James R. Hawkins, Esq. SBN192925
Isandra Fernandez, Esq. SBN220482
Lance Dacre, Esq. SBN190305
JAMES HAWKINS, APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
TEL: (949) 387-7200
FAX: (949) 387-6676
Email: staff@jameshawkinsaplc.com
Email: isandra@jameshawkinsaplc.com
Email: lance@jameshawkinsaplc.com

Attorneys for Plaintiff, JEREMIAH CLAIBORNE
on behalf of himself and all others similarly situated

[Additional Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JEREMIAH CLAIBORNE, PABLO CAMPOS HERNANDEZ and MARCOS RODRIGUEZ and VICTOR AVALOS on behalf of themselves and all others similarly situated, Plaintiffs, vs. PERFORMANCE TRANSPORTATION, LLC, a California limited liability company; PERFORMANCE FOOD GROUP, INC., a Colorado corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 22STCV31766 ASSIGNED FOR ALL PURPOSES TO: JUDGE: Hon. David S. Cunningham III DEPT: S11 **PLAINTIFFS' UNOPPOSED NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; [PROPOSED] ORDER** [Declarations of Lance Dacre, Ruben Escobedo Shani O. Zakay, Jean-Claude Lapuyade, Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez and Victor Avalos concurrently filed herewith] Date: May 1, 2025 Time: 10:00 a.m. Dept.: S11

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RUBEN ESCOBEDO (SBN 277866)
WORKWORLD LAW CORP.
A Professional Corporation
6907 El Camino Real, Suite A
Atascadero, CA 93422
Telephone: (805) 335-2476
Facsimile: (805) 892-6213
Email: support@workworldlaw.com

Attorney for PABLO CAMPOS HERNANDEZ,
as Private Attorney General

ZAKAY LAW GROUP, APLC
(State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 5400
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

JCL LAW FIRM, APC
Jean-Claude Lapuyade (State Bar #248676)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com

Attorneys for Plaintiff MARCOS RODRIGUEZ//

PLEASE TAKE NOTICE THAT on May 1, 2025, at 10:00am in Department 14 at 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez and Victor Avalos (collectively, "Plaintiffs") will and hereby do move the Court for an Order (1) provisionally certifying the Class for Settlement purposes only; (2) provisionally approving James Hawkins, Isandra Fernandez and Lance Dacre from the law firm of James Hawkins, APLC, Ruben Escobedo from the law firm of Workworld Law Corp., Shani O. Zakay from the law firm of Zakay Law Group, APLC, and Jean-Claude Lapuyade from the law firm of JCL Law Firm, APC as Class Counsel for Plaintiffs and the Class Members in this matter; (3) provisionally approving Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez and Victor Avalos as the Class Representatives; (4) approving ILYM Group, Inc. as the Settlement Administrator; (5) preliminarily approving the class action settlement; and (6) approving and directing distribution of Notice of Class Action Settlement.

This unopposed motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to provisionally certify a class for settlement purposes. The basis for this motion is that the proposed Settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to participate in, opt out of, or object to the Settlement.

This unopposed motion will be based on the Memorandum of Points and Authorities included herein, the declarations of Lance Dacre, Ruben Escobedo, Shani O. Zakay and Jean-Claude Lapuyade (class counsel), and Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez and Victor Avalos (class representatives), the Joint Stipulation For Settlement and Release of Class Action and PAGA Representative Action Claims, attached to the Declaration of Lance Dacre as Exhibit 1 and upon any oral arguments of counsel and upon the complete records and file herein.

Dated: December 30, 2024,

JAMES HAWKINS,APLC

Isandra Fernandez, Esq.
Lance Dacre, Esq.
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez and Victor Avalos ("Plaintiffs") are named plaintiffs in this consolidated action brought against Defendants Performance Transportation, LLC ("PTL") and Performance Food Group, Inc. ("PFG") collective ("Defendants") for wage and hour violations. (Case No. 22STCV31766, Los Angeles County Superior Court (the "Action")

After engaging in extensive informal exchange of documents and information and participating in a full day mediation, Plaintiffs and Defendant (collectively, the "Parties") reached a settlement of the claims asserted by Plaintiffs on behalf of Class Members and Aggrieved Employees for a total of Seven Hundred and Five Thousand Dollars ($705,000) ("Gross Settlement Amount"), subject to court approval. The Gross Settlement Amount ("GSA") includes the individual settlement payments to the Class Members and Aggrieved Employees, attorneys' fees and costs, Class Representative enhancement payments, the costs of the settlement administrator, and payment to the California Labor Workforce Development Agency ("LWDA") under PAGA (the "Settlement"). This is a non-reversionary cash settlement. Every Class Member who does not opt out of the Settlement will automatically be mailed an individual settlement payment. However, every Class Member who is also within the PAGA group will be mailed their respective individual settlement payment associated with the PAGA penalty portion of the settlement amount regardless of opt-out status. There is no claim filing process, and Class Members do not have to file a claim to be mailed a payment.

As discussed more thoroughly below, the proposed Settlement satisfies all of the criteria for preliminary settlement approval under California law, and it falls well within the range of reasonableness for proper approval. As such, Plaintiffs move this Court to: (i) provisionally certify the proposed Class; (ii) provisionally approve James Hawkins, Isandra Fernandez, and Lance Dacre from the law firm of James Hawkins, APLC;, Ruben Escobedo from the law firm of Workworld Law Corp, Shani O. Zakay from the law firm of Zakay Law Group, APLC and Jean-Claude Lapuyade from the law firm of JCL Law Firm, APC as Class Counsel for Plaintiffs and the Class

Members in this matter; (iii) provisionally approve Jeremiah Clairborne, Pablo Campos Hernandez, Marcos Rodriguez and Victor Avalos as the Class Representatives; (iv) approve ILYM Group, Inc. as the Settlement Administrator; (v) preliminarily approve the class action settlement; (vi) approve and direct distribution of Notice of Class Action Settlement; and (vii) schedule a final approval hearing.

II. FACTUAL BACKGROUND

A. Pleadings

On March 14, 2022, Plaintiff Hernandez filed a PAGA representative action in Kern County Superior Court captioned State ex rel. Hernandez v. Performance Transportation, LLC, Case. No. BCV-22-100592 (the "Hernandez Action").

On September 28, 2022, Plaintiff Claiborne filed a wage and hour class action against Defendants in Los Angeles County Superior Court captioned Clairborne v. Performance Transportation, LLC et al. Case No. 22STCV31766 ("Claiborne" Action). On that same date, Claiborne submitted notice to the LWDA of his intent to file a claim under PAGA. On October 25, 2022, Plaintiff submitted an amended notice to the LWDA and on December 22, 2022, filed a First Amended Complaint adding the claims in Hernandez. Hernandez was subsequently dismissed without prejudice.

On September 1, 2022, Plaintiff Rodriguez filed a wage and hour class action against Defendant PFG in Alameda Superior Court captioned *Rodriguez v. Performance Food Group* Case No. 22CV021320) ("*Rodriguez* Action") alleging the following claims: (1) unfair competition, (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide meal periods or compensation in lieu thereof; (5) failure to provide rest periods or compensation in lieu thereof; (6) failure to provide accurate, itemized wage statements, and (7) failure to reimburse employees for business expenses. On November 8, 2022, Rodriguez filed a PAGA action in Alameda County Superior Court captioned *Rodriguez v. Performance Transportation, LLC,* Case No. 22CV021320 ("*Rodriguez*" Action).

On August 28, 2024, Plaintiffs Claiborne and Hernandez filed a Second Amended Complaint adding the named plaintiffs, Marcos Rodriguez and Victor Avalos and facts and claims asserted therein. The Second Amended Complaint is the "Operative Complaint" in the Action, alleging: (1) failure to pay lawful wages including overtime pursuant to California Labor Code sections 510, 1194 and 1198, and the applicable wage orders; (2) failure to provide lawful meal periods pay premiums in lieu thereof in violation of California Labor Code sections 226.7 and 512(a), and the applicable wage orders; (3) failure to lawful rest periods or pay premiums in lieu thereof in violation of California Labor Code section 226.7, and the applicable wage orders; (4) failure to reimburse employee expenses pursuant to California Labor Code sections 2800 and 2802; (5) failure to timely pay wages during employment in violation of California Labor Code section 204; (6) failure to timely pay wages due at termination of employment in violation of California Labor Code sections 201-203; (7) failure to provide accurate and itemized wage statements in violation of California Labor Code section 226(a) and the applicable wage orders; (8) violations of California Business and Professions Code section 17200, *et seq*.; (9) failure to establish, implement, and maintain effective injury prevention program; (10) permitting unsafe work and failure to provide safe workplace, practices, and processes (11) failure to pay minimum wages owed; (12) failure to provide time records; (13) failure to pay correct sick pay compensation pursuant to Labor Code sections 246, 218.5, and the applicable wage orders; and (14) a cause of action for civil penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq*. (Declaration Lance Dacre "Dacre Decl." ¶ 2.)

Throughout this litigation, Defendants have denied Plaintiffs' allegations and raised defenses to their claims, individually and on a class wide basis. Defendants maintain that their policies and practices meet the requirements of the Labor Code and applicable Wage Orders (Dacre Decl. ¶ 3.) To date, no motion for class certification has been filed in this case, no class has been certified, and the Court has not made any findings that Defendants engaged in any wrongdoing or in violation of any state law, rule, or regulation, with respect to the issues presented in the litigation. (Dacre Decl., ¶ 4.)

B. <u>Discovery and Mediation</u>

Through exchange of informal discovery, Defendants produced to Plaintiffs extensive documentation, including, but not limited to, employment records, policies, time and wage records, employment and operations practices, and procedures documents, composite data, as well as time and pay data for a sample of Class Members during the Class Period, and other detailed information relevant to the claims in the Action. The Parties' attorneys also engaged in extensive discussions about the strengths and weaknesses of the claims and defenses in the Action. Plaintiff also had many of these records analyzed by an expert (Dacre Decl. ¶ 5.)

On September 27, 2023, the Parties participated in a global, full-day mediation before Jason Marsili, a well-regarded mediator experienced in mediating complex labor and employment matters. (Dacre Decl. ¶ 6.) Although they were unable to reach an agreement at the mediation, the Parties subsequently continued negotiations and accepted a mediator's proposal and reached a global resolution of all claims asserted in the Action. (Id.) The principal terms were set forth in a Memorandum of Understanding ("MOU") executed by the Parties on or about December 18, 2023, and then ultimately the Joint Stipulation for Settlement and Release of Class Action and Representative Action Claims. ("Settlement Agreement") (Dacre Decl., ¶ 7; Exh. 1)

Based on their own respective independent investigations and evaluations and after considering the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution in light of certification issues faced due to the Brinker Rest. Corp. v. Super. Ct. (2012) 53 Cal. 4th 1004 ("Brinker") decision, the informal discovery and investigation conducted, and the benefits received under the settlement, the Class Representatives and their counsel are of the opinion that settlement for the monetary consideration and on the terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Representatives and the Class Members. (Dacre Decl., ¶ 8.)

III. <u>SUMMARY OF SETTLEMENT TERMS</u>

A. <u>Class Members and Aggrieved Employees</u>

"Settlement Class Members" means all current and former non-exempt, hourly-paid employees (including but not limited to hourly and component-pay truck drivers) who performed work for PTL in California at any time from September 1, 2018, through March 18, 2024, ("Class Period") (Settlement Agreement §§ E, FF.)

"Aggrieved Employees" means all persons who were employed by PTL in California in an hourly-paid position including, but not limited to, hourly and component-pay truck drivers, at any time from January 5, 2021, through March 18, 2024. ("PAGA Period") (Settlement Agreement, §§ B, U.)

B. **Allocation of Settlement Amount**

1. The total maximum amount of settlement is Seven Hundred and Five Thousand Dollars and Zero Cents ($705,000.00)[1] ("Gross Settlement Amount" and/or "GSA") to be paid by Defendant pursuant to this Settlement. The GSA includes, but is not limited to, Individual Settlement Payments to Participating Class Members, Attorneys' Fees and Costs, the Class Representative Service Awards, Settlement Administration Costs, and the PAGA Payment, including the LWDA Payment, subject to Court approval and the terms of this Stipulation. It expressly excludes Employer Taxes, which shall be paid by Defendants separate, apart, and in addition to the GSA. (Settlement Agreement, § M.)

2. Subject to Court approval, Class Counsel shall be paid Two Hundred Forty-Six Thousand Seven Hundred and Fifty Dollars and Zero Cents ($246,750) in attorneys' fees (i.e., 35% of the GSA) and actual costs not to exceed Thirty-Five Thousand Dollars and Zero Cents ($35,000). (Settlement Agreement, § 13.)

3. Subject to Court approval, the Named Plaintiffs ("Class Representatives,") shall be paid a Class Representative Service Award ("Service Award") not to exceed Ten Thousand Dollars ($10,000) each for their time and effort in bringing and presenting the Action and for releasing their Released Representative Plaintiffs' Claims. (Settlement Agreement, § 14.)

4. Subject to Court approval, Eleven Thousand Five Hundred Dollars ($11,500) will be set aside from the GSA to cover the Settlement Administrator's costs of administering this Settlement. (Settlement Agreement, § 9.)

5. Subject to Court approval, Thirty-Five Thousand Dollars ($35,000) will be set aside from the GSA for PAGA Penalties, out of which 75% ($28,125) will be paid to the LWDA and 25% ($9,375) will be distributed among the Aggrieved Employees ("Individual PAGA Payment")

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[1] The GSA may increase subject to an escalator clause triggered by increase in the number of work weeks . (Settlement Agreement. § 18.)

(Settlement Agreement, § 16.)

6. Individual Settlement Payments to Participating Class Members. Each Class Member, who does not submit a valid request for exclusion ("Participating Class Member"), shall receive an Individual Settlement Payment. The Settlement Administrator shall calculate each Individual Settlement Payment by dividing the individual Participating Class Members' Workweeks by all Participating Class Members' Workweeks and then multiply said amount by the Net Settlement Amount. (Settlement Agreement, § 11.A.) The Net Settlement Amount ("NSA") is the amount remaining after deducting amounts set forth in paragraphs 2-5 above from the total GSA. (Settlement Agreement, §§ 1.R, 12.C)

7. Each Aggrieved Employee will be entitled to a *pro rata* share of the 25% portion of the PAGA Payment (total portion $9,375). The Settlement Administrator shall calculate each *pro rata* share by divide the individual Aggrieved Employee's Pay Periods by all Aggrieved Employees' Pay Periods and then multiply said amount by $9,375. (Settlement Agreement, § 11. C.)

8. Tax allocation of Individual Class Payments shall be: 20% as wages subject to all applicable tax withholdings, and eighty percent (80%) as penalties, interest, and non-wage damages. (Settlement Agreement, § 15(a)) The Settlement Administrator shall issue an IRS Form W-2 to each Class Member. (*Id*. § 15(b).)

Here, there are approximately 875 putative Class Members and thus the average net recovery is estimated to be $385 [2] if the Court approves the amounts set forth above. This average recovery is significantly more than other wage and hour class action settlements approved by California state and federal courts. (*See, e.g., Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately $90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately $65); *Sorenson v. Defendants, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately $60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately $35); *Gomez v. Amadeus Salon, Inc.,*

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[2] This figure is calculated based on the NSA ($336,750) divided by the number of putative Class Members (875).

Case No. BC392297 (L.A. County Super. Ct.) (average net recovery of approximately $20); and *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately $50)

C. Released Claims

1. Release by All Participating Class Members

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiffs and all Participating Class Members release the Released Parties of any and all claims that have been or could reasonably have been asserted based on the factual allegations in the Operative Complaint as follows: For the duration of the Class Period, the release includes, for Participating Class Members: (1) all claims for failure to pay (or properly pay) wages of any kind (including overtime, doubletime, meal and rest period premiums, and sick pay); (2) all claims for failure to provide meal periods or pay (or properly pay) compensation in lieu thereof (including, without limitation, break premiums); (3) all claims for failure to provide rest periods or (or properly pay) compensation in lieu thereof (including, without limitation, break premiums); (4) all claims asserting a failure to properly reimburse employees for any kind of business-related expenses; (5) all claims for failure to timely pay wages during employment; (6) all claims for failure to pay all wages due upon separation from employment; (7) all claims for failure to issue accurate, itemized wage statements; (8) all claims asserted through California Business & Professions Code section 17200, *et seq*. arising out of the Labor Code violations referenced in the SAC; (9) all claims for failure to establish, implement, and maintain an effective injury prevention program; (10) all claims for permitting unsafe work and failure to provide safe workplace, practices, and processes; (11) all claims for failure to pay minimum or other wages for all hours worked; (12) all claims for failure to provide time records; and (13) all claims for relief, including damages, statutory and/or civil penalties, equitable and/or injunctive relief, attorneys' fees, interest, costs, and any other kind of relief whatsoever that could be sought based on the factual allegations and theories of liability asserted in the SAC (the "Class Released Claims"). The Parties additionally agree that the Class Released Claims shall include the release of claims under the federal Fair Labor Standards Act ("FLSA") pursuant to *Rangel v. Check Cashers*, 899 F.3d 1106 (9th Cir. 2018).(Settlement Agreement, § 8 (a))

2. Aggrieved Employees Release of PAGA Claim

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the Settlement Administrator of the full Gross Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiffs, the Aggrieved Employees, and, to the extent permitted by law, the State of California, release the Released Parties for the duration of the PAGA Period from all claims alleged in the PAGA Notices and the SAC for PAGA civil penalties in connection with alleged violations of Labor Code sections 200, 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 223, 225, 226, 226.2, 226.3, 226.7, 246 *et seq.*, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1197.5, 1197.14, 1198, 1198.5, 1199, 2800, 2802, 2804, 2699, 2699.3, 2699.5, 6400, 6401, 6401.7, 6402, 6403, and 6404, including for alleged: (1) failure to pay (or properly pay) wages (including overtime, doubletime, meal and rest period premiums, and sick pay); (2) failure to provide meal periods or compensation in lieu thereof (including, without limitation, break premiums); (3) failure to provide rest periods or compensation in lieu thereof (including, without limitation, break premiums); (4) failure to properly reimburse employees for business-related expenses; (5) failure to timely pay wages during employment; (6) failure to pay all wages due upon separation from employment; (7) failure to issue accurate, itemized wage statements; (8) failure to maintain accurate timekeeping and payroll records; (9) failure to establish, implement, and maintain an effective injury prevention program; (10) permitting unsafe work and failure to provide safe workplace, practices, and processes; (11) failure to pay minimum or other wages for all hours worked; and (12) all claims for failure to provide time records. (Settlement Agreement, § 8 (b))

3. Plaintiffs' General Release

Effective only upon the entry of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the Settlement Administrator selected of the full Gross Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, Plaintiffs make the additional following General Release: Plaintiffs release the Released Parties from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, law or regulation arising out of, relating to, or in connection with any act or omission of the Released Parties through the date of final approval of this Agreement in connection with Plaintiffs' employment with PTL or the termination thereof, except for any and all other claims that may not be released as a matter of law through this Agreement. To the extent of the General Release provided herein, Plaintiffs stipulate and agree that, upon entry of an Order granting Final Approval of the Settlement, entry of Judgment, and payment by Defendants to the Settlement Administrator selected of the full Gross Settlement Amount and Employer's Taxes necessary to effectuate the Settlement, they shall have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code or any other similar provision under federal or state law.

D. <u>Notice Procedure</u>

Subject to Court approval of the Settlement, within twenty-five (25) calendar days after entry of the Preliminary Approval Order, Defendant will provide the Settlement Administrator with the Class Information for purposes of mailing the Class Notices to Class Members. (Settlement Agreement, §10 (A) (1)) Within seven (7) calendar days after receiving the Class Data from Defendant, the Settlement Administrator, after determining the current mailing address for each, shall mail English versions of the Court-approved Class Notice to all Class Members via U.S. Mail. (Id.)

For any Class Notice that is returned by the USPS as undeliverable, the Settlement Administrator will perform a database search or other skip trace and such returned Notices of Settlement will be re-mailed to the new addresses obtained for such Class Members no later than five (5) calendar days after the Settlement Administrator's receipt of the returned Class Notice. (Settlement Agreement, §10 (A) (3)) The Class Member's Response Deadline is forty-five (45) calendar days from the date that the Class Notice is first mailed by the Settlement Administrator. (Settlement Agreement, §1 AA.) The Response Deadline will be extended an additional fifteen (15) calendar days beyond the original Response Deadline provided in the Class Notice for all Class

Members whose notice is re-mailed. (Id.)

The Class Notice informs the Class Members about the terms of the Settlement, the date and location of the final approval hearing, and the deadline and requirements to object to the Settlement. Moreover, the Class Notice informs Class Members of their right to opt out of the Settlement and the process for doing so and deadline to opt out. (Settlement Agreement, §10 (A) (2))

IV. PRELIMINARY APPROVAL OF SETTLEMENT IS APPROPRIATE

The law favors settlement, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. (*City of Seattle*, 955 F.2d at 1276; *Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal. 2d. 592, 602-603; Conte & Herbert Newberg, *Newberg on Class Actions* (4th ed. 2002) (hereinafter "*Newberg*," § § 11.41.) To grant preliminary approval of this class action settlement, the Court need find only that the settlement falls within the "range of reasonableness." (*North County Contractor's Ass. Inc. v. Touchstone Ins. Svcs.* (1994) 27 Cal. App. 4th 1085, 1089-1090.) In determining whether a class settlement is fair, adequate and reasonable, courts must consider the following relevant factors: 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 of offered settlement, the extent of discovery completed and the range of the proceedings, and the experience and views of counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Clark v. American Residential Services, LLC* (2009) 175 Cal. App. 4th 785, 799.) 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. (*Clark*, 175 Cal. App. 4th at 799; *Wershba,* 91 Cal. App. 4th at 245.)

Furthermore, courts must give "proper deference to the private consensual decision of the parties," since "the court's intrusion upon what is otherwise a private consensual agreement negotiated between the Parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

A. The Terms of the Proposed Settlement are Fair.

A preliminary review of the terms of the Settlement Agreement shows that it is a fair settlement. A presumption of fairness exists where: 1) the settlement is reached through arms-length negotiations; 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. (*Dunk*, 48 Cal. App. 4th at 1802.) The first three of these factors apply at the preliminary approval stage; the percentage of objectors is determinable only at the final approval stage.

1. The Settlement Was Reached Through Extensive Arm's Length Bargaining and Negotiation.

As discussed herein, the Parties have conducted informed, good faith, arm's-length negotiations after exchanging extensive information about the claims and defenses of this lawsuit and engaging in pre-mediation discussions aimed at settling their dispute. After engaging in extensive informal discovery, the Parties participated in a global full- day mediation with Jason Marsili and thereafter continued in settlement discussions until they reached a settlement. (Dacre Decl., ¶ 6.) Armed with all of the relevant information and with the help of the mediator, counsel for the Parties participated in lengthy, serious, and meaningful negotiations which has resulted in the proposed Settlement Agreement before this Court for preliminary approval.

2. Investigation and Extensive Informal Discovery Were Sufficient for the Parties to Evaluate the Risks Intelligently.

Plaintiffs conducted significant investigation of the facts, evidence, and law both before and since this case was filed. Defense counsel provided voluminous documents (including, but not limited to, time and wage records, and policies) for Plaintiffs' review in preparation for the mediation. (Dacre Decl., ¶ 5.) Plaintiffs also had many of the records obtained analyzed by an expert. (*Id*.)

3. Plaintiffs' Counsel is Experienced in Similar Litigation.

Counsel for Plaintiffs and Defendant have represented, mediated, and settled many other class actions filed by employees alleging wage and hour violations and have knowledge of the strengths and weaknesses of the claims pled and defenses available in this case and the benefits of the proposed Settlement under the circumstances of the case. (Dacre Decl., ¶¶ 12-14.; Declaration of Ruben Escobedo ("Escobedo Decl.", ¶¶ 8-11.), Shani O. Zakay ("Zakay Decl.", ¶ 3.) and Jean-Claude Lapuyade ("Lapuyade Decl.", ¶¶5-8.)

B. <u>The Settlement Provides For Reasonable Compensation To Class Members.</u>

In seeking approval, a settling party must provide sufficient information to "enable the court to make an independent assessment of the adequacy of the settlement terms." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 131-32.) However, "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." (See *Officers for Justice v. Civil Serv. Comm'n of City & Cty.of San Francisco* (9th Cir. 1982) 688 F.2d 615, 628.) "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators." (*Id.* at 625.) "Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." (*In re Toys R Us-Delaware, Inc. – Fair & Accurate Credit Transactions Act (FACTA) Litig*. (C.D. Cal. 2014) 295 F.R.D. 438, 453.) In other words, in valuing the claims within a realistic range of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.

Settling parties are not, however, required to partake in a hypothetical accounting exercise: "***Kullar*** **does not … require any such explicit statement of [maximum] value**; it requires a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz v. BCI Coca-Cola Bottling Co*. (2010) 186 Cal. App. 4th 399, 409-10 (citing *Kullar*, 168 Cal. App. 4th at 120 (emphasis added).) Overall, "the most important factor" in determining "whether a settlement is fair and reasonable" is the "strength of the case for Plaintiff on the merits, balanced against the amount offered in the settlement." (Id. at 409, n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).) As discussed further below, the recovery of $705,000 for the Class Members is well within the range of reasonableness and undeniably fair, adequate, and reasonable considering the risks and hurdles of continued litigation.

The damage model used in calculating potential liability was largely based on the number of

Class Members (broken down into current and former employees), the number of pay periods, the average rate of pay and a random sample of time records, wage statements and documents produced by Defendants in preparation for mediation. Based on the information provided by Defendants, and upon which this Settlement was reached, there are an estimated number of work 48,046 work weeks and estimated 221,107 shifts during the Class Period and 14,325 pay periods during the PAGA Period. The average hourly rate of pay is approximately $ 29.40. The estimated range amounts for potential violations were calculated as follows:

a. **Failure to Pay Lawful Wages** – Plaintiffs' class claim for failure to pay lawful wages is primarily based on allegations that Plaintiffs and Class Members were not paid for the time spent "off-the-clock" prior to clocking in for the start of their work shifts, during meal periods; and after clocking out for their shifts. For instance, Plaintiffs would often be required to conduct post-trip inspections after clocking out, spending twenty (20) to sixty (60) minutes inspecting the vehicles as well as loading and unloading the vehicles. Plaintiffs allege that drivers were regularly required to perform driving and loading duties during meal periods, which were supposedly "off duty." Plaintiffs contend that they and Class Members were not compensated for time spent working off the clock. Thus, Plaintiffs claim that they and Class Members were required to work more than eight (8) hours in a day or more than forty (40) hours in a workweek without proper overtime compensation. Plaintiffs contend that Defendants also failed to pay minimum wages for work performed "off-the-clock."

Plaintiffs also allege that during pay periods where Plaintiffs and other Non-Exempt Employees worked overtime, double time, paid meal and rest period premium payments, and/or sick pay, and earned this non-discretionary bonus or incentive, Defendants failed to accurately include the non-discretionary bonus compensation and/or incentive and/or shift differential paid as part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all non-overtime hours worked. As a matter of law, the incentive compensation received by Plaintiffs and other Non-Exempt Employees must be included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay to Plaintiffs and other Non-Exempt Employees by

Defendants.

Defendants adamantly dispute Plaintiffs' allegations and asserts various defenses to their claims. Defendants contend that Plaintiffs lacked evidence of any "off-the-clock" work by themselves and Class Members. Defendants also assert that their policies not only prohibit employees from working "off-the-clock" but also require employees to accurately record their time and report inaccuracies. Further, Defendant contends that this claim would be difficult to certify given the predominance of the individualized inquiry as to whether, and to what extent, each Class Member performed work "off-the-clock." Defendant disputes Plaintiffs' regular rate claim and contend that any non-discretionary compensation was included in the calculation of overtime paid to class members. Defendants also assert that three of the plaintiffs along with the vast majority of the putative class members are delivery drivers who are exempt from overtime pay; yet they were still paid overtime, despite no legal obligation by Defendants to do so.

Based on the documents and information produced by Defendant in preparation for mediation and during settlement negotiations, Plaintiffs' counsel estimated a maximum potential liability of $4,875,409.35 based on an estimated thirty minutes of "off-the-clock" worked per shift for 221,107 shifts at the overtime hourly rate of $44.1. However, taking into consideration the nature of the claim and Defendant's defenses thereto including the inability to establish the violation with respect to the majority of the Class Members and significant challenges Plaintiffs would face providing proof Defendant knew or should have known "off-the-clock" work was occurring due to the nature of Class Members' jobs, this claim was valued between and estimated maximum of $487,541 (10%) and $3,935,293 (5%) for purposes of settlement. With respect to the regular rate claim, Plaintiffs calculated an estimated $210,474 in underpaid overtime wages. Defendant disputes the claim and contends that they were not required to pay overtime to the vast majority of the class members. (Dacre Decl., ¶ 10.a).

b. **<u>Meal Period Claim</u>** – The meal break violation claim is based primarily on Defendants' alleged failure to provide Plaintiffs and Class Members with timely, complete (minimum thirty (30) minutes) and duty-free meal periods in violation of California Labor Code §§ 226.7 and 512 and IWC Wage Order 5-2001 and *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th

58. If an employer fails to provide an employee required meal periods in accordance with the applicable provisions of the Wage Order, it must pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. (IWC Wage Order 5-2001(11); Cal. Lab. Code § 226.7.)

Plaintiffs allege that, during the Class Period, due to Defendants' policies and practices, Plaintiffs and Class Members were frequently not provided a timely, uninterrupted thirty (30) minute meal break. Specifically, Plaintiffs contend that, among other things, they and Class Members were encouraged to work through their meal breaks in order to make timely deliveries. When Plaintiffs and similarly situated class members were able to take a meal break, it was regularly interrupted and/or cut short due to the demands of their job duties.

Defendants deny Plaintiffs' meal break allegations in their entirety and maintain that Plaintiffs and Class Members were provided with the opportunity to take full, timely and uninterrupted meal periods of thirty (30) as per its policies and the law. Defendants dispute the propriety of certification on this claim as well, under the holding in Brinker and other state and federal decisions, Defendants fulfilled their legal obligations to non-exempt employees by providing them with an opportunity to take timely and proper meal periods, whether or not employees took that opportunity. Defendants further contend that they provided meal breaks to a majority of the class member drivers even though the California meal break laws are preempted and do not apply to them. Defendants also assert that, where potential violations occurred, Defendant paid meal break premiums. Defendants further point out that many of the Class Members signed meal break waivers, nullifying many of their claims entirely. Defendants also assert that liability for this claim is reduced under the doctrine of claim preclusion due to prior overlapping class action settlements.

Based upon their review of the documents and information provided by Defendants in anticipation of mediation, including the random sample of time records, Plaintiffs contend that the estimated number of meal break eligible shifts are 218,020 out of which 158,064 shifts had a potential meal break violation. Thus, the estimated maximum potential liability for the meal break claim was determined to be $4,473,890 (158,064 shifts x $29.4 minus the $173,192 estimated paid meal break premiums). However, taking into consideration the nature of the claim, Defendants' defenses, including the payment of meal break premiums during the Class Period, and issues faced due to Brinker for purposes of settlement, the meal break claim was valued between an estimated maximum of $894,778 (20%) and $223,694.5) (5%). (Dacre Decl., ¶ 10.b).

c. **Rest Break Claim** – The rest break claim is premised on allegations that, as a result of Defendants' practice and policies, Plaintiffs and Class Members were not provided compliant rest breaks during their work shifts. As with the meal breaks, Plaintiffs allege that, due to the workload and time constraints requirements in the performance of their job duties, Plaintiffs and Class Members were regularly unable to take a minimum ten (10) minute uninterrupted rest breaks for every four hours worked or major fraction thereof. Plaintiffs and Class Members also allege they were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a lawful rest period was not provided, in violation of California labor laws, regulations, and IWC Wage Orders. (IWC Wage Order 5-2001(12); Cal. Lab. Code § 226.7.)

Defendants dispute Plaintiffs' allegations regarding rest break violations and contend that Class Members were allowed to take ten (10) minute rest periods under its policies and practices and regularly took such breaks. Defendants also argues that this claim would be difficult to certify given the predominance of the individualized inquiry as to whether, and to what extent, each Class Member was unable to take compliant rest breaks during their shifts. Defendants further contend that, as with the meal breaks, they provided rest breaks to a vast number of class members drivers even though the California rest break laws are preempted and do not apply to them. Based upon their review of the documents and information provided by Defendants in anticipation of mediation, including the random sample of time records, the estimated number of rest break eligible shifts during the relevant time period is 219,275. Thus, the estimated maximum potential liability for the rest break claim was determined to be $6,466,685 (219,275 shifts x $ 29.4). The maximum estimated liability for this claim was based on a 100% violation rate which assumes a rest break violation occurred during every shift. However, given Defendants' defenses on the merits and certification difficulties brought by *Brinker* decision, the rest break claim was valued between and estimated maximum of $322,334.25 (5%) and nominal value. (Dacre Decl., ¶ 10.c).

d. Failure to Provide Accurate Itemized Wage Statements – Under Labor Code § 226(e), an employee suffering "injury as a result of a knowing and intentional failure by an employer" to provide accurate wage statements is entitled to $50 for the initial violation and $100 for each subsequent violation up to $4,000. Defendant contends that the wage statements issued to the employees fully complied with Labor Code section 226. Defendants state that because they believe no wages are unpaid, there can be no derivative penalties. Further, Defendants argue that, if any wage statements were in fact inaccurate, they did not "knowingly and intentionally" fail to provide accurate statements and that Plaintiffs and the class did not suffer any "injury" from such inaccurate wage statements. Defendants further assert that wage statement penalties are not triggered when they are purely derivative of an underlying wage claim– if a failure to pay overtime wages also justifies inaccurate wage statement penalties, then there would be an unintentional double recovery. (*Maldonado v. Epsilon Plastics, Inc*. (2018) 22 Cal.App.5th 1308, 1335.)

As per the information provided by Defendants, the estimated number of employees, during the relevant time period for this claim, is 480. Thus, if a calculation is performed using the maximum exposure permitted per Class Member under Labor Code section 226, this amounts to a maximum exposure for Defendants of $1,920,00 based on 480 putative Class Members x $4,000. However, some of the Class Members working during the relevant time period may have worked for only one pay period during the relevant time period and some may have worked for tens of pay periods. Because of the costs and risks of proceeding, and the defenses faced, for purposes of settlement negotiations, this claim was valued between an estimated maximum of $288,000 (15%) and $96,000 (5%). (Dacre Decl., ¶ 10.d).

e. Failure to Timely Pay Wages at Separation – This claim is derivative of the other claims asserted. Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (i.e., three years before the filing of the initial Complaint) is entitled to thirty (30) days' worth of wages as a waiting time penalty for not being paid all wages upon the separation of employment. Plaintiffs allege that penalties are owed under Labor Code section 203 due to, at a minimum, Defendants' failure to pay wages for all hours worked and failure to pay premium wages. 'With respect to Lab. Code § 203 claim, there were an estimated 370 Class Members to whom this claim applied. The estimated maximum potential liability was determined to be $2,610,720 using the formula: (370 former employees at the time of calculation) x (30 x $29.4 x 8 hours per day).

Defendants once again assert that no unpaid wages are owed as Defendants did not fail to pay the correct wages owed, including overtime or minimum wages, nor did they fail to pay premium wages. Defendants further contend that their actions were not willful as required for penalties to issue and that, thus, waiting time penalties cannot be awarded. Because of the costs and risks of proceeding, and the defenses faced, for purposes of settlement negotiations, said claim was valued between $261,072 (10%) and $130,536 (5%). (Dacre Decl., ¶ 10.e).

f. **Failure to Timely Pay Wages During Employment** – This claim is based on allegations that Plaintiffs and Class Members did not receive payment of all wages owed, including overtime and minimum wages and meal and rest period premiums, within the requisite time under Labor Code section 204. That statute requires that all wages are due and payable twice in each calendar month. For any initial violation under this statute, one hundred dollars ($100) is due for each failure to pay each employee. For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) is due for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. As discussed herein, Defendants adamantly dispute that they failed to pay any lawful wages owed and is therefore not liable for any penalties under this statute. Defendants also contend that liability only applies when employers fail to pay wages on a timely basis; not whether the correct amount of wages were paid. (See's *Candy Shops, Inc. v. Superior Ct.* (2012) 210 Cal. App. 4th 889, 904-905.)

Here, employees can recover penalties either Labor Code section 210 or PAGA but not both. For purposes of settlement, Plaintiffs are pursuing this claim under PAGA, which is discussed below (Dacre Decl., ¶ 10.f).

g. **Failure to Reimburse Expenses** – The claim for business expense reimbursement under Lab. Code §2802 is premised on Plaintiffs' allegation that Defendants failed to reimburse them and similarly situated class members for the use of their personal mobile phones and vehicles in the performance of their job duties. Defendants dispute this claim and contend that they maintained policies that provided mileage reimbursement. Defendants also contend that Plaintiffs and class members were not required to use their personal mobile phones in the performance of their job duties and that it was a personal choice to do so. Upon further review and evaluation of the facts and circumstances surrounding this claim and taking into consideration that it would require individualized inquiries into whether and to what extent class members used their personal phones and/or vehicles, this claim was valued between nominal amount and $0 (Dacre Decl., ¶ 10.g).

h. **Failure to Pay Correct Sick Pay Compensation** – This claim is premised on Plaintiffs' allegation that Defendant failed to pay the correct amount sick time pay. Labor Code section 204 requires that employers pay sick time pay to non -exempt employees at the employees' regular rate. Plaintiffs allege that Defendants paid the employees' sick time pay at the base hourly rate and not the regular rate, thus paying a lower rate of sick pay compensation. Defendants dispute this claim. There is no private right of action for recovery available under Lab Code 210 and thus any penalties are encompassed within Lab. Code § 203 or PAGA claims (Dacre Decl., ¶ 10.h).

i. **Bus. & Prof. Code § 17200 et seq. ("UCL") Claim** – The only remedies available under the unfair competition law ("UCL") Business and Professions Code Section 17200 et seq. are restitution and injunction, as opposed to damages. (*Clark v. Superior Court* (2010) 50 Cal. 4th 605, 610.) The UCL provides that "[t]he court may make such orders or judgments ... as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." (Bus. & Prof. Code, § 17203.) Restitution under the UCL includes "earned wages." (*Cortez v. Purolator Air Filtration Prods. Co*. (2000) 23 Cal. 4th 163, 177-78.)

Restitution under the UCL is not available for all violations of the Labor Code. (See *Pineda v. Bank of Am., N.A.* (2010) 50 Cal. 4th 1389, 1401-02.) In *Pineda*, the California Supreme Court held Labor Code section 203 is "not designed to compensate employees for work performed [but] it is intended to encourage employers to pay final wages on time, and to punish employers who fail to do so." (Id.) Like Labor Code section 203, section 226 for wage statement violations is also intended to "punish" the employer and is not an action brought to recover wages. (See *Gomez v. Jacobo Farm Labor Contractor, Inc.* (2019) 334 F.R.D. 234, 267-268.)

Here, Plaintiffs' UCL claim is solely premised on the failure to pay lawful wages and premium wages claims discussed above. Plaintiffs' Counsel assigned a zero-dollar value to the UCL claim because it does not provide any additional value in this Action other than to increase the statute of limitations to four years for the underlying claims. Those claims are valued and analyzed above based on the four-year statute of limitations provided by the UCL. However, the UCL claim in and of itself does not provide any additional damages. Therefore, there is no additional or separate monetary value that this statute provides based on the facts of this Action (Dacre Decl., ¶ 10.i).

j. **OSHA Violations** – Plaintiffs also allege a violation of Labor Code § 6401.7 and other Cal/OSHA provisions based on Defendants' failure to maintain an effective injury and illness prevention program (IIPP) and committing other safety violations. Plaintiffs allege that Defendant's excessive work demands created a working environment that was unsafe for drivers and needlessly exposed them to increased risk of accidents and injuries. Defendants dispute Plaintiffs' claims and contend that they adhered to all OSHA requirements (Dacre Decl., ¶ 10.j).

k. **Lab. Code § 2699 (PAGA Claim)** – Plaintiffs' claims under PAGA are predicated on or derivative of the claims discussed above and as set forth in the Operative Complaint. The estimated maximum PAGA penalty was calculated as $1,432,500. This figure attributes a $100 penalty to each of the estimated 14,325 pay periods in scope during the PAGA Period. This figure is based on an assumption that there is a 100% violation rate during the PAGA Period, such that every single pay period in question involved at least one Labor Code violation, despite disputes regarding Defendant's liability. However, PAGA claims under the facts and circumstances of this case may result in no award or at best a very minimal award by the trial court. See specifically § 2699(e)(2) which states in its pertinent part: "… a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

For instance, in *Fleming v. Covidien* (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, a federal court reduced PAGA penalties from $2,800,000 to $500,000, a reduction of 82.2%. The court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. *In re Taco Bell Wage & Hour Actions* (E.D. Cal. Apr. 6, 2016) 2016 U.S. Dist. LEXIS 48557, *40-43

(PAGA penalties denied after trial).

In order to recover any PAGA penalties, Plaintiffs would be required at trial to prove each of the underlying Labor Code violations. (See *Cardenas v. McLane Foodservice, Inc*. (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 13126, *10 [“Given the statutory language [of PAGA], a plaintiff cannot recover on behalf of individuals whom the plaintiff has not proven suffered a violation of the Labor Code by the defendant.”].) Here, Plaintiffs would need to prove that each Aggrieved Employee suffered all violations for each pay period the employee worked. As discussed herein, the nature of the PAGA based claims (i.e. rest break, meal period, wage statements, failure to pay all wages owed and to timely pay wages) and Defendant’s asserted defenses thereto present a strong risk that some or all of the PAGA penalties sought may not be awarded.

Defendants deny that a violation for each pay period can be established. Defendants state that because the PAGA Action heavily relies on the same allegations made in the Class Action, they are subject to the same defenses, and, thus, for the same reason Defendants believe there will be no damages collectible in the class action, no PAGA penalties would be awarded, either. Defendants also assert that individualized issues predominate the PAGA claims, making the claims unmanageable for trial. (Dacre Decl., ¶ 10.k).

Given the nature of these claims, as analyzed above, Plaintiffs’ Counsel believes it to be likely that if there were any award, it could be a minimal amount. Therefore, the amount of $37,500 (which has been reserved for the PAGA claim) is both fair and reasonable. (*Id*.).

C. The Class Representative Service Payments and Class Counsel Fees Are Reasonable and Should be Awarded.

The Settlement Agreement provides for an award to be paid to the Class Representatives. The primary purpose is to provide Plaintiffs an enhancement award, taking into consideration the risks, time, effort and expenses incurred by them in coming forward to provide invaluable information and litigate this matter on behalf of all Class Members and Aggrieved Employees. (Dacre Decl., ¶¶ 7, 16.) Plaintiffs have actively participated in this litigation by providing significant supporting documents and information and assisting counsel in developing information necessary to litigate and settle this case which has resulted in a favorable settlement for the putative Class

Members and Aggrieved Employees. (*Id.*) Thus, the payment of up to $10,000.00 to each Class Representative represents a small portion of the aggregate settlement amount and should be awarded.

Further, as will be discussed in more detail in Plaintiffs' motion for final approval of the Settlement, Class Counsel's Attorneys' Fees in the amount of $246,750 (35% of the GSA) is reasonable within California's standard benchmark and within the range customarily approved by the California courts in comparable class actions (*Id.*).

V. <u>PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE.</u>

In addition to such terms as class definition, settlement amounts and payment procedures, the Settlement Agreement reached between the Parties contains a provision to which the parties stipulate to the Court's provisional certification of the Class but do so for the purposes of this settlement only. Plaintiffs now request this Court to provisionally certify the Class.

It is well established that trial courts should use a lower standard for determining the propriety of certifying a settlement class, as opposed to a litigation class. (*Dunk*, 48 Cal.App.4th at 1794, 1807, fn. 19.) Under California law, a class action is appropriate when the Class is ascertainable and there is a "well defined community of interest in the questions of law and fact affecting the parties to be represented." (Code Civ. Proc., §382; *Dunk*, 48 Cal. App. 4th at 1806.) State law requirements under California Code of Civil Procedure section 382 for class certification largely mirror Federal Rules of Civil Procedure Rule 23 – namely, numerosity and typicality of the class representative's claims, adequacy of representation, predominance of common issues and superiority. As discussed below, although Defendant adamantly disputed and continue to dispute Plaintiffs' ability to certify a litigation class, all of the requirements of certification for settlement purposes are met for the proposed Settlement Class.

A. <u>The Proposed Settlement Class is Ascertainable.</u>

Here, the proposed class is ascertainable because all of the Class Members are/were employed directly by Defendants and received their compensation directly from Defendants. The Class Members have been identified through Defendants' employee and personnel files. (*See Rose v. City of Hayward* (1981) 126 Cal. App. 3d 926, 932 ["Class Members are 'ascertainable' where they may be readily identified without unreasonable expense or time by reference to official records."].)

B. Numerosity of the Proposed Settlement Class is Satisfied.

If the class is sufficiently large that joinder of all members is impractical or that individual joinder is impractical, the numerosity requirement is met. (*Hebberd v. Colgrove* (1972) 28 Cal. App. 3d 1017, 1030). Here, the proposed class consists of 875 putative Class Members, including current and former employees of Defendants. Therefore, joinder of individual claims would be impractical and the numerosity requirement is met.

C. There are Common Questions of Law and Fact that Apply to the Proposed Settlement Class.

Commonality is met if there are common questions of fact and law to the class. (*Hanlon*, 150 F.3d at 1019 ["The existence of shared legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class"].) Here, Plaintiffs allege that the proposed Class Members' claims all stem from the same alleged conduct. Specifically, Plaintiffs allege that Defendants violated California wage and hour law because they: (1) failed to pay all lawful wages owed including overtime compensation; (2) failed to provide statutorily compliant rest and meal periods and/or to pay one (1) hour of pay at the employees regular rate of compensation for each workday that a compliant meal period and/or rest period was not properly provided; (3) failed to timely pay all wages owed at the termination of the Class Members' employment; (4) failed to provide accurate itemized wage statements; and (5) failed to reimburse all necessary business expenses. Plaintiffs seek recovery of alleged premium wages, penalties and interest pursuant to the California Labor Code, the California Industrial Welfare Commission ("IWC") Wage Orders, Business and Professions Code § 17200 and PAGA. Although Defendants disagree with Plaintiffs' contentions for purposes of certifying a litigation class, for purposes of a settlement class, these circumstances create questions of law and fact common to all proposed Class Members.

D. The Typicality Requirement is Met as to the Proposed Settlement Class.

The typicality requirement is met if the claims of the Plaintiffs are typical of those of the class, though "they need not be substantially identical." (*Hanlon*, 150 F.3d at 1020.) Factual differences may exist between the Class and the Class Representative(s) so long as the claims arise from the same events or course of conduct and are based on the same legal theories. (*Id*.) Here, as set forth in the Operative Complaint, the claims of the Class Representatives are typical of the other Class Members they represent because they arise from the same factual basis and are based on the same legal theories as those applicable to all Class Members. (*Wherner v. Syntex* (N.D. Cal. 1987) 117 F.R.D. 641, 644.) Thus, for purposes of a settlement class, the typicality requirement is met.

E. <u>The Adequacy Requirement is Met as to the Proposed Settlement Class.</u>

If the named representatives and their counsel have no interests adverse to the interest of the putative Class Members and are committed to vigorously prosecuting the case on behalf of the class, then the adequacy requirement is met. (*McGhee v. Bank of America* (1976) 60 Cal. App.3d 442, 450.) Here, under the proposed Settlement, the Class Representatives will receive a reasonable award for their time and effort assisting counsel with factual issues surrounding the case and risk incurred in bringing this action on behalf of the Class Members. Other than this specific payment, all Class Members who do not opt out of the Settlement will receive a percentage of the NSA based on the number of weeks each Class Member worked during the class period. Therefore, no “settlement allocation” questions are raised. (*Hanlon*, 150 F.3d at 1020.)

Finally, Class Members who wish to exclude themselves from the Settlement may do so. (Settlement Agreement, § 10.C.) As a result, there is no conflict of interest between the Plaintiffs and the Class Members. Additionally, the Plaintiffs and their counsel have prosecuted this action vigorously on behalf of the Class, and they have no interest contrary to the Class either.

F. <u>Common Issues Predominate and a Class-Wide Settlement of the Proposed Settlement Class is Superior to Other Available Methods of Resolution.</u>

Class certification is authorized where common questions of law and fact predominate over individual questions and where class-wide treatment of a dispute is superior to individual litigation. (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 469.) The test is whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (*Hanlon,* 150 F.3d at 1022.) Plaintiffs contend that the proposed Class in this case is sufficiently cohesive, since all Class Members share a “common nucleus of facts and potential legal remedies.” Specifically, Plaintiffs assert that because all of the Class Members seek compensation for alleged premium wages for failure to provide compliant meal and rest breaks, as well as penalties and interest for the allegations described herein; common questions about compensation or lack thereof for worked performed by Class Members predominate over individual questions, and the Class Members' potential legal remedies are identical. Although Defendants disagree with Plaintiffs' contentions; they have agreed the Class may be certified for settlement purposes only.

Additionally, particularly in the settlement context, class resolution is superior to other methods for the fair and efficient adjudication of the controversy. (*Hanlon,* 150 F. 3d at 1023; *Dunk*, 45 Cal. App. 4th at 1087.) The superiority requirement involves a "comparative evaluation of alternative mechanisms of dispute resolution." (*Hanlon*, 150 F. 3d at 1023.) Here, the alternative methods of resolution are a plethora of individual claims from potentially 10,234 Class Members. The class action device can thus conserve judicial resources by avoiding the waste and delay of repetitive proceedings and prevent inconsistent adjudication of similar issues and claims. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 340; *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 741.) Therefore, settlement on a class-wide basis is superior.

VI. THE PROPOSED CLASS NOTICE IS APPROPRIATE.

The proposed Notice of Class Action Settlement ("Class Notice") is attached as Exhibit A to the Settlement Agreement. Should a Class Member wish to exclude himself/herself from the Settlement, he/she can send a request for exclusion to the Settlement Administrator as detailed in the Class Notice. Should a Class Member wish to object to the Settlement, he/she can object as described in the Class Notice. If a Class Member does nothing in response to the Class Notice, the Class Member will be mailed an individual settlement payment.

A. The Proposed Class Notice Satisfies Due Process.

California statutory and case law vests the Court with broad authority to fashion an appropriate notice process. (Cal. Rules of Court, Rule 3.760, *et seq.*) A proposed method of notice of a proposed settlement is fair, adequate, and reasonable if it has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) The procedure for notice to Class Members described herein entails mailing the Class Notice to all known and reasonably ascertainable Class Members based on Defendants' payroll records and provides for a reasonable chance of reaching a significant percentage of Class Members. (Settlement Agreement, §§ V.B-G.) Further, such individual notice by first class mail is routinely approved as consistent with due process. (*See*, e.g., Federal Judicial Center, *Manual for Complex Litigation* (3rd ed. 1995) (hereinafter "*Manual*") §30.41; Wright & Miller, Fed. Practice & Procedure, §1797.6 ["Of course, notice by mail to all of the identified class members . . . will suffice"] (citing cases).) Notice by mail is consistent with the class certification notices approved by numerous state and federal courts and is the best notice practicable under circumstances of this case. Other potential alternatives, such as publication of notice in a newspaper, or electronic dissemination of notice through email, are unlikely to be as effective as mail notice. Given the geographic range of Class Members, notice by publication is not feasible or reasonably likely to satisfy due process.

B. <u>The Proposed Class Notice Is Accurate and Informative.</u>

Not only is the manner of the proposed Class Notice proper, so too is the content of the said notice. The proposed Class Notice provides information on the meaning and the nature of the proposed Settlement, the terms and provisions of the Settlement (and where it may be found), the relief the Settlement will provide the Class Members, the application of Plaintiffs' counsel for reimbursement of costs and attorneys' fees from the Settlement amount, the date, time and place of the final fairness and approval hearing, and the procedure and deadlines for opting out of the Settlement and for submitting objections. Counsel for Plaintiffs and Defendants have spent considerable time attempting to draft a Class Notice that is likely to be readily understood by members of the Class.

The Class Notice also fulfills the requirement of neutrality in class notices. (2 *Newberg*, § 8.39.) It summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner, in compliance with the *Manual*'s statement, "the notice should be accurate, objective, and understandable to class members…" (*Manual*, § 30.21.) The Class Notice clearly states the settlement does not constitute an admission of liability by Defendant and recognizes the Court has not ruled on the merits. It also states the final settlement approval decision has yet to be made, and that any final determination of that issue will be made at the final approval hearing. Accordingly, the Class Notice complies with the standards of fairness, completeness and neutrality required of a class notice disseminated under the authority of the Court.

Moreover, the Class Notice comports with Cal. Rules of Court, Rule 3.766(d). As per Rule 3.766, the contents of the class notice that provides for an opt out procedure for the Class Members must include the following:

1. A brief explanation of the case, including the basic contentions or denials of the parties;

2. A statement that the court will exclude the member from the class if the member so requests by a specified date;

3. A procedure for the member to follow in requesting exclusion from the class;

4. A statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and

5. A statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel.

The Proposed Class Notice contains the information required under Rule 3.766(d). (*See* Dacre Decl., Exh. 1. A.)

VII. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court enter the Proposed Order Granting Preliminary Approval submitted concurrently herewith, and thus:

1. Grant preliminary approval of the Settlement Agreement, and provisionally certify the Settlement Class for the purposes of settlement only;

2. Confirm Plaintiffs Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez and Victor Avalos as Class Representatives;

3. Confirm James Hawkins, Isandra Fernandez, and Lance Dacre from the law firm of James Hawkins, APLC; Ruben Escobedo from the law firm of Workworld Law Corp, Shani O. Zakay from the law firm of Zakay Law Group, APLC and Jean-Claude Lapuyade from the law firm of JCL Law Firm, APC provisionally as Class Counsel;

4. Approve and appoint ILYM Group, Inc. as Settlement Administrator;

5. Enter an Order preliminarily approving the proposed Settlement and approving of the Class Notice; and

6. Schedule the Final Fairness Hearing Date on September 26, 2025 or as determined by the Court at the hearing for preliminary approval of settlement.

Respectfully submitted,

Dated: December 30, 2024

JAMES HAWKINS, APLC

Isandra Fernandez, Esq.
Lance Dacre, Esq.
Attorneys for Plaintiffs