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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DANA BECERRA and SABRINA NORSWORTHY, individuals, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

HUNGRY MARKETPLACE, INC., a Delaware corporation; and DOES 1 through 100, inclusive,

Defendants.

Case Nos.: 22STCV37436

CLASS ACTION

[Assigned for all purposes to the Hon. William F. Highberger, Dept. SSC-10]

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date: April 30, 2026
Time: 10:00 a.m.
Dept.: SSC-10

Action Filed: November 30, 2022
Trial Date: None Set

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PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 30, 2026 at 10:00 a.m., or as soon thereafter as the matter may be heard in Department 10 of the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California 90012, Plaintiffs Dana Becerra and Sabrina Norsworthy ("Plaintiffs") will, and hereby do, move this Court for:

1. Preliminary approval of the proposed Settlement Agreement ("Settlement") between Plaintiffs and Defendant Hungry Marketplace, Inc. ("Defendant" or "Hungry");
2. Pursuant to Section 382 of the California Code of Civil Procedure, provisional certification, for settlement purposes only, of the following Settlement Class:

   > All of Defendant's delivery driver contractors or delivery drivers classified by Defendant as independent contractors that worked with Defendant in California at any time from November 9, 2021 through the date of preliminary approval of the Settlement (the "Class Period").

3. Preliminary appointment of Plaintiff Becerra as Class Representative and PAGA representative, and of Plaintiff Norsworthy as PAGA representative;
4. Preliminary appointment of Tuvia Korobkin, Gary S. Brotman, and Nancy Goodes of Marquee Law Group, APC; and Craig M. Nicholas, Shaun Markley, and Jordan Belcastro of Nicholas & Tomasevic LLP as Class Counsel;
5. Appointment of ILYM Group, Inc. ("ILYM") as the Settlement Administrator;
6. Approval of the proposed Notice of Class Action Settlement (the "Class Notice"), and an order that the Class Notice be disseminated to the Settlement Class as provided in the Settlement; and
7. The scheduling of a hearing to consider whether the Settlement should be finally approved and to award Class and PAGA Representative Service Payments to Plaintiffs, and attorneys' fees and costs to Class Counsel.

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This motion is based on this notice of motion; the attached memorandum of points and authorities; the declaration of Tuvia Korobkin and exhibits attached thereto; the declarations of Gary S. Brotman, Nancy Goodes, and Shaun Markley; the declarations of Plaintiffs; the declaration of Lisa Mullins of ILYM and exhibits attached thereto; the pleadings and other papers filed in this action; and any further oral or documentary evidence or argument presented at the time of hearing.

Dated: December 22, 2025

MARQUEE LAW GROUP, APC

/s/ Tuvia Korobkin
Tuvia Korobkin
Attorneys for Plaintiffs

Dated: December 22, 2025

NICHOLAS & TOMASEVIC, PC

/s/ Shaun Markley
Shaun Markley
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Dana Becerra and Sabrina Norsworthy ("Plaintiffs") seek preliminary approval of a class and representative action settlement ("Settlement") with Defendant Hungry Marketplace, Inc. ("Hungry" or "Defendant") (together with Plaintiffs, the "Parties"). The Settlement resolves a consolidated class and representative action pending before this Court (the "Action"), in which Plaintiffs allege that Hungry misclassified its delivery drivers as independent contractors and, as a result, failed to pay all wages due; failed to provide all meal periods; failed to authorize and permit all rest periods; and failed to reimburse business expenses, among other alleged Labor Code violations. Plaintiffs further allege derivative claims for wage statement penalties, waiting time penalties, unfair competition, and civil penalties under the Private Attorneys General act ("PAGA").

Plaintiffs now respectfully request that the Court preliminarily approve this non-reversionary class and representative Settlement,[1] in which Hungry has agreed to pay **$2,600,000.00** to the following Settlement Class, estimated to consist of 271 individuals:

> All of Defendant's delivery driver contractors or delivery drivers classified by Defendant as independent contractors that worked with Defendant in California at any time from November 9, 2021 through the date of preliminary approval of the Settlement[2] (the "Class Period").

The Action was originally filed as two matters brought by Ms. Becerra and by Ms. Norsworthy, respectively. As explained below, the Settlement was reached after the Parties engaged in extensive litigation in both matters, including multiple mediations.

Notably, Settlement Class members do not need to submit a claim to receive a payment. After deductions for proposed administration costs, attorney fees and costs, Plaintiffs' service payments, and the Labor & Workforce Development Agency's ("LWDA") share of PAGA penalties, the average Settlement payment is estimated at **$4,901.60**. For the reasons discussed herein, Plaintiffs respectfully submit the Settlement is fair, reasonable, and adequate, and request that the Court grant preliminary approval.

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[1] The Settlement is attached as Exhibit 1 to the Korobkin Declaration. The Class Notice is attached as Exhibit A to the Settlement.

[2] As a practical matter, Hungry ceased working with drivers classified as independent contractors in California in December 2024, so no further claims accrued past that date. (Korobkin Decl., ¶ 15.)

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

Hungry is a meal delivery service company that operates throughout the United States. *See* Declaration of Tuvia Korobkin ("Korobkin Decl."), ¶ 10. Hungry partners with chefs to provide home meal delivery services, catering, and other culinary services. *Id*. Plaintiffs and Settlement Class members are delivery drivers who worked for Hungry during the Class Period and were classified by Hungry as independent contractors. *Id*.

On November 30, 2022, Plaintiff Becerra filed this Action, alleging class action claims for failure to reimburse expenses, failure to provide accurate wage statements, failure to pay overtime, failure to provide meal periods, failure to provide rest periods, and unfair business practices. On May 8, 2023, Ms. Becerra filed a First Amended Complaint adding a PAGA cause of action.

On February 7, 2023, Plaintiff Norsworthy filed an action against Hungry alleging wage and hour violations and individual claims for wrongful termination, in Alameda County Superior Court. Korobkin Decl., ¶ 11. On October 2, 2023, Plaintiff Norsworthy amended her complaint to add claims under PAGA for misclassification, failure to pay overtime wages, failure to provide meal and rest periods, and several other Labor Code violations. *Id*.

In the *Becerra* action, Hungry filed a Motion to Compel Arbitration, which was ultimately granted by this Court. See Declaration of Shaun Markley ("Markley Decl."), ¶ 14. In January 2024, the parties in *Becerra* attended a full-day mediation with Hon. Steven Denton (Ret.), but they were unable to reach a resolution. *Id*., ¶ 15. Ms. Becerra thereafter submitted her individual claims to arbitration, and the parties engaged in formal discovery. *Id*., ¶ 16.

Meanwhile, in the *Norsworthy* action, the parties engaged in formal written discovery with respect to both the individual claims and PAGA claims. Korobkin Decl, ¶ 12. The parties agreed to mediate with Jonathan Andrews, Esq. on February 15, 2024. *Id*. That mediation was unsuccessful. *Id*. After the failed mediation, the parties engaged in additional formal discovery, including Ms. Norsworthy's deposition. *Id*. Hungry subsequently brought several motions, including a motion to stay Ms. Norsworthy's PAGA claims, a motion to compel individual arbitration, and a motion for summary judgment on the PAGA claims. *Id*. Each of those motions was denied. *Id*.[3]

The Parties subsequently agreed to a <u>third</u> mediation, this time with Hon. Richard Stone (Ret.), to resolve all claims in both actions. Korobkin Decl., ¶ 13. That mediation took place on August 24, 2024. *Id*. That mediation, too, was unsuccessful. *Id*. However, Judge Stone continued to follow up with the Parties and eventually made a mediator's proposal that was ultimately accepted by the Parties on or about November 25, 2024. *Id*. Over the following months, the Parties negotiated their long-form agreement, eventually executing the Settlement in August 2025. *Id*.

On October 21, 2025, pursuant to the Parties' stipulation, Plaintiffs filed the operative Second Amended Class and Representative Complaint ("Complaint") in the Action. The Complaint consolidated all class and PAGA claims alleged by both Plaintiffs. *Id*.

B. <u>PLAINTIFFS' CLAIMS AND HUNGRY'S DEFENSES</u>

1. <u>Misclassification and Resulting Labor Code Violations</u>

Plaintiffs allege Hungry misclassified its California delivery drivers (also known as "Delivery Captains") as independent contractors. As a result, Plaintiffs allege Hungry failed to pay the minimum wage for all hours worked, failed to pay overtime, failed to provide meal and rest periods, failed to reimburse expenses, and failed to timely pay wages, among other violations. Plaintiffs also allege derivative claims for wage statement violations, failure to pay all wages upon termination, and unfair competition. Plaintiffs also seek PAGA penalties for these violations.

For its part, Hungry contends that its drivers were always properly classified. Hungry asserts that it is not a delivery business; it is a technology platform that connects chefs with customers Drivers, therefore, do not provide a service that is within the usual scope of Hungry's business. Drivers also have complete autonomy and discretion to choose which delivery routes they accept, Hungry argues, and therefore Hungry does not exert control over drivers' work. Finally, drivers are free to work for other companies at the same time as they work for Hungry, and in fact many drivers do so. Therefore, Hungry argues, Hungry meets the "ABC" test for

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[3] As noted, Ms. Norsworthy's action also included individual claims, which were resolved as part of a separate settlement agreement. All of the litigation work described herein pertained, in whole or in part, to the class/PAGA claims resolved by the Settlement.

classifying drivers are independent contractors. *See Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903, 957 (2018) (adopting ABC test in California). Hungry also contends it meets exemptions from the ABC test like the referral agency and business-to-business exemptions (Lab. Code, §§ 2776-2777), and that the more employer-friendly *Borrello* test therefore applies.

Hungry further asserts that to the extent it would be found to have misclassified its drivers, any damages would be minimal. Hungry contends its Drivers earn wages that equal much more than minimum wage for all hours worked, and that Drivers worked very little, if any, overtime. Hungry also argues Drivers are free to take meal and rest periods whenever they choose, as their work is not directly supervised or directed. Hungry also asserts it has paid a significant amount of reimbursements to its Drivers during the relevant time period, and in any event, it builds in reasonable reimbursement of Drivers' work-related expenses into the wages it pays Drivers, as it is permitted to do under the prevailing case law. *See Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554 (2007) ("an employer may satisfy its statutory reimbursement obligation by paying employees enhanced compensation in the form of increases in base salary …")

2. <u>Defenses to Class Certification</u>

Hungry also argues that Plaintiffs' claims would not be able to proceed on a classwide basis. First, Hungry argues that the question of whether all Drivers were misclassified could not be adjudicated with one common question, as the individual circumstances of each Driver would need to be examined, for example whether the Driver was free from Hungry's control, the extent to which the Driver held themselves out for other employment, and other individualized factors.

Hungry further contends that the arbitration agreements – which this Court already found enforceable as to Plaintiff Becerra – would prevent Plaintiffs from representing other drivers on a classwide basis. Moreover, notwithstanding the arbitration agreements, Hungry argues that each of Plaintiffs' claims would require individualized inquiries that would defeat class certification. For example, Hungry asserts that adjudicating Plaintiffs' claims would require individualized inquiries into whether each Driver worked overtime and how many overtime hours each Driver worked on each individual shift, and whether each Driver was paid at least the minimum wage for each hour worked. As for meal periods, inquiries would need to be made into whether each

Driver took a meal period on each individual shift, and if not, *why* the meal period was missed. Likewise, rest periods (which do not need to be recorded) would pose a challenge to manageability since, again, each Driver's potential recovery would need to be litigated shift-by-shift. As for expense reimbursements, Hungry argues each Driver would need to provide evidence of the expenses he or she incurred, and individual inquiries would be necessary to assess whether each Driver's expenses were reasonably incurred, and if so, whether each Driver's compensation and/or expense reimbursements were adequate to cover his/her expenses incurred.

3. <u>Defenses to Derivative Claims</u>

Finally, Hungry argues that Plaintiffs' derivative claims for wage statement penalties, waiting time penalties, and PAGA penalties would fail for the same reasons the underlying claims would fail. Moreover, Hungry asserts it has strong, good-faith defenses to Plaintiffs' underlying claims, precluding imposition of penalties both for the misclassification claim and for the derivative penalty claims. See Labor Code § 226.8(a) (imposing penalties only for "willful misclassification"); 8 Cal. Code Regs. § 13520 (a "good faith dispute that any wages are due will preclude imposition of waiting time penalties"); *Kao v. Joy Holiday*, 12 Cal.App.5th 947, 963 (2017) (holding "good faith dispute" precluded waiting time penalties); *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th 1056 (2024) (holding good faith defense precluded wage statement penalties). Hungry further contends it provided earnings statements to its Drivers, and that those statements always accurately reflected amounts *paid* to Drivers and therefore no wage statement violations occurred. *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336-37 (2018) ("The purpose of section 226 is to *document* the *paid wages* to ensure the employee is fully informed regarding the calculation of those wages.") (citation omitted).

As for PAGA penalties specifically, Hungry maintains that given its good-faith defenses and honest attempts to comply with the law, the Court would exercise its discretion to substantially reduce PAGA civil penalties even if it found in Plaintiffs' favor on the underlying claims. *See* Lab. Code § 2699(e)(2) (authorizing discretionary reduction in PAGA penalties); *Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties, in part because "the evidence showed…defendants took their obligations…seriously and attempted to comply with the law"); *Fleming v. Covidien, Inc.*, 2011 WL 7563047 at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer was "not aware" of violations and "took prompt steps to correct all violations once notified"); *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just $5 per pay period where employer made "good faith attempts" to comply with the law).

C. DISCOVERY AND MEDIATION

As noted above, the Parties engaged in extensive formal discovery. In addition, the Parties engaged in an informal exchange in connection with mediation. Hungry produced payroll and other records for the majority of putative class members; its relevant policies; data points including the total number of putative class members, total number of pay periods, and other metrics; and other relevant documents and information. Korobkin Decl., ¶ 21. Plaintiffs' counsel hired an expert data analyst to analyze and extrapolate the data. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiffs' claims and Hungry's defenses. *Id*.

As noted previously, the Parties collectively attended three mediations with three different mediators. Each of those mediations ended without resolution. However, after the third mediation, Judge Stone issued a mediator's proposal that was eventually accepted by the Parties. Over the following several months, the Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement.

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

Under the Settlement, Hungry will pay a non-reversionary Gross Settlement Amount ("GSA") of $2,600,000.00. The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount ("GSA"):	$2,600,000.00
• Minus Court-approved attorneys' fees (up to 33.3%):	$866,666.67
• Minus Court-approved costs (up to):	$75,000.00
• Minus Court-approved Service Payments:	$20,000.00
• Minus Amount Set Aside as PAGA Payment:	$400,000.00
• Minus settlement administration costs (up to):	$10,000.00
Net Settlement Amount ("NSA"):	**$1,228,333.33**
PLUS 25% of PAGA Payment ("Individual PAGA Payments"):	$100,000.00
Total Amount Paid to Settlement Class:	**$1,328,333.33**

1. **The Settlement Provides for Reasonable Monetary Payments**

As noted above, after deducting amounts for court-approved service payments, administration costs, attorneys' fees and costs, and PAGA payment to the LWDA, Settlement Class members will receive $1,328,333.33. *See* Settlement, § 4.2. Hungry represents there are approximately 271 Settlement Class members. *Id.*, § 9. Thus, the average payment to Settlement Class members is estimated to be **$4,901.60**. Korobkin Decl., ¶ 23.

The NSA will be distributed to Participating Class Members (those Settlement Class members who do not opt out) proportionally based on the number of workweeks each Participating Class Member worked as a Driver for Hungry in California during the Class Period while being classified by Hungry as an independent contractor. *See* Settlement, §§ 1.23, 1.45. Additionally, all Settlement Class members (even those who opt out) who worked as independent contractor Drivers for Hungry in California during the PAGA Period (November 9, 2021 through preliminary approval) are known as "PAGA Employees," and PAGA Employees will receive an Individual PAGA Payment from the $100,000 amount (i.e. 25% of the PAGA Payment), based on their proportionate number of pay periods worked for Hungry as a Driver in California during the PAGA Period. *Id.*, § 4.2.5.1. Class Members have 180 days to cash their checks and will receive a reminder at 90 days if checks remain uncashed. *Id.*, § 5.3.1-5.3.3. Uncashed checks will go to the California Controller's Unclaimed Property Fund in the Class Member's name. *Id.*, § 5.3.4. All payments will be paid as 1099 payments with no withholdings. *Id.*, § 4.2.4.1.

2. **Notice Period and Release of Claims**

Settlement Class members will have 60 days from Notice mailing to request exclusion from or object to the Settlement or submit disputes (Settlement Class Members to whom Notice Packets are re-sent after having been returned undeliverable shall have an additional 14 days beyond the Response Deadline expiration date), thereby providing ample time to review the Notice without unduly delaying the Settlement. *See* Settlement, §§ 8.5.1, 8.6, 8.7.2

Participating Class Members will be bound by the Settlement and shall release all wage and hour claims that were pled in the Action, or that could have been pled based on the facts alleged in the Action, during the Class Period ("Released Class Claims"). *See* Settlement, § 6.2.

In addition, all PAGA Employees will release all claims against Hungry for PAGA civil penalties based on the facts alleged in the PAGA letters submitted by the Plaintiffs, that arose during the PAGA Period ("Released PAGA Claims"). *Id*., § 6.3.[4] Both the Released Class Claims and the Released PAGA Claims only include claims arising during workweeks/pay periods when Settlement Class members were classified by Hungry as independent contractors. *Id*.

3. Funding of the Settlement

The Gross Settlement Amount will be funded no later than 28 days after the Effective Date. *See* Settlement, § 5.2. If there are no objections to the Settlement, the Effective Date will be 65 days after the Court grants final approval of the Settlement. *Id.*, § 1.18.

4. Attorneys' Fees and Costs, Enhancement Award, and PAGA Payment

At final approval, Plaintiffs will apply for Service Payments of $10,000 each. *See* Settlement, §§ 4.2.1. "[I]ncentive awards are fairly typical in class action cases…and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be briefed at final approval, Plaintiffs' requested payments are in recognition of the time and effort they expended on behalf of the Settlement Class, including providing factual information and documents to counsel, discussing with counsel the claims and theories at issue in the litigation, reviewing the settlement agreement and other documents, participating actively in formal discovery (including, in Ms. Norsworthy's case, sitting for deposition), and otherwise actively participating in the prosecution of this case. Plaintiffs respectfully submit that the requested payments are well within the range of permissible approval especially given the strong recovery obtained for the class here. *See, e.g., Alvarado v. Nederend*, No. 1:08-cv-01099-OWW-DLB, 2011 WL 1883188 at *10 (E.D. Cal. May 17, 2011) (approving $7,500 award to each of five plaintiffs ($37,500 total) from $505,058.60 settlement); *Martinez v. Knight Transportation*, *Inc.*, No. 1:16-cv-01730-SKO, 2023 WL 5917989 (E.D. Cal. Sept. 11, 2023) (awarding $10,000 incentive award from $400,000 claims-made settlement with average payment of just $127.61).

[4] The PAGA letters are attached as Exhibit 2 to the Korobkin Declaration and Exhibit A to the Markley Declaration.

The parties have also designated $400,000.00 of the GSA as PAGA penalties, of which $300,000 (75%) will be paid to the LWDA, with the remaining $100,000 (25%) distributed to PAGA Employees as described above, consistent with the requirements of the PAGA statute that was in effect when Plaintiffs submitted their PAGA notices (i.e., the "old" PAGA). Plaintiffs submit this allocation to the LWDA is reasonable. *See, e.g., Chu v. Wells Fargo Inv., LLC*, No. C-05-4526-MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011) (approving $10,000 PAGA payment from $6.9 million settlement); *Lagunas v. Young Adult Institute, Inc.,* No. 23-cv-00654-RS, 2024 WL 1025121 (N.D. Cal. Mar. 8, 2024) (preliminarily approving PAGA allocation of $20,000 from $850,000 settlement).

At final approval, Plaintiffs' counsel will request attorneys' fees of one third (33.3%) of the GSA (currently estimated at $866,666.67), and up to $75,000 in litigation costs. (Settlement, § 4.2.2.) The two firms representing the Plaintiffs here have a fee splitting agreement which Plaintiffs approved and signed. Korobkin Decl., 38 & Exh. 3. The requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. Plaintiffs' counsel have incurred substantial attorneys' fees in, among other things, conducting pre-filing investigation and legal research; drafting and filing initial pleadings; conducting formal written and deposition discovery; engaging in significant motion practice; analyzing documents, payroll data, and other data and information with Plaintiffs' data expert to create a comprehensive damages model; preparing for and attending three separate mediations; negotiating and preparing the Settlement; preparing this Motion; and otherwise prosecuting this case. Korobkin Decl., ¶ 34; Markley Decl., ¶¶ 14-17. Counsel will also incur future attorney fees in overseeing the Notice process, fielding phone calls from Class members, preparing the Final Approval Motion and supporting documents, and appearing at the Final Approval Hearing. *Id*.

It is appropriate to award attorney fees as a percentage of the "common fund" created by the settlement. *Laffitte v. Robert Half Int'l, Inc.,* 1 Cal.5th 480 (2016) (holding "the percentage of fund method survives in California class action cases"). Counsel's fee request is well within the range of reasonableness and is typical for common fund settlements. *See*, *e.g.*, *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, n.11 (2008) ("regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"). As will be briefed at final approval, the fee request is reasonable in light of, *inter alia*, the substantial risks taken by counsel, the significant work undertaken, and the results obtained.

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 conditions class action settlements on court approval, which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court's role is to ensure the settlement agreement taken as a whole is fair and within the range of reasonableness. *Hanlon*, 150 F.3d at 1027. There is a presumption of fairness when a settlement is negotiated at arm's length by counsel. *See, e.g.*, *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval Is Met Here

To make a fairness determination, the Court should consider several factors, including: "the strength of 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, [and] the experience and views of counsel." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). "The list of factors is not exclusive and the Court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001).

The Court can grant preliminary approval and direct that notice be given if the settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed negotiations; and (3) has no obvious deficiencies. *See Manual for Complex Litig.*, § 30.41 (3rd

Ed. 1995); *Newberg on Class Actions*, §§ 11:24-25 (4th Ed. 2013). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of these factors.

a. <u>The Strength of Plaintiffs' Case</u>

While Plaintiffs are confident in the merits of their claims and obtained strong value for those claims, Plaintiffs acknowledge there were substantial risks and uncertainty in proceeding with this case on a class and/or PAGA basis. As described in section II.B., *supra*, Hungry presented multiple defenses to Plaintiffs' claims, both on the merits and to class certification, rendering success uncertain. Moreover, this Court had previously granted Hungry's motion to compel arbitration of Plaintiff Becerra's claims. Thus, the Settlement presents a strong result for Settlement Class members, and there is a significant risk that the Settlement Class would have recovered much less, or nothing at all, had the matters proceeded through litigation to trial.

b. <u>Risk, Expense, Complexity, and Duration of Further Litigation</u>

Further supporting the reasonableness and fairness of the Settlement are the risks and complexities of further proceedings. As noted above, the Parties litigated this case for years through significant formal discovery including depositions and substantive motion practice and completed 3 full-day mediations. Korobkin Decl., ¶¶ 11-13, 37. There was, however, still much costly and risk-based work to be done. If the litigation had not settled, the Parties would incur considerably more attorneys' fees and costs through additional discovery, motion work, trial, and potential appeals. *Id*. The Settlement avoids those remaining risks and the accompanying delay and expense. *Id.* Thus, this factor supports preliminary approval.

c. <u>Risk of Maintaining Class Action Status</u>

Plaintiffs had not yet filed a class certification motion, and as such, the extent to which Plaintiffs' proposed classes were certifiable is somewhat speculative. As noted above, this Court previously granted Hungry's motion to compel arbitration and strike class claims in the *Becerra* action. Absent settlement, there was a risk there would not be a certified class at trial, or if there were, that it would consist of a significantly smaller group of workers than the proposed Settlement Class given arbitration obligations, and the expected recovery would be significantly reduced. Thus, this factor supports preliminary approval.

d. **Amount Offered in Settlement is Reasonable and the Result of Serious, Informed Negotiations**

The Settlement provides a fair and reasonable recovery for the Settlement Class for disputed claims. As detailed in the Korobkin Declaration, and with the assistance of a data expert, Plaintiffs conducted an analysis of potential damages due to Hungry's allegedly unlawful policies and practices. After applying reasonable discounts for risks of not obtaining class certification and risks of losing on the merits, Plaintiffs estimated their claims had a realistic potential value of $2,629,002. Korobkin Decl., ¶¶ 26-33. The proposed settlement of $2,600,000 thus represents nearly 99% of Plaintiffs' reasonably forecasted recovery. *Id*., ¶ 33. In addition, this litigation was apparently a catalyst for Hungry to change its practices to bring them into compliance, including by discontinuing its practice of engaging drivers as independent contractors approximately one year ago. Preliminary approval is appropriate, as the Settlement provides significant relief to the Class and the litigation resulted in additional relief to future employees.

The Settlement also serves the purpose of PAGA, which is to "remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77 [disapproved on other grounds in *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664].) As noted, this litigation was apparently a catalyst for Hungry to change its practices so that they better comply with California law. In addition, the $400,000 PAGA set-side is a substantial sum, representing more than 15% of the Gross Settlement Amount. Thus, the Settlement provides significant penalties to penalize alleged past violations, while simultaneously providing robust compensation (nearly $5,000 on average) to the workers who suffered the alleged violations.

In sum, the Settlement resulted from an exchange of substantial information, extensive discovery, arm's-length negotiations, multiple mediation sessions, and months of additional negotiations. Plaintiffs carefully vetted the claims at issue and conducted a detailed analysis of the relevant data and information with the help of an expert. Korobkin Decl., ¶¶ 26-33. The Settlement is thus entitled to a presumption of fairness. *Kullar*, 168 Cal.App.4th at 130.

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e. The Experience and Views of Counsel

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pac. Enter. Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). Here, counsel have extensive experience litigating wage and hour class actions, and have been appointed class counsel in numerous cases alleging similar claims. *See* Korobkin Decl., ¶¶ 2-8; Markley Decl., ¶¶ 4-12; Declaration of Gary S. Brotman, ¶¶ 2-5; Declaration of Nancy Goodes, ¶¶ 2-4. As described above, the Settlement was reached after three separate mediation sessions with three different mediators and eventually a mediator's proposal, all with the direct involvement of counsel. This strongly supports preliminary approval. *Kullar*, 168 Cal.App.4th at 130.

f. The Settlement Is Devoid of Obvious Deficiencies

The Settlement provides tangible monetary relief to the Settlement Class, and the amounts proposed for attorneys' fees, costs, Plaintiffs' service awards, and PAGA penalties are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE PROPOSED CLASS

The proposed Settlement Class satisfies the criteria for certification because: 1) the Settlement Class is ascertainable and numerous; 2) common questions of law and fact predominate; 3) Plaintiffs' claims are typical of the Settlement Class; and 4) Plaintiffs and their counsel will fairly and adequately represent the Settlement Class. Cal. Code Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is "ascertainable" where members "may be readily identified without unreasonable expense or time by reference to official [or business] records." *Sevidal v. Target Corp.*, 189 Cal.App.4th 905, 919 (2010). The Settlement Class includes Drivers who worked for Hungry in California during the Class Period and were classified by Hungry as independent contractors. Thus, they can be readily identified from Hungry's records. Hungry represents there are approximately 271 Settlement Class members, rendering it impracticable to bring them all before the Court. Numerosity is therefore satisfied.

2. **Common Issues of Law and Fact Predominate**

The focus on certification is not on the merits, but rather on what types of questions, "common or individual," are likely to arise in the action. *Sav-On Drug Store, Inc. v. Sup. Ct.*, 34 Cal.4th 319, 327 (2004). Plaintiffs' claims are predicated primarily on Hungry's alleged misclassification of Drivers as independent contractors, which is a claim commonly held proper for class certification. *See*, *e.g.*, *Dynamex*, *supra*, 4 Cal.5th at 967 (affirming class certification of question whether workers were misclassified under ABC test); *Ayala v. Antelope Valley Newspapers, Inc.*, 59 Cal.4th 522 (2014) (holding that trial court should have certified misclassification claim).

3. **Plaintiffs' Claims Are Typical**

Typicality is satisfied where class representatives have claims typical of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.,* 191 Cal.App.3d 1341, 1347 (1987). Here, Plaintiffs' claims are typical of those held by Settlement Class members because, as explained in their declarations, they were delivery drivers classified by Hungry as independent contractors, and were injured by the same allegedly failure to pay wages suffered by the Settlement Class as a whole.

4. **Plaintiffs and Class Counsel Will Adequately Represent the Class**

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *Capital People First v. State Dept. of Developmental Svcs.,* 155 Cal.App.4th 676, 697 (2007). Plaintiffs and their counsel will adequately represent the Settlement Class, as there are no known conflicts between them or their counsel and the Settlement Class. *See McGhee v. Bank of Am.,* 60 Cal.App.3d 442, 450 (1976) (finding adequacy satisfied where there was no indication that plaintiff's counsel was not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). As noted above, Class Counsel also have extensive experience in wage and hour class action litigation, as noted above.

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

The Court should order distribution of the proposed Notice by U.S. Mail, using last known mailing addresses provided by Hungry. This is the "best notice practicable" under the circumstances as it provides "individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin,* 417 U.S. 156, 173 (1974). Plaintiffs propose the Settlement be administered by ILYM Group, Inc., an experienced administrator. *See* Mullins Declaration and exhibits. ILYM will run all addresses through the USPS National Change of Address database and will perform "skip traces" to obtain current addresses for Notices returned as undeliverable. *See* Settlement, §§ 8.4.1, 8.4.2.

The proposed Notice satisfies Rule of Court 3.766(d) because it advises Settlement Class members of the nature of the claims; the basic contentions and denials of the parties; the key terms of the Settlement; the 60-day deadline to opt out, object, or submit a dispute and how to do so; explains the recovery formula and expected recovery amount for each Settlement Class member; and explains the releases of claims included in the Settlement. *See* Settlement, Exh. A. The Notice also includes the final approval hearing date and time and provides contact information for Class Counsel and the administrator. *Id.* The Notice satisfies Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching the Settlement Class.

The notice is provided only in English. Hungry's platform that Class Members used to complete their work is entirely in English as were all documents produced in this case, thus, there is no reason to expect that the Class will need translations here. Korobkin Decl., ¶ 39.

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

The Court should set a hearing for final approval on a date appropriately scheduled to follow Settlement Class members' response deadline. *See* Cal. Rule of Court 3.769.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class, and enter the Proposed Order submitted concurrently herewith.

Dated: December 22, 2025

Respectfully submitted,
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Dated: December 22, 2025

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