

Brian S. Kabateck (SBN 152054)
bsk@kbklawyers.com
Shant Karnikian (SBN 285048)
sk@kbklawyers.com
Jerusalem F. Beligan (SBN 211258)
jfb@kbklawyers.com
Sheri R. Lalehzarian (SBN 346917)
sl@kbklawyers.com
KABATECK LLP
633 W. Fifth Street, Suite 3200
Los Angeles, CA 90071
Telephone: (213) 217-5000

James L. Simon (*pro hac vice* pending)
(OH SBN 0089483)
james@simonsayspay.com
SIMON LAW CO.
11 ½ N. Franklin Street
Chagrin Falls, Ohio 44022
Telephone: (216) 816-8696

Michael L. Fradin (*pro hac vice* pending)
(OH SBN 0091739; IL SBN 6289502)
mike@fradinlaw.com
8401 Crawford Ave., Ste. 104
Skokie, IL 60076
Telephone: (847) 986-5889

Attorneys for Plaintiffs and the Putative Classes

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Helaine Heid, Ingrid Leeman, and
Miriam Saraiva individually, and on
behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

CyraCom International, Inc., a
Delaware corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. 3:22-cv-01445-MMA-KSC

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF
FLSA AND CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION OF THE
SETTLEMENT CLASSES,
APPOINTMENT OF CLASS
REPRESENTATIVES AND CLASS
COUNSEL, APPROVAL OF CLASS
NOTICES, AND SETTING OF
FINAL APPROVAL HEARING**

Judge: Hon. Michael M. Anello
Date: January 22, 2024
Time: 2:30pm
Courtroom: 3C (3rd Flr.) / 3195

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL AND PROCEDURAL BACKGROUND	2
	A. The procedural history in this Action.	2
	B. The substantial exchange of class data and mediation.	3
III.	SUMMARY OF THE MATERIAL TERMS OF THE SETTLEMENT	5
	A. The Gross Settlement Amount and Settlement Classes.	5
	B. The Net Settlement Amount to be distributed to Settlement Class Members, allocation between the Settlement Classes, and formula to determine distribution among participating Settlement Class Members.	6
	C. The limited scope of release for Settlement Class Members and general release for Named Plaintiffs.	10
	D. The notice to Settlement Class Members advising them of the Settlement and opportunity to opt-in, opt-out, or object.	10
IV.	THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED	12
	A. The standard for settlement approval of collective and class actions. ..	12
	B. The Settlement is “fair, adequate, and reasonable” and should be preliminarily approved.	12
	1. Named Plaintiffs and their counsel have adequately represented the Settlement Classes.	13
	2. The Settlement was negotiated at arm’s length.	14
	3. The quality of relief to the Settlement Classes weighs in favor of approval.	15
	(i) The Settlement provides strong relief to Settlement Class Members.	15
	(ii) Continued litigation could entail substantial cost, risk, delay and potential appeals.	15
	(iii) The Settlement provides for an effective distribution of proceeds to the Settlement Classes.	18
	(iv) The terms of the proposed award of attorneys’ fees, including timing of payment, also support settlement approval.	19
	(v) The Parties have no other agreements pertaining to the Settlement.	19

1	4.	The Settlement treats all Settlement Class Members equitably..	20
2	A.	Conditional certification under the FLSA has been satisfied.....	21
3	B.	The Rule 23 requirements are met.....	22
4	1.	Rule 23(a)(1) – Numerosity	22
5	2.	Rule 23(a)(2) – Commonality	23
6	3.	Rule 23(a)(3) – Typicality	23
7	4.	Rule 23(a)(4) – Adequacy	24
8	5.	Rule 23(b) – Predominance and Superiority	24
9	VI.	CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases

<i>Altamirano v. Shaw Indus., Inc.</i> , No. 13-cv-00939, 2015 WL 4512372, at *8 (N.D. Cal. July 24, 2015).....	20
<i>Boyd v. Bank of Am. Corp.</i> , No. 13-cv-0561-DOC, 2014 WL 6473804, at *7 (C.D. Cal. Nov. 18, 2014).....	21
<i>Campanelli v. Image First Healthcare Laundry Specialists, Inc.</i> , No. 5-cv-04456-PJH, 2018 WL 6727825, at *5 (N.D. Cal. Dec. 21, 2018).....	22
<i>Campbell v. City of Los Angeles</i> , 903 F.3d 1090 (9th Cir. 2018).....	21, 22
<i>Class Plaintiffs v. City of Seattle</i> , 955 F.2d 1268, 1276 (9th Cir. 1992).....	12
<i>Haley v. Medtronic, Inc.</i> , 169 F.R.D. 643 (C.D. Cal. 1996)	23
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 101 (9th Cir. 1998).....	23, 24, 25
<i>Hudson v. Libre Technology Inc.</i> , No. 3:18-cv-1371-GPC-KSC, 2019 WL 5963648, at *3 (S.D. Cal. Nov. 13, 2019)	12, 21
<i>In re Cooper Cos. Sec. Litig.</i> , 254 F.R.D. 628, 634 (C.D. Cal. 2009)	22
<i>In re Paxil Litigation</i> , 212 F.R.D. 539 (C.D. Cal. 2003).	23
<i>In re Volkswagen “Clean Diesel” Mktg., Sales Practices, & Prod. Liab. Litig.</i> , 895 F.3d 597, 611 (9th Cir. 2018).....	13
<i>Linney v. Cellular Alaska P’ship</i> , 151 F.3d 1234 (9th Cir. 1998).....	16
<i>Murillo v. Pac. Gas & Elec. Co.</i> , 266 F.R.D. 468, 472 (E.D. Cal. 2010).....	12

1	<i>Officers for Justice v. Civil Serv. Comm’n</i> ,	
2	688 F.2d 615 (9th Cir. 1982)	13
3	<i>Pederson v. Airport Terminal Servs.</i> ,	
4	No. 15-cv-02400, 2018 WL 2138457, at *7 (C.D. Cal. Apr. 5, 2018)	15
5	<i>Sadowska v. Volkswagen Grp. of Am.</i> ,	
6	No. CV 11-00665, 2013 WL 9600948, at *9 (C.D. Cal. Sept. 25, 2013)	19
7	<i>Staton v. Boeing Co.</i> ,	
8	327 F.3d 938, 952 (9th Cir. 2003)	12, 21, 24
9	<i>Tyson Foods, Inc. v. Bouaphakeo</i> ,	
10	136 S.Ct. 1036 (2016)	25
11	<i>Valentino v. Carter-Wallace, Inc.</i> ,	
12	97 F.3d 1227 (9th Cir. 1996)	25
13	<i>Vizcaino v. U.S. Dist. Court for W. Dist. of Wash.</i> ,	
14	173 F.3d 713 (9th Cir. 1999)	23
15	<i>Wershba v. Apple Computer, Inc.</i> ,	
16	91 Cal.App.4th 224 (2001)	16
17	Other Authorities	
18	California Business & Professions Code § 17200	3
19	California Code of Civil Procedure § 1542	10
20	Fed. R. Civ. P. 23(a)	22, 23
21	Fed. R. Civ. P. 23(b)(1), (2), or (3)	24
22	Fed. R. Civ. P. 23(c)(2)(B)	22
23	Fed. R. Civ. P. 23(e)	12, 15, 16, 18
24	Fed. R. Civ. P. 23(e)(2)(C)	15, 20
25	Fed. R. Civ. P. 23(h)	19

1 **I. INTRODUCTION**

2 Plaintiffs Helaine Heid, Ingrid Leeman and Miriam Saraiva (“Named
3 Plaintiffs”) and Defendant CyraCom International, Inc. (“CyraCom” or “Defendant,”
4 and collectively with Named Plaintiffs, the “Parties”) are pleased to report they have
5 finalized a proposed class settlement that is ready to undergo the court-approval
6 process.¹ The Parties seek to conditionally certify a collective and class for settlement
7 only: (1) a nationwide FLSA Collective; and (2) a California Class. Subject to this
8 Court’s approval, CyraCom agrees to pay a Gross Settlement Amount of \$2,700,000
9 to settle the claims of Named Plaintiffs and the Settlement Classes. The Settlement
10 resolves the claims of Named Plaintiffs and approximately 5,857 FLSA Collective
11 Members, 210 California Class members, and 139 PAGA Representative Group
12 Members.²

13 The Settlement satisfies all criteria for preliminary settlement approval and falls
14 well within the range of approval. Plaintiffs’ counsel, having resolved many
15 employment class actions, believe the Settlement provides strong relief to the
16 Settlement Classes and is worthy of this Court’s approval. It provides guaranteed
17 relief for Settlement Class Members without further risks and delay of a litigated
18 outcome and conserves the time and resources of not only the Parties, but also this
19 Court. Accordingly, the Parties respectfully request this Court to preliminarily
20 approve the Settlement and grant a Preliminary Approval Order that does the
21 following: (1) preliminarily approves the Settlement as fair, reasonable, and
22 adequate; (2) conditionally certifies the FLSA Collective and California Class for
23 settlement only; (3) preliminarily approves the PAGA Gross Settlement Amount; (4)
24 appoints Plaintiffs’ attorneys as Class Counsel for the Class/Collective Members; (5)

25
26 ¹ A copy of the fully executed Class and Collective Action Settlement Agreement and
27 Release, including its exhibits (the “Settlement Agreement”), is attached as **Exhibit 1**
28 to the Declaration of Jerusalem F. Beligan (“Beligan Decl.”). Unless otherwise stated,
all capitalized terms used herein are defined and carry the same definition as the terms
used in the Settlement Agreement.

² The estimated class sizes were calculated as of March 26, 2023.

1 appoints Named Plaintiffs as the Class Representatives for the Nationwide FLSA
2 Collective, and Plaintiff Heid and Plaintiff Leeman for the California Class; (6)
3 approves the Notices of Settlement and Opt-In Consent Forms (attached as **Exhibits**
4 **A – C** to the Settlement Agreement) to be disseminated to the Class/Collective
5 Members in the form and manner proposed by the Parties as set forth in the
6 Settlement Agreement; (7) preliminarily enjoins all Class/Collective Members from
7 commencing, prosecuting or maintaining any claim already asserted in, and
8 encompassed by, this case, or commencing, prosecuting or maintaining in any court
9 or forum, other than in this Court, any claim, action or other proceeding that
10 challenges, or seeks review of or relief from, any order, judgment, act, decision or
11 ruling of the Court in connection with the settlement of this case; and (8) sets a
12 hearing date and schedule for the Final Approval Hearing and consideration of Class
13 Counsel’s motion for award of fees, costs, expenses, service awards, and
14 administration costs not less than 134 days after the date of the order granting this
15 Motion for Preliminary Approval.

16 **II. FACTUAL AND PROCEDURAL BACKGROUND**

17 **A. The procedural history in this Action.**

18 CyraCom supplies healthcare providers with Interpreters throughout the United
19 States, including California. CyraCom treats its Interpreters, including Named
20 Plaintiffs, as nonexempt employees and pays them an hourly wage.

21 Plaintiff Heid and Plaintiff Leeman initiated the Action by filing the original
22 Complaint on September 26, 2022, alleging four claims for relief under the FLSA,
23 seeking alleged unpaid minimum and overtime wages in connection with alleged
24 “off-the-clock” work, unpaid rest breaks, and unreimbursed business expenses on
25 their own behalf and on behalf of a nationwide FLSA collective of similarly-situated
26 Interpreters. The original Complaint also included claims for violation of California
27 Labor Code sections 201-203, 226, 226.7, 227.3, 510, 512, 1194, 1194.2, 2802;
28 Industrial Welfare Commission Order No. 4-2001 (“Wage Order No. 4”); and

1 California Business & Professions Code § 17200, et seq. (the “UCL”), in connection
2 with CyraCom’s alleged failure to pay all earned minimum and overtime wages,
3 failure to provide compliant meal periods and rest breaks, failure to pay all accrued
4 and vested PTO wages, failure to furnish accurate wage statements, failure to
5 reimburse employees for reasonable and necessary business expenses, failure to pay
6 all wages timely upon separation of employment, and violations of the UCL on behalf
7 of Plaintiff Heid, Plaintiff Leeman, and a California class of similarly-situated
8 Interpreters.

9 On September 27, 2022, Plaintiff Heid and Leeman filed a notice of violation
10 of the PAGA with the LWDA. The PAGA claims are premised on the same alleged
11 violations as the California claims outlined in the initial Complaint.

12 On December 2, 2022, Plaintiff Heid and Plaintiff Leeman filed the First
13 Amended Complaint, which is the Operative Complaint in the Action, adding
14 Plaintiff Saraiva as a named plaintiff and adding a claim under the PAGA.

15 On May 22, 2023, the Parties participated in a full day mediation with David
16 Rotman. As a result of a mediator’s proposal, and weeks of subsequent work by the
17 Parties to reach agreement on the details of the settlement allocation, notice
18 procedures, release of claims, and more, the Parties negotiated the terms of this
19 Agreement.

20 **B. The substantial exchange of class data and mediation.**

21 Before the mediation took place on May 22, 2023, the Parties had substantive
22 discussions for purposes of clarifying the disputes between them. They then agreed
23 to defer further discovery and associated disputes in favor of pursuing settlement. In
24 an effort to reach a settlement in this lawsuit, the Parties engaged in significant
25 informal discovery including, but not limited to, Defendant’s production of policies
26 and procedures, production of the timekeeping and payroll records for approximately
27 2% of Interpreters nationwide going back to September 2019 and 7% of California-
28 based Interpreters going back to September 2018, and production of the timekeeping

1 and payroll records for the Named Plaintiffs.

2 Plaintiffs, in turn, produced this sampling to their retained experts to analyze
3 and estimate damages to the balance of the Class/Collective Members. Plaintiffs'
4 experts provided Plaintiffs' counsel a damages analysis. During the mediation, the
5 Parties' counsel discussed their positions on the likelihood of conditional and class
6 certification, liability and damages. This discussion provided each side with
7 information necessary to evaluate the likelihood of conditional and class certification,
8 CyraCom's potential exposure, and risks of continued litigation, including denial of
9 conditional and/or class certification, losing on the merits, and potential appeals.

10 Throughout this litigation, Plaintiffs and their counsel expended substantial
11 time, effort, energy, and expenses in order to achieve the best recovery possible for
12 the Settlement Classes. Plaintiffs' counsel had to balance the amount being offered
13 in the Settlement against the risks of continued litigation, which could result in both
14 sides incurring substantial attorneys' fees and litigation and expert costs, delay, losing
15 on the merits, and appeals. Plaintiffs' counsel believe they were in a position to weigh
16 the risks and benefits of continued litigation at the time of mediation and believe—
17 based on their experience—the best alternative for the Class/Collective Members was
18 to settle the Action for the Gross Settlement Amount of \$2,700,000.

19 Below, Plaintiffs provide additional information about the settlement benefits,
20 the class releases, why the settlement is fair, adequate, and reasonable, and why the
21 FLSA Collective and California Class should be certified. Given the strength of the
22 Settlement and the certifiability of the Class and Collective, Plaintiffs respectfully
23 request this Court to preliminarily approve the Settlement, conditionally certify the
24 FLSA Collective and California Class, appoint Named Plaintiffs as the Class
25 Representatives and Plaintiffs' counsel as Class Counsel for the Class/Collective
26 Members, approve the Class Notices and Consent Form, and set a schedule for the
27 Final Approval Hearing.

III. SUMMARY OF THE MATERIAL TERMS OF THE SETTLEMENT

A. The Gross Settlement Amount and Settlement Classes.

CyraCom agrees to pay a Gross Settlement Amount of \$2,700,000 to settle this Action. See Settlement Agreement ¶ 23. From the Gross Settlement Amount, and subject to this Court's approval, the following will be paid: (1) settlement payments to Settlement Class Members, which will include penalties, liquidated damages, interest, and employee withholding on any portion of the payments to the Settlement Class Members that constitute wages; (2) court-approved service awards to Named Plaintiffs; (3) court-approved costs of a third-party administration company; (4) court-approved attorneys' fees; (5) court-approved out-of-pocket litigation expenses associated with the Action; (6) payments to the PAGA Representative Group; and (7) payments to the LWDA. *Id.*

The Gross Settlement Amount shall be allocated as follows: One Million Two Hundred Twenty Five Thousand Dollars and no cents (\$1,225,000.00) to settle the claims of the California Class in connection with the California Released Claims ("California Gross Settlement Amount"); Two Hundred Fifty Thousand Dollars and no cents (\$250,000.00) to settle the PAGA claims of the PAGA Representative Group ("PAGA Gross Settlement Amount"); One Million Two Hundred Twenty Five Thousand Dollars and no cents (\$1,225,000.00) to settle the claims of the FLSA Collective in connection with the FLSA Released Claims ("FLSA Gross Settlement Amount"). *Id.* ¶ 65(a)-(f).

The Settlement will provide relief to members of the following Settlement Classes:

The FLSA Settlement Collective: Named Plaintiffs and all current and former employees employed by CyraCom as Interpreters in the United States (excluding New York based Interpreters) from September 26, 2019 through May 31, 2023 and who opt-in the Action after notice is issued. *Id.* ¶ 18, 19, 21.

The California Settlement Class: Plaintiff Heid, Plaintiff Leeman,

1 and all current and former employees employed by CyraCom as
2 Interpreters in the State of California from September 26, 2018 through
3 May 31, 2023 and who do not opt-out after receiving notice. *Id.* ¶ 5, 6,
8.

4 **The PAGA Representative Group:** All current and former employees
5 employed by CyraCom as Interpreters in the State of California from
6 September 26, 2021 through May 31, 2023 (the “PAGA Period”). *Id.* ¶
34, 35.

7 If this Court grants conditional certification and preliminary approval of the
8 Settlement, the members of the FLSA Collective will be provided 60 days to opt-in
9 and will be provided reminder postcards, and for those collective members for whom
10 CyraCom has email addresses, reminder emails to opt-in 20- and 40- calendar days
11 after the initial notices are sent. *Id.* ¶ 60(b)(vi). The members of the California Class
12 will be provided 60 days to opt-out. The California Class will also be provided an
13 opportunity to object to the Settlement.³ *Id.* ¶ 60(c)(i).

14 **B. The Net Settlement Amount to be distributed to Settlement Class**
15 **Members, allocation between the Settlement Classes, and formula to**
16 **determine distribution among participating Settlement Class**
17 **Members.**

18 At the final approval stage, Plaintiffs’ counsel will petition the Court to award
19 Plaintiff Heid, Plaintiff Leeman and Plaintiff Saraiva service awards in the amount
20 of \$7,500 each or a total of \$22,500 for the work and risks they incurred in
21 prosecuting this Action. At the final approval stage, Plaintiffs’ counsel will also
22 petition the Court to approve attorneys’ fees in the amount of \$900,000 (or 1/3 of the
23 Gross Settlement Amount) for the substantial work and risks they undertook
24 prosecuting this Action and will seek reimbursement of their actual out-of-pocket
25 litigation expenses which are currently \$30,574.78, up to a maximum of \$36,000.
26 Plaintiffs’ counsel has selected a Settlement Administrator to administer the

27 ³ Because members of the FLSA Settlement Collective are only bound by the
28 Settlement if they opt-in to the Settlement, no right to object to the Settlement is
necessary or appropriate as individuals who do not opt-in are free to pursue their own
claims. Allowing such individuals a right to object would allow a non-party to the
settlement to hold up the settlement for others who have opted-in.

1 Settlement and, at the final approval stage, will petition the Court to reimburse the
2 Settlement Administrator for its services in an amount not to exceed \$50,000. The
3 Parties also agreed to allocate \$250,000 of the Gross Settlement Amount towards the
4 PAGA Payment (75% of which will be paid to the LWDA and 25% will be
5 distributed in payments to members of the PAGA Representative Group) and will
6 petition the Court to approve this amount.

7 After the class representative service awards (\$22,500), attorneys' fees and
8 costs (\$936,000), costs of claims administration (\$50,000), payments to the PAGA
9 Representative Group and payment to the LWDA (\$250,000) have been deducted
10 from the Gross Settlement Amount, the Net Settlement Amount (\$1,441,500) shall
11 be distributed to the FLSA Settlement Collective and the California Settlement Class
12 in equal shares.

13 The Parties further agree the Net Settlement Amount and the PAGA Payment
14 be distributed as follows:

15 **California Settlement Amount:** 50% of the Net Settlement Amount (the "Net
16 California Settlement Amount") will be allocated to California Settlement Class
17 Members on the following basis. Each California PT Workweek will be equal to one
18 (1) California Settlement Share. Each California FT Workweek will be equal to one
19 and one-half (1.5) California Settlement Shares. The Settlement Administrator will
20 add together the total California Settlement Shares for all California Settlement Class
21 Members and the resulting sum will be divided into the California Net Settlement
22 Amount to reach a per-California-Settlement-Share dollar figure. That figure will
23 then be multiplied by each California Settlement Class Member's number of
24 California Settlement Shares to determine the California Settlement Class Member's
25 "California Settlement Award."

26 Each California Settlement Award shall be allocated as follows: 20% will be
27 considered wages; and 80% will be considered liquidated damages, penalties and
28 interest. The amounts paid as wages shall be subject to all tax withholdings

1 customarily made from an employee's wages and all other authorized and required
2 withholdings and shall be reported on IRS Form W-2. The Settlement Administrator
3 shall effectuate federal and applicable state income and employment tax withholding
4 as required by law with respect to 20% of each California Settlement Award
5 distributed. The Settlement Administrator shall calculate and timely pay from the
6 California Net Settlement Amount the Employer Payroll Taxes owed on any wages
7 paid to California Settlement Class Members. Employer Payroll Taxes and employee
8 withholdings from the salary amounts will be remitted by the Settlement
9 Administrator from the Qualified Settlement Fund to the appropriate governmental
10 authorities. The remaining 80% of each California Settlement Award shall be treated
11 as non-wage liquidated damages, penalties and interest, to be reported on an IRS
12 Form 1099, and shall not be subject to FICA and FUTA withholding taxes.

13 **FLSA Nationwide Settlement Amount:** 50% of the Net Settlement Amount
14 (the "Net FLSA Settlement Amount") will be allocated for potential payment to
15 FLSA Collective Members. FLSA Settlement Awards will be calculated on the basis
16 of each FLSA Collective Member's total FLSA PT Workweeks and FLSA FT
17 Workweeks. Each FLSA PT Workweek will be equal to one (1) FLSA Settlement
18 Share. Each FLSA FT Workweek will be equal to one and one-half (1.5) FLSA
19 Settlement Shares. The Settlement Administrator will add together the total FLSA
20 Settlement Shares for all FLSA Collective Members and the resulting sum will be
21 divided into the FLSA Net Settlement Amount to reach a per-FLSA-Collective
22 Member figure. That figure will then be multiplied by each FLSA Collective
23 Member's number of FLSA Settlement Shares to determine the calculation of that
24 FLSA Collective Member's "FLSA Settlement Award."

25 However, the Net FLSA Settlement Amount (and Gross Settlement Amount)
26 shall be reduced if less than all FLSA Collective Members make a claim to the
27 amount allocated to the FLSA Collective. In that event, Defendant shall not be
28 obligated to pay the amounts allocated to the FLSA Collective Members who do not

1 opt in and so do not become FLSA Settlement Collective Members: Only FLSA
2 Settlement Collective Members will be paid their FLSA Settlement Award. The
3 FLSA Collective Members who do not opt in will not release their potential FLSA
4 claims against CyraCom.

5 Each FLSA Settlement Award shall be allocated as follows: 50% will be
6 considered wages; and 50% will be considered liquidated damages, penalties and
7 interest. The amounts paid as wages shall be subject to all tax withholdings
8 customarily made from an employee's wages and all other authorized and required
9 withholdings and shall be reported on IRS Form W-2. The Settlement Administrator
10 shall effectuate federal and applicable state income and employment tax withholding
11 as required by law with respect to 50% of each FLSA Settlement Award distributed.
12 The Settlement Administrator shall calculate and timely pay from the FLSA Net
13 Settlement Amount the Employer Payroll Taxes owed on any wages paid to FLSA
14 Settlement Collective Members. Employer Payroll Taxes and employee withholdings
15 from the salary amounts will be remitted by the Settlement Administrator from the
16 Qualified Settlement Fund to the appropriate governmental authorities. The
17 remaining 50% of each FLSA Settlement Award shall be treated as non-wage
18 liquidated damages, penalties and interest, to be reported on an IRS Form 1099, and
19 shall not be subject to FICA and FUTA withholding taxes.

20 **PAGA Settlement Amount:** Seventy-five percent (75%) of the approved
21 PAGA Gross Settlement Amount will be paid to the LWDA. The remaining twenty-
22 five percent (25%) (the "Net PAGA Amount") will be distributed on the basis of the
23 PAGA Representative Group Member's total PAGA Pay Periods. The Settlement
24 Administrator will add together the total PAGA Pay Periods worked by all PAGA
25 Representative Group Members, and the resulting sum will be divided into the Net
26 PAGA Amount to reach a per-pay-period dollar figure. That figure will then be
27 multiplied by each PAGA Representative Group Member's number of PAGA Pay
28 Periods to determine the PAGA Representative Group Member's PAGA Settlement

1 Award.

2 Each PAGA Settlement Award shall be allocated as follows: 100% will be
3 considered penalties and interest. The Settlement Administrator shall issue an IRS
4 Form 1099 for the PAGA Settlement Awards. PAGA Representative Group
5 Members assume full responsibility and liability for any taxes owed on their PAGA
6 Settlement Payments.

7 **C. The limited scope of release for Settlement Class Members and**
8 **general release for Named Plaintiffs.**

9 In exchange for the benefits provided under the Settlement, the Settlement Class
10 Members will release claims based on the Settlement Class(es) of which they are a
11 part for claims arising from the start of the statute of limitations through May 31,
12 2023. This is outlined in detail in section III of the Settlement Agreement, but on a
13 broad level, individuals who opt in to the FLSA Settlement Collective will release
14 FLSA claims that were or could have been pled based on the factual allegations in
15 the Operative Complaint or any preceding complaint filed in this Action; individuals
16 who do not exclude themselves from the California Settlement Class will release
17 claims that were or could have been pled based on the factual allegation in the
18 Operative Complaint or any preceding complaint filed in this Action; and the
19 members of the PAGA Representative Group will release all claims under the PAGA
20 for civil penalties for Labor Code violations identified, pleaded, or otherwise set out
21 in the PAGA Notice and/or the Operative Complaint or any preceding complaint filed
22 in this Action during the PAGA Period. Named Plaintiffs will execute a general
23 release of all claims, whether known or unknown to them at the time the Settlement
24 Agreement was executed. Named Plaintiffs' release will also include a waiver
25 pursuant to California Code of Civil Procedure § 1542. The release will not include,
26 however, claims that cannot be waived and released as a matter of law.

27 **D. The notice to Settlement Class Members advising them of the**
28 **Settlement and opportunity to opt-in, opt-out, or object.**

1 If preliminary approval is obtained, CyraCom will provide the Settlement
2 Administrator with the contact information of all Class/Collective Members. The
3 Settlement Administrator will then disperse two separate and independent Notice
4 Packets: (1) one packet to members of the FLSA Collective who are not also members
5 of the California Class giving them notice of the Settlement and 60-days to opt in to
6 the FLSA Settlement Collective; and (2) a separate packet to members of the
7 California Class giving them notice of the Settlement and 60-days to opt in to the
8 FLSA Settlement Collective (if they were employed as Interpreters during the FLSA
9 Collective Period), and 60-days to object to the California Settlement or to opt out of
10 the California Settlement Class by submitting a written request for exclusion.
11 California Class Members within the PAGA Period will also be advised of the PAGA
12 settlement.

13 To ensure as many FLSA Collective Members receive compensation for the
14 alleged violations in the Operative Complaint, the Parties agreed to provide all
15 members of the FLSA Collective who have not yet opted in to the Action two
16 reminder notices: (1) a reminder postcard, and for those collective members for
17 whom CyraCom has provided email addresses and cellphone numbers, a reminder
18 email and/or text, 20 calendar days after the initial notices are sent; and (2) a reminder
19 postcard, and for those collective members for whom CyraCom has provided email
20 addresses and/or cellphone numbers, a reminder email and/or text, 40 calendar days
21 after the initial notices are sent. To further facilitate a high opt-in rate, CyraCom
22 management will send a communication to currently-employed members of the
23 FLSA Collective and California Class informing them that no one will be retaliated
24 against for participating, and providing contact information to the Settlement
25 Administrator. The Parties also agreed that all FLSA Collective Members will have
26 the option of opting-in through the regular mail or electronically.

27 Aside from opting-in or opting-out and/or objecting (for California Class
28 Members only), the Notice Packets will notify Class/Collective Members of, among

1 other things, the following: (1) the amounts to be deducted from the Gross
2 Settlement Amount for reimbursement of attorneys' fees and costs, Named
3 Plaintiff Service Awards and Settlement Administration Costs; and (2) for each
4 of the foregoing actions, the manner and deadline date for opting-in, opting-out
5 and/or objecting (where applicable). If the Settlement is preliminarily approved,
6 the Notice Packets will also inform Class/Collective Members of the date of the
7 Final Approval Hearing.

8 **IV. THE SETTLEMENT SHOULD BE PRELIMINARILY APPROVED**

9 **A. The standard for settlement approval of collective and class actions.**

10 Class action settlements must be approved by the trial court. *See* Fed. R. Civ.
11 P. 23(e). "The Ninth Circuit has a strong judicial policy that favors settlements in
12 class actions." *Hudson v. Libre Technology Inc.*, No. 3:18-cv-1371-GPC-KSC, 2019
13 WL 5963648, at *3 (S.D. Cal. Nov. 13, 2019) (citing *Class Plaintiffs v. City of*
14 *Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). If, however, the parties reach a
15 settlement before class certification, "the court must peruse the proposed compromise
16 to ratify both the propriety of the certification and the fairness of the settlement." *Id.*
17 (citing *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003)). A majority of courts
18 have determined a hybrid Rule 23 and FLSA action is proper. *Murillo v. Pac. Gas &*
19 *Elec. Co.*, 266 F.R.D. 468, 472 (E.D. Cal. 2010).

20 The approval process is twofold: first, this Court must determine whether the
21 proposed settlement is "fair, adequate, and reasonable"; and if so, determine if the
22 Settlement Classes meet the requirements for conditional certification and class
23 certification under Rule 23. *Id.*

24 **B. The Settlement is "fair, adequate, and reasonable" and should be** 25 **preliminarily approved.**

26 "If the propos[ed] [settlement] would bind class members, the court may
27 approve it only after a hearing and only on finding that it is fair, reasonable, and
28 adequate after considering" the following factors:

- 1 (A) the class representatives and class counsel have adequately
2 represented the class;
3 (B) the proposal was negotiated at arm's length;
4 (C) the relief provided for the class is adequate, taking into account:
5 (i) the costs, risks, and delay of trial and appeal;
6 (ii) the effectiveness of any proposed method of distributing
7 relief to the class, including the method of processing class-
8 member claims;
9 (iii) the terms of any proposed award of attorney's fees,
10 including timing of payment; and
11 (iv) any agreement required to be identified under Rule 23(e)(3);
12 and
13 (D) the proposal treats class members equitably relative to each other.

14 Fed. R. Civ. P. 23(e)(2)(A)-(D).

15 The "underlying question remains this: Is the settlement fair?" *In re*
16 *Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 895 F.3d
17 597, 611 (9th Cir. 2018). This Court's primary function is to determine that the
18 Settlement is not the product of fraud or overreaching by, or collusion between, the
19 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
20 adequate to all concerned. *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615,
21 625 (9th Cir. 1982).

22 As discussed in each factor below, the proposed Settlement is fair, and the Rule
23 23(e)(2) factors weigh in favor of approving it.

24 **1. Named Plaintiffs and their counsel have adequately**
25 **represented the Settlement Classes.**

26 Named Plaintiffs have diligently represented the Class/Collective Members.
27 See Declaration of Helaine Heid ("Heid Decl.") ¶¶ 13-14, 19; Declaration of Ingrid
28 Leeman ("Leeman Decl.") ¶¶ 13-14, 19; Declaration of Miriam Saraiva ("Saraiva
Decl.") ¶¶ 10-11, 16. They actively participated by providing documentation,
submitting to interviews, and answering questions asked by their counsel to fill in
factual gaps. Heid Decl. ¶¶ 15; Leeman Decl. ¶¶ 15; Saraiva Decl. ¶¶ 12. Throughout,
they have remained in contact with their counsel, stayed apprised of the litigation,
and have acted with the interests of the Class/Collective Members in mind.

1 Plaintiffs' counsel has also adequately represented the Class/Collective
2 Members. They have vigorously prosecuted the Action, having filed multiple
3 complaints to preserve and maximize the claims of the Class/Collective Members,
4 obtained substantial informal discovery before the mediation, retained an expert to
5 review and analyze sample time and payroll records, prepared a detailed and
6 comprehensive mediation brief, attended a full-day mediation, negotiated a long-
7 form settlement agreement, retained a Settlement Administrator, and prepared and
8 finalized this Motion and supporting documents, including the notices to the
9 Class/Collective Members. This does not include the time they will have to expend
10 working with the Settlement Administrator on issuing the notices and fielding
11 inquiries from Class/Collective Members. Plaintiffs' counsel also interviewed
12 Named Plaintiffs, obtained documents from them, and met and conferred with
13 CyraCom's counsel on several occasions. Plaintiffs' counsel also advanced litigation
14 expenses and expert costs on behalf of the Class/Collective Members, with no
15 assurance that those expenses would be reimbursed. Finally, Plaintiffs' counsel has
16 successfully litigated many wage-and-hour class actions, and has brought that
17 experience and knowledge to bear on behalf of the Class/Collective Members.
18 Accordingly, this factor weighs in favor of preliminary approval.

19 **2. The Settlement was negotiated at arm's length.**

20 The Settlement was reached as a result of the extensive arm's-length
21 negotiations facilitated by experienced mediator, David Rotman. Despite a full-day
22 session with Mr. Rotman on May 22, 2023 the Parties were not able to reach an
23 agreement. The Parties remained in contact with Mr. Rotman, who eventually made
24 a mediator's proposal on May 24, 2023. The Parties ultimately agreed to Mr.
25 Rotman's proposal on May 31, 2023. Since that time, the Parties have continued to
26 negotiate the terms of their long-form settlement and accompanying notice
27 documents through several iterations over six months. "[T]he involvement of a
28 neutral or ... facilitator in [settlement] negotiations may bear on whether th[ose]

[negotiations] were conducted in a manner that would protect and further the class interests.” Fed. R. Civ. P. 23(e), 2018 Advisory Committee’s Notes; accord *Pederson v. Airport Terminal Servs.*, No. 15-cv-02400, 2018 WL 2138457, at *7 (C.D. Cal. Apr. 5, 2018) (finding the oversight “of an experienced mediator” reflected noncollusive negotiations). In sum, this Court can be confident of the arm’s length nature of the process and that the Settlement was not the product of collusion.

3. The quality of relief to the Settlement Classes weighs in favor of approval.

The third factor to be considered is whether “the relief provided for the class is adequate, taking in to account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” Fed. R. Civ. P. 23(e)(2)(C). Under this factor, the relief “to class members is a central concern.” Fed. R. Civ. P. 23(e)(2)(C), Advisory Committee’s Notes; *In re Volkswagen*, 895 F.3d at 611.

(i) The Settlement provides strong relief to Settlement Class Members.

The relief to be provided to Settlement Class Members is strong. CyraCom is offering a Gross Settlement Amount of \$2,700,000 to settle its alleged violations as set forth in the Operative Complaint. This Settlement provides substantial and immediate benefits to Settlement Class Members, and readily satisfies the Rule 23 standard of being fair, reasonable, and adequate, especially when measured against the risks of further litigation.

(ii) Continued litigation could entail substantial cost, risk, delay and potential appeals.

Almost all class actions involve high levels of cost, risk, and time, which supports the Ninth Circuit’s “strong judicial policy that favors settlements,

1 particularly where complex class action litigation is concerned.” *Linney v.*
2 *Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998). “A[] central concern
3 [when evaluating a proposed class action settlement] ... relate[s] to ***the cost and***
4 ***risk involved in pursuing a litigated outcome.***” Fed. R. Civ. P. 23(e), 2018
5 Advisory Committee’s Notes (emphasis added). “The proposed settlement is not
6 to be judged against a hypothetical or speculative measure of what might have
7 been achieved had plaintiffs prevailed at trial.” *Wershba v. Apple Computer, Inc.*,
8 91 Cal.App.4th 224, 246 (2001) (citing *Linney*, 151 F.3d at 1242). Rather, “the
9 test is... whether the settlement is reasonable under all of the circumstances.” *Id.*
10 at 250. “A settlement need not obtain 100 percent of the damages sought in order
11 to be fair and reasonable. [Citations omitted] ... Compromise is inherent and
12 necessary in the settlement process. Thus, even if ‘the relief afforded by the
13 proposed settlement is substantially narrower than it would be if the suits were to
14 be successfully litigated,’ this is no bar to a class settlement because ‘the public
15 interest may indeed be served by a voluntary settlement in which each side gives
16 ground in the interest of avoiding litigation.’” *Id.*

17 While Plaintiffs believe in the strength of their claims, the risks to Settlement
18 Class Members of continued litigation were significant. CyraCom argued that the
19 “gap time” claims of the FLSA Collective for minimum wages were nonexistent and
20 had little value, if any. Plaintiffs’ counsel agreed the “gap time” claims as pled were
21 subject to attack, but had this Action not settled, Plaintiffs’ counsel was going to
22 amend the Operative Complaint and replace the “gap time” claims with various
23 breach-of-contract claims. CyraCom argued that any time worked off-the-clock was
24 de minimis and that Named Plaintiffs’ accounts of such time would not be supported
25 by other interpreters. CyraCom argued that unpaid breaks about which Named
26 Plaintiffs complained were subject to various defenses under the FLSA, and were not
27 prohibited by California law. CyraCom argued that due to the high rate of pay for
28 interpreters, any failure to reimburse for expenses would not bring interpreters below

1 the minimum wage in any workweek, and thus would not ever violate the FLSA.
2 CyraCom further argued that any required expense reimbursement under California
3 law was much less than what was alleged by Named Plaintiffs. CyraCom also argued
4 that the proper statute of limitations under the FLSA should only be two years.
5 CyraCom also argued that the case was not appropriate for class or collective
6 treatment due to differences among class/collective members as to whether they
7 experienced the practices about which Named Plaintiffs complained, and/or whether
8 they suffered any damage even if they were subjected to the same policies. In
9 addition, CyraCom argued that the PAGA claims would be unmanageable at trial.
10 CyraCom made clear that it intended to bring a motion for summary judgment on
11 many of these issues, and Plaintiffs intended to oppose said motion.

12 Thus, had this case not settled, this Action was poised for contentious pre-
13 certification law-and-motion work which would have consumed a substantial amount
14 of attorney time, court time, and depending on the motion and the result, potential
15 appeals to the Ninth Circuit. Thus, continued litigation would likely have been risky,
16 protracted, and costly for both sides.

17 Were the case to continue, the Parties would have to engage in formal
18 discovery, briefing conditional and class certification motions, briefing a Rule 23(f)
19 appeal after the Court's certification ruling, followed by summary judgment, *Daubert*
20 motions, motions in limine, a possible decertification motion, and then trial. Each
21 stage would have added risk and unnecessarily imposed delay before relief could be
22 provided to Settlement Class Members. As to the merits of the case, Plaintiffs believe
23 they ultimately would have been able to demonstrate that Settlement Class Members
24 were not paid all wages due, were not properly reimbursed, and did not receive the
25 proper breaks. However, Plaintiffs' counsel also recognized, based on their
26 experience in other class litigation, that their case could fail on liability, or at least be
27 whittled down. For example, CyraCom vigorously contended that the pre- and post-
28 shift work Named Plaintiffs and Class/Collective Members allegedly performed, if

any at all, were de minimis and could not have taken 15-minutes per shift.

Even if Plaintiffs prevailed on these issues through trial, an appeal would likely follow, taking another two-plus years to resolve. Again, while Plaintiffs believe the case they are pursuing on behalf of the Settlement Classes is a strong one, all cases, including this one, are subject to substantial risk. Plaintiffs' theories of liability, while sound in their view, remain subject to attack from CyraCom in a disputed conditional and class certification setting and unproven in front of a jury. Also—as in any class action case—establishing liability and damages on a classwide basis is rife with uncertainty, making settlement the more prudent course when a reasonable deal is available. In other words, a victory at trial might not even yield superior results to this settlement.

By settling now, CyraCom is agreeing to pay a Gross Settlement Amount of \$2,700,000 and provide Settlement Class Members a remedy that is imminently available. *See* Fed. R. Civ. P. 23(e), 2018 Advisory Committee's Notes ("The relief that the settlement is expected to provide to class members is a central concern."). The amount being offered is reasonable and well within the range of recovery after considering the challenges to recovery at trial that could preclude the class from collecting altogether. All of these considerations favor settlement; the Settlement Class Members will receive meaningful relief now—not years down the road.

(iii) The Settlement provides for an effective distribution of proceeds to the Settlement Classes.

Here, the Settlement provides for an efficient and effective distribution of funds to Settlement Class Members. Members of the FLSA Collective will have 60 days to opt in either via regular mail or electronically to collect their settlement proceeds. They will also be given reminder notices 20- and 40-calendar days after the notices are issued to opt in. Members of the California Class and PAGA Representative Group do not have to do anything to collect their settlement proceeds. Thus, the claims process in this Settlement poses no artificial hurdles and should encourage

1 class member participation in the Settlement. Accordingly, this factor weighs in favor
2 of preliminary approval.

3 **(iv) The terms of the proposed award of attorneys' fees,**
4 **including timing of payment, also support settlement**
5 **approval.**

6 Nothing about the negotiated attorney's fee award should detract from the
7 fairness of the Settlement. The Parties (under Mr. Rotman's supervision) finalized
8 the material terms of the classwide relief under the Settlement before broaching the
9 subject of attorney's fees—so there is no risk that the attorney's fee agreement
10 impacted the nature of the class relief. Had the Parties not negotiated the fee, they
11 would still have proceeded with this settlement and simply would have litigated the
12 fee before this Court. In addition, the agreement was itself secured through arm's
13 length negotiations under the supervision of Mr. Rotman, and of course remains
14 subject to this Court's approval once Plaintiffs file their supporting motion. *See* Fed.
15 R. Civ. P. 23(h).

16 While the percentage sought by Plaintiffs' counsel (33% of the Gross
17 Settlement Amount) is slightly higher than the benchmark in the Ninth Circuit (25%),
18 Plaintiffs' counsel will request a modest multiplier at the appropriate time,
19 considering the risks, substantial work, contingent nature, and costs advanced by
20 Plaintiffs' counsel to bring this Action to a successful resolution. *See e.g., Sadowska*
21 *v. Volkswagen Grp. of Am.*, No. CV 11-00665, 2013 WL 9600948, at *9 (C.D. Cal.
22 Sept. 25, 2013) (approving negotiated fee award 1.37 times the lodestar and noting
23 that "[m]ultipliers can range from 2 to 4 or even higher[']"). Plaintiffs' counsel will
24 detail further when they file their Rule 23(h) motion for attorney's fees.

25 **(v) The Parties have no other agreements pertaining to the**
26 **Settlement.**

27 This Court must also evaluate any agreement made in connection with the
28

1 proposed Settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Here, the Settlement
2 Agreement before this Court is the only extant agreement. Thus, this factor weighs
3 in favor of preliminary approval.

4 **4. The Settlement treats all Settlement Class Members equitably.**

5 The final Rule 23(e)(2) factor turns on whether the proposed settlement “treats
6 class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D).

7 Here, the Parties took into consideration the allocation between the Settlement
8 Classes as detailed above. Based on the Parties’ assessment of exposure, risk, strength
9 of claims, and CyraCom’s defenses, they believe that allocation between the
10 Settlement Classes as discussed above is fair and reasonable. Additionally, the Parties
11 proposed a fair method to distribute the settlement amounts to the Settlement Class
12 Members based on the claims in the Action that applied to them, the number of
13 workweeks in the position, and for individuals with potential FLSA and/or California
14 claims, accounting for whether they worked full time or part time.⁴ *See, e.g.,*
15 *Altamirano v. Shaw Indus., Inc.*, No. 13-cv-00939, 2015 WL 4512372, at *8 (N.D.
16 Cal. July 24, 2015) (finding no preferential treatment because the settlement
17 “compensates class members in a manner generally proportionate to the harm they
18 suffered on account of [the] alleged misconduct”). The same is true for the releases
19 provided by Settlement Class Members: all Settlement Class Members (except for
20 the Named Plaintiffs who will sign a general release) will provide a release that is
21 tailored to the claims that were raised or could have been raised based on the alleged
22 facts pertaining to the class/collective group(s) to which they are a member. As a
23 result, the Settlement treats all Settlement Class Members equitably, further
24 supporting approval of the Settlement.

25
26 ⁴ The allocation provides equitable distribution of the FLSA Net Settlement Amount
27 for all members of the FLSA Settlement Collective. On the other hand, the allocation
28 acknowledges that California state law provides for potential relief far in excess of the
relief provided under the FLSA (including, for example, statutory penalties for meal
and rest break violations), and thus California Settlement Class Members will receive
additional compensation in exchange for the release of their California claims.

1 Finally, though Named Plaintiffs will receive additional compensation
2 commensurate with their participation in the Action, the extra payment is in
3 recognition for the service they performed on behalf of the Settlement Classes and
4 broader release of claims. The Ninth Circuit has approved such awards. *Boyd v. Bank*
5 *of Am. Corp.*, No. 13-cv-0561-DOC, 2014 WL 6473804, at *7 (C.D. Cal. Nov. 18,
6 2014) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 976-77 (9th Cir. 2003)).

7 For all these reasons, the proposed Settlement merits preliminary approval.

8 **V. THE SETTLEMENT CLASSES MEET ALL THE REQUIREMENTS**
9 **OF CONDITIONAL CERTIFICATION AND RULE 23**

10 As stated above, a prerequisite for the Court’s preliminary approval of a
11 class/collective action settlement is that the proposed classes meet the requirements
12 of conditional certification under the FLSA and Rule 23, as applicable.

13 **A. Conditional certification under the FLSA has been satisfied.**

14 For employees allegedly denied wages and overtime pay, the FLSA establishes
15 an opt-in procedure. “Under the FLSA, ‘one or more employees’ may file a civil
16 action—termed a collective action—on “behalf of himself or themselves and other
17 employees similarly situated.” *Hudson*, No. 3:18-cv-1371-GPC-KSC at *6 (citing
18 29 U.S.C. § 216(b)).

19 In determining whether an FLSA collective action may proceed, the Ninth
20 Circuit in *Campbell* requires a two-step approach. First, plaintiffs move for
21 preliminary certification, which involves disseminating notice to putative collective
22 members and advises them that “they must affirmatively opt in to participate in the
23 litigation.” *Campbell v. City of Los Angeles*, 903 F.3d 1090, 1108-1109 (9th Cir.
24 2018). This dissemination of notice is “conditioned on a preliminary determination
25 that the collective as defined in the complaint satisfies the ‘similarly situated’
26 requirement of section 216(b).” *Id.* at 1109. At this preliminary stage, this Court
27 applies a “lenient” standard, “loosely akin to a plausibility standard, commensurate
28 with the state of the proceedings.” *Id.* Second, “[t]he employer can move for

1 ‘decertification’ of the collective action for failure to satisfy the ‘similarly situated’
2 requirement in light of the evidence produced to that point.” *Id.*

3 According to the court in *Campbell*, “[p]arty plaintiffs are similarly situated,
4 and may proceed in a collective, to the extent ***they share a similar issue of law or***
5 ***fact material to the disposition of their FLSA claims.***” *Id.* at 1117 (emphasis added).
6 “If plaintiff makes a plausible showing that such a similarity exists, the district court
7 should grant first-stage certification.” *Campanelli v. Image First Healthcare Laundry*
8 *Specialists, Inc.*, No. 5-cv-04456-PJH, 2018 WL 6727825, at *5 (N.D. Cal. Dec. 21,
9 2018).

10 Here, Named Plaintiffs and other Interpreters are “similarly situated” because
11 they allegedly worked pre- and post-shift hours for which they were not paid, were
12 not paid for rest breaks that were less than 20 minutes, and had to pay for internet
13 expenses that they claim should have been borne by CyraCom. Since Named
14 Plaintiffs and other Interpreters are “similarly situated,” conditional certification of
15 the FLSA Collective should be granted.

16 **B. The Rule 23 requirements are met.**

17 Certification requires that all four elements of Rule 23(a) and at least one prong
18 under Rule 23(b) be satisfied. The requirements of Rule 23(a) are: numerosity,
19 commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a). In addition, the Court
20 must assure itself that the proposed forms of notice to the California Class are the
21 “best notice that is practicable under the circumstances.” Fed. R. Civ. P. 23(c)(2)(B).
22 Here, the California Class meets the requirements under Rule 23.

23 **1. Rule 23(a)(1) – Numerosity**

24 Numerosity requires that the proposed class be so numerous that joinder of all
25 members is impracticable. *See* Fed. R. Civ. P. 23(a)(1). No exact number is required,
26 but courts have routinely found numerosity where the putative class contains 40 or
27 more members. *In re Cooper Cos. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009).

28 Here, according to CyraCom, there are more than 200 individuals in the

1 California Class, falling well within the acceptable scope of numerosity.

2 **2. Rule 23(a)(2) – Commonality**

3 A plaintiff has met the commonality requirement for class certification if “there
4 are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The
5 requirement is “construed permissively.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
6 1019 (9th Cir. 1998). “[F]or the commonality requirement to be met, there must only
7 be one single issue common to the proposed class.” *Haley v. Medtronic, Inc.*, 169
8 F.R.D. 643, 648 (C.D. Cal. 1996). The presence of one common issue whose
9 resolution will affect all or a significant number of the putative class members
10 suffices to satisfy this requirement. *Vizcaino v. U.S. Dist. Court for W. Dist. of Wash.*,
11 173 F.3d 713, 722 (9th Cir. 1999).

12 The Plaintiff Leeman and Plaintiff Heid allege that CyraCom’s uniform policies
13 and actions deprived members of the California Class of minimum and overtime
14 wages, compliant meal-and-rest periods, compliant wage statements, unreimbursed
15 expenses, and timely payment of wages upon separation of employment. Plaintiffs
16 take the position that common proof applicable to the California Class is based on
17 CyraCom’s overtime, pay, meal period, and rest break policies. Thus, the California
18 Class members share the same common questions regarding the legality of
19 CyraCom’s actions.

20 **3. Rule 23(a)(3) – Typicality**

21 Typicality requires that “the claims or defenses of the representative parties [be]
22 typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). The
23 representative plaintiffs’ claims are “typical” if they are “reasonably co-extensive
24 with those of absent class members.” *Hanlon*, 150 F.3d at 1020. The claims “need
25 not be substantially identical.” *Id.* However, class representatives “must be able to
26 pursue [their] claims under the same legal or remedial theories as the unrepresented
27 class members.” *In re Paxil Litigation*, 212 F.R.D. 539, 549 (C.D. Cal. 2003).

28 Here, typicality is easily met. Plaintiff Leeman and Plaintiff Heid allege they

1 and the California Class members, suffered violations of their legal rights, including
2 not being paid overtime wages, not having compliant meal-and-rest breaks, not being
3 reimbursed for business expenses, and more. Also, the law applicable to those facts
4 is the same for the Plaintiff Leeman, Plaintiff Heid, and the California Class
5 members. The claims the Plaintiff Leeman and Plaintiff Heid pursue on behalf of the
6 California Class are based on the same legal theories and involve the same course of
7 conduct that equally impacted all California Class members. Based on the foregoing,
8 the typicality requirement is also satisfied.

9 **4. Rule 23(a)(4) – Adequacy**

10 The final Rule 23(a) requirement requires (1) that the representative plaintiffs
11 do not have conflicts of interest with the putative class; and (2) that plaintiffs are
12 represented by qualified and competent counsel. *Staton*, 327 F.3d at 957. Here, the
13 Plaintiff Leeman and Plaintiff Heid have adequately represented the California Class
14 throughout this litigation. There are no intra-class conflicts as Plaintiff Leeman,
15 Plaintiff Heid, and the California Class members share the same interest in holding
16 CyraCom accountable for the alleged violations. Also, Plaintiffs’ counsel are highly
17 experienced trial and class-action attorneys who have successfully handled complex
18 class actions in both state and federal court. *See* Beligan Decl., Exhs. 2 and 3;
19 Declaration of Michael L. Fradin (“Fradin Decl.”) ¶ 10; and Declaration of James L.
20 Simon (“Simon Decl.”) ¶ 10. Therefore, adequacy is satisfied.

21 **5. Rule 23(b) – Predominance and Superiority**

22 “In addition to meeting the conditions imposed by Rule 23(a), the parties
23 seeking class certification must also show that the action is maintainable under Fed.
24 R. Civ. P. 23(b)(1), (2), or (3).” *Hanlon*, 150 F.3d at 1022. Under Rule 23(b)(3): (1)
25 “the questions of law or fact common to class members predominate over any
26 questions affecting only individual members” and (2) “a class action is superior to
27 other available methods for fairly and efficiently adjudicating the controversy.”

28 As alleged, the California Class members’ claims depend on whether CyraCom

1 paid them for all hours worked, overtime pay, and provided them with compliant
2 meal-and-rest breaks. If found liable, those potential violations trigger derivative
3 claims (i.e., wage statement violations, waiting-time penalties and potential PAGA
4 violations, etc.). It is Plaintiffs' position that liability and damages can be resolved
5 using the same evidence for all California Class members, and thus this Action
6 provides the precise type of predominant questions that makes a classwide
7 adjudication worthwhile. *Tyson Foods, Inc. v. Bouaphakeo*, 136 S.Ct. 1036, 1045
8 (2016).

9 Superiority turns on "whether objectives of the particular class action procedure
10 will be achieved in the particular case." *Hanlon*, 150 F.3d at 1023. The main inquiry
11 in determining superiority is whether "classwide litigation of common issues will
12 reduce litigation costs and promote greater efficiency." *Valentino v. Carter-Wallace,*
13 *Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Here, resolution of the issues through
14 individual actions is impracticable as the recovery for each class member would be
15 less, especially given the attorneys' fees, and costs that would be incurred by each
16 individual member. Accordingly, the class device is the superior method of
17 adjudicating the California Class members' claims.

18 **VI. CONCLUSION**

19 For the foregoing reasons, the Parties respectfully request this Court to grant
20 preliminary approval of the Settlement, conditionally certify the FLSA Collective,
21 and California Class, appoint Named Plaintiffs as the Class Representatives, appoint
22 their attorneys as Class Counsel, approve as to form the Notices and Opt-In Consent
23 Forms and set a Final Approval Hearing not less than 134 days after the date of the
24 order granting this Motion for Preliminary Approval.

25 Respectfully submitted,

26 DATED: December 11, 2023
27
28

KABATECK LLP

By: /s/ Brian S. Kabateck
Brian S. Kabateck (SBN 152054)
bsk@kbklawyers.com
Shant Karnikian (SBN 285048)
sk@kbklawyers.com
Jerusalem F. Beligan (SBN 211258)
jfb@kbklawyers.com
Sheri R. Lalehzarian (SBN 346917)
sl@kbklawyers.com
633 W. Fifth Street, Suite 3200
Los Angeles, CA 90071
Telephone: (213) 217-5000

SIMON LAW CO.

By: /s/ James L. Simon
James L. Simon (admitted *pro hac*
vice)
james@simonsayspay.com
11 ½ N. Franklin Street
Chagrin Falls, Ohio 44022
Telephone: (216) 216-8696

By: /s/ Michael L. Fradin
Michael L. Fradin, Esq. (admitted
pro hac vice)
mike@fradinlaw.com
8401 Crawford Ave., Ste. 104
Skokie, IL 60076
Telephone: 847-986-5889

Attorneys for Plaintiffs and the Putative Classes