclude those
individual employees from recovery in class action litigation against the employer for the same
wage claims.

Decl., ¶ 14. Plaintiff therefore discounted the maximum exposure by 15% for the risk of non-certification, and by an additional 20% for the risk of losing on the merits, to arrive at an estimated exposure of approximately \$19,613. *Id.*

Rest Period Violations: \$454,605

Plaintiff's expert's data analysis determined that employees did not receive all legally compliant rest periods on 63,101 shifts in excess of 3.5 hours, reflecting a 38% violation rate. Blakely Decl., ¶ 15. Plaintiff's analysis further revealed that Defendant paid 111 rest period premiums during the Class Period. *Id.* Plaintiff therefore calculated Defendant's maximum exposure for this claim at approximately \$1,377,591 [(63,101 violations – 111 rest premiums paid) × \$21.87 average rest premium]. *Id.*

Defendant, however, argues it maintains lawful written rest period policies that authorize and permit all required rest periods. Blakely Decl., ¶ 15. Defendant contends that the activity records do not definitively prove rest periods were denied, and that individualized inquiries would be necessary to establish liability on a classwide basis. *Id.* Plaintiff therefore discounted the maximum exposure by 45% for the risk of non-certification, and by an additional 40% for the risk of losing on the merits, to arrive at an estimated exposure of approximately \$454,605. *Id.*

Second Meal Period Violations: \$285,414

Plaintiff alleges that Defendant regularly failed to provide second meal periods to employees working shifts in excess of 10.0 hours. Blakely Decl., ¶ 16. Plaintiff's expert's review of Defendant's timekeeping records reveals that 99.6% of all shifts over 10.0 hours did not reflect a legally compliant second meal period. *Id.* In total, approximately 43,178 shifts of over 10.0 hours lacked a compliant second meal period. *Id.* Plaintiff's data analysis further showed that Defendant paid 36 meal period premiums during the entire Class Period. *Id.* Plaintiff therefore calculated Defendant's maximum exposure for this claim at approximately \$943,516 [(43,178 violations – 36 meal premiums paid) × \$21.87 average meal premium]. *Id.*

Defendant, however, argues it provided the opportunity for second meal periods on shifts exceeding 10.0 hours, consistent with *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), and that for shifts between 10.0–12.0 hours, employees voluntarily waived their second

1 meal periods by mutual consent pursuant to Labor Code § 512(a). Blakely Decl., ¶ 16. Defendant
2 also argues that individualized inquires would preclude class certification of this claim. *Id.*
3 Plaintiff therefore discounted the maximum exposure by 45% for the risk of non-certification,
4 and by an additional 45% for the risk of losing on the merits, or having the exposure reduced due
5 to Defendant’s waiver arguments, to arrive at an estimated exposure of \$285,414. *Id.*

6 First Meal Period Violations: \$57,522

7 Plaintiff’s expert’s review of Defendant’s timekeeping records shows 7,306 shifts in
8 excess of 6.0 hours that do not reflect a legally compliant first meal period. Blakely Decl., ¶ 17.
9 Plaintiff therefore calculated Defendant’s maximum exposure for this claim at approximately
10 \$159,782 (7,306 violations × \$21.87 average meal premium). *Id.*

11 Defendant, however, argues it maintained compliant written meal period policies and
12 provided compliant first meal periods in line with those policies. Blakely Decl., ¶ 17. Defendant
13 further argues that any alleged interruptions were isolated incidents, not evidence of a common
14 policy or practice. *Id.* Plaintiff therefore discounted the maximum exposure by 40% for the risk
15 of non-certification, and by an additional 40% for the risk of losing on the merits, to arrive at an
16 estimated exposure of approximately \$57,522. *Id.*

17 Wage Statement Penalties: \$390,500

18 As a result of Defendant’s failure to pay all overtime wages and all meal and rest period
19 premiums, Plaintiff alleges that Defendant issued inaccurate wage statements. Blakely Decl., ¶
20 18. A total of 355 employees received 17,305 wage statements during the one-year statute of
21 limitations period. *Id.* Labor Code § 226(e)(1) sets penalties at \$50 for initial violations and \$100
22 for subsequent violations, capped at \$4,000 per employee. *Id.* Plaintiff therefore calculated
23 Defendant’s maximum exposure for this claim at approximately \$1,420,000 (355 employees ×
24 \$4,000 max penalty per employee). *Id.*

25 Defendant, however, argues that any wage statement violations were not “knowing and
26 intentional” as required by Labor Code § 226(e), and that employees did not suffer “injury” and
27 that the wage statements always accurately reflected hours worked and amounts paid to
28 employees. Blakely Decl., ¶ 18. Defendant further argues that since Plaintiff’s wage statement

claims are derivative of his underlying claims, the wage statement claims would fail as well. *Id.* Plaintiff therefore discounted the maximum exposure by 45% for the risk of non-certification, and by an additional 50% for the risk of losing on the merits, to arrive at an estimated exposure of \$390,500. *Id.*

Waiting Time Penalties: \$594,449

Plaintiff's expert's data analysis showed that a total of 453 employees are eligible for waiting time penalties. Blakely Decl., ¶ 19. Under Labor Code § 203, employees are entitled to their daily rate of pay for up to 30 days as a penalty for willful failure to timely pay final wages. *Id.* Based on an hourly rate of \$21.87, Plaintiff estimated the average waiting time penalty per former employee to be \$5,249 (\$21.87 average hourly rate × 8 hours × 30 days). *Id.* Plaintiff therefore calculated Defendant's maximum exposure for this claim at approximately \$2,377,797 (453 former employees × \$5,249 average waiting time penalty). *Id.*

Defendant, however, contends it attempted to pay all final wages owed to separating employees in good faith and within the statutory time limits. Blakely Decl., ¶ 19. Defendant also invokes a good faith dispute defense under 8 Cal. Code Regs. § 13520, arguing that any failure to include meal/rest period premiums or overtime wages in final wages was based on a reasonable and good faith belief that such amounts were not owed. *Id.* Defendant further argues that waiting time penalties are derivative and fail if the underlying wage claims fail. *Id.* Plaintiff therefore discounted the maximum exposure by 50% for the risk of non-certification, and by an additional 50% for the risk of losing on the merits, to arrive at an estimated exposure of \$594,449. *Id.*

PAGA Penalties: \$181,703

Plaintiff seeks PAGA civil penalties based on all predicate Labor Code violations. Blakely Decl., ¶ 20. Plaintiff calculated Defendant's maximum PAGA exposure at approximately \$1,730,500 (17,305 pay periods × \$100 "initial" violation rate). *Id.*; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision).

Defendant, however, argues that PAGA civil penalties are derivative of the disputed underlying Labor Code claims and should be reduced or eliminated if those claims fail. Blakely

Decl., ¶ 20; *see, e.g., Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim’s success was determined by the merits of its underlying claims). Defendant also asserts the Court would drastically reduce any award of PAGA penalties as “confiscatory.” Blakely Decl., ¶ 20; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer “not aware” of violations); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where employer made “good faith attempts” to comply with the law). Plaintiff therefore discounted the maximum exposure by 65% for risk of losing on the merits and/or not recovering a PAGA penalty in each and every pay period, and by an additional 70% for the risk of the Court reducing penalties, to arrive at an estimated exposure of \$181,703. Blakely Decl., ¶ 20.

Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential realistic recovery for the Settlement Class would be approximately \$1,983,806. Blakely Decl., ¶ 21. The proposed GSA of \$1,900,000.00 represents approximately 95.78% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiff’s counsel believes could have been recovered had the case proceeded through trial. *Id.*

e. The 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 Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is 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. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines (“Haines Decl.”). Class Counsel conducted an in-depth review of Defendant’s timekeeping, payroll, and activity records with the

1 help of a retained expert, and drew on their extensive experience in similar cases to assess the
2 strengths and weaknesses of Plaintiff's claims. *See* Blakely Decl., ¶ 23. The Settlement was also
3 reached with the assistance of an experienced and respected wage-and-hour class action mediator,
4 Steve Serratore, Esq., over two separate mediation sessions. *See* Blakely Decl., ¶ 11. This factor
5 strongly supports preliminary approval of the Settlement. *See Kullar*, 168 Cal.App.4th at 130.

6 **2. The Preliminary Approval Standard Is Met**

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

12 **a. The Settlement Is Within the Range of Possible Approval**

13 The proposed Settlement reflects approximately 95.78% of the estimated recovery the
14 Settlement Class could reasonably expect in light of the significant litigation risks and will
15 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
16 percentage of the liability exposure recovered in this case far exceeds percentages routinely
17 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
18 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
19 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
20 representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV,*
21 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) ("it is well-settled law that a proposed settlement may
22 be acceptable even though it amounts to only a fraction of the potential recovery that might be
23 available to the Settlement Class members at trial"). Further, the average Individual Settlement
24 Award of approximately **\$1,585.65** exceeds average payments achieved in many other wage and
25 hour class action settlements. Thus, Plaintiff submits that the proposed settlement is within the
26 range of possible approval, such that notice should be provided to the Settlement Class members
27 so that they can consider the Settlement. The Court will have the opportunity to again assess the
28 reasonableness of the Settlement after the Settlement Class members have had the opportunity to

1 opt-out or object.

2 **b. The Settlement Resulted from Serious, Informed Negotiations**

3 The Settlement resulted from an exchange of substantial information, extensive informal
4 discovery including the production of timekeeping records, payroll records, and activity records,
5 arm's-length negotiations by counsel, and two mediation sessions before an experienced wage
6 and hour mediator, Steve Serratore, Esq. Thus, the Settlement is entitled to an initial presumption
7 of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130. As discussed above, Plaintiff carefully
8 vetted the claims at issue, reviewed extensive timekeeping, payroll, and activity data, and with
9 the help of a retained expert conducted a detailed statistical analysis of the data to arrive at his
10 estimated class-wide damages figures. *See Blakely Decl.*, ¶¶ 10-11. Thus, this factor supports
11 preliminary approval.

12 **c. The Settlement Is Devoid of Obvious Deficiencies**

13 Preliminary approval of the Settlement is also warranted because there are no obvious
14 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
15 members. The amounts proposed for Class Counsel's attorneys' fees and costs, Plaintiff's Class
16 Representative Service Award, and settlement administration costs are all reasonable and
17 appropriate based on the facts of this case. Because the Settlement is devoid of obvious
18 deficiencies, this factor supports preliminary approval.

19 **B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

20 The Settlement Class satisfies the criteria for certification of a settlement class under
21 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
22 (2) common questions of law and fact predominate over individual questions such that class
23 certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's
24 claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and his
25 counsel will fairly and adequately represent Settlement Class members' interest. *See Cal. Civ.*
26 *Proc.* § 382.

27 **1. The Proposed Class Is Ascertainable and Numerous**

28 A class is "ascertainable" where the members "may be readily identified without

unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt employees employed by Defendant in California during the Class Period. *See* Settlement, § 1. Therefore, Settlement Class members can be identified from Defendant’s personnel and employment records. Defendant represents that the Settlement Class consists of approximately 683 current and former non-exempt employees. *See* Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Settlement Class members before the Court or for each Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class satisfies numerosity. *See, e.g., Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits but rather on what types of questions, “common or individual,” are likely to arise in the Action. *See Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on, among other issues, Defendant’s uniform meal and rest period policies/practices. These types of claims are commonly held to be proper for class certification. *See, e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. The Claims of the Named Plaintiff Are Typical

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 plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff’s claims are typical of those held by the Settlement Class members. First, Defendant employed Plaintiff as a non-exempt employee during the Class Period, and Plaintiff was subject to Defendant’s wage and hour policies at issue in this case. *See* Kovacovsky Decl., ¶ 2. Second, Plaintiff was injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he is owed unpaid overtime wages due to Defendant’s failure to include shift differentials in the regular rate calculation. *See* Kovacovsky Decl., ¶ 3. In addition, Plaintiff

1 alleges he was deprived of all legally compliant meal and rest periods. *Id.* Plaintiff further asserts
2 that he did not receive accurate and compliant wage statements and was not paid all final wages
3 upon separation. *Id.* Because Plaintiff has suffered the same injuries as the other members of the
4 Settlement Class, the typicality requirement is satisfied.

5 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
6 **Class**

7 The adequacy requirement examines conflicts of interest between named parties and the
8 class(es) they seek to represent. *See Capitol People First v. State Dep't of Developmental Servs.*,
9 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the
10 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
11 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
12 *Bank of Am.*, 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication
13 that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to
14 those of the proposed class). Class Counsel also have extensive experience in wage and hour class
15 action litigation. *See Blakely Decl.*, ¶¶ 2-6; *Haines Decl.*, ¶¶ 2-11.

16 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

17 This Court should order distribution to the Settlement Class of the proposed Notice Packet
18 by U.S. Mail, postage prepaid, in English, using the last known mailing address information
19 provided by Defendant. *See Settlement*, § 9. This manner of giving notice is the “best notice
20 practicable” under the circumstances because it provides “individual notice to all members who
21 can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173
22 (1974). Here, the Parties have agreed that the Settlement be administered by ILYM Group, Inc.
23 (“ILYM”), an experienced class action settlement administrator. *See generally* Declaration of
24 Anthony Rogers (“Rogers Decl.”) and attached exhibits. Within ten (10) business days after entry
25 of an order preliminarily approving this Settlement, Defendant will provide the Settlement
26 Administrator with the names, last known addresses, phone numbers, social security numbers, the
27 dates of employment, and the number of workweeks worked by each Settlement Class (the “Class
28 Data”). *See Settlement*, § 9(A). Within ten (10) business days of receipt of the Class Data, ILYM

1 will run the names of all Settlement Class members through the National Change of Address
2 (“NCOA”) database to update addresses and mail a Notice Packet to each Settlement Class
3 member. *Id.*, § 9(B).

4 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
5 because it advises Settlement Class members of the nature of the claims, basic contentions and
6 denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object
7 to the Settlement and the procedures by which to do so, explains the recovery formula and
8 expected recovery amount for each Settlement Class member, and advises them that they will be
9 bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. A & B to
10 Exh. 1. The proposed Class Notice will also notify Settlement Class members of the final approval
11 hearing date and provides the Settlement Class contact information for Class Counsel and advises
12 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
13 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
14 cost-effective method of reaching Settlement Class members.

15 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

16 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
17 appropriately scheduled to follow the deadline by which Settlement Class members must file
18 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

19 **V. CONCLUSION**

20 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
21 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
22 Proposed Order submitted concurrently herewith.

23
24 Dated: September 22, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

25
26 By:



27 Sean M. Blakely
28 Attorneys for Plaintiff