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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

MARK JOHN SANTOS, individually, and on behalf of other members of the general public similarly situated; SAMANTHA SANCHEZ, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiffs,

vs.

MEDZED, LLC, a Georgia limited liability company; MEDZED PHYSICIAN SERVICES, INC., a California corporation; and DOES 1 through 100, inclusive,

Defendants.

Lead Case No.: 22STCV15585
Related to Case No.: 22STCV38149

Honorable Stuart M. Rice
Department SSC-1

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Yasmin Hosseini); Declarations of Proposed Class Representatives (Mark John Santos and Samantha Sanchez); and [Proposed] Order filed concurrently herewith]

Date:	June 12, 2024
Time:	10:30 a.m.
Department:	SSC-1
Complaint Filed:	May 10, 2022
FAC Filed:	December 27, 2023
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on June 12, 2024 at 10:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Stuart M. Rice in Department SSC-1 of the Superior Court of California for the County of Los Angeles, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Mark John Santos and Samantha Sanchez ("Plaintiffs" or "Class Representatives") will, and hereby does, move for an order:

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

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

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

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

Dated: December 29, 2023 **LAWYERS *for* JUSTICE, PC**

By: ______________________
Yasmin Hosseini
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Mark John Santos and Samantha Sanchez (together, "Plaintiffs" or "Class Representatives") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants MedZed, LLC and MedZed Physician Services, Inc., (together, "Defendants"), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (collectively, the "Parties") have agreed to settle this lawsuit for a Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars and Zero Cents ($750,000.00).[1] The Gross Settlement Amount includes the following: (1) Individual Settlement Payments to Participating Class Members which will be distributed from the Net Settlement Amount[2]; (2) the Service Payments of Five Thousand Dollars ($5,000.00) each to Plaintiffs Mark John Santos and Samantha Sanchez ($10,000.00)[3]; (3) the Class Counsel Fees Payment and Class Counsel Litigation Expenses to Class Counsel, consisting of attorneys' fees in the amount of one-third (1/3) of the Gross Settlement Amount, or $250,000.00, and reimbursement of litigation costs and expenses not to exceed Twenty Thousand Dollars ($20,000.00)[4]; (4) the Administration Costs to the Administrator in the amount not to exceed Eleven Thousand Dollars ($11,000.00);[5] and (5) the amount of Eighty-Five Thousand Dollars ($85,000.00) allocated to penalties under the Private Attorneys General Act ("PAGA"), of which 75% (i.e., $63,750.00) will be distributed to the Labor and Workforce Development Agency ("LWDA") and 25% (i.e., $21,250.00) will be distributed to (a) all current and former hourly-paid or non-exempt employees employed by any of the Defendants in the State of California at any time during the PAGA Period, including, but not limited to all current and former hourly-paid or non-exempt employees who earned shift differentials or non-discretionary bonuses or non-discretionary

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[1] Settlement Agreement, attached as "**EXHIBIT 1**" to Declaration of Yasmin Hosseini ("Hosseini Decl."), § 1.20.
[2] *Id.*, § 1.22.
[3] *Id.*, § 3.2.1.
[4] *Id.*, § 3.2.2.
[5] *Id.*, § 3.2.3.

performance pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate ("PAGA Group A"); and (b) all salaried managers, or persons who held similar job titles and/or performed similar job duties, who are or previously were employed by any of the Defendants in the State of California in such positions during the PAGA Period, allegedly misclassified as exempt ("PAGA Group B") (together with PAGA Group A, "Aggrieved Employees") on a *pro rata* basis based on PAGA Pay Periods during the PAGA Period (60% to PAGA Group A, equal to $12,750, and 40% to PAGA Group B, equal to $8,500) (i.e., Individual PAGA Payment).[6]

Plaintiffs also seek to provisionally certify the following Class for settlement purposes only, which Defendant does not oppose:

> All current and former hourly-paid or non-exempt individuals who are or previously were employed by any of the Defendants in the State of California at any time during the Class Period ("Class" or "Class Members").[7]

Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement ("Participating Class Member") will receive a share of the Net Settlement Amount ("Individual Settlement Share") on a *pro rata* basis based upon the number of weeks each Class Member worked for Defendants as an hourly-paid or non-exempt employee within California during the Class Period ("Workweeks").[8]

Aggrieved Employees will receive a share of the 25% portion of the PAGA Penalties ("Individual PAGA Payment") on a pro rata basis, based on the number of pay periods each Aggrieved Employee worked for Defendants during the PAGA Period ("PAGA Pay Periods").[9]

The Settlement, if granted preliminary and final approval by the Court, will operate to resolve the Released Class Claims of Plaintiffs and Participating Class Members, and the

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[6] Settlement Agreement, § 3.2.4. "PAGA Period," means the period from February 2, 2022 to August 20, 2023. *See id.*, § 1.31.
[7] *Id.*, § 1.4. "Class Period" is defined as the period from May 18, 2018 through August 20, 2023. *See id.*, § 1.10.
[8] *Id.*, §§ 1.23, 1.37 and 1.47.
[9] *Id.*, §§ 1.21 and 1.30.

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Released PAGA Claims of Plaintiff Samantha Sanchez, Aggrieved Employees, and the State of California, against the Released Parties.[10]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants are a telehealth company focused on delivering health care to the homes of patients and partner with health insurances to provide house calls to individuals with chronic conditions. Plaintiffs Mark John Santos and Samantha Sanchez are former employees of Defendant MedZed, LLC.

On May 10, 2022, Plaintiff Mark John Santos ("Plaintiff Santos") filed a Class Action Complaint for Damages in the Los Angeles County Superior Court ("Court"), thereby commencing the above-captioned lawsuit.

On February 2, 2023, Plaintiff Samantha Sanchez ("Plaintiff Sanchez") submitted notice to the California Labor & Workforce Development Agency ("LWDA") and Defendants of her intent to pursue civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. On April 10, 2023, Plaintiff Sanchez provided an amended written notice to the LWDA and Defendants ("Amended PAGA Notice").

On December 27, 2023, Plaintiffs filed the First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq. ("First Amended Complaint," or "Operative Complaint"), adding Samantha Sanchez as a named Plaintiff and a cause of action to allege violation of PAGA.

Plaintiffs' core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, Class Members, and Aggrieved Employees, of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California

[10] See *id.* At § 1.41, for the full scope of the "Released Class Claims," *id.* At § 1.42, for the full scope of the "Released PAGA Claims," and *id.* At § 1.43, for the definition of the "Released Parties."

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Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Actions, and further denies that the Actions are appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only.

The Parties have actively litigated the Action since it was commenced on May 10, 2022, including removing the case to the federal district court and remanding to pursue settlement. On May 17, 2023, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters. With the aid of the mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.

III. <u>SUMMARY OF THE SETTLEMENT TERMS</u>

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount to resolve the Released Class Claims of Plaintiffs and the Class Members who do not submit a timely and valid request to be excluded from the Class Settlement (i.e., Participating Class Member) and the Released PAGA Claims of Plaintiff Sanchez, Aggrieved Employees, and the State of California, with respect to the Released Parties.[11] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed Two Hundred Fifty Thousand Dollars ($250,000.00) (i.e., up to 1/3 of the Gross Settlement Amount) ("Class Counsel Fees Payment") and reimbursement of costs and expenses in an amount not to exceed Twenty Thousand Dollars ($20,000.00) to Class Counsel ("Class Counsel Litigation Expenses Payment"); (2) administration costs, which are currently estimated not to exceed Eleven Thousand Dollars ($11,000.00) to the Administrator ("Administration Costs"); (3) payment

[11] Settlement Agreement, §§ 5.2 and 5.3.

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PAGA Penalties ($85,000.00), of which 75% will be distributed to the LWDA (i.e., $63,750.00) ("LWDA Payment") and the remaining 25% (i.e., $21,250.00) will be distributed to Aggrieved Employees; and (4) one (1) payment in the amount of up to Five Thousand Dollars ($5,000.00) each to Plaintiffs Mark John Santos and Samantha Sanchez ("Service Payments").[12] The Parties have agreed to retain ILYM Group, Inc. ("ILYM" or "Administrator") to handle the notice and settlement administration process.

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

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

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

The Parties have agreed that the Individual PAGA Payments will be calculated and apportioned by the Administrator from the 25% share of the PAGA Penalties based on the Aggrieved Employees' PAGA Pay Periods, with 60% allocated to PAGA Group A and 40% allocated to PAGA Group B, as follows: The Administrator will divide the 60% portion of the PAGA Penalties attributed to Aggrieved Employees in PAGA Group A by the PAGA Pay Periods worked by PAGA Group A employees and then multiplying the resulting value by the number of each PAGA Pay Period worked by each individual PAGA Group A member; and the Administrator will divide the 40% portion of the PAGA Penalties attributed to Aggrieved Employees in PAGA Group B by the PAGA Pay Periods worked by PAGA Group B employees

[12] Settlement Agreement, §§ 3.21., 3.2.2, 3.2.3, and 3.2.4.
[13] *Id.*, § 3.2.5 (a).
[14] *Id.*, § 3.2.5 (b).

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and then multiplying the resulting value by the number of each PAGA Pay Period worked by each individual PAGA Group B member.[15]

Each Participating Class Member's Individual Settlement Payment will be allocated as follows: twenty percent (20%) as wages (the "Wage Portion"), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and non-wage damages (the "Non-Wage Portion"), which will be reported on an IRS Form 1099.[16] Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.[17] The Administrator will withhold the employee's share of taxes and withholdings with respect to the Wage Portion of the Individual Settlement Shares, and issue checks to Participating Class Members for their Individual Settlement Payments.[18] The employer's share of taxes and contributions on the Wages Portion of Individual Settlement Shares will be paid separately and in addition to the Gross Settlement Amount.[19]

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

Class Members who wish to be excluded from the Class Settlement (i.e., opt-out) must send the Administrator, by email or mail, a signed written request postmarked no later than sixty (60) calendar days after the Administrator first mails the Class Notice to Class Members and

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15 *Id.*, § 3.26.
16 Settlement Agreement, § 3.2.7.
17 *Ibid.*
18 *Id.*, § 1.22.
19 *Id.*, § 3.1.
20 *Id.*, § 4.4.1.
21 *Id.*, § 4.4.3.

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Aggrieved Employees ("Response Deadline").[22] The Request for Exclusion must communicate that the Class Member is electing to be excluded from the Class Settlement and must include the Class Member's name, address and email address or telephone number.[23] Class Members who submit a valid and timely Request for Exclusion from the Class Settlement are Non-Participating Class Members and shall not receive Individual Settlement Payments or have the right to object to the Class Settlement.[24] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[25]

Only Participating Class Members may object to the Class Settlement and/or this Agreement, including contesting the fairness of the Class Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Service Payments.[26] Participating Class Members may send written objections to the Administrator, by email or mail.[27] In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing.[28] A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline.[29]

Each Class Member and Aggrieved Employee shall have until the Response Deadline to challenge the number of Workweeks and/or PAGA Pay Periods (if any) allocated to the Class Member and/or Aggrieved Employee in the Class Notice.[30] The Class Member may challenge the allocation by communicating with the Administrator via email or mail.[31]

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[22] *Id.*, §§ 1.44 and 1.45.
[23] Settlement Agreement, § 7.5.1.
[24] *Id.*, § 7.5.4.
[25] *Id.*, § 7.5.1.
[26] *Id.*, § 7.7.1.
[27] *Id.*, § 7.7.2.
[28] *Ibid.*
[29] *Ibid.*
[30] *Id.*, § 7.6.
[31] *Ibid.*

IV. <u>LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS</u>

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

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

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

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495

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F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

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

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

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

The Parties actively litigated the Action since it was commenced on May 10, 2022. Both sides used the pre-mediation time period to investigate the veracity, strength, and scope of the claims, and Class Counsel was actively preparing the case for class certification and trial.[32]

Prior to engaging in mediation, Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of thousands of pages of documents and data obtained from Defendants, Plaintiffs, and other sources.[33] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: employment records of Plaintiff Mark John Santos, a detailed sampling of Class Members' time and pay data, Defendants' Employee Handbook, job descriptions, earning statements, company policy acknowledgements (Acknowledgment of Receipt Employee Notice of MPN California, Anti-Harassment Policy Acknowledgement of Receipt, Family and Medical Leave Policy Acknowledgement of Receipt, California Employee Notice and Acknowledgment), internal memoranda, operations and employment practices, forms (including but not limited to Direct Deposit Authorization and Agreement, California Meal and Rest Period Attestation Form, Employment Agreement, First Meal Period Waiver Agreement, Second Meal Period Waiver Agreement), procedures, and policies (including but not limited to Meal and Rest Break Policy), among other information and documents.[34] Class Counsel had the opportunity to interview Plaintiffs and other Class Members to gather facts and to identify potential witnesses.[35] Counsel for the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to the pleadings, and the production of documents and data prior to the mediation.[36] Class Counsel also drafted Plaintiff's mediation brief and prepared for and attended court proceedings, settlement negotiations, and

[32] Hosseini Decl., ¶¶ 10-12.
[33] Hossieni Decl., ¶ 11.
[34] *Id.*, ¶ 11.
[35] *Ibid.*
[36] *Ibid.*

the mediation, among other tasks.[37]

The Parties engaged in extensive settlement negotiations and participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[38] Prior to and during the mediation and settlement discussions, the Parties exchanged class information and engaged in an intensive discussion regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, wage-and-hour enforcement, and PAGA representative claims, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[39] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[40] Arriving at a settlement that was acceptable to both Parties was not easy. Defendants and its counsel felt strongly about their ability to prevail on the merits and at certification, and Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[41] After conducting investigations, significant informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the complex and uncertain legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.[42]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification and trial.[43] The Parties have had the opportunity to interview and obtain information from their respective witnesses.[44] Counsel for the Parties have also reviewed documents and information relating to Plaintiffs',

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[37] *Ibid*.
[38] *Id.*, ¶ 10.
[39] Hosseini Decl., ¶ 10.
[40] *Ibid.*
[41] *Id.*, ¶¶ 10, 15-17.
[42] *Ibid.*
[43] *Ibid.*
[44] *Ibid*.

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Class Members', and Aggrieved Employees' employment with Defendants and performed significant research into the law concerning class certification, PAGA representative actions, off-the-clock theory, meal and rest periods, wage-and-hour enforcement, Plaintiffs' claims, and Defendants' defenses thereto, as well as facts discovered.[45] The Parties have reached the Settlement based on this large volume of facts, evidence, and investigation. In addition, Class Counsel has extensive experience in employment class actions, including significant experience in California wage-and-hour litigation.[46]

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

The Settlement, which provides for a Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars ($750,000.00), represents a fair, adequate, and reasonable resolution of the matter.[47] The Settlement was calculated using the information and data uncovered during litigation, case investigation, as well as the informal exchange of information.[48] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the case at issue.[49] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[50]

Assuming that the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Service Payments, PAGA Penalties, and Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be Three Hundred Seventy-Four Thousand Dollars and Zero Cents ($374,000.00).[51] Additionally, the 25% of the PAGA Penalties, which is $21,250.00 out of $85,000.00, will be distributed to Aggrieved Employees. As discussed in Part III, *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement. The amount of each Participating Class Member's Individual Settlement Share will be calculated based on his or her Workweeks during

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[45] *Id.*, ¶¶ 10-12 & 15-17.
[46] *Id.*, ¶¶ 6-7.
[47] Hosseini Decl., ¶¶ 10, 12, 13 & 20.
[48] *Id.*, ¶¶ 10-12.
[49] *Id.*, ¶¶ 15-17.
[50] *Id.*, ¶¶ 10, 12, & 20.
[51] *Id.*, ¶ 13.

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the Class Period and the amount of each Aggrieved Employee's Individual PAGA Payment will be based on his or her PAGA Pay Periods during the PAGA Period.[52] There is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

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

C. The Settlement Is of Significant Value.

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

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[52] Settlement Agreement, §§ 3.25 and 3.26.
[53] Hosseini Decl., ¶¶ 10, 11, & 20.
[54] *Id.*, ¶¶ 10-12 & 17.
[55] *Id.*, ¶ 17.
[56] *Id.*, ¶¶ 10-12 & 15-17.

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VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

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

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. Further, Plaintiffs' claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. Finally, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. The Class is amenable to class certification for settlement purposes as discussed below.

A. The Class Is Ascertainable and Sufficiently Numerous.

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

This class is sufficiently numerous. *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement

[57] Settlement Agreement, § 12.1.

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as joinder is not practical at that point). Further, all Class Members can and will be identified by Defendants to the Administrator through a review of Defendants' employment records regarding hourly-paid and non-exempt employees in California during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

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

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

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

Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the Action. Based on the documents and information obtained through informal discovery and exchange of information in this case, Plaintiffs contend that Class Members were subject to the same or similar job duties and uniform operations and employment practices, policies, and procedures during the time period at issue.[58] Plaintiffs' claims arise from Defendants' alleged uniform policy and systematic scheme, with respect to Plaintiffs and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, failing to provide compliant meal and rest periods and associated premium pay, failing

[58] Hosseini Decl., ¶ 15.

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to timely pay wages during employment and upon termination of employment, failing to provide complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses.[59]

Plaintiffs also contend that Defendants' payroll and recordkeeping practices with respect to Plaintiffs and the Class Members were substantially the same during the time period at issue.[60] As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue.[61]

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

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

Class Counsel has litigated the matter for over one (1) year, and was actively preparing the matter for class certification and trial.[62] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel conducted extensive investigations into the facts of the case and informal discovery. Class Counsel reviewed thousands of pages of documents and data[63] and also interviewed and obtained information from Plaintiffs and other sources, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings and the production of documents and data prior to mediation.[64] Counsel for the Parties also undertook extensive settlement discussions, which included participating in a formal, full-day mediation.[65]

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59 *Ibid.*
60 *Ibid.*
61 *Ibid.*
62 Hosseini Decl., ¶¶ 10-12.
63 *Id.*, ¶ 11.
64 *Ibid.*
65 *Id.*, ¶ 10.

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Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[66]

The Settlement establishes a Gross Settlement Amount of Seven Hundred Fifty Thousand Dollars ($750,000.00), and provides for Class Counsel to apply to the Court for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, consisting of attorneys' fees in an amount not to exceed one-third (1/3) of the Gross Settlement Amount (i.e., $250,000.00) and an amount not to exceed Twenty Thousand Dollars and Zero Cents ($20,000.00) for costs and expenses.[67] The attorneys' fees provided for by the Settlement is commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members with information about the amount allocated toward the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, and that an award of the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment will be sought, as provided for by the Settlement.[68]

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

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[66] *Id.*, ¶¶ 6-7.
[67] Settlement Agreement, § 3.2.2.
[68] *Id.*, Exh. A.

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awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50. In cases where class members present claims against a settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Id.* at 32.

The propriety of calculating and awarding attorneys' fees as a percentage of a settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte*, *supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he percentage of fund method survives in California." *Id*. (internal quotation marks omitted).

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

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[69]

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs' motion for final approval of the Settlement and application for the Class Counsel Fees Payment and Class Counsel Litigation Expenses

[69] Hosseini Decl., ¶ 18.

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Payment and at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice[70] describes the Settlement, the deadlines and procedures to mail an objection to the Class Settlement, Request for Exclusion from the Class Settlement, and/or disputes regarding Workweeks and PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[71]

The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39. "Sufficient information about the case should be provided to enable class members to make an informed decision about their participation." *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[72] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[73] The proposed Class Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Share is calculated and the number of Workweeks credited to them.[74]

The proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960 ("The

[70] Settlement Agreement, Exh. A.
[71] *Ibid.*
[72] *Ibid.*
[73] *Ibid.*
[74] *Ibid.*

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essentials of due process of law in class suits would appear to be afforded by fair representation in the assertion of claims of class members against the opposing parties in any lawsuit, and notice of the pending suit."). Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF ILYM GROUP, INCS., AS THE ADMINISTRATOR

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

The Administrator will mail the Class Notice to all identified Class Members by First-Class U.S. mail.[75] Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.[76] If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.[77] The deadlines for Class Members' written objections to the Class Settlement, disputes regarding Workweeks and/or PAGA Pay Periods, and Requests for Exclusion from the Class Settlement will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed.[78] The Administrator will receive and process Requests for Exclusion, objections, and disputes regarding Workweeks and/or PAGA Pay Periods.[79]

The Administrator's duties will include, calculating the amounts of the Individual Settlement Payments and Individual PAGA Payments; deduct and transmit applicable state and/or federal taxes in connection with the wage portion of Individual Settlement Share; mail the Individual Settlement Payment checks to the Participating Class Members and Individual PAGA Payment checks to Aggrieved Employees; issue W-2 and 1099 forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations; calculate and disburse the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Service Payments, LWDA Payments; and perform such other tasks

[75] Settlement Agreement, § 7.4.2.
[76] *Id.*, § 7.4.3.
[77] *Ibid.*
[78] *Id.*, § 7.4.4.
[79] *Id.*, §§ 7.5, 7.6 and 7.7.

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necessary to effectuate the terms of the Agreement.[80] The Administration Costs are currently estimated to be Eleven Thousand Dollars ($11,000.00) and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[81]

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

X. PROPOSED DEADLINES FOR THE NOTICE PROCESS

At this preliminary approval stage, plaintiff seeks approval of the proposed deadlines for the notice and settlement administration process. *Newberg*, at § 11.26. The notice process entails mailing of the Class Notice, in the form approved by the Court, to all known and reasonably ascertainable Class Members based on Defendants' records.[82]

Not later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Agreement, Defendants will provide the Administrator with a complete list of all Class Members and Aggrieved Employees which will include each Class Member's and Aggrieved Employee's: full name, last known mailing address, last known telephone number, Social Security number, and Workweeks and PAGA Pay Periods.[83]

Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class and PAGA Data, the Administrator will send to all Class Members identified in the Class and PAGA Data, via first-class United States Postal Service ("USPS") mail, the Class Notice.[84] Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.[85] If the USPS does not provide a forwarding address, the Administrator shall conduct a

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[80] *Id.*, § 3.2.3.
[81] *Ibid*.
[82] Settlement Agreement, § 7.4.
[83] *Id.*, §§ 1.7 and 4.2.
[84] *Id.*, § 7.4.2.
[85] *Id.*, § 7.4.3.

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Class Member Address Search, and re-mail the Class Notice to the most current address obtained.[86] Class Members will have until the applicable Response Deadline to submit a Request for Exclusion, disputes regarding Workweeks and PAGA Pay Periods, and/or an objection.[87]

Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) calendar days after the Effective Date.[88] Within fifteen (15) calendar days after Administrator receives the Gross Settlement Amount, the Administrator will mail checks for all Individual Settlement Payments, all Individual PAGA Payments, the LWDA Payment, the Administration Costs, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Service Payments.[89]

Each Individual Settlement Payment and Individual PAGA Payment check shall prominently state the date (not less than one hundred eighty (180) calendar days after the date of mailing) when the check will be voided.[90] For any Class member or Aggrieved Employee whose Individual Settlement Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to Los Angeles Bar Association's Domestic Violence Project, a nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b).[91]

XI. <u>APPOINTMENT OF CLASS REPRESENTATIVES AND ALLOCATION FOR SERVICE PAYMENTS</u>

Plaintiffs Mark John Santos and Samantha Sanchez respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Service Payments in an amount up to Five Thousand Dollars ($5,000.00) each to Plaintiffs Mark John Santos and Samantha Sanchez, for a combined amount of $10,000.00.[92] It is within the Court's discretion to award payment to a class representative for their efforts and work. *Vranken v. Atlantic*

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[86] *Ibid.*
[87] Settlement Agreement, §§ 7.5, 7.6 and 7.7.
[88] *Id.*, § 4.3.
[89] *Id.*, § 4.4.
[90] *Id.*, § 4.4.1.
[91] *Id.*, § 4.4.3.
[92] *Id.*, § 3.2.1.

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Richfield Co. (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative). The factors that courts may consider in determining whether to make an enhancement payment include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Id*.

The Service Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[93] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[94] Accordingly, it is appropriate and just for Plaintiffs to receive an Service Payments for their services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to their individual settlement payments.

XII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that the Court grant preliminary approval of the Settlement; conditionally certify the Class for settlement purposes; preliminary appoint and designate Lawyers *for* Justice, PC as Class Counsel; preliminary appoint and designate Plaintiffs Mark John Santos and Samantha Sanchez as Class Representatives; appoint ILYM Group, Inc. as Administrator; preliminarily approve the allocations for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Service Payments, PAGA Penalties, and Administration Costs; approve the proposed Class Notice; direct the Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; schedule a Final Approval Hearing to take place in approximately six (6) months.

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[93] Hosseini Decl., ¶ 20; Declaration of Mark John Santos in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Santos Decl."), ¶ 4; Declaration of Samantha Sanchez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Sanchez Decl."), ¶ 4.

[94] Hosseini Decl., ¶ 20; Santos Decl., ¶¶ 3-6; Sanchez Decl., ¶¶ 3-6.

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Dated: December 29, 2023

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