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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

BRENDA BUSTILLO, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; Plaintiff, vs. WILSON CREEK WINERY & VINEYARDS, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. CVRI2305704 [*Consolidated with Case No. CVRI2306189*] Honorable Harold W. Hopp Department 1 **CLASS ACTION** **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Date: July 13, 2026 Time: 8:30 a.m. Department: 1 Complaint Filed: October 23, 2023 Trial Date: None Set

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

PLEASE TAKE NOTICE that on July 13, 2026 at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Harold W. Hopp in Department 1 of the Superior Court of California for the County of Riverside, located at 4050 Main Street, Riverside, California 92501, Plaintiff Brenda Bustillo ("Plaintiff" or "Class Representative") 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 partially-executed Class Action and PAGA Settlement and Release of Claims attached as "**EXHIBIT 1**" to the Declaration of Ryan Slinger in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement (the "Settlement," "Agreement," or "Settlement Agreement");
- Certifying the proposed Class for settlement purposes;
- Appointing Plaintiff Brenda Bustillo as Class Representative;
- Appointing Arby Aiwazian, Joanna Ghosh, Yasmin Hosseini, Ryan Slinger, and Erica Stepanian of Lawyers *for* Justice, PC;
- Approving the proposed Notice of Class Action Settlement ("Class Notice"), Exclusion Form, and Objection Form, attached as "**EXHIBIT A**," "**EXHIBIT B**," "**EXHIBIT C**," respectively (together, "Notice Packet"), to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, and directing the mailing thereof in accordance with the Settlement Agreement;
- Approving ILYM Group, Inc. ("ILYM" or "Settlement Administrator") as the Settlement Administrator; and
- Scheduling a hearing to consider final approval of the Settlement.

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

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This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declaration of Proposed Class Counsel (Ryan Slinger) and Proposed Class Representative (Brenda Bustillo) in support thereof, as well as 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: June 17, 2026

LAWYERS *for* JUSTICE, PC

By: ______________________________
Ryan Slinger
Erica Stepanian
Attorneys for Plaintiff Brenda Bustillo

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Brenda Bustillo ("Plaintiff" or "Class Representative") seeks preliminary approval of the partially executed Class Action and PAGA Settlement and Release of Claims (the "Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant Wilson Creek Winery & Vineyards, Inc. ("Defendant"), on the other hand. Subject to approval by the Court, Plaintiff and Defendant (together, the "Parties") have agreed to settle the lawsuits for a Total Settlement Amount of $1,700,000.00.[1]

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendant does not oppose:

> All current and former hourly-paid or non-exempt employees of Defendant employed within the State of California at any time during the Class Release Period ("Class" or "Class Members").[2]

Class Members who do not submit a timely and valid Opt-Out Request from the Class Settlement ("Participating Class Member") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Payment")[3]. The net payment of each Participating Class Member's Individual Settlement Payment will be distributed to Participating Class Members on a *pro rata* basis based on the Participating Class Member's number of Workweeks[4] during the

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[1] Settlement Agreement, attached as **Exhibit 1 t**o Declaration of Ryan Slinger ("Slinger Decl."), ¶ 44. Defendant represents that there were 63,124 total Workweeks for the period from October 23, 2019 to January 14, 2025 for Class Members. Should the number of such Workweeks for the Class Members increase beyond five percent (5%) during the Class Release Period (i.e., by more than 3,156 Workweeks), then Defendant shall have the option to increase the Total Settlement Amount on a *pro rata* basis equal to the percentage increase in the total Workweeks exceeding 66,280 Workweeks, or to cap the Class Release Period at the last point in time in which the number of Workweeks does not exceed 63,124 (and such date shall be referred to as the "Alternate End Date"). *Id.*, ¶ 59.

[2] *Id.*, ¶ 6. "Class Release Period" is defined as the period from October 23, 2019 through April 30, 2025, or, if applicable, the Alternate End Date. *See Id*., ¶ 10. "PAGA Release Period" is defined as the period from August 11, 2022 through April 30, 2025, or, if applicable, the Alternate End Date. *See Id*., ¶ 33.

[3] *Id.*, ¶ 21.

[4] "Workweeks" means the number of weeks each Class Member was employed by Defendant as a hourly-paid or non-exempt employee within the State of California during the Class Release Period, which will be calculated by the Settlement Administrator by totaling the number of weeks each Class Member was employed by Defendant using the Class Member's hire date and either (1) the Class Member's date of separation of employment, for former employees, or (2) the Effective Date, for current employees. *Id*., ¶ 45.

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Class Release Period, which will be calculated by the Settlement Administrator by dividing the Participating Class Member's number of Workweeks during the Class Release Period by the total number of Workweeks of all Participating Class Members during the Class Release Period and multiplying this figure by the Net Settlement Amount.[5]

Aggrieved Employees will receive a *pro rata* share ("Individual PAGA Payment") of the twenty-five percent (25%) portion of the PAGA Penalty Amount (i.e., 25% of $140,000.00, or $35,000.00), based on PAGA Pay Periods during the PAGA Period.[6]

The Settlement, upon the Effective Date and full funding of the Total Settlement Amount, will operate to resolve the Class Released Claims of Plaintiff and Participating Class Members and the PAGA Released Claims of Plaintiff, the State of California and Aggrieved Employees, against the Released Parties.[7]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant is a winery and vineyard headquartered and operated in Temecula, California. Plaintiff is a former employee of Defendant in California.

On August 11, 2023, Plaintiff Brenda Bustillo ("Plaintiff") provided written notice by electronic upload to the California Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendant Wilson Creek Winery & Vineyards, Inc. ("Defendant") (together, Plaintiff and Defendant are referred to as the "Parties") of the specific provisions of the California Labor Code that were alleged to be violated, thereby initiating LWDA Case No. LWDA-CM-974548-23 ("PAGA Notice").[8]

On October 23, 2023, Plaintiff filed a Class Action Complaint & Enforcement Action Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq*. ("Complaint") against Defendant, thereby commencing the action entitled *Brenda Bustillo v. Wilson Creek Winery & Vineyards, Inc.*, Superior Court of California for the County of Riverside, Case No.

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[5] *Id.,* ¶¶ 21 & 60(e)(i)
[6] *Id.,* ¶¶ 58 & 60(e)(ii).
[7] Settlement Agreement, ¶ 14. For the full scope of the "Class Released Claims," *see id.*, at ¶ 9; for the full scope of the "PAGA Released Claims," s*ee id.*, at ¶ 31; and for the full definition of the "Released Parties," s*ee id.*, at ¶ 40.
[8] Slinger Decl., ¶ 2.

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CVRI2305704 ("Action").[9]

On December 21, 2023, Defendant filed its Answer to the Complaint.[10]

On December 21, 2023, Defendant filed a Notice of Related Case for Riverside County Superior Court, Case No. CVRI12306189, entitled *Daymian Gutierrez v. Wilson Creek Family LLC, et al.*, filed on November 15, 2023 ("Gutierrez Action").[11]

On January 16, 2024, during the Initial Case Management Conference, the Parties and the Court agreed to consolidating the Action and Gutierrez Action, with the Action as the lead case. [12]

On January 23, 2024, pursuant to the Court's request, Defendant filed a [Proposed] Order Regarding Consolidation of the Cases.[13]

On February 1, 2024, the Court entered the Order consolidating the Action and Gutierrez Action, and designated the Action as the lead case.[14]

On December 11, 2025, Plaintiff Daymian Gutierrez ("Plaintiff Gutierrez") filed a request for dismissal of the Gutierrez Action, with prejudice as to Plaintiff Gutierrez's individual claims against Defendant and without prejudice with respect to Plaintiff Gutierrez's class action claims against Defendant. On January 20, 2026, this Court entered an Order granting Plaintiff Gutierrez's request for dismissal.[15]

Plaintiff's core allegations are that Defendant has violated the California Labor Code and Industrial Welfare Commission Wage Orders by engaging in a uniform policy and systematic scheme of wage abuse against Plaintiff, the Class Members, and Aggrieved Employees including *inter alia*, failing to pay all overtime and minimum wages, at all or at the correct rate of pay, 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

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[9] Slinger Decl., ¶ 3.
[10] *Id.*, ¶ 4.
[11] *Id.*, ¶ 5.
[12] *Id.*, ¶ 6.
[13] *Id.*, ¶ 7.
[14] *Id.*, ¶ 8.
[15] *Id.*, ¶ 9.

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complaint wage statements, and failing to maintain requisite payroll records, associated waiting time penalties, and failing to reimburse necessary business expenses, and thereby engaging in unfair business practices, in violation of California Business and Professions Code Section 17200, *Et Seq.,* and conduct giving rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *Et Seq*.). Plaintiff contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees and costs.[16]

The Parties have actively litigated the Action since it commenced on August 11, 2023. On January 14, 2025, the Parties participated in arm's-length and informed negotiations with Steven Rottman, Esq. (the "Mediator"), a well-respected expert experienced in mediating complex labor and employment matters.[17] With the aid of the Mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety. [18]

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

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount of $1,700,000.00 to resolve the Action.[19] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) Attorneys' Fees in an amount up to 35% of the Total Settlement Amount (i.e., $595,000.00 if the Total Settlement Amount remains $1,700,000.00) and costs and expenses in an amount not to exceed $30,000.00 ("Attorneys' Fees and Costs") to Class Counsel; (2) Settlement Administration Costs, which are currently estimated not to exceed $12,000.00 to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Penalty Amount of $140,000.00 ("PAGA Penalties"); and (4) payment in the amount of up to $7,500.00 to Plaintiff ("Enhancement Award").[20]

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[16] Slinger Decl., ¶ 32.
[17] *Id.*, ¶ 24.
[18] Ibid.
[19] Settlement Agreement, ¶ 44.
[20] *Id.*, ¶¶ 4, 16, 32 & 43.

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

a. Each Participating Class Member's Individual Settlement Payment will be calculated by the Settlement Administrator by dividing the Participating Class Member's number of Workweeks during the Class Release Period by the total number of Workweeks of all Participating Class Members during the Class Release Period and multiplying this figure by the Net Settlement Amount.[21]

The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employee's share of the Aggrieved Employee Amount ("Individual PAGA Payments"), in accordance with the Settlement Agreement and as follows[22]:

a. Each Aggrieved Employee's Individual PAGA Payment will be calculated by the Settlement Administrator by dividing the Aggrieved Employee's number of PAGA Pay Periods during the PAGA Release Period only by the total number of PAGA Pay Periods of all Aggrieved Employees during the PAGA Release Period and multiplying this figure by the Aggrieved Employee Amount.[23]

The Parties agree, for purposes of this Settlement, that each Individual Settlement Payment will be allocated 20% to wages ("Wage Portion") subject to taxes and withholdings, and 80% to penalties, interest, and non-wage damages ("Non-Wage Portion").[24] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Payments, and issue checks to Participating Class Members for their Individual Settlement Payment net of these taxes and withholdings.[25] Individual PAGA Payments to Aggrieved Employees will be allocated as 100% penalties and not subject to wage withholdings.[26] The employer's share of taxes will be paid separately and in addition to the Total Settlement Amount.[27]

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[21] Settlement Agreement, ¶ 60(e)(i).
[22] *Id.*, ¶¶ 3 & 60(e)(ii).
[23] *Id.*, ¶ 60(e)(ii).
[24] *Id.*, ¶ 62.
[25] Ibid.
[26] Ibid.
[27] Ibid.

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Individual Settlement Payment and Individual PAGA Payment checks shall remain valid and negotiable for 180 calendar days from the date of their original issuance, and thereafter, shall be canceled.[28] Pursuant to California Code of Civil Procedure Section 384, all funds associated with such cancelled checks will be transmitted to Alaska Adventure Project.[29] Alaska Adventure Project is a non-profit organization benefiting wounded and disabled Veterans. The Parties and their counsel each represent that they do not have any significant affiliation or involvement with the proposed *cy pres* recipient.[30]

Any Class Member may request to be excluded from the Class Settlement by mailing a letter indicating a request to be excluded from the Class Settlement ("Opt-Out Request") postmarked on or before the date that is 60 days from the date of the initial mailing of the Class Notice by the Settlement Administrator ("Response Deadline").[31] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they submit an Opt-Out Request from the Class Settlement.[32]

Only Class Members who have not submitted a timely and valid Opt-Out Request from the Class Settlement (i.e., Participating Class Members) may object to the Class Settlement orally at the Final Approval Hearing and/or by mail to the Settlement Administrator on or before the Response Deadline ("Objection").[33] A written Objection must be submitted by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline, containing all information required by the Settlement Agreement.[34]

In order to dispute the number of Class Workweeks and PAGA Pay Periods (if any) attributable to an individual Class Member and/or Aggrieved Employee, that Class Member and/or Aggrieved Employee must submit a written letter disputing the preprinted information on the Class Notice as to his or her Workweeks and/or PAGA Pay Periods credited to them

[28] *Id.*, ¶ 67(f).
[29] Ibid.
[30] Slinger Decl., ¶ 38.
[31] Settlement Agreement, ¶¶ 29 & 41.
[32] *Id.*, ¶ 65.
[33] *Id.*, ¶ 66.
[34] Ibid.

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(“Workweeks and/or PAGA Pay Periods Dispute”) by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline, and attach any documentation that he or she has to support the dispute.[35]

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

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). 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* Actio*ns* § 11.24 (4th Ed. 2002). 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. 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 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 GRANT PRELIMINARY APPROVAL OF THE SETTLEMENT

The trial court has broad discretion to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk,* 48 Cal.App.4th at 1800. To make this fairness determination, courts must consider several relevant factors, including “the strength of the

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[35] *Id.*, ¶¶ 46 & 64.

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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*, 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 v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. Furthermore, courts give "proper deference to the private consensual decision of the parties." *Hanlon*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 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*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. **<u>The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Discovery.</u>**

The Parties have actively litigated the Action since it commenced on August 11, 2023. Both sides investigated the veracity, strength, and scope of the claims throughout the case, and Class Counsel was actively preparing the matter for class certification and trial.[36]

Class Counsel conducted significant investigation and formal and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a volume of documents and data obtained from Plaintiff, Defendant, and other sources.[37] Class Counsel served one set of formal written discovery requests onto Defendant (specifically, Special Interrogatories (Set One).[38] The volume of data and documents that Class Counsel

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[36] Slinger Decl., ¶ 25.
[37] Ibid.
[38] Ibid.

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reviewed and analyzed included and was not limited to: Plaintiff's employment records, Class Members' time and payroll data, Defendant's Employee Handbook, company policy acknowledgements, Defendant's operations and employment practices, forms, procedures, and policies, among other information and documents.[39] Class Counsel had the opportunity to interview Plaintiff to gather facts and to identify potential witnesses.[40] In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[41]

The Parties engaged in extensive settlement negotiations and participated in a full-day mediation conducted by Steven Rottman, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[42] Prior to and during the mediation and settlement negotiations, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, including the risks of proceeding with class certification and/or representative adjudication, the law relating to off-the-clock theory, meal and rest periods, PAGA representative actions, and state wage-and-hour law and enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[43] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[44] Arriving at a settlement that was acceptable to both Parties was not easy. Both sides felt strongly about their ability to prevail at certification and at trial.[45] After conducting investigations, formal and 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 legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[46]

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[39] Ibid.
[40] Ibid.
[41] *Id.*, ¶¶ 17-22.
[42] I*d*., ¶ 24.
[43] Ibid.
[44] Ibid.
[45] Ibid.
[46] Ibid.

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B. The Settlement Is Fair, Reasonable, and Adequate.

The Settlement 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, and the informal and formal exchange of information.[48] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter 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 Attorneys' Fees and Costs, Enhancement Award, PAGA Penalty Amount, and Settlement 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 $915,500.00.[51] Additionally, 25% of the PAGA Penalty Amount (i.e., Aggrieved Employees Amount), which is $35,000.00 out of $140,000.00, will be distributed to the Aggrieved Employees.[52] The entire Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement and there is no reversion to Defendant.

The amount of each Participating Class Member's Individual Settlement Payment and each Aggrieved Employee's Individual PAGA Payment will be calculated based on their Workweeks and/or PAGA Pay Periods during the Class Release Period and PAGA Release Period, respectively.[53] "An 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. Here, the allocation is reasonably related to the number of Workweeks and/or PAGA Pay Periods actually worked for Defendant during the relevant period and should be approved.

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[47] *Id.*, ¶¶ 24-28.
[48] *Id.*, ¶ 25.
[49] *Id.*, ¶¶ 24-28.
[50] Ibid.
[51] *Id.,* ¶ 12.
[52] Ibid.
[53] Settlement Agreement, ¶ 60(e).

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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.[54] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, and have 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. <u>The Settlement Is of Significant Value.</u>

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted extensive formal and informal discovery and exchanged a volume of documents, data, and information prior to the mediation.[55] The information that Class Counsel obtained from Plaintiff, Defendant, 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 Defendant's defenses thereto.[56] As outlined in the Declaration of Ryan Slinger, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[57]

VI. <u>CERTIFICATION OF THE CLASS IS APPROPRIATE</u>

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[58] 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.*

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[54] Slinger Decl., ¶ 39.
[55] *Id.*, ¶ 25.
[56] *Id.*, ¶ 28.
[57] *Id.*, ¶¶ 32-34.
[58] Settlement Agreement, ¶ 53.

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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; *see also 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 as joinder is not practical at that point). The Class here is estimated to be approximately 650 individuals, which is sufficiently numerous.[59] Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding all current and former non-exempt employees employed by Defendant in California at any time during the Class Release Period. As such, the Class is ascertainable and sufficiently numerous.

B. The Class Members Share a Well-Defined Community of Interest.

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*, 34 Cal.4th at 333).

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[59] Slinger Decl., ¶ 11.

Here, common issues of law and fact predominate as to each of the claims alleged and asserted in the Action. Based on the documents and information obtained through formal and informal discovery and exchange of information in the case, Plaintiff contends that Class Members performed similar job duties and were subject to uniform operations and employment policies, practices, and procedures during the Class Period, including payroll and recordkeeping practices.[60] As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue. Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its non-exempt employees employed by Defendant in California at any time during the Class Release Period.

As a member of the Class who was subject to these same policies, practices, and procedures, Plaintiff's claims are typical of the Class. Moreover, Plaintiff has no interests adverse to the Class. Plaintiff has taken steps to initiate and maintain the action and to ensure that it comes to a fair and reasonable resolution.[61] Importantly, Plaintiff has retained a law firm well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiff, the Class, and the State of California.[62]

Accordingly, the proposed Class shares a community of interest, and the Court should certify the Class for settlement purposes only.

VII. APPOINTMENT OF CLASS COUNSEL AND ALLOCATION FOR ATTORNEYS' FEES & COSTS

Class Counsel has litigated the matter for over two (2) years and was actively preparing the matter for class certification and trial.[63] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed a volume of documents and data and also interviewed and obtained information from

[60] Slinger Decl., ¶¶ 28 & 32.
[61] Declaration of Brenda Bustillo in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement ("Bustillo Decl."), ¶¶ 2-6.
[62] Slinger Decl., ¶¶ 17-22.
[63] *Id.*, ¶ 24.

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Plaintiff and other percipient witnesses, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to mediation.[64] Class Counsel drafted Plaintiff's pleadings and the mediation brief and prepared for and attended court proceedings, settlement negotiations, and a mediation session, among other tasks.[65]

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 Total Settlement Amount of $1,700,000.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount up to 35% of the Total Settlement Amount (i.e., $595,000.00 if the Total Settlement Amount remains $1,700,000.00) and reimbursement of actual costs and expenses in an amount up to $30,000.00.[67] The attorneys' fees provided for by the Settlement are 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, Aggrieved Employees, and the State of California, 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 that an award of the Attorneys' Fees and Costs will be sought, and the amount allocated toward the Attorneys' Fees and Costs 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

[64] *Id.*, ¶¶ 24-26.
[65] *Id.*, ¶ 25.
[66] *Id.*, ¶¶ 17-22.
[67] Settlement Agreement, ¶ 4.
[68] *Id.*, Exh. A.

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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*, 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 awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Id.* at 50.

The California Supreme Court has confirmed 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. *Laffitte*, *supra*, 1 Cal.5th 480 at 486 & 506. The Court has taken the position that while "[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).

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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 Plaintiff's Motion for Final Approval of the Settlement and application for the Attorney's Fees and Costs at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement are well within the range of reasonableness for preliminary approval.

VIII. THE PROPOSED NOTICE PACKET IS ADEQUATE

California statutory authority 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).

"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 Notice Packet describes the Settlement, the deadlines and procedures to submit an Objection to the Class Settlement, submit an Opt-Out from the Class Settlement, and/or dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[70] The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[71] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[72] The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Settlement Payment and if applicable, their Individual PAGA Payment, is calculated and the number of Workweeks and/or

[69] Slinger Decl., ¶ 13.
[70] Settlement Agreement, Exhs. A-C.
[71] *Id.,* Exh. A.
[72] Ibid.

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PAGA Pay Periods credited to them.[73] The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg,* at § 8.39.

Thus, 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. Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected ILYM Group, Inc. as the Settlement Administrator. Within 14 calendar days of receipt of the Class List, the Settlement Administrator will mail the Class Notice, with Spanish translation, to each Class Member and Aggrieved Employee.[74] If any Class Notice is returned by the USPS, the Settlement Administrator shall conduct a single re-mailing of the Class Notice no later than five (5) calendar days after receipt of the returned Class Notice, using any forwarding address provided by the USPS.[75] If a forwarding address is not provided, the Settlement Administrator shall conduct a Class Member Address Search, and conduct and single re-mailing of the Class Notice to the most current address obtained.[76] In the case of a re-mailed Class Notice, the Response Deadline will be extended by fifteen (15) calendar days from the initial Response Deadline.[77] The Settlement Administrator will receive and process Opt-Out Forms, Objections, and any disputes regarding Workweeks and/or PAGA Pay Periods.[78] In addition, the Settlement Administrator will be responsible for translation of the Class Notice into Spanish, printing, distributing, and tracking Notice Packets and other documents for the Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances; providing necessary reports and declarations; and other duties and responsibilities to process the Settlement

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[73] Ibid.
[74] Settlement Agreement, ¶ 63(a).
[75] *Id.*, ¶ 63(c).
[76] Ibid,
[77] *Id.*, ¶ 41.
[78] *Id.*, ¶¶ 64-66.

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and as requested by the Parties.[79] The Settlement Administration Cost is currently estimated not to exceed $12,000.00 and will be paid out of the Total Settlement Amount, subject to approval by the Court.[80] Accordingly, Plaintiff respectfully requests that the Court appoint ILYM Group, Inc. as the Settlement Administrator and direct the mailing of the Notice Packet 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.

XI. ENHANCEMENT AWARD

Plaintiff respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Award in an amount up to $7,500.00.[81] It is within the Court's discretion to award payment to a Class Representative for their efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. The factors that courts may consider in determining whether to make an Enhancement Award 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 Enhancement Award is fair and appropriate. Plaintiff 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.[82] Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.[83] Accordingly, it is appropriate and just for Plaintiff to receive $7,500.00 for her services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to her individual settlement payments.

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[79] *Id.,* ¶¶ 62 -63.
[80] *Id.,* ¶ 58.
[81] Settlement Agreement, ¶ 60(c).
[82] Slinger Decl., ¶ 14; Bustillo Decl., ¶¶ 3-5.
[83] Slinger Decl., ¶ 14; Bustillo Decl., ¶¶ 3-5.

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XII. CONCLUSION

For the foregoing reasons, Plaintiff 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; appoint Plaintiff Brenda Bustillo as Class Representative; appoint ILYM Group, Inc. as Settlement Administrator; preliminarily approve the allocations for Attorney's Fees and Costs, Enhancement Award, PAGA Penalty Amount, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and to schedule a Final Approval Hearing to take place in approximately 6 months.

Dated: June 17, 2026

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By: ______________________

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