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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF YOLO – CIVIL DIVISION

JORDON NORRIS, VERONICA GARCIA, and
JAMIL JOHNSON, individually on behalf of
themselves, and on behalf of all others similarly
situated and aggrieved,

Plaintiffs,

vs.

SCHILLING ROBOTICS, LLC, a limited
liability company; FMC TECHNOLOGIES,
INC., a Delaware corporation; EQ TALENT
SOLUTIONS, LLC, a limited liability company;
ROBERT GLOVER, a natural person
(previously identified as DOE 1), and DOES 2
through 10, inclusive,

Defendants.

Case No.: CV2021-2251

*[Assigned for All Purposes to the Honorable
David Rosenberg, Department 14]*

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY APPROVAL
OF CLASS AND REPRESENTATIVE
ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Date: December 6, 2024
Time: 9:00 a.m.
Courtroom: Dept. 14
Judge: Hon. David Rosenberg

Action Filed: December 29, 2021
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that at 9:00 a.m., on December 6, 2024, or as soon thereafter as this
3 matter may be heard in Department 14 of the above-captioned Court, located at 1000 Main Street,
4 Woodland, California 95695, plaintiffs Veronica Garcia and Jamil Johnson (“Plaintiffs”), will and
5 hereby do move this Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Preliminarily approving the JOINT STIPULATION OF CLASS AND PAGA
9 REPRESENTATIVE ACTION SETTLEMENT AND RELEASE (“Settlement” or
10 “Agreement”);

11 3. Appointing counsel for Plaintiffs, Moon Law Group, PC, as Class Counsel;

12 4. Appointing Plaintiffs as the Class Representatives;

13 5. Approving the use of the proposed notice procedure and related notice form;

14 6. Approving ILYM Group, Inc., as the third-party administrator;

15 7. Directing that notice be mailed to the Class; and,

16 8. Scheduling a hearing date for motions for final approval of class action settlement
17 and awards of attorneys’ fees and costs.

18 Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for
19 class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement
20 Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted
21 by Plaintiffs; (3) Plaintiffs and Class Counsel are adequate to represent the Class; (4) the proposed notice
22 procedures and related forms comply with California Rules of Court 3.766(d) and (e), adequately apprise
23 Class Members of their rights, and fully comport with due process; and, (5) based on the foregoing,
24 notice should be directed to the Class Members and a final fairness hearing should be scheduled
25 (Plaintiffs suggest about 140 days after preliminary approval is granted).

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

TENTATIVE RULINGS: Pursuant to Local Rule 11.2, the court will issue a tentative ruling on the merits of the matter by 3:00 p.m. on the court day before the hearing. The tentative rulings are available by phone at (530) 406-6806 and on the Court's web site after 3:00 p.m. The tentative ruling shall become the ruling of the court, unless a party desiring to be heard so advises the courtroom clerk of the designated department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the courtroom clerk that such party has notified the other party(s) of its intention to appear.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of H. Scott Leviant, Plaintiffs, and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: November 8, 2024

MOON LAW GROUP, PC

By: 
Kane Moon
H. Scott Leviant
Sandy Pham

Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769, Plaintiffs request that this Court preliminarily
3 approve the class action settlement set forth in the JOINT STIPULATION OF CLASS AND PAGA
4 REPRESENTATIVE ACTION SETTLEMENT AND RELEASE (“Settlement” or “Agreement”) with
5 defendant Schilling Robotics, LLC (“Defendant”).

6 After the exchange of documents and data, and an arm’s-length mediation session with mediator
7 Marc Feder, Esq., Plaintiffs and Defendant (collectively referred to herein as the “Parties”) reached a
8 proposed class and representative PAGA action settlement with a gross settlement amount (“GSA”) of
9 **\$575,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting
10 of approximately **216** members. Plaintiffs believe this settlement is a fair, adequate, and reasonable
11 compromise of disputed claims for alleged wage and hour violations and penalties asserted in this case.

12 Plaintiffs now submit this Motion for Preliminary Approval of Class Action Settlement, along
13 with the Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibit 1 thereto).
14 For the Court’s convenience, below is a summary of the key provisions of the Settlement.

15 **II. THE MAJOR TERMS OF SETTLEMENT**

16 The provisions of the proposed Settlement include the following:

- 17 • Defendant agrees not to oppose certification for purposes of Settlement (Settlement, ¶ 20);
- 18 • Class: All individuals employed by Schilling Robotics, LLC in non-exempt positions in
19 California, and all individuals employed by EQ Talent Solutions, LLC who were assigned to
20 work at Schilling Robotics, LLC’s California locations, at any time during the Class Period.
21 (the “Class Period” is the period from December 29, 2017, to August 27, 2024).
- 22 “Participating Class Member” means a Class Member who does not return a valid and timely
23 request to be excluded from the non-PAGA portion of the Settlement. (Settlement, ¶¶ 1.d, 1.f,
24 1.w.)
- 25 • Settlement Amount: Defendant will pay a maximum of **\$575,000.00**, referred to as the
26 Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** benefit
27 per Class Member of about **\$2,662.04** (Settlement, ¶ 1.i; Leviant Decl., ¶ 17.);
- 28

- 1 • Funding of Gross Settlement Amount: Defendant shall fully fund the Gross Settlement
2 Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll
3 taxes by transmitting the funds to the Administrator no later than 15 business days after the
4 Effective Date. (Settlement, ¶ 39.)
- 5 • Class Size: About **216** individuals. (Leviant Decl., ¶ 35.);
- 6 • PAGA Group Size: An estimated **130** aggrieved employees who worked 8,935 pay periods
7 during the PAGA Period (Leviant Decl., ¶ 11.);
- 8 • PAGA Period: December 29, 2020, to August 27, 2024. (Settlement, ¶ 1.v.);
- 9 • Kullar/Munoz Analysis: Plaintiffs address the claims analysis herein, at Part V.B.3, and in
10 the Declaration of Leviant, at Paragraph 18;
- 11 • No Reversion: The Settlement is a **non-reversionary** settlement (Settlement, ¶ 17);
- 12 • Certification: Plaintiffs address certification requisites herein, at Part V.A., and in the
13 Declaration of Leviant, at Paragraphs 34-40;
- 14 • No Claim Form: No claim form is required (Settlement., ¶ 1.w);
- 15 • Class Release: The Settlement will release wage-and-hour claims for Participating Class
16 Members (those Class Members who do not opt out of the Settlement) all claims that were
17 alleged, or reasonably could have been alleged, based on the facts stated in the Operative
18 Complaint (Settlement, ¶ 1.z, 48);
- 19 • PAGA Release: Plaintiffs, PAGA Members, and the State of California, and anyone
20 purporting to act on its behalf, will release all claims for civil penalties under PAGA, based
21 on the facts and Labor Code sections that were alleged or reasonably could have been alleged
22 in Plaintiffs' PAGA letters or amended PAGA letters. (Settlement, ¶ 1.aa, 48);
- 23 • Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys'
24 fees and costs, service payment to Plaintiffs, administration costs, and the PAGA penalty,
25 the remainder will be available for distribution to participating Class Members who do not
26 opt out, with each participating Class Member receiving a share based on the number of
27 Workweeks each Class Member worked for Defendant within the Class Period. The Net
28 Settlement Amount is estimated to be at least **\$189,333.00**, resulting in an average **net**

1 payment per Class Member of approximately **\$876.54**, before any tax withholdings.
2 (Settlement, ¶¶ 1.m, 15-18.)

- 3 • Tax Allocation: The amounts distributed to Class Members will be characterized as 20%
4 alleged unpaid wages, 80% to interest and penalties, and PAGA Settlement payments to
5 Aggrieved Employees will be allocated as 100% penalties. (Settlement, ¶ 45.)
- 6 • Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes
7 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that
8 constitute wages will be paid separate and apart from the GSA (Settlement, ¶ 1.k);
- 9 • Settlement Administrator: The notice portion of the Settlement will be administered by a
10 third-party Administrator, ILYM Group, Inc. Administration is estimated not to exceed
11 \$9,000.00. ILYM's bid for settlement administration services in the not-to-exceed amount
12 of **\$7,450.00** was chosen from a competitive bidding process. (Settlement, ¶¶ 16.b, 26;
13 Mullins Decl., ¶ 10.)
- 14 • Class Data for Administration: The Settlement Administrator will receive the Class Data
15 within 14 calendar days of the Order granting Preliminary Approval, use the National
16 Change of Address ("NCOA") database to update the Class Data, and then use skip tracing
17 on returned Notices (Settlement, ¶¶ 23, 25);
- 18 • Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 26).
19 The Notice describes how to dispute workweeks, submit an objection in writing, in person,
20 or through an attorney, or request exclusion (Settlement, ¶ 26);
- 21 • Notice Language: Notice will issue in English only, since translation is not required;
- 22 • Objections: Objections can be submitted in person, by attorney, or in writing to the
23 Administrator, with no pre-requisite to being heard (Settlement, ¶ 30);
- 24 • Exclusion Requests: The procedure for exclusion requests, mailing a request to the
25 Settlement Administrator, is the same as the procedure for submitting a written objection
26 (Settlement, ¶ 28);
- 27 • PAGA Allocation: From the GSA, **\$40,000.00** will be allocated to settle claims brought
28 pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.*

1 (“PAGA”), and seventy-five percent (75%), or **\$30,000.00**, will be paid to the California
2 Labor & Workforce Development Agency. (Settlement, ¶ 16.e);

- 3 • Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is
4 attached to the Leviant Declaration;
- 5 • Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for
6 Class Representative Service Payments of up to **\$7,500.00** each for Plaintiffs, to be paid
7 from the GSA (Settlement, ¶ 16.a);
- 8 • Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to
9 exceed 33 1/3% of the GSA (**\$191,666.00**), and actual costs, in an amount not to exceed
10 **\$130,000.00**, to be paid out of the GSA (Settlement, ¶¶ 16.c, 16.d);
- 11 • Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 43);
- 12 • Uncashed Checks: Any settlement checks that are mailed to the participating Class
13 Members and remain uncashed after 180 days of the date of issuance will be cancelled, and
14 the monies will be directed to the State Controller’s Office, Unclaimed Property Division in
15 the name of the participating Class Member (Settlement, ¶ 43);
- 16 • Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after
17 entry (Settlement, ¶ 36);
- 18 • Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement
19 with Class Members (Settlement ¶ 53).

20 (Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

21 **III. FACTUAL AND PROCEDURAL BACKGROUND**

22 **A. Plaintiff’s Claims**

23 On December 29, 2021, plaintiff Jordon Norris filed a representative wage and hour class action
24 lawsuit against Schilling Robotics, LLC, FMC Technologies, Inc. and EQ Talent Solutions, LLC. for
25 failure to pay minimum and regular rate wages, failure to pay overtime compensation, failure to provide
26 meal periods, failure to authorize and provide rest breaks, failure to timely pay final wages at termination,
27 failure to provide accurate itemized wage statements, failure to indemnify for necessary business
28 expenses, and unfair business practices. (Leviant Decl., ¶ 4.)

1 Plaintiff Jordan Norris sent a letter to the Labor and Workforce Development Agency
2 (“LWDA”), pursuant to California Labor Code § 2699.3, providing notice of his intent to seek civil
3 penalties under the Private Attorneys General Act, California Labor Code § 2698, *et seq.*, LWDA Case
4 No. LWDA-CM-859553-21. (Leviant Decl., ¶ 5.) The LWDA did not indicate that it intended to
5 investigate the alleged violations referenced in the letter, and the 65-day time period permitted for the
6 LWDA to provide such a notification expired. On May 24, 2022, plaintiff Jordan Norris filed a First
7 Amended Complaint alleging an additional cause of action against Defendant for civil penalties under
8 the Private Attorneys General Act (“PAGA”). On November 7, 2022, plaintiff Jordon Norris filed an
9 Amendment to the First Amended Class and Representative Action Complaint naming Robert Glover as
10 Doe Defendant 1. On December 9, 2022, Plaintiff Veronica Garcia submitted a letter to the LWDA
11 notifying it of her intent to seek civil penalties from Schilling Robotics, LLC and FMC Technologies,
12 Inc., LWDA Case No LWDA-CM-923697-22. On January 9, 2023, Plaintiff Jamil Johnson submitted a
13 letter to the LWDA notifying it of his intent to seek civil penalties from EQ Talent Solutions, LLC,
14 Schilling Robotics, LLC, FMC Technologies, Inc. and Robert Glover, LWDA Case No LWDA-CM-
15 923697-22. Also on January 9, 2023, plaintiffs Jordon Norris, Jamil Johnson and Veronica Garcia sent
16 an amended letter to the LWDA in Case No. LWDA-CM-859553-21. On January 16, 2023, plaintiff
17 Jordon Norris filed a Second Amended Class and Representative Action Complaint adding Veronica
18 Garcia and Jamil Johnson as named Plaintiffs. On August 9, 2023, the Court entered an Order
19 dismissing Jordon Norris as a named plaintiff in the Action. The Second Amended Complaint is the
20 operative complaint in the Action (the “Operative Complaint.”). (*Id.*)

21 **B. Pre-Mediation Data Production and Analysis**

22 The Parties conducted extensive formal discovery and investigation of the facts and law. Such
23 investigation included, *inter alia*, the exchange of extensive data and discoverable information in
24 preparation for the mediation session. (Leviant Decl., ¶ 6.) The Parties have analyzed time clock, pay
25 and other data pertaining to Plaintiffs and the Class during the relevant Settlement Period, including but
26 not limited to the numbers of former and current members of the Class, average workweeks and pay
27 periods, and average rate of hourly pay. (*Id.*) Data for the full Class was analyzed. (*Id.*) In addition,
28 Defendant also provided other data pertaining to Plaintiffs and the Class during the relevant Class Period,

1 including but not limited documents reflecting wage and hour policies and practices during the Class
2 Period and information regarding the total number of current and former employees in the Class. (*Id.*)
3 On April 27, 2023, Plaintiffs filed a Motion for Class Certification. On September 21, 2023, the Court
4 entered an Order denying Plaintiffs’ Motion for Class Certification without prejudice. (*Id.*)

5 After reviewing documents regarding Defendant’s wage and hour policies and practices and
6 other information obtained during the exchange of discovery, Class Counsel were able to evaluate the
7 probability of class certification, success on the merits, and the reasonably obtainable maximum
8 monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis
9 prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses
10 asserted in the litigation. (Leviant Decl., ¶ 7.)

11 C. Settlement

12 On June 13, 2024, the Parties participated in mediation with experienced wage and hour mediator
13 Marc Feder, Esq., which ultimately led to a proposed settlement. (Leviant Decl., ¶ 8.) The Parties
14 discussed at length the burdens and risks of continuing with the litigation as well as the merits of claims
15 and defenses. (*Id.*) After the mediation, the Parties then prepared and signed a long form settlement
16 agreement (the “Agreement”). (*Id.*)

17 Plaintiffs and Class Counsel are aware of the burdens of proof necessary to establish liability for
18 the claims asserted in the Action, both generally and in response to Defendant’s defenses thereto.
19 (Leviant Decl., ¶ 9.) Plaintiffs and Class Counsel have also taken into account Defendant’s agreement to
20 enter into a Settlement that confers substantial relief upon the Class. (*Id.*)

21 Based on the foregoing, Plaintiffs and Class Counsel have determined that the Settlement set
22 forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the
23 Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the
24 requirements for establishing class action certification with respect to this class have been met and are
25 met. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves the right to
26 contest class certification. (*Id.*) This Settlement, if approved, will result in the termination of the
27 litigation through the entry of the Judgment and the release of all Released Claims for all Class
28 Members, including all within the class definition who have not elected to exclude themselves from the

Class, as well as the release of all Released PAGA Claims for all PAGA Members who worked for Defendant during the PAGA Period. (*Id.*)

IV. **CLASS DEFINITION**

The Class is defined as follows:

All individuals employed by Schilling Robotics, LLC in non-exempt positions in California, and all individuals employed by EQ Talent Solutions, LLC who were assigned to work at Schilling Robotics, LLC's California locations, at any time during the Class Period. (the "Class Period" is the period from December 29, 2017, to August 27, 2024). "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.d, 1.f, 1.w.)

(Leviant Decl., ¶ 34 and Exhibit 1.)

V. **DISCUSSION**

A. **The Court Should Conditionally Certify the Class for Settlement Purposes**

The Class should be provisionally certified for settlement because: (1) the Class is ascertainable and numerous; (2) there exists a well-defined community of interest; and (3) a class action is the superior method of adjudication for this settlement. Code of Civ. Proc. § 382; *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012); *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000); *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326, 332 (2004). For purposes of this Settlement *only*, Defendant stipulates to conditional certification. (Settlement ¶ 12.1.)

"The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.'" *Id.*, at 326, quoting *Linder*. Indeed, the certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). "[I]t is also well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996).

In view of these standards, the Class should be certified for purposes of settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

1 **1. The Members of the Class Are Both Ascertainable and Numerous.**

2 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of
3 the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal. App. 3d
4 862, 873 (1983). A class is ascertainable when “it is defined ‘in terms of objective characteristics and
5 common transactional facts’ that make ‘the ultimate identification of class members possible when that
6 identification becomes necessary.’” *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). The class
7 definition is sufficiently specific to enable the Parties, Class Members, and the Court to determine the
8 parameters of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987). Here,
9 there are about 216 Class, all of whom may be identified by reference to Defendant’s records. Plaintiffs
10 thus contend the Class is not only ascertainable, but also numerous. (Leviant Decl., ¶ 35.)

11 **2. There Are Common Questions That Predominate Over Any Questions That**
12 **May Be Unique to Individual Class Members.**

13 The community of interest requirement embodies three factors: (1) predominant questions of law
14 and fact; (2) class representatives with claims or defenses typical of the class; and (3) class
15 representatives who can adequately represent the class. *Dunk*, 48 Cal. App. 4th at 1806; *Richmond*, 29
16 Cal. 3d at 473-75. A question of law or fact is common to the members of a class if it may be resolved
17 through common proof. *See, Jaimez*, 181 Cal. App. 4th at 1305. As for predominance, it “is a
18 comparative concept, and ‘the necessity for class members to individually establish eligibility and
19 damages does not mean individual fact questions predominate.’” *Sav-on*, 34 Cal. 4th at 334.

20 In this case, common questions include, but are not limited to: i. Whether or not Defendant paid
21 proper wages to the Class; ii. Whether or not Defendant provided meal periods to the Class; iii. Whether
22 or not Defendant provided rest periods to the Class; iv. Whether or not Defendant paid compensation
23 timely upon separation of employment to former Class Members; v. Whether or not Defendant provided
24 accurate itemized wage statements to the Class; vi. Whether or not waiting-time penalties are available to
25 the Class for violation of California Labor Code § 203; and, vii. Whether or not Defendant engaged in
26 unlawful or unfair business practices. (Leviant Decl., ¶¶ 37-38.)

27 In the Action, Plaintiffs’ claims present sufficient common issues of law and fact that
28 predominate over individual issues and warrant class certification. From their review of the

documentation provided, Class Counsel determined and on that basis Plaintiffs contend that for purposes of these claims, Defendant's policies and practices are either identical, or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because Plaintiffs contend Class Members would have to prove the same issues of law and fact to prevail, and because their potential legal remedies are identical, it would be preferable to resolve all Class Members' claims by means of the Settlement than to require each Class Member to litigate his or her individual claims. Therefore, Plaintiffs contend common questions predominate over questions that may be unique to individual Class Members, and class-wide settlement is superior to any other resolution.

3. Plaintiffs' Claims Are Typical of Those of the Class.

Typicality "requires a showing that the class representative has claims or defenses typical of the class." *See, e.g., Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), approved by *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004 (2012). California law does not require that plaintiffs have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct. *Seastrom v. Neways, Inc.*, 149 Cal. App. 4th 1496, 1502 (2007).

In light of these standards, Plaintiffs contend they are typical of class members. Like other Class Members, Defendant employed Plaintiffs as an hourly employees during the Class Period, and Plaintiffs claim that there were subject to the same policies alleged to have impacted the entire class. (Leviant Decl., ¶ 36.) Plaintiffs allege that they and other Class Members share the same claims stemming from Defendant's alleged violations of the Labor Code and relevant wage order. In addition, Defendant's main defenses, including that the wage and hour policies and practices fully comply with California law, apply equally to the claims of all Class Members. Thus, Plaintiffs contend they are typical of the Class.

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

Adequacy is shown where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to class members. *McGhee v. Bank of America*, 60 Cal. App. 3d 442, 451 (1976). In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the

1 plaintiff's ability to represent the class. *Id.* In the Action, Plaintiffs contend they have no conflicts of
2 interest with other Class Members and further contend they have agreed to place Class interests above
3 Plaintiffs' own. (Garcia Decl., ¶¶ 5-21; Johnson Decl., ¶¶ 5-21; Leviant Decl., ¶ 39.) Moreover,
4 Plaintiffs' counsel are experienced in wage and hour class litigation and have no conflicts of interest with
5 absent Class Members. (Leviant Decl., ¶¶ 21-26, 39.) Thus, Plaintiffs contend this Court should appoint
6 Plaintiffs as Class Representatives and appoint Plaintiffs' Counsel as Class Counsel.

7 **5. Proceeding as a Class Action is Superior to Individual Actions**

8 Plaintiffs contend that proceeding as a class action is a superior means of resolving this dispute,
9 as the Class Members and the Court will derive substantial benefits. Class certification would serve as
10 the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co.* 23
11 Cal. 4th at 434. Furthermore, individual actions arising out of the same operative facts would unduly
12 burden the courts and could result in inconsistent results, which Plaintiffs contend may be avoided by
13 class certification.

14 **6. The Proposed Class Notice Complies with Rule 3.766(d) and (e)**

15 Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of
16 notice, the court must consider interests of the class, relief requested, stakes of individual class members,
17 costs of notifying class members, resources of the parties, possible prejudice to class members who do
18 not receive notice, and the *res judicata* effect on class members. Rules of Court, Rule 3.766(e).

19 *a) The Notice Procedure Satisfies Due Process*

20 The proposed procedure for distributing the Proposed Notice is robust and meets the requirement
21 that it have "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v.*
22 *Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). There is no statutory or due process requirement that all class
23 members receive actual notice, but in this matter, the Class Members will receive direct notice. Here, the
24 proposed procedure includes safeguards, including, but not limited to, mailing notice to Class Members'
25 last known addresses; skip tracing; searches for address changes; and the re-mailing of returned notices
26 to any forwarding addresses. This manner of giving notice complies with Rule of Court 3.766(c)
27 because it provides a reasonable chance that Class Notice will reach most if not all Class Members.
28

b) *The Notice is Accurate and Informative*

The proposed Notice of Class Action Settlement should be approved for dissemination to the Class Members because its content complies with Rule of Court 3.766(d) in that it contains a brief explanation of the case, including the basic contentions and denials of the Parties, detailed information about Class Members' rights to be excluded from the non-PAGA portion of the Settlement or object to the Settlement; a statement that the Settlement will bind all members who do not timely opt-out or exclude themselves from the non-PAGA portion of the Settlement. Thus, the Notice also satisfies Rule of Court 3.769(f) regarding the contents of settlement notices.

The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative and coherent manner, in compliance with the Manual for Complex Litigation ("MANUAL"), (2d Ed. 1993), which states that "the notice should be accurate, objective, and understandable to Class Members . . ." MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability by Defendant and recognizes that this Court has not ruled on the merits. It also states that the final settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

B. The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims

California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). For the reasons discussed below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the Class as proposed, and schedule a final fairness and final approval hearing.

1. Class Action Settlements Are Subject to Review and Approval.

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary

1 Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks
2 *preliminary approval* and the setting of a Final Approval Hearing.

3 To evaluate a settlement, the trial court must receive “*basic*” information about the nature and
4 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
5 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
6 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum
7 theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
8 186 Cal. App. 4th 399, 409 (2010).

9 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
10 **Between Experienced Counsel with the Assistance of a Highly Qualified**
11 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

12 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
13 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
14 experienced in similar litigation, and the percentage of objectors is small.¹ *Dunk*, 48 Cal. App. 4th at
15 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair*
16 *Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In exercising the power to approve
17 a settlement, the overriding concern is to ensure that a proposed settlement is “fair, adequate, and
18 reasonable,” *Dunk*, at 1801, considering “the complexity and likely duration of further litigation, the risk
19 of maintaining class action status through trial, the amount offered in settlement, the extent of discovery
20 completed and the state of the proceedings, the experience and views of counsel, the presence of a
21 governmental participant, and the reaction of the class members to the proposed settlement. *Id.* These
22 factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors
23 considered to each case and give due regard to “what is otherwise a private consensual agreement
24 between the parties.” *Id.*

25 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
26

27 ¹ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final
28 approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement
approval process.

counsel with the assistance of a skilled mediator, Marc Feder, Esq. (Leviant Decl., ¶¶ 8-10.) Plaintiffs obtained data from Defendant through extensive formal discovery and then carefully reviewed that information. Counsel for Plaintiffs also examined relevant policies and interviewed witnesses in detail about their work experiences and Defendant's practices.

Based on the review of data, Plaintiffs estimated potential exposure and then estimated risk factors to adjust the reasonable expected outcome. Plaintiffs contend that the investigation that Plaintiffs' counsel conducted was sufficient to provide them with enough information to intelligently evaluate the estimated exposure for purposes of negotiating the Settlement in view of the risks discussed below and was sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members' Claims Based on Defendant's Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for substantially narrower relief than would likely be obtained if the suit were successfully litigated can be reasonable given that "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id.*

With respect to the claims asserted on behalf of the Class, there are serious risks that support this compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiffs would be unable to establish liability for unpaid wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"); (ii) the risk that Defendant's meal and rest period policies might not support class certification or a class-wide liability finding; (iii) the risk that uncertainties about the legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties; (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not

1 just damages; (v) the risk that any penalty award under PAGA could be reduced by the Court in its
2 discretion; (vi) the risk that lengthy trial or appellate litigation could ensue; and, (vi) the risk that
3 violation rates could prove lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

4 In light of the uncertainties of protracted litigation, Plaintiffs contend the settlement amount
5 reflects a fair and reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement
6 amount is, of course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks
7 related to liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class
8 Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have
9 claims that are greater than the benefits they would otherwise receive under this Settlement to pursue
10 their own claims. (*Id.*) For the approximately **216** members of the Class as of September 2023, the
11 average **gross** benefit is **\$2,662.04** per class member, and the estimated average **net** recovery for each
12 Class Member would be approximately **\$876.54**. (*Id.*) Given that Defendant could and would
13 aggressively challenge certification and liability, this is the best result that could have been achieved in
14 settlement. Moreover, a Class Member who worked a greater number of workweeks will receive a larger
15 Settlement share than a Class Member who worked for a shorter time during the class period. (*Id.*)

16 After analyzing the claims in this matter, Plaintiffs have concluded that the Gross Settlement
17 Amount of **\$575,000** is just above the **\$571,304.93** estimate of *risk-adjusted* recovery (excluding
18 interest) at this stage in the litigation. (Leviant Decl., ¶ 18.) This assessment is based on a carefully
19 constructed model of the current fair value of the case, using estimated risks, average wage rates,
20 numbers of employees, and the amount of time covered by the class period. (*Id.*)

- 21 • A reasonably estimated exposure for unpaid wages was calculated by Plaintiffs, with the
22 assistance of an expert, to be approximately **\$24,943.10**. However, with the risk factor
23 discounts for certification and liability proof, the value of that claim is estimated by
24 Plaintiffs' counsel to be approximately **\$15,963.58**, assuming certification probability of 80%
25 and merits success at 80%. The unpaid wages resulted from a variety of alleged issues
26 associated with Defendant's proprietary timeclock system. The majority of the work
27 performed by Plaintiffs' expert consultant concerned preparation of custom programming
28 tools to deconstruct the time data from its native format into one that could be analyzed
effectively. Despite this effort, there were a large percentage of consistency errors in the
timeclock data, creating some risk when making exposure calculations. Even with the errors,
it appears to Plaintiffs that some evidently unpaid wages were potentially related to errors
caused by the way that Class Members recorded time and to the fact that the pay period end
fell in the middle of the Friday workday (an uncommon choice for a pay period end time).
- A reasonably estimated maximum exposure for rest break violations over the class period

was calculated by Plaintiffs at **\$528,538.90**, based on the legal argument that an earlier rest break policy did not permit employees to leave the work premises, with a current value exposure of **\$21,141.16**, assuming certification probability of 20% and merits success at 20%. This claim is factually and legally disputed, and some inconsistent information from class members indicates that this theory carries the potential for high risk. Plaintiffs calculated the exposure assuming one missed break per week for 100% of the Class, a very optimistic assumption.

- A reasonably calculated exposure for meal break violations over the class period was calculated by Plaintiffs at **\$685,509.78**, with chances of certification and liability risks (50% and 50% respectively) resulting in a risk-adjusted exposure of **\$171,377.45**. This exposure is based upon alleged facial violations of short, missed, or late meal periods identified by Plaintiffs. The exposure valuation by Plaintiffs was still susceptible to attack. Employee choice is a serious issue in the context of a meal period claim. So long as an employee has the opportunity to take a lawful meal period, an employee can choose to take it late, cut it short, or skip it. In addition, many of the “late” meal periods were entered as starting exactly at the beginning of the sixth hour of work, leading to the legal issue of whether “before the end of the fifth hour of work” means that four hours and 59 minutes is timely, but a meal period starting at the five hour mark is untimely.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated by Plaintiffs to be approximately **\$60,000.00** and **\$79,447.75**, respectively, on maximum exposures calculated by Plaintiffs of **\$150,000.00** and **\$198,619.37**, respectively (with certification and merits success chances of 80% and 50% respectively, based on unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim and assuming that Defendant had a good faith belief that it was providing accurate wage statements and paying all wages due at the time of termination.
- Performing risk-adjusted valuations for all claims yields a total value calculated by Plaintiffs in the range of **\$347,929.93**, excluding PAGA.²
- PAGA penalties exposure was calculated by Plaintiffs to be **\$893,500.00**, using the more expedient method of assuming a single \$100 penalty for every pay period, a somewhat generous assumption. But, assuming issues with proof and cooperation of aggrieved employees, along with the Court’s power to reduce penalties, the realistic exposure was calculated by Plaintiffs to be **\$223,375.00**.

The concurrently-filed Declaration of H. Scott Leviant sets forth Plaintiffs’ claim valuation in additional detail. (*See*, Leviant Decl., ¶ 18.)

Plaintiffs contend this result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish.

² It is difficult to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel. The numbers explain with math what can also be described conceptually in words.

(Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Leviant Decl., ¶ 19.) The Judicial Council’s Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 (“Second Interim Report”), at page 5, states that “less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification or as part of a classwide settlement agreement.” See, Second Interim Report, at 5 (emphasis added).³ That “*or*” is significant. The certification rate of less than 25% identified in the study includes *both* contested certifications and settlement certifications, which are the majority of certifications. In other words, one must assume in any wage and hour class action prior to certification that a contested certification motion will have a success rate of well under 25%, and probably closer to 10% as a starting point for risk evaluation. The facts of each case have significant bearing on these percentages. But it cannot be disputed that certification is an exceptionally difficult procedural hurdle to successfully overcome. Thus, it is not unreasonable to start from the proposition that a pre-certification settlement that is 10% to 15% of the maximum plausible exposure is a valid starting point for valuation. If roughly 10% of class actions are certified on a contested basis, then, on average, 90% of the time a class will not be certified and the result for the class is *zero* dollars.

Here, the estimated certification probabilities are *above* the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Leviant Decl., ¶ 19.) Summarizing the above, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) Here, the recovery falls within the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately \$1,238,981.77, with no risk reduction), excluding penalties and interest; the settlement is about 47% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.⁴

³ The report is available at <https://www.courts.ca.gov/documents/classaction-certification.pdf> (last viewed March 12, 2024).

⁴ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate

1 Plaintiffs contend this Settlement achieves the goals of the litigation.

2 **4. The Proposed Method for Allocating Settlement Funds Is Fair.**

3 The proposed method of allocating the Settlement Fund to participating Class Members and
4 PAGA Members also is fair and reasonable. The Settlement Fund is to be allocated between all
5 participating Class Members, based on time worked by the participating Class Member during the Class
6 Period, in relation to the total amount of time worked by all participating Class Members. This proposed
7 method is fair and reasonable because each Class Member's actual potential damages vary based on the
8 number of workweeks he or she worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the
9 employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher
10 number of incidents occur). A participating Class Member who worked a greater number of workweeks
11 will receive a larger payment under the Settlement than a participating Class Member who worked for a
12 shorter amount of time. (Leviant Decl., ¶¶ 13, 17.)

13 **5. The Proposed Enhancement Awards to Plaintiffs Warrant Approval.**

14 The proposed enhancement of \$7,500.00 to each remaining named Plaintiff is intended to
15 recognize substantial initiative and significant efforts on behalf of the Class. Courts routinely approve
16 incentive awards to compensate named plaintiffs for the services they provide and the risks they incur
17 during class action litigation, often in much higher amounts than those sought here. Factors considered
18 when awarding an incentive include the actions the plaintiff has taken to protect the class, the degree to
19 which the class has benefitted, the amount of time and effort the plaintiff expended in the litigation, the
20 risk to the class representative in commencing suit (financial and otherwise), the notoriety and personal
21 difficulties encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed
22 by the plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785,
23 804 (2009). Here, taking the risk of participating in a lawsuit against an employer deserves recognition,
24 especially in light of the settlement achieved by Plaintiffs, who participated in discovery and were

25
26 the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
27 *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA*
28 *Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a
defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within
the range of possible approval).

deposed. (Garcia Decl., ¶¶ 5-21; Johnson Decl., ¶¶ 5-21; Leviant Decl., ¶ 32.) The enhancement also recognizes risks Plaintiffs took to be personally liable for costs regardless of the success of the litigation, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiffs sued employers, making future employment less certain. Plaintiffs' Declarations support the requested enhancements and confirm Plaintiffs were active participants in the settlement of this case.

6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁵ Thus, this Court may and, pursuant to *Laffitte*, *should* award fees to Plaintiffs' counsel based upon the percentage of the fund methodology.

Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the lodestar method is used, the outcome is roughly the same: "[F]ee awards in class actions average around one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.'" *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021). This is also consistent with counsels' experience in class cases. Here, Plaintiffs' attorneys intend to request attorneys' fees of up to \$191,666.67 (33 and 1/3% of the GSA), and costs capped at \$130,000.00.⁶ (Leviant Decl., ¶ 31.) Given the efforts and risks involved in this case, as well as the results achieved, these amounts are within the range of reasonableness and warrant *preliminary approval*.

⁵ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

⁶ While this cost amount may appear high when judged against the size of the settlement, most of these costs were paid to the forensic accounting expert firm that had to write custom software to analyze the unique timekeeping system employed by Defendant. The tremendous amount of work performed was required to support both the initial motion for class certification and the anticipated renewed motion for class certification that Plaintiffs were preparing when the case resolved at mediation. Without that substantial contribution from Plaintiffs' expert, the matter would not have resolved, and the likelihood for certification on a renewed motion would have been even lower than the already daunting challenge that all motions for class certification pose.

1 **7. The Proposed Payment to the Administrator Is Fair and Reasonable.**

2 ILYM Group, Inc., which has been selected due to its competitive bid, states that administration
3 can be performed for a flat rate of **\$7,450.00**. In counsel’s experience, based on similar wage-and-hour
4 actions, an estimated cost of **\$7,450.00** is a fair and reasonable amount for administration fees and should
5 be preliminarily approved. (Leviant Decl., ¶ 33.) ILYM has also confirmed its capabilities and security
6 protocols in the accompanying declaration. (See, Mullins Decl.)

7 **8. The PAGA Allocation is Reasonable.**

8 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
9 Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil
10 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil
11 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
12 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

13 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources
14 of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in
15 federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement,
16 could be reasonable if the settlement of the wage and hour claims is robust and serves the deterrent
17 purpose of PAGA. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016)
18 (“By providing fair compensation to the class members as employees and substantial monetary relief, a
19 settlement not only vindicates the rights of class members as employees, but may have a deterrent effect
20 upon the defendant employer and other employers, an objective of PAGA.”). *Moniz* provided explicit
21 confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA
22 settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that have considered
23 how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered,
24 along with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present
25 labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

26 As to the first set of elements (the class-type analysis), it is embodied in Plaintiffs’ discussion of
27 the adequacy of the settlement generally. Here, the expense, complexity and likely duration of future
28 litigation was to some extent an unknown. However, what is certain is that to adequately establish the

violations that would support a substantial penalty, tremendous time and expense would be invested.

The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*, PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major portion of settlement funds to class members still advances the goal of labor law violation remediation. The allocation of a major portion of settlement funds to class members also deters future violations. This is a \$575,000.00 settlement, a good result for the Class size. Deterrence is fulfilled. Finally, allocation of a major portion of settlement funds to class members advances the goal of enforcement of state labor law. This settlement is, by definition, a response to alleged labor code violations, balanced against risks.

In addition, there is no evidence that a court or a commissioner had informed Defendant that its conduct allegedly violated the Labor Code in the first instance. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v. Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a case where a company has deliberately sought to evade the law." *Cotter*, 176 F. Supp. 3d at 941.

Finally, the PAGA allocation is fair. The LWDA is receiving \$30,000.00. The Class is receiving, net, an estimated \$189,333.33 for the releases of *all* other claims. While the proportion is tipped slightly in favor of the employees, the allocation is not unfair because it satisfies California's wage and hour policies.

VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING

The last step in the settlement approval process is the fairness hearing, where the Court makes a final determination about the propriety of settlement. Plaintiffs request that the fairness hearing in this case be scheduled for about 140 days after issuance of the Court's Order granting preliminary approval of the Settlement. Under the Settlement, the Defendant will have 14 days to provide the data to the Settlement Administrator, which will then have 14 calendar days to mail out class notice. Class Members have 60 days after mailing of the notice to submit exclusions or objections (with a 15-day extension available for re-mailed notices). Therefore, Plaintiffs propose a final approval hearing scheduled for the first available hearing date that is about 140 days after preliminary approval is granted.

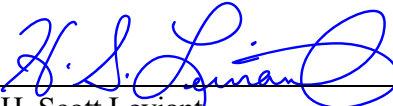
1 **VII. CONCLUSION**

2 For all the foregoing reasons, because the Class meets the requirements for certification for
3 settlement purposes, only, because the Settlement bears all requisite indicia of fairness, reasonableness,
4 and adequacy, and because the proposed notice procedure and forms comport with Rule 3.766 and Due
5 Process, this Court should grant this Motion for Preliminary Approval, adopt the [Proposed] Order
6 Granting Preliminary Approval of Class Action Settlement submitted herewith, and schedule a Final
7 Fairness Hearing.

8 Respectfully submitted,

9 Dated: November 8, 2024

MOON LAW GROUP, PC

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11 By: 
H. Scott Leviant

12 Attorneys for Plaintiff
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party
4 to the within suit; my business address is 725 S. Figueroa St., Suite 3100, Los Angeles, CA 90017.

5 On the date indicated below, I served the document described as: **PLAINTIFFS' NOTICE OF**
6 **MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE**
7 **ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties
8 in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as
9 stated on the attached service list:

10 David J. Dow
11 Kara Adelle Ritter Cole
12 LITTLER MENDELSON, P.C.
13 501 West Broadway, Suite 900
14 San Diego, California 92101
15 Facsimile: (619) 232-4302
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18 *Counsel for Defendants* SCHILLING ROBOTICS, LLC and FMC TECHNOLOGIES, INC.

19 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in
20 the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's
21 practice of collection and processing correspondence for mailing. Under that practice, sealed
22 envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business
23 with postage thereon fully prepaid at Los Angeles, California.

24 ☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail
25 delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in
26 this action.

27 ☐ **BY ELECTRONIC SERVICE:** Pursuant to the Court's Order directing Electronic Service, the
28 above-named document(s) has (have) been electronically served on counsel of record by an approved
electronic service provider. The transmission of these documents was reported complete and a copy of
the service confirmation will be maintained, along with the original document(s) and proof of service
in our office.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the
offices of the addressee(s) named herein.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and
processing correspondence for overnight delivery. Under that practice, overnight packages are
enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are
picked up by the carrier at our offices or delivered by our office to a designated collection site.

25 I declare under penalty of perjury under the laws of the State of California and the United States that the
26 foregoing is true and correct. Executed this **November 8, 2024** at Los Angeles, California.

27 H. Scott Leviant
28 Type or Print Name


Signature