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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

MITZI CASTILLO, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiff,

vs.

ABLE FREIGHT SERVICES, LLC, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 21STCV09625

Honorable Yvette M. Palazuelos
Department SSC9

<u>CLASS ACTION</u>

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

[Declaration of Proposed Class Counsel (Yasmin Hosseini); Declaration of Proposed Class Representative (Mitzi Castillo); and [Proposed] Order filed concurrently herewith]

Date:	October 19 2023
Time:	10:00 a.m.
Department:	SSC9
Complaint Filed:	March 11, 2021
FAC Filed:	January 4, 2023
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on October 19, 2023 at 10:00 a.m. or as soon thereafter as the matter may be heard before the Honorable Yvette M. Palazuelos in Department SSC9 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Mitzi Castillo ("Plaintiff" or "Class Representative") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") attached as "**EXHIBIT 1**" to the Declaration of Yasmin Hosseini, including, but not limited to, the means of allocation and distribution of funds, including and not limited to, the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payment to Plaintiff, and Administration Costs to the Administrator;
- Conditionally certifying the Class for settlement purposes;
- Preliminarily appointing Plaintiff Mitzi Castillo as Class Representative;
- Preliminarily appointing Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action Settlement;
- Directing the mailing of the Class Notice to the Class Members and Aggrieved Employees;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving ILYM Group, Inc., as the Administrator; and

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- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Attorneys' Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, Class Representative Service Payment for Plaintiff, and Administration Costs to Administrator.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declaration of Proposed Class Counsel (Yasmin Hosseini) and Proposed Class Representative (Mitzi Castillo) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: September 18, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________
Yasmin Hosseini
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Mitzi Castillo ("Plaintiff" or "Class Representative") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement" or "Agreement,") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Able Freight Svcs, LLC, formerly known as Able Freight Services, Inc., Able Freight Services, LLC, and EGI-Able Investors, LLC (together, "Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the "Parties") have agreed to settle this lawsuit for a Gross Settlement Amount of One Million Two Hundred Thousand Dollars and Zero Cents ($1,200,000.00), subject to increase.[1] The Gross Settlement Amount includes the following: (1) Individual Settlement Shares to Participating Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Class Representative Service Payment of Fifteen Thousand Dollars ($15,000.00) to Plaintiff[3]; (3) the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment to Class Counsel, consisting of attorneys' fees in the amount of no more than thirty-eight percent (38%) of the Gross Settlement Amount, or $456,000.00 if the Gross Settlement Amount remains $1,200,000.00, and reimbursement of litigation costs and expenses not to exceed Twenty-Five Thousand Dollars ($25,000.00)[4]; (4) the Administration Costs to the Administrator in the amount not to exceed Fifteen Thousand Dollars ($15,000.00);[5] and (5) the amount of Two Hundred Thousand Dollars ($200,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA") (i.e., PAGA Penalties), of which 75% (i.e., $150,000.00) will be distributed to the Labor and Workforce Development Agency ("LWDA

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Yasmin Hosseini ("Hosseini Decl."), ¶ 1.21. Pursuant to the Escalator Clause in Paragraph 8 of the Settlement Agreement, if the total number of Workweeks during the time period from June 9, 2018 to October 24, 2022 actually exceeds 49,171 by more than ten percent (10%), then the Gross Settlement Amount will be increased on a proportional basis by the same number of percentage points above ten percent (10%). The final escalated Gross Settlement Amount will be determined by the Administrator upon receipt of the Class Data.

[2] *Id.*, ¶ 1.24.

[3] *Id.*, ¶ 3.2.1.

[4] *Id.*, ¶ 3.2.2.

[5] *Id.*, ¶ 3.2.3.

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Payment") and 25% (i.e., $50,000.00) will be distributed to all current and former hourly-paid or non-exempt employees of Defendant in California at any time during the PAGA Period ("Aggrieved Employees").[6]

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendant does not oppose:

> All current and former hourly-paid or non-exempt employees who worked for Defendant in the State of California at any time during the Class Period ("Class" or "Class Members").[7]

Class Members who does not submit a timely and valid request to be excluded from the Class Settlement ("Participating Class Member") will receive a share of the Net Settlement Amount ("Individual Settlement Share") on a *pro rata* basis based upon the number of weeks each Class Member worked for Defendant as an hourly-paid or non-exempt employee within California during the Class Period, which information will be provided to the Administrator by Defendant and calculated by the Administrator based on Defendant's employment records of the number of pay periods during the Class Period, adjusted for the number of employees ("Workweeks").[8] Aggrieved Employees will receive a share of the 25% portion of the PAGA Penalties ("Individual PAGA Payment") on a *pro rata* basis, based on the number of weeks each Aggrieved Employee worked for Defendant as an hourly-paid or non-exempt employee within California during the PAGA Period, which information will be provided to the Administrator by Defendant and calculated by the Administrator based on Defendant's employment records of the number of pay periods during the PAGA Period, adjusted for the number of employees ("PAGA Pay Periods").[9]

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[6] Settlement Agreement, ¶¶ 1.31 & 1.27. "PAGA Period," means the period from October 31, 2021 through January 22, 2023. *See id.*, ¶ 1.32.

[7] *Id.*, ¶ 1.4. "Class Period" is defined as the period from June 9, 2018 through January 22, 2023. *See id.*, ¶ 1.10.

[8] Settlement Agreement, ¶¶ 1.24, 1.37 & 1.46.

[9] *Id.*, ¶¶ 1.22 & 1.31.

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The Settlement, if granted preliminary approval, will operate to resolve the Released Class Claims of Plaintiff and Participating Class Members, and the Released PAGA Claims of Plaintiff, Aggrieved Employees, and the State of California, against the Released Parties.[10]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant provides airfreight forwarding services with a focus on temperature-sensitive and time-critical perishable cargo for a wide array of customers shipping to over 60 countries. Plaintiff Mitzi Castillo is a former employee of Defendant.

On March 11, 2021, Plaintiff filed a Class Action Complaint for Damages in the Los Angeles County Superior Court ("Court"), thereby commencing the above-captioned lawsuit ("Action").

On June 14, 2021, Defendant filed an Answer to Plaintiff's Complaint for Damages. On July 19, 2021, Defendant filed a First Amended Answer to Plaintiff's Complaint for Damages.

On October 31, 2022, Plaintiff submitted notice to the California Labor & Workforce Development Agency ("LWDA") and Defendant of her intent to pursue civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq.

On January 4, 2023, Plaintiff filed the First Amended Class Action Complaint for Damages & Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("Operative Complaint").

Plaintiff's core allegation is that Defendant has violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and Aggrieved Employees, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to civil

[10] See *id.* at ¶5.2, for the full scope of the "Released Class Claims," *id*. at ¶ 5.3, for the full scope of the "Released PAGA Claims," and *id.* at ¶ 1.43 for the definition of the "Released Parties."

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penalties pursuant to PAGA. Plaintiff contends that she, and the Class Members, are entitled to, *inter alia,* unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

On February 7, 2023, Defendant filed an Answer to the Operative Complaint.

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

On November 11, 2021, Plaintiff propounded multiple sets of discovery including Request for Production of Documents, (Set One); Special Interrogatories, (Sets One & Two); and Form Interrogatories, (Set One), on Defendant Able Freight Services, LLC. On November 11, 2021, Plaintiff also noticed the deposition of Defendant's Person Most Knowledgeable regarding job duties and organizational structure of Defendant.

The Parties have actively litigated the Action since it was commenced on March 11, 2021. On October 28, 2022, the Parties participated in a formal, full-day mediation conducted by Hon. Howard R. Broadman (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiff and the Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (i.e., Participating Class Member) and the Released PAGA Claims of Plaintiff, Aggrieved Employees, and the State of California, with respect to the Released Parties.[11] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Gross Settlement Amount and reimbursement of costs and expenses in an amount not to

[11] Settlement Agreement, ¶¶ 5.2 & 5.3.

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exceed Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) to Class Counsel ("Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment"); (2) administration costs, which are currently estimated not to exceed Fifteen Thousand Dollars and Zero Cents ($15,000.00) to the Administrator ("Administration Costs"); (3) payment of the PAGA Penalties ($200,000.00), of which 75% will be distributed to the LWDA (i.e., $150,000.00) ("LWDA PAGA Payment") and the remaining 25% (i.e., $50,000.00) will be distributed to Aggrieved Employees; and (4) payment in the amount of up to Fifteen Thousand Dollars ($15,000.00) to Plaintiff Mitzi Castillo ("Class Representative Service Payment").[12] The Parties have agreed to retain ILYM Group Inc. ("ILYM" or "Administrator") to handle the notice and settlement administration process.

The Parties have agreed that the Administrator will determine each Participating Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in accordance with the Settlement Agreement and as follows:

a. After Preliminary Approval of the Settlement, the Administrator will divide the Net Settlement Amount by the total number of Workweeks worked by all Class Members to yield the "Estimated Workweek Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value to yield his or her estimated Individual Settlement Share that he or she may be eligible to receive under the Class Settlement.[13]

b. After Final Approval of the Settlement, the Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members to yield the "Final Workweek Value," and multiply each Participating Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.[14]

The Parties have agreed that the Individual PAGA Payments will be calculated and apportioned from the 25% of the PAGA Penalties based on the Aggrieved Employees, based on the Aggrieved Employees' PAGA Pay Periods, as follows: the Administrator will divide the 25% portion of the PAGA Penalties attributed to Aggrieved Employees, i.e., $50,000.00, by the PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period ("Total PAGA Pay Periods") resulting in the PAGA Pay Period Value and then multiplying the PAGA

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[12] Settlement Agreement, ¶¶ 3.2.1, 3.2.2, 3.2.3 & 3.2.4.
[13] *Id.*, ¶ 3.2.5(a).
[14] *Id.*, ¶ 3.2.5(b).

Pay Period Value by the number of PAGA Pay periods worked by each individual Aggrieved Employee during the PAGA Period.[15]

Each Participating Class Member's Individual Settlement Payment will be allocated as follows: twenty percent (20%) as wages (the "Wage Portion"), which will be reported on an IRS Form W-2; forty percent (40%) as claims for penalties and non-wage damages; and the remaining forty percent (40%) as claims for interest (the "Non-Wage Portion"), which will be reported on an IRS Form 1099.[16] Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.[17] Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Settlement Payment (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).[18] Defendant will separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Settlement Shares.[19]

Each Individual Settlement Payment and Individual PAGA Payment shall prominently state the date (not less than one hundred eighty (180) calendar days after the date of mailing) when the check will be voided.[20] For any Class Member whose Individual Settlement Payment check of Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Employment Rights Project of Bet Tzedek, a nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) (the "Cy Pres Recipient").[21]

Class Members who wish to exclude themselves (opt-out of) the Class Settlement must submit a signed written letter to be excluded from the Class Settlement ("Request for Exclusion") to the Administrator, by fax or mail, postmarked no later than sixty (60) days after

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[15] Settlement Agreement, ¶ 3.2.6.
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *Id.*, ¶ 3.1.
[20] *Id.*, ¶ 4.4.1.
[21] *Id.*, ¶ 4.4.3.

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the initial mailing of the Class Notice ("Response Deadline").[22] The Request for Exclusion must: (a) state the case name and number of the Action, (b) be signed by the Participating Class Member, (c) state the full name, address, telephone number, and the last four digits of the Social Security Number of the Participating Class Member requesting exclusion, (d) state that the Participating Class Member does not wish to be included in the Class Settlement, and (e) be returned by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.[23] Class Members who submit a valid and timely Request for Exclusion from the Class Settlement ("Non-Participating Class Member") will not participate in, or be bound by, the Class Settlement and will not be issued any payment pursuant to the Class Settlement, and will not have any right to object, appeal, or comment thereon.[24] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[25]

Only Class Members who do not exclude themselves from the Class Settlement (i.e., Participating Class Members) may object to the Class Settlement by submitting a written objection to the Administrator, by fax or mail.[26] The objection must: (a) state the full name and number of the Action; (b) state the objecting Participating Class Member's full name, address, telephone number, and the last four digits of his or her Social Security Number; (c) state all the grounds for the objection accompanied by any legal or factual support for such objection; (d) state the full name, address, and telephone number of any legal representative representing the Class Member with respect to the objection; (e) contain copies of any papers, briefs, or other documents upon which the objection is based; (f) be signed by the Participating Class Member; and (g) be returned by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.[27] In the alternative, Participating Class Members may appear in

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[22] Settlement Agreement, ¶¶ 1.45 & 7.5.1.
[23] *Id.*, ¶ 7.5.1.
[24] *Id.*, ¶ 7.5.4.
[25] *Id.*, ¶ 7.5.1.
[26] *Id.*, ¶ 7.7.2.
[27] *Ibid.*

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Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.[28]

The Class Member or Aggrieved Employee may challenge the calculation of Workweeks by communicating with the challenge in writing to the Administrator via mail, on or before the Response Deadline (or any applicable extended Response Deadline, whichever is later).[29] The Workweeks challenge must: (a) state the case name and number of the Action; (b) state the full name, address, telephone number, and the last four digits of Social Security number of the challenging Participating Class Member; (c) clearly state that the Class Member challenges the number of Workweeks and/or Pay Periods credited to them and what they contend is the correct number to be credited to them' (d) include information and/or attach documentation demonstrating that the number of Workweeks and/or Pay Periods that they contend should be credited to them are correct; and (e) be returned by mail to the Administrator at the specified address, postmarked on or before the Response Deadline.[30]

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts look to federal authority for guidance with class action settlements. *Dunk*, *supra*, 48 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a proposed settlement is within the court's discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether a settlement was fair and reasonable, whether certification of the class was proper, and whether the attorney fee award was proper are matters addressed to the trial court's broad discretion."). Accordingly, a court's decision to approve a class action settlement may be reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiff v. City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

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[28] *Ibid.*
[29] Settlement Agreement, ¶ 7.6.
[30] *Id.*, ¶ 7.6.

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Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002). This procedure, which is commonly utilized by both federal and state courts, assures class members of the protection of procedural due process safeguards and enables a court to fulfill its role as the guardian of the interest of the settlement class.

Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after notice of the settlement has been given to the class members and they have had an opportunity to voice their views of the settlement or to exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad powers to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794. To make this fairness determination, courts must consider several relevant factors, including "the strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement." *Dunk*, *supra*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba*, *supra*, 91 Cal.App.4th at 245. Furthermore, courts give "proper deference to the private consensual decision of the parties." *Hanlon*, *supra*, 150 F.3d at 1027 (citation omitted).

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

A. <u>The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Discovery.</u>

The Parties actively litigated the Action since it was commenced on March 11, 2021. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.[31]

Prior to engaging in mediation, Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data produced by Defendant.[32] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff, a detailed sampling of Class Members' time and pay data, multiple iterations of Defendant's Employee Handbook, forms (including but not limited to the Handbook Acknowledgement and Agreement), new hire checklist, earning statements, payroll reports, among other information and documents.[33] Class Counsel had the opportunity to interview Plaintiff and other Class Members to gather facts and

[31] Hosseini Decl., ¶¶ 11-13.
[32] *Id.*, ¶ 12.
[33] *Ibid.*

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to identify potential witnesses.[34] Class Counsel propounded multiple sets of formal written discovery requests on Defendant and noticed the depositions of Defendant's Person Most Knowledgeable designees regarding organizational structure and job duties (specifically Request for Production of Documents, (Set One); Special Interrogatories, (Sets One & Two); and Form Interrogatories, (Set One)).[35] Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, discovery, and the production of documents and data prior to the mediation.[36] Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and the mediation, among other tasks.[37]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Hon. Howard R. Broadman (Ret.), a well-respected mediator experienced in mediating complex labor and employment matters.[38] In the course of litigation and in connection with mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[39] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[40] Arriving at a settlement that was acceptable to both Parties was not easy. Defendant and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[41] After conducting investigations,

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[34] *Ibid.*
[35] *Ibid.*
[36] *Ibid.*
[37] *Ibid.*
[38] Hosseini Decl., ¶ 11.
[39] *Id.*, ¶ 11.
[40] *Ibid.*
[41] *Id.*, ¶¶ 11, 16-18.

formal and informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[42]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.[43] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[44] Counsel for the Parties have also reviewed documents and information relating to Plaintiff's and the Class Members' employment with Defendant and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiff's claims, and Defendant's defenses thereto, as well as facts discovered.[45] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[46]

B. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement, which provides for a Gross Settlement Amount of One Million Two Hundred Thousand Dollars and Zero Cents ($1,200,000.00), represents a fair, adequate, and reasonable resolution of the matter.[47] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the formal and informal exchange of information.[48] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[49] Moreover, considering all of the facts and

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[42] *Ibid.*
[43] *Ibid.*
[44] *Ibid*.
[45] Hosseini Decl., ¶¶ 11-13 & 16-18.
[46] *Id.*, ¶¶ 6-7.
[47] *Id.*, ¶¶ 11, 13, 14 & 21.
[48] *Id.*, ¶¶ 11-13.
[49] *Id.*, ¶¶ 16-18.

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circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[50]

Assuming that the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, PAGA Penalties, and Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Four Hundred Eighty-Nine Thousand Dollars and Zero Cents ($489,000.00).[51] As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Share will be calculated based on his or her Workweeks during the Class Period and the amount of each Aggrieved Employee's Individual PAGA Payment will be based on his or her PAGA Pay Periods during the PAGA Period.[52] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.[53] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

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[50] Hosseini Decl., ¶¶ 11, 13 & 21.
[51] *Id.*, ¶ 14.
[52] Settlement Agreement, ¶¶ 3.2.5 & 3.2.6.
[53] Hosseini Decl., ¶¶ 11, 13 & 21.

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C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted significant formal and informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[54] The discovery and information that Class Counsel obtained from Defendant and through other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendant's defenses thereto.[55] As outlined in the Declaration of Yasmin Hosseini, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[56]

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

For settlement purposes, the requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[57] California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiff's claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available

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[54] Hosseini Decl., ¶¶ 11-13 & 18.
[55] *Id.*, ¶ 18.
[56] *Id.*, ¶¶ 11-13 & 16-18.
[57] Settlement Agreement, ¶ 12.1.

means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

A. <u>The Class Is Ascertainable and Sufficiently Numerous.</u>

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

This action involves a putative class of approximately five hundred and six (506) individuals.[58] This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendant to the Administrator through a review of Defendant's employment records regarding hourly-paid and non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

B. <u>The Class Members Share a Well-Defined Community of Interest.</u>

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

[58] Hosseini Decl., ¶ 9.

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The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of recovery’ is likely to prove compatible with class treatment.” *Capitol People*, *supra*, 155 Cal.App.4th at 690 (emphasis added) (citing *Sav-On*, *supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied to the potential class. *Ghazaryan*, *supra*, 169 Cal.App.4th at 1534.

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Operative Complaint. Based on the documents and information obtained through formal and informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.[59] Plaintiff’s claims arise from Defendant’s alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[60]

Plaintiff also contends that Defendant’s payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue.[61] As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue.[62]

Plaintiff maintains that the outcome of this litigation would be determined by Defendant’s alleged uniform operations and employment policies and procedures that applied across its hourly-paid and non-exempt employees who worked in California during the Class Period. Accordingly, the Court should certify the Class for settlement purposes only.

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[59] Hosseini Decl., ¶ 16.
[60] *Ibid.*
[61] *Ibid.*
[62] *Id.*, ¶ 16.

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VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR CLASS COUNSEL FEES PAYMENT AND CLASS COUNSEL LITIGATION EXPENSES PAYMENT

Class Counsel has litigated the matter for over two (2) years, and was actively preparing the matter for class certification and trial.[63] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and formal and informal discovery, including, and not limited to, propounding multiple formal written discovery requests onto Defendant. Class Counsel also noticed the depositions of Defendant's Person Most Knowledgeable designees.[64]Class Counsel reviewed a large volume of documents and data[65] and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to mediation.[66] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[67]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[68]

The Settlement establishes a Gross Settlement Amount of One Million Two Hundred Thousand Dollars and Zero Cents ($1,200,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, consisting of attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the Gross Settlement Amount and an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) for costs and expenses.[69] The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2)

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[63] Hosseini Decl., ¶¶ 11-13.
[64] *Id.*, 11.
[65] *Id.*, ¶ 12.
[66] *Ibid.*
[67] *Id.*, ¶ 11.
[68] *Id.*, ¶¶ 6-7.
[69] Settlement Agreement, ¶ 3.2.2.

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the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and that an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment will be sought, as provided for by the Settlement.[70]

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 (citing *Lealao, supra*, 82 Cal.App.4th at 48-49). In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte*, *supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check

[70] Settlement Agreement, Exh. A.

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and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he percentage of fund method survives in California." *Id*. (internal quotation marks omitted).

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[71]

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's motion for final approval of the Settlement and application for the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

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[71] Hosseini Decl., ¶ 19.

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The proposed Class Notice[72] describes the Settlement, the deadlines and procedures to mail an objection to the Class Settlement, Request for Exclusion from the Class Settlement, and/or disputes regarding Workweeks and or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[73]

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[74] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[75] The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Settlement Share and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.[76]

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 ("The essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit."). Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF ILYM GROUP INC. AS THE ADMINISTRATOR

The Parties have selected ILYM Group Inc., to administer the Settlement.

The Administrator will mail the Class Notice to all identified Class Members by First-Class U.S. mail.[77] No later than three (3) business days after the Administrator's receipt of any

[72] Settlement Agreement, Exh. A.
[73] *Ibid.*
[74] *Ibid.*
[75] *Ibid.*
[76] *Ibid.*
[77] *Id.*, ¶ 7.4.2.

Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.[78] If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.[79] The deadlines for Class Members' written objections to the Class Settlement, disputes regarding Workweeks and/or PAGA Pay Periods, and Requests for Exclusion from the Class Settlement will be extended an additional fifteen (15) calendar days beyond the sixty (60) calendars days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed.[80] The Administrator will receive and process Requests for Exclusion, objections, and dispute regarding Workweeks and/or PAGA Pay Periods.[81]

The Administrator's duties will include translating the Class Notice into Spanish, printing, distributing, and tracking Class Notices and other documents for this settlement, calculation and distributing payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process this settlement, and as requested by the Parties.[82] The Administration Costs are currently estimated to be Fifteen Thousand Dollars ($15,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[83]

Accordingly, Plaintiff respectfully requests that the Court appoint ILYM Group, Inc. as the Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employees in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

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[78] Settlement Agreement, ¶ 7.4.3.
[79] *Ibid.*
[80] *Id.*, ¶ 7.4.4.
[81] *Id.*, ¶¶ 7.5, 7.6 & 7.7.
[82] *Id.*, ¶ 7.8.
[83] *Id.*, ¶ 3.2.3.

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X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendant's records.[84]

No later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will provide the Administrator with a complete list of all Class Members: full name, last known mailing address, last known telephone number, Social Security Number, and start and end dates worked for Defendant during the Class Period and, if applicable, during the PAGA Period, number of Workweeks and Class Members during the period June 9, 2018 to October 24, 2022, and relevant datapoints to calculate Workweeks during the period June 9, 2018 to October 24, 2022, and such other information and data as necessary for the Administrator to independently calculate Workweeks during the Class Period, PAGA Period, and the period from June 9, 2019 to October 24, 2022 (collectively, "Class Data").[85]

No later than fifteen (15) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service mail.[86] No later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.[87] If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.[88] Class Members will have until the applicable Response Deadline to mail a Request for Exclusion, disputes regarding Workweeks and/or PAGA Pay Periods, and/or an objection.[89]

Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts

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[84] Settlement Agreement, ¶ 7.4.2.
[85] *Id.*, ¶¶ 1.7 & 4.2.
[86] *Id.*, ¶ 7.4.2.
[87] *Id.*, ¶ 7.4.3.
[88] *Ibid.*
[89] *Id.*, ¶¶ 7.5, 7.6 & 7.7.

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necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than fifteen (15) calendar days after the Effective Date.[90] Within fifteen (15) calendar days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Settlement Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Costs, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.[91]

Each Individual Settlement Payment and Individual PAGA Payment shall prominently state the date (not less than one hundred eighty (180) calendar days after the date of mailing) when the check will be voided.[92] For any Class Member whose Individual Settlement Payment check and/or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Employment Rights Project of Bet Tzedek, a nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) (the "Cy Pres Recipient").[93]

XI. <u>APPOINTMENT OF CLASS REPRESENTATIVE AND ALLOCATION FOR CLASS REPRESENTATIVE SERVICE PAYMENT</u>

Plaintiff Mitzi Castillo respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Class Representative Service Payment in an amount up to Fifteen Thousand Dollars ($15,000.00).[94] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the

[90] Settlement Agreement, ¶ 4.3.
[91] *Id.*, ¶ 4.4.
[92] *Id.*, ¶ 4.4.1.
[93] *Id.*, ¶ 4.4.3.
[94] *Id.*, ¶ 3.2.1.

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duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Class Representative Service Payment is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[95] Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[96] Accordingly, it is appropriate and just for Plaintiff to receive an Class Representative Service Payment for her services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to her individual settlement payment.

XII. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Settlement Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiff Mitzi Castillo as Class Representative; appoint ILYM Group, Inc. as Administrator; preliminarily approve the allocations for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, PAGA Penalties, and Administration Costs; approve the proposed Class Notice; direct the Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and schedule a Final Approval Hearing to take place in approximately five (5) months.

Dated: September 18, 2023

LAWYERS *for* JUSTICE, PC

By: ______________________

Yasmin Hosseini
Attorneys for Plaintiff

[95] Hosseini Decl., ¶ 21; Declaration of Mitzi Castillo in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Castillo Decl."), ¶ 4.

[96] Hosseini Decl., ¶ 21; Castillo Decl., ¶¶ 3-6.

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