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SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

JIHYUN KWON, as an individual on behalf of
herself and on behalf of all others similarly
situated,

Plaintiff,

v.

WOOLTARI USA, INC., a Delaware
corporation; and DOES 1-100, inclusive,

Defendants.

Case No. 22STCV37161

Assigned for All Purposes to:
Hon. Maren E. Nelson
Dept. SSC-17

MEMORANDUM OF POINTS &
AUTHORTIES ISO MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT

[Filed concurrently with Notice of Motion
and Motion; Declarations of Jamie K. Serb,
Jihyun Kwon, and Lisa Mullins; [Proposed]
Order]

Date: May 16, 2024
Time: 9:00 am
Dept.: SSC-17

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1 **I. INTRODUCTION**

2 Plaintiff Jihyun Kwon respectfully requests that the Court preliminarily approve the Class
3 Action and PAGA Settlement Agreement (“Agreement”) entered into between Plaintiff and
4 Defendant Wooltari USA, Inc. (“Wooltari” or “Defendant”). The proposed settlement seeks to
5 resolve claims in the above captioned matter in exchange for a non-reversionary \$300,000 Gross
6 Settlement Amount. The settlement class is comprised of “all current and former non-exempt
7 employees that worked either directly or via a staffing agency for Wooltari at any location in
8 California at any time during the Class Period” of November 23, 2018 to October 2, 2023.

9 The Agreement and notice distribution plan are the products of adversarial, arm’s-length
10 negotiations by informed counsel and parties, facilitated by an experienced mediator. The
11 settlement is fair, reasonable, and adequate to all. Plaintiff has analyzed the strengths and
12 vulnerabilities of the claims with Defendant’s potential exposure and determined the \$300,000
13 proposed settlement is well within the range of reasonableness and is in the Class Members’ best
14 interests. The length and risks of trial and perils of litigation that affect the values of the claims
15 were all carefully weighed. In addition, the defenses asserted by Defendant, the uncertainty of
16 class certification, the difficulties of complex litigation, the lengthy process of establishing
17 specific damages and various possible delays and appeals, were also considered by Plaintiff and
18 counsel in negotiating the proposed settlement. Further, the proposed settlement satisfies the
19 criteria for preliminary approval under California Rule of Court 3.769.

20 Accordingly, Plaintiff seeks: (1) preliminary approval of the settlement; (2) provisional
21 certification of the Class; (3) appointment of Plaintiff as Class Representative; (4) appointment of
22 Crosner Legal, PC as Class Counsel; (5) approval of the Parties’ proposed Notice of Class Action
23 Settlement (“Notice”) and method of notifying the Class Members; (6) a hearing date for
24 Plaintiff’s Motion for Final Approval of Class Action Settlement; and (7) entry of an Order
25 Granting Preliminary Approval of Class Action Settlement.

26 **II. BACKGROUND/LITIGATION HISTORY**

27 Defendant Wooltari is a direct-to-consumer marketplace. Plaintiff Kwon worked for
28 Wooltari as a Design Team Leader, primarily creating banner ads and other advertising for

1 Wooltari's website. She worked for Defendant for approximately 1.5 years, from September 28,
2 2020, until Wooltari terminated her on April 18, 2022, allegedly in retaliation after she
3 complained about not receiving overtime pay and other wage and hour issues. At all times she
4 alleges she was treated as an "exempt" employee and was paid a base salary of \$52,800 per year
5 (\$2,000 per bi-weekly pay period) regardless of the number of hours she worked. (Declaration of
6 Jamie K. Serb ("Serb Decl."), ¶ 12.)

7 On November 23, 2022, Plaintiff filed a class action complaint against Defendant in the
8 Los Angeles County Superior Court (Case No. 22STCV37161), alleging claims for unpaid
9 minimum and overtime wages, meal and rest break violations, wage statement violations, waiting
10 time penalties, failure to reimburse business expenses, and unfair competition. (Serb Decl., ¶ 13.)
11 Plaintiff also submitted the required notice letter the LWDA under PAGA and timely exhausted
12 her administrative remedies. (Serb Decl. ¶ 13; Exh. 4.) Plaintiff did not receive notice from the
13 LWDA that it intended to investigate the alleged violations outlined in her PAGA letter. (Serb
14 Decl., ¶ 13.) On March 27, 2023, Plaintiff also filed a PAGA-only action in Los Angeles
15 County Superior Court (Case No. 23STCV06707) based on the same alleged Labor Code
16 violations. (Serb Decl., ¶ 13.)

17 In August 2023, the Parties participated in global mediation of both cases with Steve
18 Cerveris, Esq., a respected wage and hour class action mediator. The mediation lasted a full day
19 and, although the matter did not resolve that day, Mr. Cerveris ultimately made a mediator's
20 proposal that was accepted by both Parties. The Parties then formally reduced the proposed
21 settlement to the Agreement now before the Court for approval. Finally, as part of the Settlement,
22 Plaintiff filed a First Amended Complaint in this matter adding a PAGA cause of action, and the
23 FAC is the Operative Complaint. Both the FAC and the Agreement have been uploaded to the
24 LWDA. (Serb Decl., ¶ 14; Exhs. 5-6.)

25 **III. INVESTIGATION**

26 Prior to the mediation, Defendant provided Plaintiff with extensive informal discovery,
27 including Plaintiff's personnel, time, and payroll records, time and payroll records for a randomly
28

1 selected sampling of about 15% of the Class Members,¹ wage statement exemplars, Defendant's
2 employee handbooks, including Defendant's policies and procedures regarding the payment of
3 wages, the provision of meal and rest breaks, timekeeping policies (including recording hours),
4 issuance of wage statements, and termination wages, expense reimbursement policies, as well as
5 information regarding the number of putative Class Members who are current and former
6 employees, the number of Aggrieved Employees, the number of workweeks throughout the Class
7 Period, and the number of pay periods throughout the PAGA Period. From this information,
8 Plaintiff was able to analyze Defendant's liability for the claims asserted in this case and, with the
9 assistance of the experts at Berger Consulting Group, the potential exposure and damages. (Serb
10 Decl., ¶ 15.)

11 Based on this informal discovery, Plaintiff contends the Class Members were not paid all
12 wages due, and particularly overtime wages based on the alleged misclassification, not provided
13 with legally compliant meal and rest periods, did not receive compliant wage statements, did not
14 receive required expense reimbursement, and did not receive all wages due on separation of
15 employment. In considering the reasonableness of the proposed settlement, Plaintiff considered
16 each of Defendant's counterarguments, which sharply contested Plaintiff's claims. Plaintiff and
17 counsel weighed the strength of Defendant's arguments, including the risks of prevailing at class
18 certification and on the merits, and determined that the proposed settlement is in the best interests
19 of the Class. Although remaining confident in the strength of her claims, these factors led Plaintiff
20 to discount the exposure analysis, as discussed below. (Serb Decl., ¶ 16.)

21 **IV. TERMS OF THE PROPOSED SETTLEMENT**

22 **A. Deductions from the Settlement**

23 The Parties have agreed (subject to the Court's approval) to resolve this matter for the
24 non-reversionary total sum of \$300,000.00 ("Gross Settlement Amount" or "GSA"), to be paid in
25 six equal installments over a period of six months following final approval (Agreement, §§ 3.1,
26

27
28 ¹ Plaintiff's experts suggested this sampling would be statistically reliable and allow them to extrapolate effectively
for the entire class. (Serb. Decl., ¶ 15.)

4.3.). The GSA includes: (a) reasonable attorney’s fees of up to \$100,000 (33.3% of the GSA)² to compensate Class Counsel for work already performed and all work remaining to be performed (Agreement, § 3.2.1.); (b) actual litigation expenses as documented and not to exceed \$15,000.00³ (Agreement, § 3.2.1.); (c) Administration Costs to ILYM Group, Inc. (the proposed settlement administrator) in an amount not to exceed \$3,999.00 (Agreement, § 3.2.2.); and (e) PAGA penalties to the LWDA of \$15,000.00 (which is 75% of the \$20,000.00 PAGA Payment, with the remaining 25% or \$5,000.00 to Aggrieved Employees) (Agreement, § 3.2.4.).⁴ Employer-side payroll taxes (including FICA, FUTA, and SDI) will be paid by Defendant separate and apart from the GSA. (Agreement, § 3.1.)

B. Calculation of the Individual Settlement Payments to Class and Aggrieved Employees

After all Court-approved deductions from the GSA, it is estimated that at least \$161,001 (“Net Settlement Amount” or “NSA”) will be distributed to the estimated 76 Class Members, with an average individual settlement amount of around \$2,118.⁵ (Agreement, § 3.2.3.) Additionally, the 25% PAGA Payment (\$5,000.00) will be distributed to the estimated 76 Aggrieved Employees, resulting in an average payment of about \$66⁶ per Aggrieved Employee. (Serb Decl., ¶ 18.) Under no circumstances will any portion of the Settlement revert to Defendant. (Agreement, § 3.1.)

ILYM will calculate and issue Individual Class Payments to Participating Class Members by “(a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks.” (Agreement, § 3.2.3.) Additionally, ILYM will

² The percentage method, with or without a lodestar cross-check, may be used in common fund cases like this one. *Laffitte v. Robert Half Internat., Inc.* (2016) 1 Cal.5th 480, 503. In support of their fee request at Final Approval, Class Counsel will provide the Court with lodestar information to permit the Court to do a lodestar cross-check in connection with Class Counsel’s request for attorney’s fees.

³ At Final Approval, Class Counsel will provide documentation regarding actual expenses incurred to support Class Counsel’s request for reimbursement of actual expenses.

⁴ Plaintiff is not seeking a representative enhancement as she filed and settled a separate wrongful termination and retaliation claim. (Serb Decl., ¶ 12.)

⁵ \$161,001 estimated NSA/76 Class Members

⁶ \$5,000 (25% PAGA Payment) /76 Aggrieved Employees

1 calculate and issue payments to Aggrieved Employees based (a) dividing the amount of the
2 Aggrieved Employees' 25% share of PAGA Penalties (\$5,000) by the total number of PAGA
3 Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b)
4 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods." (Agreement, §
5 3.2.4.1.)

6 Each Class Member's settlement award will be apportioned as follows: twenty percent
7 (20%) wages and eighty percent penalties and interest. (Agreement, § 3.2.3.1.) ILYM will be
8 responsible for issuing Form W-2s for amounts deemed wages and Form 1099s for the portions
9 allocated to penalties and interest. (Agreement, §§ 3.2.3.1. and 3.2.4.2.)

10 **C. Uncashed Funds to Unclaimed Property Fund**

11 Settlement checks must be cashed or deposited within 180 days after issuance.
12 (Agreement, § 4.4.1.) In the event a settlement check remains uncashed, such uncashed funds
13 shall be transmitted to the State Controller's Office Unclaimed Property Fund in the name of the
14 Participating Class Member and/or Aggrieved Employee. (Agreement, § 4.4.3.). Therefore, there
15 will be no unpaid residue or unclaimed or abandoned Class Member funds under California Code
16 of Civil Procedure section 384(a).

17 **D. Notice and Extended Response Deadline for Re-Mailed Notices**

18 Within fifteen (15) calendar days after entry of the Preliminary Approval Order,
19 Defendant will provide ILYM with the Class Data, which ILYM will maintain as private and
20 confidential. (Agreement, § 4.2.)

21 Prior to mailing, ILYM will perform a search for updated addresses in the National
22 Change of Address database, and will use the NCOA database and skip traces to attempt to find
23 current addresses for any Notice returned as undeliverable. (Agreement, § 7.4.2.) If ILYM is
24 unable to obtain a better address for a Class Member, it will be under no obligation to make
25 further attempts to locate or notice the Class Member. (Agreement, § 7.4.3.) Within fourteen days
26 after receipt of the Class Data, ILYM will mail the Notice to all Class Members via First-Class
27 mail. (Agreement, § 7.4.2.)

28 The contents of the Notice are consistent with the terms of the Agreement and California

1 Rule of Court 3.769. The Notice informs Class Members how and when to request exclusion from
2 or object to the settlement and of their estimated payment amount which they will automatically
3 receive a settlement payment if they do nothing. (Serb Decl., ¶¶ 25-28; Exh. 3.)

4 **E. Responses to the Settlement and Deadlines**

5 Class Members will have forty-five (45) days from the initial mailing of the Notice to
6 respond to the settlement by submitting a challenge to the number of weeks or pay periods
7 attributed to them, objecting, or requesting exclusion. (Agreement, §§ 1.45, 7.4.4.) Class
8 Members can also request for exclusion from the settlement by mailing or faxing a written
9 request, including his or her name, address, phone number or email address, last four digits of
10 their Social Security Number or Employment Authorization number, and a statement
11 demonstrating his or her intent to opt out of the settlement. (Agreement, § 7.5.1.)

12 The Notice also informs the Class Members/Aggrieved Employees that they can dispute
13 the number of workweeks/pay periods used to calculate their settlement payments by contacting
14 ILYM before the Response Deadline and providing documentation to support their dispute.
15 ILYM will investigate the dispute, request additional information from Defendant, and make a
16 final decision as to the number of eligible work weeks/pay periods. (Agreement, § 7.6.)

17 Class Members can object to the settlement in writing via mail or fax by submitting a
18 document with their name, the words “Notice of Objection” or “Formal Objection” and a
19 description of the arguments supporting their objection, or they may be heard at the Final
20 Approval Hearing. (Agreement, § 7.7.)

21 **F. Funding and Distribution of the Settlement**

22 Defendant will fund the settlement in six equal installments over 180 days following the
23 Effective Date, and ILYM will disburse all payments required under this Settlement within
24 fourteen (14) calendar days after Wooltari fully funds the GSA. (Agreement, § 4.3-4.)

25 **G. Release of Claims**

26 Upon final approval, Participating Class Members shall forever release the Released
27 Parties⁷ for the Released Claims for the Class Period, including all claims pleaded in the

28 ⁷ “Released Parties” means Defendant each of its former and present directors, officers, shareholders,

1 Operative Complaint, and which could reasonably have been alleged, based on the Class Period
2 facts, allegations, and/or claims stated in the Operative Complaint, for work performed during the
3 Class Period, and as specifically detailed in Section 5.2 of the Agreement. The Aggrieved
4 Employees also will release the Released Parties from all claims for PAGA penalties alleged, or
5 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
6 Complaint, and PAGA Notice, and as more specifically detailed in Section 5.3 of the Agreement.

7 **IV. ARGUMENT**

8 In deciding whether to approve a proposed class action settlement under Code of Civil
9 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
10 reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801 [quoting *Officers for*
11 *Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625, cert. den. (1983) 459 U.S.
12 1217]. A proposed class action settlement is **presumed** fair under the following circumstances:
13 (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery
14 were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
15 similar litigation; and (4) the percentage of objectors is small. *Id.* at 1802. As the following
16 shows, all of these elements are present here and the Court should grant of preliminary approval.

17 **A. The Settlement was Reached as a Result of Arm’s Length Negotiations**

18 The proposed settlement was reached as a result of arm’s-length negotiations facilitated
19 by a respected mediator. Though cordial and professional, the settlement negotiations have been,
20 at all times, adversarial and non-collusive. Following mediation, counsel for the Parties conducted
21 further extensive and arm’s length negotiations on the settlement terms memorialized in the
22 Agreement. (Serb Decl., ¶ 31.)

23 While Plaintiff believes in the merits of her case, she also recognizes the inherent risks of
24 litigation and understand the benefit of Class Members receiving significant settlement funds
25 immediately as opposed to risking continued litigation in achieving class certification, the merits
26 of the case before and after trial, the damages awarded and/or an appeal that can take several

27
28 owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and
affiliates (Agreement, § 1.43.)

1 more years to litigate. (Serb Decl., ¶ 32.)

2 **B. The Settlement is the Result of Thorough Investigation and Discovery**

3 The Parties thoroughly investigated and evaluated the strengths and weaknesses of their
4 factual and legal arguments before reaching the proposed settlement, and engaged in sufficient
5 investigation, research and discovery to support the settlement. The proposed settlement was only
6 possible following significant analysis and evaluation of Defendant's relevant policies and
7 procedures, as well as the data it produced for the putative Class. (Serb Decl., ¶¶ 15, 33-34.) This
8 litigation has reached the stage where "the Parties certainly have a clear view of the strengths and
9 weaknesses of their cases" sufficient to support the Settlement. *Boyd v. Bechtel Corp.* (N.D. Cal.
10 1979) 485 F. Supp. 610, 617.

11 **C. Counsel for the Parties are Experienced in Similar Litigation**

12 Counsel for the Parties are particularly experienced in wage and hour employment law,
13 class actions and PAGA actions. Plaintiff's Counsel has prosecuted numerous cases on behalf of
14 employees for wage and hour violations and thus are experienced and qualified to evaluate the
15 class and PAGA claims, evaluate settlement versus trial on a fully informed basis, and to evaluate
16 the viability of the defenses. This experience informed Plaintiff's Counsel on the risks and
17 uncertainties of further litigation and guided their determination to endorse the proposed
18 settlement.⁸ (Serb Decl. ¶¶ 6-11.)

19 **D. The Proposed Settlement is a Reasonable Compromise of Claims**

20 An understanding of the amount in controversy is an important factor into whether the
21 settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of
22 the claims and the risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168
23 Cal.App.4th 116, 129; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
24 Cal.App.4th 399, 409. The most important factor in this regard is "the strength of the case for
25 plaintiffs on the merits, balanced against the amount offered in settlement." *Kullar*, 168
26 Cal.App.4th at 129.

27 ⁸ The final factor mentioned in *Dunk* - the number of objectors - is not determinable until the Notice of Class Action
28 Settlement has been provided to the Class and they have had an opportunity to respond. This information will be
provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 In weighing the strength of Plaintiff's case, *Kullar* instructs that the court is not to "decide
2 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of
3 the attorneys." 168 Cal.App.4th at 133. Further, this analysis does not require an explicit
4 statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,
5 provided there is a record which allows "an understanding of the amount that is in controversy
6 and the realistic range of outcomes of the litigation." *Munoz*, 186 Cal. App. 4th at 409. Put
7 differently, "as the court does when it approves a settlement as in good faith under Code of Civil
8 Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the
9 'ballpark' of reasonableness." *Kullar*, 168 Cal. App. 4th at 133 citing *Tech-Bilt v. Woodward-*
10 *Clyde & Associates* (1985) 38 Cal. 3d 488, 499-500. As shown below, the Parties' investigation
11 and discovery revealed several reasons to discount claims and agree to this settlement.

12 E. **The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's**
13 **Case and the Risks and Costs of Further Litigation**

14 The proposed settlement was only possible following significant analysis and evaluation
15 of Defendant's relevant policies and procedures, as well as the data that Defendant produced for
16 the Class. This permitted Plaintiff's Counsel to engage in a comprehensive analysis of liability
17 and potential damages. The discovery conducted resulted in Plaintiff's central theories of liability,
18 which are based on Plaintiff's claims that Defendant failed to provide compliant meal and rest
19 periods, failed to pay all minimum and overtime wages, failed to provide accurate, itemized wage
20 statements, failed to reimburse expenses, and failed to pay all wages due on separation of
21 employment. As explained above, Defendant maintains that the discovery produced demonstrates
22 it likely would prevail on both class certification and the merits. (Serb Decl., ¶¶ 15, 33-34.)

23 Plaintiff believes this case is suitable for certification as she contends there are company-
24 wide policies that violate California law and uniformly affect the Class Members. Defendant's
25 counterarguments, however, raise uncertainties with respect to both class certification and success
26 on the merits. As the California Supreme Court emphasized in *Sav-On v. Superior Court* (2004)
27 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion, and
28 decisions following *Sav-On* have reached different conclusions with respect to certification of

1 wage and hour claims.⁹ While remaining confident in the strengths of her claims, all of these
2 factors led Plaintiff to discount the maximum potential damage claims. (Serb Decl., ¶ 35.)

3 **1. The Settlement Amount is Reasonable**

4 Defendant provided Plaintiff with data from which Plaintiff's Counsel and experts
5 extrapolated a damage analysis for mediation. For purposes of the mediation, there were a total of
6 76 Class Members who worked approximately 3,947 work weeks in the limitations period, and 76
7 aggrieved employees and 1,607 pay periods within the PAGA Period. (Serb Decl., ¶ 36.)

8 First, Plaintiff contends Wooltari wrongfully classified the class members as "exempt"
9 employees and accordingly paid them a base salary regardless of the number of hours worked. In
10 order to qualify as administratively exempt,¹⁰ however an employee must be primarily engaged in
11 duties that meet the test of the exemption, customarily and regularly exercise discretion and
12 independent judgment in performing his or her duties, and earn a monthly salary equivalent to no
13 less than two times the state minimum wage. E.g., Wage Order 7-2001, §§ 1(A)(2)(a)-(g). Here,
14 Plaintiff contends Defendant failed to pay class members on the required salary basis; for
15 example, Plaintiff's salary of \$4,400/month was less than the \$4,853.33 per month needed to
16 meet the exemption in 2021 when the state minimum wage as \$14/hour. Furthermore, Plaintiff
17 contends the duties and responsibilities of the class members' job positions did not involve
18 management of the business and they didn't exercise any discretion/independent judgment such
19 that they met the requirements of the administrative exemption. Accordingly, Plaintiff argues the
20 class was misclassified and entitled to receive overtime wages and all required meal and rest
21 breaks. (Serb Decl., ¶ 37.)

22 Defendant denies Plaintiff's contentions, claiming its compensation policies properly paid
23 Plaintiff and the class members for all hours worked, noting there is nothing improper about
24 paying non-exempt employees a "salary" for 40 hours of work per week, and that its records

25 ⁹ *E.g.*, *Harris v. Superior Court*, 154 Cal.App.4th 164 (2007) (reversing decertification of class claiming
26 misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007)
27 (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th
28 1440 (2007) (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*, 144
Cal.App.4th 121 (2006) (reversing denial of certification); *Dunbar v. Albertson's Inc.*, 141 Cal.App.4th 1422 (2006)
(affirming denial of certification).

¹⁰ Wooltari appears to be relying on the administrative exemption, Wage Order 7-2001, § 1(A)(2).

1 show Plaintiff and the class members rarely worked more than 40 hours per week and that it paid
2 for documented overtime. Wooltari also argued it made meal and rest breaks available to Class
3 Members in compliance with California law and that its meal and rest break policies are lawful
4 and that Class Members were frequently reminded they were required to take all meal and rest
5 breaks. Defendant also contends its meal and rest break policies and practices comported with the
6 flexibility the *Brinker* court held was integral to California’s meal and rest period requirements.
7 Finally, Defendant argues that Plaintiff’s meal and rest break claims are not susceptible to
8 common proof, as the claims would require individualized inquiry, including whether there was
9 an unlawful companywide policy, whether employees had the opportunity to take meal and rest
10 periods, whether they voluntarily chose to forego their meal and rest periods, and whether
11 Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant
12 contends class treatment is not appropriate. (Serb Decl., ¶ 38.)

13 Without taking into consideration any of Defendant’s defenses to certification or on the
14 merits, Plaintiff estimates Wooltari faces around **\$1,432,000** in damages for unpaid overtime,
15 around **\$919,670** for meal period violations assuming a 100% violation rate, and around **\$919,670**
16 in damages on the rest period claims, again assuming a 100% violation rate. (Serb Decl., ¶ 39.)

17 On the inaccurate wage statement claims under Labor Code section 226, Plaintiff contends
18 HHP’s wage statements violate Section 226 on their face by failing to correctly state the total
19 hours worked during each pay period and by failing to state the applicable hourly rates in effect
20 during each pay period. Plaintiff further alleges derivative violations, and contends that if she
21 prevails on her primary unpaid wage claims then the wage statements would be further
22 inaccurate. Plaintiff estimates Wooltari faces over **\$173,800** in wage statement penalties under
23 Labor Code 226. (Serb Decl., ¶ 40.)

24 As a result of the above alleged violations, Plaintiff also derivatively alleges Wooltari
25 failed to timely pay all wages that were due and owing upon separation of employment. Thus,
26 should the primary claims for unpaid wages fail, the waiting time penalty claims would also fail.
27 Defendant further contends it would not be liable for waiting time penalties because a “good faith
28 dispute” exists over the payment of past wages. *Amaral v. Cintas Corp. No. 2* (2008) 163

1 Cal.App.4th 1157, 1201. Further, Defendant contends Plaintiff would have to prove Defendant
2 “willfully” failed to pay Class Members appropriate wages due upon separation of employment.
3 (Serb Decl., ¶ 46.) Without taking into consideration any of Defendant’s defenses to certification
4 or on the merits, Plaintiff calculated Defendant’s maximum exposure for waiting time penalties at
5 about **\$141,000** based on 25 former employees during the limitations period. (Serb Decl., ¶ 41.)

6 For the expense reimbursement claims, Plaintiff argues Wooltari requires Class Members
7 to use their personal cell phones to communicate with supervisors and coworkers regarding their
8 work without reimbursement. In response, Wooltari contends there was no need to use a personal
9 cell phone in the performance of Class Member job duties, and if anyone did so it was purely for
10 personal convenience and not a job requirement and therefore no reimbursement was required.
11 Without accounting for any potential defenses, Plaintiff estimates she and the Class Members are
12 entitled to about **\$40,000** in expense reimbursement. (Serb Decl., ¶ 42.)

13 As far as potential PAGA liability, the theoretical civil penalties likely are around \$2.5
14 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code
15 sections at issue. (Serb Decl., ¶ 43.) As with the class claims, Plaintiff discounted the potential
16 PAGA penalties based on Defendant’s various defenses on the merits and also accounted for the
17 Court’s wide discretion to reduce such penalties, or to decline to award penalties at all. Labor
18 Code § 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court
19 awarded penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal);
20 *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557
21 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$20,000 to PAGA
22 penalties. (Agreement, § 3.2.4.)

23 Plaintiff submits this amount is reasonable under the circumstances and in line with
24 comparable settlements in other wage and hour class actions in California. *E.g.*, *Van Kempen v.*
25 *Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
26 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
27 *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS
28 116303 (finding a \$7,500 PAGA payment reasonable when measured against the overall

1 settlement of \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total
2 settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the
3 settlement, and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D.
4 Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA
5 penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA,
6 and the LWDA has not objected to the settlement.

7 Thus, Plaintiff and her counsel discounted the value of the class claims consistent with the
8 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
9 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
10 real and substantial risks – settlement on the proposed terms and without prolonged and costly
11 litigation was in the best interests of the class. The overall \$300,000 recovery represents a
12 significant percentage of Defendant's potential exposure. Given Defendant's multi-layered
13 defenses and all other potential risks of continued litigation, a total recovery for the class of
14 \$300,000, which will result in average award of at least \$2,118 per class member, plus additional
15 sums under PAGA, is a significant result well within the range of reasonableness considering all
16 potential outcomes, and it will provide direct monetary awards to all Class Members without
17 further delay. [Serb Decl., ¶ 44.]

18 Importantly, the mere fact that a settlement does not provide the same recovery as might
19 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
20 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the
21 settlement process...even if the relief afforded by the proposed settlement is substantially
22 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
23 settlement because the public interest may indeed be served by a voluntary settlement in which
24 each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair
25 Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed
26 settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean
27 that the proposed settlement is grossly inadequate and should be disapproved"); White v.
28 Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting

1 contention settlement was not fair and reasonable even though it represented 99% discount off the
2 maximum value of the claims); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he
3 question whether a settlement is fundamentally fair . . . is different from the question whether the
4 settlement is perfect in the estimation of the reviewing court"). Importantly as well, the proposed
5 settlement is non-reversionary and will provide immediate benefits to the Class Members without
6 a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class
7 Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
8 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
9 claims process may indicate lack of fairness). Plaintiff and her counsel submit the settlement is
10 within the "range of reasonableness," and is fair and adequate for the Class.

11 **F. Provisional Class Certification Should be Granted**

12 A class action is appropriate when the class is ascertainable and there is "a well-defined
13 community of interest in the questions of law and fact involved affecting the parties to be
14 represented." Code Civ. Proc. § 382. Class certification requirements under Section 382 follow
15 Rule 23 of the Federal Rules of Civil Procedure, and require: numerosity, typicality of the class
16 representatives' claims, adequacy of representation, predominance of common issues, and
17 superiority. Fed.R.Civ.Pro. 23(b)(3); *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011,
18 1019. While a court must certify a class for settlement purposes if a class has not already been
19 certified, "it is well established that trial courts should use different standards to determine the
20 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser
21 standard of scrutiny is used for settlement cases." *Glob. Minerals & Metals Corp. v. Superior*
22 *Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk*, Cal.App.4th 1794, 1807, n.19; *Wershba v.*
23 *Apple Computer* (2001) 91 Cal.App.4th 224, 237-38.

24 **1. The Proposed Class is Sufficiently Numerous and Ascertainable**

25 First, the class is both sufficiently numerous, consisting of approximately 76 individuals,
26 and ascertainable by reference to Defendant's personnel and payroll records. (Serb Decl., ¶ 45.)
27 "There is no set number required to maintain a class action, and the statutory test is whether a
28 class is so numerous that 'it is impracticable to bring them all before the court.'" *Hebbard v.*

1 *Colgrove* (1972) 28 Cal. App. 3d 1017, 1030 (noting that there is no set minimum to meet the
2 numerosity prerequisite, but that a class of as few as 28 is acceptable); *Bowles v. Superior Court*
3 (1995) 44 Cal. 2d 574 (upholding a class of ten members); *Rose v. City of Hayward* (1981) 126
4 Cal. App. 3d 926, 932 (finding that “Class Members are ‘ascertainable’ where they may be
5 readily identified without unreasonable expense or time by reference to official records.”). Thus,
6 the ascertainability requirement is met.

7 **2. The Typicality and Adequacy Requirements Are Met**

8 The typicality requirement is met if the claims of the named representative are typical of
9 those of the Class, though, “they need not be substantially identical.” *Classen v. Weller* (1983)
10 145 Cal.App.3d 27, 46-47. Here, Plaintiff’s claims are typical of the Class Members’ claims as
11 they arise from the same factual basis and are based on the same legal theories applicable to the
12 Class Members. Plaintiff further contends Defendant’s policies applied to all Class Members and
13 each Class Member is challenging the same policies and practices. As such, the typicality
14 requirement is satisfied for purposes of settlement. (Kwon Decl., ¶¶ 2-3; Serb Decl. ¶ 46.)

15 Adequacy requires that the Plaintiff have no interests adverse to the interests of the
16 proposed Class Members and be committed to vigorously prosecuting the case on behalf of the
17 Class. *McGhee v. Bank of America* (1976) 70 Cal.App.3d 442, 450-51. Plaintiff has been and will
18 continue to be committed to vigorously prosecuting this case, and she has no conflicts of interest
19 with the Class. (Kwon Decl., ¶¶ 3-7; Serb Decl., ¶ 46.)

20 **3. The Commonality Requirement is Met**

21 Next, common questions of law and fact predominate – particularly for purposes of a
22 settlement class – as the Class Members all were subject to the same policies that allegedly
23 misclassified them as exempt employees and resulting the failure to receive all wages due, failure
24 to receive required meal and rest breaks, etc. Since the focus of the claims against Defendant
25 concerns the legality of common policies applied uniformly to the entire class, common issues
26 predominate over individualized inquiries concerning liability. For instance, Defendant’s
27 decision to classify class members as exempt and pay them a base salary regardless of hours
28 worked is company-wide policy applied equally and consistently to all class members, and this

1 policy is either compliant with California law or it is not. Regardless of that determination, it will
2 decide liability for all class members one way or another. [Serb Decl., ¶ 47.]

3 By now it is well-settled a theory of recovery asserting the existence of a uniform policy
4 violating California law is sufficient to satisfy the requirements for class certification. Jones v.
5 Farmers Ins. Exch. (2013) 221 Cal.App.4th 986, 996 (“Claims alleging that a uniform policy
6 consistently applied to a group of employees is in violation of the wage and hour laws are of the
7 sort routinely, and properly, found suitable for class treatment”); Williams v. Superior Court
8 (2013) 221 Cal.App.4th 1353 (“A company-wide practice can sustain a common question of fact
9 or law that supports commonality for class certification”). Lastly, a class action is superior to
10 other means for the fair and efficient adjudication of this controversy. (Serb Decl., ¶ 48.)

11 **G. ILYM Should be Appointed as the Settlement Administrator**

12 The Parties agreed to use ILYM Group, Inc. as the Settlement Administrator in this
13 matter. (Agreement, § 7.1.) ILYM is highly qualified and experienced as a settlement
14 administrator, committed to the security of data (having experienced no data breaches at all),
15 carries insurance for the theft of money or data, and has no relationship with Counsel.
16 (Declaration of Lisa Mullins, ¶¶ 2-10; Exhs. A-C; Serb Decl., ¶ 49.)

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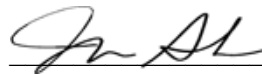
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1 **V. CONCLUSION**

2 Plaintiff respectfully submits that the proposed settlement is in the best interests of the
3 Class Members, as it is fair, adequate, and reasonable. Plaintiff accordingly requests the Court
4 certify the class for settlement purposes, appoint Plaintiff as Class Representatives, appoint
5 Plaintiff's Counsel as Class Counsel, appoint ILYM Group, Inc. as Settlement Administrator,
6 approve the method of notice and the Notice to be sent to the Class, preliminarily approve the
7 Settlement Agreement, enter the proposed order filed herewith, and set a Final Approval hearing
8 date.

9 Dated: February 6, 2024

CROSNER LEGAL, P.C.

10
11 

12 _____
13 Jamie K. Serb
14 Michael Jones
15 Zachary M. Crosner
16 Attorneys for Plaintiff JIHYUN KWON