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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

LETICIA RICO, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

BOYD SPECIALTIES LLC, a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No. CIVSB2523082

*[Assigned for All Purposes to the Hon.
Michael A. Dauber, Dept. S35]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: January 26, 2027
Time: 8:30 a.m.
Dept.: S35

Complaint Filed: August 11, 2025
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
3 on January 26, 2027 at 8:30 a.m. in Department S35 of the Superior Court of the State of
4 California, County of San Bernardino, located at 247 West Third Street, San Bernardino,
5 California 92415, Plaintiff Leticia Rico (“Plaintiff”), as an individual and on behalf of a class of
6 similarly situated individuals, will and hereby does move this Court for:

- 7 1. Preliminary approval of the proposed class settlement of this lawsuit;
- 8 2. Pursuant to section 382 of the California Code of Civil Procedure, provisional
9 certification of the following Settlement Class defined as follows:
10 All current and former non-exempt employees employed by Defendant
11 Boyd Specialties, LLC in California during the period of January 1, 2024
12 through June 16, 2026 (“Class Period”).
- 13 3. Preliminary appointment of Plaintiff Leticia Rico as Class Representative;
- 14 4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Kristopher N.
15 Tayyeb of Haines Law Group, APC as Class Counsel;
- 16 5. The scheduling of a hearing to consider whether the Settlement should be finally
17 approved and to permit a Class Representative Service Award to Plaintiff, civil
18 penalties payable to the Labor & Workforce Development Agency (“LWDA”),
19 settlement administration costs, and attorneys’ fees and costs to Class Counsel;
- 20 6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for
21 mailing notices; and
- 22 7. Approval of the proposed Class Notice and an order that is to be disseminated to the
23 Settlement Class as provided in the Settlement.

24 This Motion is based on this Notice of Motion; the attached Memorandum of Points and
25 Authorities; the supporting declarations of Paul K. Haines, Sean M. Blakely, Kristopher N.
26 Tayyeb, Plaintiff Leticia Rico, and Anthony Rogers of ILYM Group, Inc., and the exhibits
27 attached thereto; the pleadings, and other papers filed in this Action; and on any further oral or
28 documentary evidence or argument presented at the time of the hearing. Given the multiplicity of
issues addressed herein, Plaintiff’s memorandum of points and authorities necessitates exceeding

1 the 20-page limit set forth in California Rule of Court 3.764(c)(2). As this Motion is unopposed,
2 Plaintiff respectfully requests that the Court consider the entire Motion, which is 23 pages in
3 length.

4
5 Dated: September 29, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

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8 By: 
9 Paul K. Haines
Sean M. Blakely
10 Kristopher N. Tayyeb
Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Leticia Rico (hereinafter “Plaintiff”) brought this class and representative action
4 for various wage and hour violations on behalf of current and former non-exempt employees who
5 worked for Defendant Boyd Specialties, LLC (“Boyd”) in California from January 1, 2024
6 through June 16, 2026 (the “Class Period”). Plaintiff’s primary allegations are that Boyd failed to
7 pay all overtime wages due to its regular rate miscalculations, failed to provide all legally
8 compliant meal periods, failed to authorize and permit all required rest periods, and failed to
9 reimburse for all necessary business expenditures. As a result of these alleged violations, Plaintiff
10 also brought derivative claims for Boyd’s alleged failure to issue accurate and compliant wage
11 statements, its failure to pay all final wages owed, and for civil penalties under the Private
12 Attorneys’ General Act (“PAGA”).¹

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,² in which Boyd has agreed to pay Two
15 Hundred Thirty-Five Thousand Dollars and Zero Cents (\$235,000.00) to the following Settlement
16 Class:

17 All current and former non-exempt employees employed by Defendant
18 Boyd Specialties, LLC in California during the period of January 1, 2024
through June 16, 2026 (“Class Period”).

19 If the Settlement is approved, Boyd will pay a non-reversionary Gross Settlement Amount
20 of \$235,000.00. After deducting administration costs, Plaintiff’s requested Class Representative
21

22 ¹ The operative First Amended Class and Representative Action Complaint (“FAC”) pleads the
23 following causes of action: (1) failure to pay all overtime wages; (2) meal period violations; (3)
24 rest period violations; (4) failure to reimburse for all necessary business expenditures; (5) wage
25 statement violations; (6) waiting time penalties; (7) unfair competition in violation of Cal.
Business & Professions Code § 17200, *et seq.*; and (8) civil penalties under the Private Attorneys
General Act, Cal. Labor Code § 2698 *et seq.* (“PAGA”).

26 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
27 as **Exhibit 1**. The proposed Notice of Pendency of Class Action and Proposed Settlement and
28 Notice of Estimated Individual Settlement Award (collectively “Notice Packet”) are attached to
the Settlement as **Exhibits A and B**, respectively. All defined terms in this motion have the same
definition as that in the Settlement.

1 Service Award, the amount set aside as PAGA civil penalties, and requested attorneys’ fees and
2 costs, the Net Settlement Amount of approximately \$89,750.00 will be distributed to all
3 Settlement Class members who do not opt out of the Settlement based on the proportionate
4 number of workweeks worked by each Settlement Class member during the Class Period.
5 Additionally, all non-exempt employees who worked for Boyd in California from August 11,
6 2024 to June 16, 2026 (the “PAGA Period”) will also receive a portion of their 35% share of the
7 \$15,000.00 designated as PAGA Penalties based on the proportionate number of pay periods
8 worked during the PAGA Period.

9 Significantly, Settlement Class members do not need to file a claim to reap the financial
10 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
11 unless they affirmatively opt out. There are approximately 77 Settlement Class members, and the
12 average payment to participating Settlement Class members is projected to be approximately
13 \$1,165.58, an excellent result for the Settlement Class.

14 The proposed Settlement is well within the range of possible approval in light of the
15 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
16 and the tangible monetary benefits to be received by Plaintiff and the Settlement Class. For the
17 reasons discussed herein, Plaintiff respectfully requests that this Court grant preliminary approval
18 of the Settlement.

19 **II. SUMMARY OF THE LITIGATION**

20 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

21 Boyd is in the business of manufacturing beef jerky products. *See* Declaration of Sean M.
22 Blakely (“Blakely Decl.”), ¶ 8. Plaintiff was employed by Boyd as a non-exempt Labeler in the
23 packing department of its San Bernardino facility from approximately August 2022 until
24 approximately January 17, 2025. *See* Declaration of Plaintiff Leticia Rico (“Rico Decl.”), ¶ 2.

25 On August 11, 2025, Plaintiff filed this class action asserting causes of action for failure
26 to: (1) pay all overtime wages; (2) provide compliant meal periods; (3) authorize and permit
27 compliant rest periods; (4) reimburse for all necessary business expenditures; (5) provide accurate
28 itemized wage statements; (6) timely pay all final wages; and (7) refrain from unfair competition

1 in violation of California Business & Professions Code ¶ 17200, *et seq.* Blakely Decl., ¶ 9. On
2 August 11, 2025, Plaintiff also sent her PAGA notification letter to the LWDA. *Id.*; Exhibit 2
3 (Rico LWDA Letter). Subsequently, on October 16, 2025, Plaintiff filed her operative First
4 Amended Class and Representative Action Complaint (“FAC”) adding a cause of action for civil
5 penalties under the PAGA. *Id.*, at ¶ 9.

6 **B. PLAINTIFF’S CLAIMS AND BOYD’S DEFENSES**

7 **1. Arbitration Agreements**

8 As an initial matter, Boyd asserts that nearly all Settlement Class members signed valid
9 and enforceable arbitration agreements with class action waivers. Blakely Decl., ¶ 14. Setting
10 aside any arguments as to the merits of Plaintiff’s claims, Boyd contends that absent settlement,
11 a class-wide recovery was not possible and that only PAGA civil penalties could potentially be
12 recovered on behalf of a subset of the Settlement Class members. *Id.* As such, Boyd contends that
13 absent its agreement to not raise the arbitration agreements as an affirmative defense, any
14 recovery to the Settlement Class members through a representative action would be limited to
15 only the employees’ potential 35% share of PAGA civil penalties. *Id.*

16 **2. Unpaid Overtime Wages Due to Regular Rate Miscalculations**

17 Plaintiff contends that Boyd systematically underpaid overtime wages to Settlement Class
18 members through the miscalculation of Settlement Class members’ regular rates of pay for
19 overtime purposes. Blakely Decl., ¶ 15. Plaintiff contends that Boyd failed to include the value
20 of non-discretionary bonuses that Settlement Class members earned when calculating their
21 regular rates of pay for overtime purposes, resulting in Boyd’s failure to compensate Settlement
22 Class members for all overtime wages earned. *Id.*

23 Boyd counters that it properly calculated Settlement Class members’ regular rates of pay
24 for overtime purposes and paid all overtime wages owed to Settlement Class members. Blakely
25 Decl., ¶ 15. Boyd further argues that Settlement Class members received different types of
26 bonuses throughout the Class Period, creating substantive differences among Settlement Class
27 members with respect to the incentives received, making class certification unlikely. *Id.*

28 ///

1 **3. Meal Period Claims**

2 Plaintiff alleges that Boyd failed to provide legally compliant first meal periods such that
3 first meal periods were regularly late and/or less than 30-minutes, as well as failed to provide
4 compliant second meal periods for shifts over 10.0 hours. Blakely Decl., ¶ 16. Plaintiff alleges
5 that Boyd only permitted Settlement Class members to take meal periods once they had been
6 dismissed by their department supervisors, who routinely did so after the fifth hour of work, and
7 who often entirely failed to do so for second meal periods when employees worked shifts of longer
8 than 10.0 hours. *Id.* Plaintiff also contends that Settlement Class members were not provided with
9 a full “net” 30 minutes of uninterrupted meal period time because Boyd’s supervisors required
10 employees to be back at their workstations ready to work within 30 minutes of being dismissed
11 for their meal periods, but within that time, employees had to doff and don their personal
12 protective equipment (“PPE”), walk several minutes to and from Boyd’s electronic timeclock,
13 and line up with other employees to use it – all unlawfully cutting short employees’ meal periods.
14 *Id.*

15 Boyd argues that it maintained compliant written meal period policies throughout the
16 Class Period and provided compliant meal periods in line with those policies. Blakely Decl., ¶ 16.
17 Boyd further argues that it provided employees the opportunity to take meal periods and is not
18 required to *ensure* they are taken. *Id.*; *see Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034
19 (2012) (rejecting “ensure” standard). Thus, Boyd argues that any missed, late or short meal
20 periods resulted from lawful employee waiver or choice rather than any policy and/or practice of
21 Boyd. Blakely Decl., ¶ 16. With respect to second meal periods, Boyd argues that Settlement
22 Class members lawfully waived second meal periods on shifts of 10.0 – 12.0 hours in duration,
23 as they are permitted to do pursuant to Labor Code § 512(a). *Id.* Finally, Boyd argues that these
24 claims are not suited for class treatment, as individual inquiries would be needed to assess which
25 employees took non-compliant meal periods or missed meal periods, how many meal periods
26 were non-compliant or missed, whether there was a valid waiver, and the reasons why a particular
27 employee did not take a compliant meal period on a particular shift. *Id.*

28 ///

1 **4. Rest Period Claims**

2 Plaintiff alleges that Boyd’s policies/practices entirely failed to provide for legally
3 compliant off-duty rest periods with the 10 minutes of “net rest time per four (4) hours or major
4 fraction thereof” that Wage Order 1, section 12(A), requires. Blakely Decl., ¶ 17. Specifically,
5 Plaintiff alleges that, as with Settlement Class members’ meal periods, Boyd did not authorize
6 and permit employees to leave their workstations for rest periods unless dismissed by their
7 department supervisors, and supervisors strictly required employees to return to their work
8 stations within 10 minute of being dismissed. *Id.* As a result, Plaintiff alleges Settlement Class
9 members did not receive a full 10 minutes of “net” rest because they had to doff and don their
10 PPE and walk between their workstations and Boyd’s break room, which took several minutes at
11 the beginning and end of their rest periods. *Id.*

12 Boyd counters that it maintained and enforced lawful rest period policies/practices
13 throughout the Class Period, and has, in fact, authorized and permitted all required rest periods to
14 Settlement Class members. Blakely Decl., ¶ 17. Furthermore, Boyd argues that Plaintiff’s rest
15 period claim is not amenable to class treatment, since individual inquiries would be required to
16 determine which employees failed to take rest periods, how many rest periods they failed to take,
17 and the reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These
18 manageability concerns are especially pertinent with respect to rest period claims, Boyd argues,
19 given that rest periods are not recorded. *Id.*

20 **5. Failure to Reimburse For Necessary Business Expenses**

21 Plaintiff alleges that she and other employees were required to use their personal cellular
22 phones for work-related purposes, but were not reimbursed for these necessary business expenses
23 in violation of California Labor Code §§ 2802 and 2804. Blakely Decl., ¶ 18. In response, Boyd
24 argues that employees were not required to use their personal cell phones in the discharge of their
25 work duties. *Id.* Boyd further contends that this claim would require individual inquiries into
26 whether Settlement Class members actually used their personal cellular phones for work
27 purposes, how much expense they incurred, whether they submitted a request for reimbursement,
28 and the reasonableness of that expense, thus precluding class certification. *Id.*; *see also, e.g.,*

1 *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) (“In calculating the
2 reimbursement amount due under section 2802, the employer may consider not only the actual
3 expenses that the employee incurred, but also whether each of those expenses was ‘necessary,’
4 which in turn depends on the reasonableness of the employee’s choices”).

5 **6. Wage Statement Claims**

6 As a result of the unpaid wages and unpaid meal and rest period premium wages described
7 above, Plaintiff alleges that Boyd is liable for wage statement penalties pursuant to Labor Code §
8 226. Blakely Decl., ¶ 19. Boyd argues any alleged wage statement violations were not “knowing
9 and intentional,” and Plaintiff cannot show that she or other employees “suffer[ed] injury” due to
10 the alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
11 penalties. Blakely Decl., ¶ 19. Further, Boyd contends its wage statements always accurately
12 reflected hours worked and amounts paid as well as all other required information, precluding
13 liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th
14 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were
15 accurate in that they correctly reflected the hours worked and the pay received...The purpose of
16 section 226 is to *document the paid wages* to ensure the employee is fully informed regarding the
17 calculation of those wages.”) (Italics in original). Blakely Decl., ¶ 19.

18 **7. Waiting Time Penalties**

19 As a further result of the unpaid wages and unpaid meal and rest period premium wages
20 described above, Plaintiff alleges that Boyd failed to comply with its final pay obligations set
21 forth in Labor Code §§ 201-203. Blakely Decl., ¶ 20.

22 Boyd argues that it possesses strong, good-faith defenses to Plaintiff’s underlying claims,
23 thus precluding recovery of waiting time penalties, which are only available for the “willful”
24 failure to pay wages. Blakely Decl., ¶ 20; see *also* 8 Cal. Code Regs. § 13520 (“[A] good faith
25 dispute that any wages are due will preclude imposition of waiting time penalties under Section
26 203 . . . A ‘good faith’ dispute that any wages are due occurs when an employer presents a defense,
27 based in law or fact which, if successful, would preclude any recovery on the part of the
28 employee”). Boyd further asserts that Plaintiff’s waiting time penalty exposure was grossly

1 inflated as not every former employee experienced the alleged Labor Code violations. Blakely
2 Decl., ¶ 20.

3 **8. PAGA Civil Penalties**

4 As a result of the foregoing Labor Code violations, Plaintiff alleges that Boyd is liable for
5 civil penalties under the PAGA. Blakely Decl., ¶ 21. Since Plaintiff's PAGA claim is derivative
6 of Plaintiff's underlying wage claims, Boyd asserts the PAGA claim would fail with those claims.
7 *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) ("Because the underlying
8 causes of action fail, the derivative UCL and PAGA claims also fail."). Boyd further maintains
9 that, given its good-faith defenses, this Court would exercise its discretion to substantially reduce
10 any PAGA penalties if it were to find Boyd liable for any of Plaintiff's claims. Blakely Decl., ¶
11 21; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt., Inc.* 203 Cal.App.4th 1112,
12 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.*, Case No. ED
13 CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties
14 by over 82% in part because employer "not aware" of violations); *Carrington v. Starbucks Corp.*,
15 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty of just \$5 per pay period where
16 employer made "good faith attempts" to comply with the law).

17 **C. DISCOVERY AND MEDIATION**

18 In connection with mediation, the Parties engaged in extensive informal discovery.
19 Blakely Decl., ¶ 10. Boyd provided Plaintiff with timekeeping and payroll records for a sampling
20 of Settlement Class members. *Id.* Boyd also provided Plaintiff's personnel file, timesheets, wage
21 statements, as well as its written policies. *Id.* Boyd also provided a number of relevant data points,
22 including the total number of putative class members (as well as the size of the putative waiting
23 time and wage statement classes), the putative class members' average hourly rate of pay, the
24 number of aggregate workweeks worked by putative class members during the Class Period, the
25 size of the putative PAGA group, and the number of aggregate pay periods worked during the
26 PAGA/wage statement period. *Id.* Plaintiff retained an expert to conduct a comprehensive
27 analysis and extrapolation of the data produced by Boyd to calculate Boyd's potential classwide
28 exposure for each of Plaintiff's claims. *Id.* This discovery allowed the Parties to assess the merits

and value of Plaintiff's claims, the chances of certification of Plaintiff's claims, and Boyd's potential defenses. *Id.*

On June 16, 2026, the Parties participated in a full-day mediation with Jason Marsili, Esq., a well-respected wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* At the conclusion of mediation, Mr. Marsili issued a mediator's proposal for a class-wide settlement, which was ultimately accepted by both sides. *Id.* During the months that followed, the Parties finalized the terms of the Settlement and executed the long-form Settlement now before the court. *Id.*

III. THE PROPOSED SETTLEMENT

A. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court preliminarily approves the Settlement, Boyd will pay a Gross Settlement Amount of \$235,000.00. *See* Settlement, ¶ 3. Significantly, this Settlement is non-reversionary, and no Settlement Class member will have to submit a claim form to receive an Individual Settlement Award. *Id.*, at ¶ 4. Each Settlement Class member will automatically receive an Individual Settlement Award unless they affirmatively opt out of the Settlement. *Id.* The monetary terms of the Settlement are summarized below:

• Gross Settlement Amount:	\$235,000.00
• Minus Court-approved attorneys' fees:	\$82,250.00
• Minus Court-approved verified costs (up to):	\$30,000.00
• Minus Court-approved Service Award:	\$10,000.00
• Minus amount set aside as PAGA penalties:	\$15,000.00
• <u>Minus estimated settlement administration costs:</u>	<u>\$8,000.00</u>
Net Settlement Amount:	\$89,750.00
• Plus 35% "PAGA Amount" to Settlement Class:	\$5,250.00
Total Amount Paid to Settlement Class members:	\$95,000.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Service Award to Plaintiff, the amount set aside as PAGA civil penalties, and settlement administration costs, the Settlement requires Boyd to pay a Net Settlement Amount of at least \$89,750.00 to all Settlement Class members who do not timely opt-out. *See* Settlement, ¶

4(A). The Net Settlement Amount shall be distributed to participating Settlement Class members based on each participating Settlement Class member's proportionate workweeks worked during the Class Period. *See* Settlement, ¶ 4(B)(i). For tax purposes, each Individual Settlement Award will be allocated as 20% wages (W-2) and 80% penalties and interest (1099). *Id.*, ¶ 4(D). Further, employer-side payroll taxes shall be paid by Boyd separately and in addition to the Gross Settlement Amount. *Id.*, ¶ 3(E).

In addition to the Net Settlement Amount, each Aggrieved Employee who was employed by Boyd at any time during the PAGA Period (including those who submit a valid and timely Request for Exclusion from the class action settlement) shall receive a share of 35% of the portion of the Gross Settlement Amount that has been designated as the "PAGA Penalties" (i.e., \$5,250.00) proportionate to the number of pay periods worked during the PAGA Period. Settlement, at ¶¶ 3(C)(5), 4(B)(iv). Aggrieved Employees assume full responsibility for and liability for any taxes owed on their Individual PAGA Payments, which will be reported on IRS 1099 Forms. *Id.*, at ¶ 4(D).

According to Boyd, there are approximately 77 Settlement Class members. Blakely Decl., ¶ 13. Therefore, the average Individual Settlement Payment from the Net Settlement Amount is projected to be approximately \$1,165.58. *Id.* There are also approximately 63 Aggrieved Employees employed during the PAGA Period who will each receive an average of approximately \$83.33 from the PAGA Amount. *Id.*

Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packet to opt out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 9(C), 9(D). Those Settlement Class members who do not opt out of the Settlement will be bound by its terms and will release all claims against Boyd included within the Settlement. *See Id.*, at ¶ 2(A).

2. Attorneys' Fees and Costs, Service Award, and PAGA Payment

Plaintiff will apply for a Class Representative Service Award at the time of seeking final approval of the proposed class action settlement in the amount of \$10,000.00 for her service to the Settlement Class. *See* Settlement, ¶¶ 3(C)(3), 6; Blakely Decl., ¶ 25. "[I]ncentive Payments

1 are fairly typical in class action cases . . . and are intended to compensate class representatives for
2 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
3 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
4 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Service Award
5 is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class,
6 including providing substantial factual information and documents to Class Counsel, discussing
7 the claims and theories at issue in the litigation, actively participating in the prosecution of her
8 claims, as well as the significant risks Plaintiff undertook by agreeing to serve as the named
9 plaintiff in this case. *See* Blakely Decl., ¶ 25; *see also* Rico Decl., ¶¶ 4-5.

10 Class Counsel will also apply for an attorneys’ fees award of thirty-five percent (35%) of
11 the Gross Settlement Amount, which is currently estimated to be \$82,250.00, and up to
12 \$30,000.00 in verified costs reimbursement. *See* Settlement, ¶¶ 3(C)(4), 5; Blakely Decl., ¶ 24.
13 Plaintiff submits that the requested fee is fair compensation for undertaking a complex, risky,
14 expensive, and time-consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 24.
15 Class Counsel has incurred substantial attorneys’ fees conducting pre-filing investigation,
16 analyzing Plaintiff’s claims, conducting legal research, conducting extensive informal discovery,
17 analyzing Settlement Class members’ records, working with Plaintiff’s retained expert to create
18 a comprehensive damages model, preparing for and attending mediation, negotiating and
19 preparing the long-form Settlement, preparing this Motion, and otherwise litigating the case. *Id.*
20 Class Counsel expects to expend additional attorney time in attending the hearing on this Motion,
21 overseeing the Notice process and fielding questions from Settlement Class members, preparing
22 the Final Approval papers, and attending the Final Approval hearing. *Id.*

23 California courts recognize that an appropriate method for awarding attorneys’ fees in
24 class actions is to award a percentage of the “common fund” created as a result of a settlement.
25 *See, e.g., Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding “the percentage of
26 fund method survives in California class action cases”). Class Counsel’s request for fees of thirty-
27 five percent (35%) of the Gross Settlement Amount is well within the range of reasonableness
28 and indeed is considered the typical rate for common fund settlements. Historically, courts have

1 awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case.
2 *See* 4 Newberg on Class Actions ¶ 14.6 (4th Ed. 2013).

3 Class Counsel submit that their request for attorneys' fees is reasonable when viewed as
4 an overall percentage of the Settlement and in light of the substantial risks and significant work
5 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
6 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees
7 and verified costs upon seeking final approval.

8 Additionally, the parties have agreed to designate \$15,000.00 of the Gross Settlement
9 Amount as PAGA civil penalties, of which \$9,750.00 (65%) will be paid to the LWDA, with the
10 remaining \$5,250.00 (35%) for distribution to the Aggrieved Employees, as the PAGA requires
11 such penalties to be allocated per Labor Code § 2699(m). *See* Settlement, ¶ 3(C)(5). Plaintiff
12 submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v.*
13 *Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal.
14 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
15 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
16 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
17 settlement).

18 **IV. ARGUMENT**

19 **A. PRELIMINARY APPROVAL IS WARRANTED**

20 California Rule of Court 3.769 conditions settlement of a class action on court approval,
21 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
22 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
23 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and
24 adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
25 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair,
26 adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly
27 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
28 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the

1 agreement taken as a whole is fair. *See e.g., Hanlon, supra*, 150 F.3d at 1027. There is an initial
2 presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class
3 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
4 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

5 **1. Standard for Preliminary Approval**

6 To make a fairness determination, the Court should consider several factors, including:
7 "the strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further
8 litigation, the risk of maintaining class action status through trial, the amount offered in
9 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
10 experience and views of counsel." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
11 "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
12 of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.*,
13 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
14 reasonable in light of the overall balance of factors in this case.

15 **a. The Strength of Plaintiff's Case**

16 Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff
17 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
18 described above, Boyd presented multiple defenses to Plaintiff's claims, both on the merits and
19 with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims
20 through class certification and ultimately trial, success was far from certain.

21 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

22 Although the Parties engaged in significant informal discovery prior to mediation, the
23 Parties still had significant formal discovery to complete had the matter not been settled. Blakely
24 Decl., ¶ 23. This would have required the expenditure of substantial time and resources by both
25 Parties that would have very likely spanned several years. *Id.* Even if Plaintiff were to certify the
26 proposed classes, the Parties would incur considerably more attorneys' fees and costs through a
27 possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks
28 and the accompanying expense. *Id.*

1 **c. Risk of Maintaining Class Action Status**

2 Plaintiff has not yet filed her motion for class certification, and as such, the extent to which
3 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
4 was a risk that there would not be a certified class at the time of trial, or if there were, it would
5 consist of a significantly smaller group of employees than the proposed Settlement Class (either
6 due to a narrowing of the class definition in a Court order on a contested motion for class
7 certification, or through individual settlements entered into by Boyd with class members by way
8 of *Pick Up Stix* type settlement agreements³), and the expected recovery could be significantly
9 reduced, given the settlement amounts that are typically offered through the *Pick Up Stix* process.
10 Thus, this factor, too, supports preliminary approval of the settlement.

11 **d. Amount Offered in Settlement Given Realistic Value of Claims**

12 The Settlement provides a positive recovery for the Settlement Class in the face of
13 disputed claims. Plaintiff conducted a detailed analysis of alleged unpaid overtime wages, meal
14 and rest period premium payments owing, unreimbursed business expenses, wage statement
15 penalties, waiting time penalties, and PAGA civil penalties. A summary of the results of
16 Plaintiff's exposure analysis is discussed below:

17 Unpaid Wages Due to Regular Rate Miscalculations: \$1,783

18 Plaintiff alleges Boyd underpaid Settlement Class members by failing to include the value
19 of non-discretionary incentive pay when calculating their regular rates for overtime purposes.
20 Blakely Decl., ¶ 15. Plaintiff's retained expert analyzed and extrapolated Boyd's payroll records
21 and estimated that Settlement Class members were underpaid by approximately \$2,468 due to
22 regular rate miscalculations for overtime purposes. *Id.*

23 As noted above, however, Boyd contends that it properly calculated Settlement Class
24 members' regular rates of pay for overtime purposes, and paid all overtime wages to Settlement
25

26 ³ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
27 employer may enter into pre-certification settlement agreements with individual putative class
28 members in which the putative class members release claims for past unpaid wages and penalties
in exchange for consideration. The Court further held that such settlements could preclude those
individual employees from recovery in class action litigation against the employer for the same
wage claims.

1 Class members. Blakely Decl., ¶ 15. In light of Boyd’s arguments and defenses, Plaintiff
2 discounted the maximum recovery on this claim by 15% to account for the risk of non-
3 certification and an additional 15% to account for being unsuccessful on the merits or failure to
4 recover the full amount sought, for a projected total of approximately \$1,783. *Id.*

5 **Meal Period Violations: \$73,545**

6 Plaintiff estimated that she and other non-exempt employees were provided with non-
7 compliant first meal periods on approximately 53% of all shifts over 6.0 hours during the Class
8 Period. Blakely Decl., ¶ 16. Therefore, Plaintiff calculated Boyd’s maximum exposure for meal
9 period violations at approximately \$294,182 (15,370 non-compliant first meal periods * \$19.14
10 average meal period premium). *Id.*

11 However, as noted above, Boyd contends that it provided compliant first meal periods
12 throughout the Class Period, and argues that under *Brinker* it is only required to “provide” the
13 opportunity to take meal periods, not “ensure” meal periods are taken, and any non-complaint
14 meal periods were the result of lawful employee waiver or choice. Blakely Decl., ¶ 16. Boyd also
15 maintains that the meal period claim is not suited for class certification, since individual inquiries
16 would be needed to assess which employees took non-compliant meal periods or missed meal
17 periods, how many meal periods were non-compliant or missed, and the reasons why a particular
18 employee did not take a compliant meal period on a particular shift. *Id.* In light of these defenses
19 and arguments, Plaintiff discounted Boyd’s maximum exposure by 50% for the risk of non-
20 certification, and an additional 50% to account for Boyd’s defenses on the merits or failing to
21 recover the full amount sought, to arrive at an estimated total of approximately \$73,545. *Id.*

22 **Rest Period Violations: \$99,910**

23 Plaintiff contends that she and other non-exempt employees were not authorized or
24 permitted to take legally-compliant rest periods during the Class Period. Blakely Decl., ¶ 17. As
25 such, Plaintiff calculates Boyd’s maximum exposure for rest period violations at approximately
26 \$555,060 (approximately 29,000 shifts * \$19.14 average rest period premium). *Id.*

27 However, Boyd contends that it has always authorized and permitted employees a 10-
28 minute rest period for every four hours worked, or major fraction thereof, and that any failure to

1 take rest periods was as a result of employee choice, rather than any Boyd policy and/or practice.
2 Blakely Decl., ¶ 17. Boyd further argues that Plaintiff's rest period claim is not amenable to class
3 treatment, since individual inquiries would be required to determine which employees failed to
4 take rest periods, how many rest periods they failed to take, and the reasons why each employee
5 failed to take rest period(s) on a particular shift. *Id.* These manageability concerns are especially
6 present with respect to rest period claims, Boyd argues, given that rest periods are not recorded.
7 *Id.* Given these defenses, Plaintiff discounted this maximum amount by 60% for risk of non-
8 certification, and an additional 55% for the risk of being unsuccessful on the merits or of failing
9 to recover the full amount sought, to arrive at an estimated realistic exposure of approximately
10 \$99,910. *Id.*

11 Unreimbursed Business Expenses: \$5,336

12 Plaintiff alleges that Boyd failed to reimburse her and other Settlement Class members for
13 all reasonable and necessary work expenditures, including the use of personal cellular phones.
14 Blakely Decl., ¶ 18. Plaintiff calculates Boyd's maximum liability for its failure to reimburse
15 employees for usage of their personal cell phones at approximately \$33,350 (1,334 aggregate
16 months in Class Period * \$25.00 per month in expenditures). *Id.*

17 As noted above, Boyd argues that employees were not required to use their personal cell
18 phones for work purposes. Blakely Decl., ¶ 18. Boyd further argues that this claim would require
19 individual inquiries into whether Settlement Class members actually used their personal cellular
20 phones for work purposes, how much expense they incurred, whether they submitted a request
21 for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.*
22 Based on these defenses, Plaintiff discounted the estimated maximum amount by 60% for risk of
23 non-certification, and by an additional 60% to account for risk of losing on the merits or failure
24 to recover the maximal amount sought, to arrive at an estimated exposure of approximately
25 \$5,336. *Id.*

26 Wage Statement Penalties: \$32,568

27 Plaintiff alleges that Boyd is liable for wage statement penalties as a result of the unpaid
28 wages and unpaid meal and rest period premiums. Blakely Decl., ¶ 19. Those penalties are

1 calculated as \$50 for each “initial” violation and \$100 for each “subsequent” violation, with a
2 maximum of \$4,000 per employee. *Id.*; see Labor Code § 226(e). Plaintiff’s analysis reflected
3 that there were approximately 63 unique employees and approximately 2,067 pay periods worked
4 during the liability period applicable to Plaintiff’s wage statement claim. *Id.* Plaintiff, therefore,
5 calculated Boyd’s maximum potential wage statement exposure at approximately \$203,550 ((63
6 employees * \$50 initial violation) + (2,004 remaining pay periods * \$100 subsequent violation)).
7 *Id.*; see also Labor Code § 226(e).

8 In light of Boyd’s arguments that no violations occurred, that employees suffered no
9 “injury,” that any alleged violations were not “knowing and intentional,” that wage statements
10 always accurately reflected hours worked and amounts paid, as well as risks associated with
11 Plaintiff’s underlying claims discussed above, Plaintiff discounted the maximum exposure by
12 60% for risk of non-certification, and by an additional 60% for risk of being unsuccessful on the
13 merits, for an estimated realistic exposure of approximately \$32,568. Blakely Decl., ¶ 19.

14 **Waiting Time Penalties: \$28,660**

15 Boyd’s records show approximately 39 Settlement Class members who are eligible for
16 waiting time penalties. Blakely Decl., ¶ 20. Based on an hourly rate of \$19.14, Plaintiff estimated
17 the average waiting time penalty per former employee to be approximately \$4,593 (\$19.14 * 8
18 hours per day * 30 days). *Id.* Therefore, Plaintiff calculated Boyd’s maximum exposure for
19 potential waiting time penalties to be approximately \$179,127 (39 former employees * \$4,593
20 average penalty). *Id.*

21 However, Boyd presented several defenses to this claim, most notably their assertion that
22 because they possessed good-faith defenses to the underlying claims, any failure to pay wages
23 was not “willful” as a matter of law. Blakely Decl., ¶ 20. Boyd further asserts that Plaintiff’s
24 waiting time penalty exposure was grossly inflated as not every former employee experienced the
25 alleged Labor Code violations. *Id.* Moreover, because the waiting time claim is derivative of
26 Plaintiff’s underlying wage claims, Plaintiff would need to overcome Boyd’s defenses, both as to
27 class certification and on the merits, as to her underlying claims. *Id.* To account for Boyd’s
28 defenses, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification and

an additional 60% for the risk of losing on the merits and/or not receiving the maximum penalties sought, to arrive at an estimated exposure of approximately \$28,660. *Id.*

PAGA Penalties: \$33,072

Plaintiff estimated a maximum total PAGA exposure of approximately \$206,700 (2,067 pay periods * \$100 “default” penalty). Blakely Decl., ¶ 21; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding “initial” violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which Boyd disputes vigorously. Blakely Decl., ¶ 21; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim’s success was determined by the merits of its underlying claims). Boyd also asserts that the Court would drastically reduce any award of PAGA penalties as “confiscatory.” Blakely Decl., ¶ 21; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff discounted the maximum figure by 60% for the risk of losing on the merits and/or not recovering a PAGA penalty for each and every pay period, and an additional 60% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure of approximately \$33,072. Blakely Decl., ¶ 21.

Using these estimated figures for each of the claims described above, Plaintiff predicted that the potential realistic recovery for the Settlement Class would be approximately \$274,874. Blakely Decl., ¶ 22. The proposed Settlement of \$235,000.00 represents approximately 85.5% of the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is appropriate since the Settlement will provide significant monetary relief to the Settlement Class, which is consistent with what Plaintiff’s counsel believes could have been recovered had the case proceeded through trial.

e. The Experience and Views of Counsel

“Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*

1 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
2 by competent, experienced counsel who possess extensive experience prosecuting and defending
3 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
4 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines (“Haines
5 Decl.”), ¶¶ 2-8; Declaration of Kristopher N. Tayyeb (“Tayyeb Decl.”) ¶¶ 2-5. Class Counsel
6 conducted an in-depth review of Boyd’s timekeeping and payroll records with the help of their
7 retained expert, and drew on their extensive experience in similar cases to assess the strengths
8 and weaknesses of Plaintiff’s case. *See* Blakely Decl., ¶¶ 14-22. The Settlement was also reached
9 with the assistance of an experienced and respected wage-and-hour class action mediator. *Id.*, at
10 ¶ 11. This factor strongly supports preliminary approval of the Settlement. *See Kullar, supra*, 168
11 Cal.App.4th at 130.

12 **2. The Preliminary Approval Standard Is Met**

13 At this stage, the Court can grant preliminary approval of the Settlement and direct that
14 notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2)
15 appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no
16 obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on
17 Class Actions § 11:24-25 (4th Ed. 2013).

18 **a. The Settlement Is Within the Range of Possible Approval**

19 The proposed Settlement reflects approximately 85.5% of the estimated recovery the
20 Settlement Class could reasonably expect in light of the significant litigation risks and will
21 provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the
22 percentage of the liability exposure recovered in this case far exceeds percentages routinely
23 approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL
24 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential
25 damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
26 representing about one-sixth of potential recovery); *Nat’l Rural Telecomm. Coop. v. DirecTV,*
27 *Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may
28 be acceptable even though it amounts to only a fraction of the potential recovery that might be

1 available to the Settlement Class members at trial”). Further, the average Individual Settlement
2 Payment of approximately \$1,165.58 exceeds average payments achieved in other wage and hour
3 class action settlements.⁴ Thus, Plaintiff submits that the proposed settlement is within the range
4 of possible approval, such that notice should be provided to the Settlement Class members so that
5 they can consider the Settlement. The Court will have the opportunity to again assess the
6 reasonableness of the Settlement after the Settlement Class members have had the opportunity to
7 opt-out or object.

8 **b. The Settlement Resulted from Serious, Informed Negotiations**

9 The Settlement resulted from extensive informal discovery and a full-day mediation.
10 Thus, it is entitled to a presumption of fairness *See Kullar, supra*, 168 Cal.App.4th at 130. As
11 discussed above, Plaintiff carefully vetted the claims at issue, reviewed extensive data, and
12 conducted a detailed statistical analysis of the data to arrive at her estimated class-wide damages
13 figures. *See Blakely Decl.*, ¶¶ 14-22. Thus, this factor supports preliminary approval.

14 **c. The Settlement Is Devoid of Obvious Deficiencies**

15 Preliminary approval of the Settlement is also warranted because there are no obvious
16 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
17

18 ⁴ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct.
19 May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department*
20 *Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net
21 recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619
22 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco*
23 *Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery
24 of approximately \$65); *Lim v. Victoria’s Secret Stores, Inc.*, Case No. 04CC00213 (Orange
25 County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus*
26 *Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net
27 recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-
28 DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average
recovery was approximately \$60); *Schiller v. David’s Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-
SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) (“Class Members will receive an
average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted
compelling defenses to liability; Plaintiff also notes several similar actions where the gross
recoveries per class member were less than \$90...[T]he Court finds that the results achieved are
good”); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC,
2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, LWDA payment, Plaintiff’s Class Representative Service Award, and settlement administration costs are all reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of obvious deficiencies, this factor supports preliminary approval.

B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS

The Settlement Class satisfies the criteria for certification because: (1) it is sufficiently numerous; (2) common questions of law and fact predominate; (3) Plaintiff’s claims are typical; and (4) Plaintiff and her counsel will adequately represent them. Cal. Code Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is “ascertainable” where the members “may be readily identified without unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt employees who worked for Boyd in California during the Class Period. *See* Settlement, ¶ 1. Therefore, Settlement Class members can be identified from Boyd’s personnel and employment records. Boyd represents that the Settlement Class consists of approximately 77 current and former non-exempt employees. *See* Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Settlement Class members before the Court or for each Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits but rather on what types of questions, “common or individual,” are likely to arise in the Action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on, among other issues, Boyd’s uniform meal and rest period policies/practices. These types of claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

///

1 **3. The Claims of the Named Plaintiff Are Typical**

2 The typicality requirement is satisfied where class representatives have claims that are
3 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
4 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named plaintiff purchased the
5 same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical
6 of those held by the Settlement Class Members. First, Boyd employed Plaintiff as a non-exempt
7 employee during the Class Period, and Plaintiff was subject to Boyd's wage and hour policies at
8 issue in this case. *See* Rico Decl., ¶ 2. Second, Plaintiff was injured by the same challenged
9 policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiff
10 asserts that she was deprived of overtime wages and contends that she was deprived of all legally
11 compliant meal and rest periods. *Id.*, at ¶ 3. Plaintiff further asserts that she was not reimbursed
12 for all necessary business expenses, did not receive accurate and compliant wage statements and
13 did not receive all wages at the time of separation of employment. *Id.* Because Plaintiff suffered
14 the same injuries as the other members of the Settlement Class, the typicality requirement is
15 satisfied.

16 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
17 **Class**

18 The adequacy requirement examines conflicts of interest between named parties and the
19 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
20 155 Cal.App.4th 676, 697 (2007). Plaintiff and her counsel will adequately represent the
21 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
22 and Plaintiff possess claims that are in line with those of the Settlement Class. *See McGhee v.*
23 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
24 indication that Class Counsel were not qualified and the named plaintiff had no interests
25 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
26 and hour class action litigation. *See* Haines Decl., ¶¶ 2-8; Blakely Decl., ¶¶ 2-6; Tayyeb Decl., ¶¶
27 2-5.

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

2 This Court should order distribution to the Settlement Class of the proposed Class Notice
3 by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address
4 information provided by Boyd *See* Settlement, ¶ 9.A. This manner of giving notice is the “best
5 notice practicable” under the circumstances because it provides “individual notice to all members
6 who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156,
7 173 (1974). Here, Plaintiff proposes the settlement be administered by ILYM Group, Inc.
8 (“ILYM”), an experienced class action settlement administrator. *See* Declaration of Anthony
9 Rogers (“Rogers Decl.”) and attached exhibits. Class Members’ addresses will be ascertainable
10 through Boyd’s personnel and payroll records, which Boyd will provide to ILYM within ten (10)
11 business days Boyd’s receipt of the Court’s order granting preliminary approval of the Settlement.
12 *See* Settlement, ¶ 9(A). Within ten (10) business days of receipt of the Settlement Class members’
13 addresses, ILYM will run the names of all Settlement Class members through the National
14 Change of Address database to update addresses and mail the Class Notice to all Settlement Class
15 members via First Class U.S. mail. *Id.*, at ¶ 9(B). To the extent that any notices are returned,
16 ILYM will perform a “skip trace” to track any Class Member’s current mailing address. *Id.*, at ¶
17 9(F).

18 The proposed Class Notice satisfies Cal. Rule of Court 3.766(d) because it advises
19 Settlement Class members of the nature of the claims, basic contentions and denials of the parties,
20 and the key terms of the Settlement, the 60-day deadline to opt out or object to the Settlement and
21 the procedures by which to do so, explains the recovery formula and expected recovery amount
22 for each Settlement Class member, and advises them that they will be bound by the terms of the
23 Settlement if they do not opt-out. *See* Blakely Decl., Exhs. A and B to Exh. 1. The proposed Class
24 Notice will also notify Settlement Class members of the final approval hearing date and provides
25 the Settlement Class contact information for Class Counsel and advises Settlement Class members
26 that they may enter an appearance through counsel if they wish to. *Id.* This manner of giving
27 notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method
28 of reaching Settlement Class members.

1 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

2 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
3 appropriately scheduled to follow the deadline by which Settlement Class members must file
4 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

5 **V. CONCLUSION**

6 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
7 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
8 Proposed Order submitted concurrently herewith.

9
10 Dated: September 29, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

11
12 By: 
13 Paul K. Haines
14 Sean M. Blakely
15 Attorneys for Plaintiff