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Individually and on behalf of all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

Paloma Scalise, Anna Cardoso, and Demarco Evans, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

Chipotle Services LLC, DBA Chipotle Mexican Grill, Inc.; and Does 1 through 20, inclusive,

Defendants.

Case No. 23CV006629

Hon. Lauri A. Damrell

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

[Declaration of Jonathan M. Lebe; Declaration of Paloma Scalise; Declaration of Anna Cardoso; Declaration of Demarco Evans; Declaration of Paul K. Haines; Declaration of James R. Hawkins; Declaration of Anthony Rogers of ILYM Group, Inc.; and [Proposed] Order Filed Concurrently Herewith]

Hearing Information:
Date: August 22, 2025
Time: 9:00 a.m.
Dept. 22
Reservation Number: A-06629-001

Action Filed: August 10, 2023
Trial Date: None Set

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on behalf of himself and all others similarly situated

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 22, 2025 at 9:00 a.m., in Department 22 of the above-titled court, located at 720 Ninth Street, Sacramento, California 95814, Plaintiffs Paloma Scalise, Anna Cardoso, and Demarco Evans, on behalf of themselves and the settlement class members described herein, will and hereby do move for an order: (1) preliminarily approving the proposed class and representative Private Attorneys General Act ("PAGA") action settlement pursuant to the Parties' Stipulation of Settlement ("Settlement Agreement"), which is attached to the Declaration of Jonathan M. Lebe ("Lebe Decl.") as Exhibit 1, appointing Plaintiff Scalise as Class Representative for the Settlement Class, and appointing Plaintiffs Cardoso and Evans as named representatives for the Aggrieved Employees, for settlement purposes only; (2) appointing Jonathan M. Lebe and Brielle D. Edborg of Lebe Law, APLC, Paul K. Haines and Sean M. Blakely of Haines Law Group, APC, and James R. Hawkins and Christina M. Lucio of James Hawkins APLC as Class Counsel for settlement purposes only; (3) preliminarily certifying the proposed class for settlement purposes only; (4) appointing ILYM Group, Inc. as the third party settlement administrator; (5) approving the proposed form and content of the Notice Packet (comprised of the Class Notice and Notice of Estimated Settlement Award), which is attached as Exhibits A and B to the Settlement Agreement; (6) approving the schedule for dissemination of notice to class and PAGA members; and (7) scheduling a final fairness hearing.

This motion is based on this notice, the attached memorandum of points and authorities, the declarations of Jonathan M. Lebe, Paul K. Haines, James R. Hawkins, Anthony Rogers of ILYM Group, Inc., and Plaintiffs, all documents on file in this action, and upon such oral argument as may be presented at the time of hearing.

Dated: July 31, 2025 **LEBE LAW, APLC**

By: /s/ Jonathan M. Lebe
Jonathan M. Lebe
Brielle D. Edborg
Attorneys for Plaintiff Paloma Scalise

///

Dated: July 31, 2025 **HAINES LAW GROUP, APC**

By: ___/s/ Paul K. Haines_____________________

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff Anna Cardoso

Dated: July 31, 2025 **JAMES HAWKINS APLC**

By: ___/s/ James R. Hawkins___________________

James R. Hawkins
Christina M. Lucio
Attorneys for Plaintiff Demarco Evans

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Paloma Scalise ("Plaintiff Scalise"), as a representative of the putative Settlement Class, requests preliminary approval of a class and representative action settlement to resolve this matter in its entirety.[1] Plaintiffs' claims in this case are focused on Defendant Chipotle Services LLC, DBA Chipotle Mexican Grill, Inc.'s ("Defendant") alleged failure to pay minimum and overtime wages; failure to provide meal and rest periods; failure to provide accurate, itemized wage statements; failure to reimburse necessary business expenses; failure to pay reporting time pay; failure to pay all final wages; and engaging in unfair business practices. Plaintiffs have alleged violations of the California Labor Code, applicable Industrial Welfare Commission Wage Orders, the California Business & Professions Code, and seek civil penalties under the Private Attorneys General Act ("PAGA"). Defendant denies each of the allegations asserted by Plaintiffs, has consistently denied that it engaged in any wrongdoing, and denies any liability arising out of any of the facts or conduct alleged by Plaintiffs. The parties have entered into a Settlement Agreement which, subject to approval by this Court, fully releases Defendant from all claims that were or could have been asserted in this action under state law, including class and PAGA claims, in exchange for the payment of a non-reversionary Gross Settlement Amount totaling **$6,755,000**.

The Settlement Agreement was reached through arms-length negotiations by informed counsel following extensive litigation and investigation of the asserted claims and relevant law, as well as the exchange of both formal and informal discovery, and a full-day mediation before an experienced neutral. The Settlement is within the range of possible approval in light of the significant legal and factual obstacles that Plaintiffs faced, the risk and costs of further litigation, and the tangible monetary benefits to be received by Plaintiffs and the Settlement Class. Once

[1] Pursuant to the Stipulation of Settlement, Plaintiff Scalise is the proposed class representative for the Settlement Class of "all current and former non-exempt employees who are or were minors and were employed by Defendant in the State of California at any time from August 10, 2019 through July 19, 2024 (the "Class Period") (Settlement, at ¶ 1.) Plaintiffs Cardoso and Evans are the proposed representatives of the "Aggrieved Employees," which are defined as "all current and former non-exempt employees of Defendant who were employed by Defendant in the State of California from December 2, 2021 through July 19, 2024 (the "PAGA Period"). (*Id.*) Plaintiffs Scalise, Cardoso, and Evans are referred to collectively as "Plaintiffs."

approved deductions have been made from the Gross Settlement Amount for requested attorneys' fees and expenses, settlement administration costs, service awards for Plaintiffs, and the amount designated as PAGA civil penalties, the remaining Net Settlement Amount of approximately $2,287,463.33 will be distributed to all Settlement Class members who do not opt out of the Settlement based on the proportionate number of workweeks worked by each Settlement Class member during the Class Period. Significantly, Settlement Class members do not need to submit a claim form to receive a settlement as all Settlement Class members will automatically receive a payment unless they affirmatively opt out. There are approximately 11,100 Settlement Class members who will recover an average of approximately $206.08. Additionally, the Labor & Workforce Development Agency ("LWDA") will receive $1,485,652.50 for its share of PAGA civil penalties, and $495,217.50 will be distributed to Aggrieved Employees for their share of PAGA civil penalties. Plaintiffs respectfully request that the Court preliminarily approve this Settlement because it reflects a fair, adequate, and reasonable compromise of the disputed claims in this action.

To effectuate their settlement, the Parties respectfully request that the Court: (1) grant preliminary approval of the settlement in accordance with the Parties' Settlement Agreement, which is attached to the Declaration of Jonathan M. Lebe ("Lebe Decl.") as Exhibit 1; (2) certify the proposed settlement class for settlement purposes only; (3) appoint Jonathan M. Lebe and Brielle D. Edborg of Lebe Law, APLC, Paul K. Haines and Sean M. Blakely of Haines Law Group, APC, and James R. Hawkins and Christina M. Lucio of James Hawkins APLC as Class Counsel for settlement purposes only; (4) appoint Plaintiff Scalise as class representative for settlement purposes; (5) approve the proposed Notice Packet, which is comprised of the proposed Class Notice and Notice of Estimated Settlement Award (attached as Exhibits A and B to the Settlement Agreement); (6) appoint ILYM Group, Inc. as the third party administrator for the settlement, and (7) schedule a fairness hearing for final approval of the settlement.

II. FACTUAL BACKGROUND

A. Plaintiffs' Claims Against Defendant

Defendant is a national fast casual restaurant chain offering Mexican fare, including designyour-own burritos, tacos, and bowls. (Lebe Decl., ¶ 14.) Plaintiff Paloma Scalise ("Plaintiff Scalise") was employed by Defendant as a non-exempt Crew Member from approximately October 24, 2022 to approximately January 10, 2023 and worked at Defendant's Folsom, California location. (Declaration of Paloma Scalise ("Scalise Decl."), ¶ 2) Throughout her employment with Defendant, Plaintiff Scalise was a minor. (*Id.*) Plaintiff Anna Cardoso ("Plaintiff Cardoso") was employed by Defendant as a non-exempt employee from September 2022 until approximately November 2022 in Los Angeles (Declaration of Anna Cardoso ("Cardoso Decl."), ¶ 2.) Plaintiff Demarco Evans ("Plaintiff Evans") was employed by Defendant as a non-exempt Cashier from approximately October 2021 to November 2021 and worked at Defendant's Fairfield, California location. (Declaration of Demarco Evans ("Evans Decl."), ¶¶ 2-3.)

Plaintiffs have alleged Defendant maintained an unlawful time reporting policy requiring its employees to report to work but furnished them with less than two hours of work and failed to pay Plaintiffs and other employees with the requisite two hours of reporting time pay. (Lebe Decl., ¶ 15.) As a result of this practice, as well as other violations, Defendant allegedly failed to pay Plaintiffs and class members all minimum and overtime wages owed. (*Id.*) Plaintiffs further allege that Defendant failed to provide compliant meal and rest periods; failed to provide accurate and itemized wage statements; and failed to pay all final wages to Settlement Class members who were terminated or separated from employment. (*Id.*) Plaintiffs also allege that Defendant failed to reimburse Plaintiffs and Settlement Class members for all necessary business expenses incurred, including for the use of their cell phones for work purposes. (*Id.*)

In Plaintiffs' Second Amended Complaint ("SAC" or "Operative Complaint"), which Plaintiffs filed on March 25, 2025, Plaintiffs assert claims for: Failure To Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1194.2, and 1197); Failure To Pay Overtime Wages (Cal. Lab. Code §§ 510, 1194 and 1198); Failure To Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512); Failure To Permit Rest Breaks (Cal. Lab. Code § 226.7); Failure To Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); Failure To Reimburse Business Expenses (Cal. Lab. Code §§ 2800 and 2802); Failure To Pay All Reporting Time Pay (Cal. Lab. Code §§ 1198 and 1199); Failure To Pay All Final Wages (Cal. Lab. Code §§ 201-203); Violations of Business and

Professions Code §§ 17200, *et seq*.; and Violations of Cal. Lab. Code § 2698 *et seq*. (Lebe Decl., ¶ 16.)

B. Procedural History

On February 4, 2022, Plaintiff Evans and Hope Lopez submitted their PAGA notice to the California Labor and Workforce Development Agency ("LWDA") and alleged violations by Defendant of the California Labor Code and the applicable IWC Wage Order(s). (Hawkins Decl., ¶ 8.)

On April 12, 2022, Plaintiff Evans and Hope Lopez filed their PAGA-only action against Defendant in Orange County Superior Court (the "*Evans* Action"), Case No. 30-2022-01254511-CU-OE-CXC, containing a single cause of action under the PAGA for (1) failure to pay minimum wages; (2) failure to pay overtime owed; (3) failure to pay all wages owed during employment; (4) failure to reimburse necessary expenses; (5) failure to pay reporting time pay; (6) knowing and intentional failure to comply with itemized wage statement provisions; (7) failure to provide suitable seats; and (8) failure to keep accurate records. (Hawkins Decl., ¶ 10.) Ms. Lopez subsequently dismissed her claims. (Hawkins Decl., ¶ 9.) Mr. Evans filed an arbitration with JAMS Case No. 520000871 to assert his individual wage and hour claims. (Hawkins Decl., ¶ 11.)

On March 15, 2023, Plaintiff Cardoso submitted her PAGA notice to the LWDA and alleged violations by Defendant of the California Labor Code and the applicable IWC Wage Order(s). (Haines Decl., ¶ 13.)

On May 22, 2023, Plaintiff Cardoso filed her PAGA-only action against Defendant in Los Angeles Superior Court (the "*Cardoso* Action"), Case No. 23STCV11524, containing a single cause of action for civil penalties under the PAGA for (1) unreimbursed business expenses; (2) uncompensated reporting time pay; (3) meal period violations; and (4) rest period violations. (Haines Decl., ¶ 13.)

On August 10, 2023, Plaintiff Scalise submitted her PAGA notice to the LWDA, alleging violations by Defendant of California Labor Code §§ 201, 202, 203, 204, 218, 218.6, 226, 226.7, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2699 *et seq*., 2802, and 2804, and the applicable IWC Wage Order(s). (Lebe Decl., ¶ 17.)

Also on August 10, 2023, Plaintiff Scalise filed her initial class action complaint against Defendant in Sacramento Superior Court (the "*Scalise* Action"), Case No. 23CV006629, alleging nine causes of action for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to provide accurate itemized wage statements; (6) failure to reimburse for business expenses; (7) failure to pay reporting time pay; (8) failure to pay all final wages; and (9) violation of business and professions code §§ 17200, *et seq*. (Lebe Decl., ¶ 18.) On October 16, 2023, Plaintiff Scalise filed her First Amended Complaint ("FAC") adding a cause of action for enforcement of labor code § 2698 *et. seq*. (*Id*.)

On April 17, 2024, the Parties in this Action, the *Evans* Action, and the *Cardoso* Action participated in a global mediation before the experienced employment mediator, Jeffrey Ross, Esq. (Lebe Decl., ¶ 19.) In advance of settlement, the parties engaged in informal discovery, whereby Defendant provided timekeeping and payroll data for a sampling of putative class members and aggrieved employees, and policy documents of Defendant related to the claims asserted by Plaintiffs in this action, including Defendant's meal and rest break policies, overtime policies, and policies related to the amount of control Defendant had over class members. (*Id.*) Defendant also provided relevant data points, such as the number of minor putative class members and their aggregate number of workweeks worked during the Class Period, as well as the number of Aggrieved Employees and the number of aggregate pay periods worked during the PAGA Period. (*Id.*)

Plaintiffs hired a labor economist with a Ph.D. in economics to assist Plaintiffs in conducting a comprehensive analysis and extrapolation of the payroll and timekeeping data produced by Defendant to create a detailed exposure analysis for all claims at issue. (Lebe Decl., ¶ 19.) This discovery allowed the Parties to assess the merits and value of Plaintiffs' claims, the chances of certification of Plaintiff Scalise's claims, and Defendant's potential defenses. (*Id*.)

During mediation, the Parties vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff Scalise's claims, and the legal basis for the claims and defenses. (Lebe Decl., ¶ 20.) At the conclusion of mediation, Mr. Ross issued a mediator's proposal for a global class and representative settlement, which was ultimately accepted by all Parties. (*Id*.) During the months that followed, the Parties finalized the terms of the Settlement and executed the Stipulation of Agreement now before the court. (*Id*.) The Parties also agreed to process the settlement through this Court. (*Id*., at ¶ 22.)

C. The Settlement

1. Settlement Negotiations

At the mediation on April 17, 2024, the Parties engaged in settlement negotiations, including the exchange of legal analyses and data pertaining to Plaintiffs' class and PAGA claims. (Lebe Decl., ¶ 20.) Negotiations were rigorous and conducted at arms-length. (*Id*.) Defendant denies any wrongdoing and believes that it has meritorious defenses to the issues alleged, but has concluded that the further defense of this action would be lengthy and expensive for all parties. (*Id*.) Plaintiffs and their counsel have considered the uncertainty and risk involved in further litigation, including the difficulties and potential delays in seeking class certification and Defendant's defenses. (*Id*.) Based upon these considerations, Plaintiffs and class counsel have determined that the settlement is fair, adequate, and reasonable, and is in the best interests of the Settlement Class and the Aggrieved Employees. (*Id*.)

2. Settlement Terms

The Settlement was reached on a class and PAGA basis. The Settlement class is defined as "All current and former non-exempt employees of Defendant who are or were minors and were employed by Defendant in the State of California at any time from August 10, 2019 through July 19, 2024 (the "Settlement Class members") (Settlement, at ¶ 1.) The Class Period is defined as the time from August 10, 2019 through July 19, 2024. (*Id*.)

In exchange for Settlement Class members' release of all claims that were or could have been alleged in the SAC, as well the release of the Released Parties from all claims for civil penalties under PAGA arising during the PAGA Period by the Aggrieved Employees (Settlement, at ¶ 2(B)), Defendant is providing substantial compensation to Plaintiffs the Settlement Class, and Aggrieved Employees. Defendant has agreed to pay a non-reversionary amount of $6,755,000 (the "Gross Settlement Amount" or "GSA") to settle the class and PAGA claims, of which $1,980,870 has been allocated as PAGA civil penalties. (Settlement, at ¶ 3(C)(5).) The following deductions will be requested from the Gross Settlement Amount: (1) attorneys' fees up to $2,251,666.67 (one-third of the GSA); (2) Plaintiffs' counsels' reasonable litigation costs necessary to prosecute and settle this litigation, estimated at no more than $100,000; (3) a $15,000 service award to Plaintiff Scalise, and a $10,000 service award each to Plaintiff Cardoso and Plaintiff Evans for a total of $35,000 for Plaintiffs' combined Service Awards; (4) settlement administration costs not to exceed $100,000; and (5) $1,980,870.00 of the GSA has been allocated as PAGA civil penalties, of which 75% ($1,485,652.50) will be payable to the LWDA, and 25% ($495,217.50) will be payable to the Aggrieved Employees. (Settlement, at ¶¶ 3(C)(2)-(5).) After deduction of these amounts, the remaining Net Settlement Amount of approximately $2,287,463.33 will be distributed to participating Settlement Class members based on the number of proportionate pay periods worked during the Class Period. (Settlement, at ¶ 4(A)-(B)(i).) Significantly, the Settlement is non-reversionary and Settlement Class members will not be required to return any claim form to participate in the Settlement as Settlement Class members will automatically receive an Individual Settlement Award unless they affirmatively opt-out. (Settlement, at ¶¶ 3-4.)

In addition to the Net Settlement Amount, each Aggrieved Employee shall receive a portion of the 25% share of the amount allocated as PAGA civil penalties based on the proportionate number of pay periods worked during the PAGA Period. (Settlement, ¶¶ 3(C)(5), 4(B)(ii).)

Any payment from the Net Settlement Amount shall be classified as one-third (1/3) wages to be reported on IRS Forms W-2, and two-thirds (2/3) penalties and interest to be reported on IRS Forms 1099. (Settlement, ¶ 4(D)). Any payment from the PAGA Amount will be allocated as 100% penalties and reported on IRS Forms 1099. (*Id.*) Defendant's share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount. (Settlement, ¶ 3(E)).

3. Notice to Settlement Class Members and Right to Opt Out or Object to Settlement

Following preliminary approval of the settlement, and in accordance with California Rule of Court 3.769(f), the Notice of Class Action Settlement and Notice of Estimated Settlement Award ("Notice Packet"), will be mailed by first-class mail, in English and Spanish, to each Settlement class member at the last known address according to Defendant's records. (Settlement, at ¶ 9.) The proposed Notice of Class Action Settlement ("Class Notice") and Notice of Estimated Settlement Award are attached as Exhibits A and B, respectively, to the Settlement Agreement. (*Id.*) The Class Notice includes information on the claims asserted, the material settlement terms, the right to object, or to opt out and the timing and manner to do either. (*Id.*) Settlement Class members will have forty-five (45) calendar days from the mailing of the Class Notice to object or request exclusion from the settlement. (*Id.*) The Class Notice will also inform the Settlement Class of the date, place, and time of the final approval hearing. (*Id.*)

Before mailing the Notice Packets, the settlement administrator will conduct a search of all Settlement Class members' addresses using the National Change of Address database to update addresses. (Settlement, ¶ 9(B).) Furthermore, the settlement administrator will undertake Skip Tracing in an effort to locate Settlement Class members whose Notice Packets are returned as undeliverable. (*Id.*, at ¶ 9(F).) Following final approval of the proposed settlement, the Settlement Administrator will also provide notice of final judgment by posting the Judgment on the Settlement Administrator's website. (*Id.*, at ¶10 (C).)

III. LEGAL ARGUMENT

A. Standard for Preliminary Settlement Approval

To prevent fraud, collusion, or unfairness to the class, settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1800-01, as modified (Sept. 30, 1996) (citations omitted); Cal. Rules of Court 3.769(c), 3.770(a).) When "the court grants preliminary approval, it must set a final approval hearing, and provide for notice . . . to the class." (*Luckey v. Superior Court* (2014) 228 Cal. App. 4th 81, 93, review denied; see Cal. Rule of Court 3.769(e).)

The preliminary approval stage "is not a fairness hearing." (*Armstrong v. Bd. of Sch. Directors of Defendants of Milwaukee* (7th Cir. 1980) 616 F.2d 305, 314 (overruled on other grounds by *Felzen v. Andreas* (7th Cir. 1998) 134 F.3d 873). At the preliminary approval stage, the court "limits its inquiry to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." (*In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723, (internal citations omitted*); 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1145.)

A class action settlement is presumed to be fair 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." (*Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 52 [citing *Dunk*, 48 Cal. App. 4th at 1802]; *In re Microsoft I-V Cases*, 135 Cal. App. 4th at 723; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146.) Where there is no extrinsic evidence of fraud collusion, the court should assume that negotiations were conducted in good faith. (Newberg on Class Actions § 11.51 (3d ed. 1992); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 748, (denying objector's request for discovery where there was no evidence of collusion between the parties during negotiations); *In re Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110, 1122-23 [citing Cho, 177 Cal. App. 4th at 748].)

Here, when measured against the above standards, the Settlement satisfies the requirements for preliminary approval, because it is well within the range of possible approval, reached after extensive litigation in which the parties have thoroughly evaluated the claims, and there are no grounds to doubt its fairness.

B. The Proposed Settlement Satisfies the Standards for Preliminary Approval

In *Kullar v Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, the Court held that a presumption of fairness exists when: (1) the settlement is reached through arms-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.

The Court also confirmed that the trial court should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. (*Id*. at 129.)

Here, all four *Kullar* elements are met.

1. The Settlement is the Result of Arms-Length Bargaining

The Parties engaged in settlement negotiations at the mediation after months of analysis and informal discovery. (Lebe Decl., ¶¶ 19, 25, 33.) During mediation, each side provided the other with several detailed settlement proposals before the agreement was reached. (Lebe Decl., ¶ 25.) At all times during the mediation, the negotiations were rigorous and conducted at arm's length through Mr. Ross. (*Id.*) The settlement cannot be described as fraudulent or collusive. (*Id.*) Rather, the settlement is the product of informed and rigorous negotiations by experienced counsel. (*Id.*) The settlement is fair, adequate, and reasonable for Plaintiff Scalise and the Settlement Class. (*Id.*)

2. There Has Been Sufficient Investigation and Discovery to Allow Plaintiff Scalise and the Court to Act Intelligently and Evaluate the Settlement

Prior to reaching agreement to settle the class and representative claims, the Parties engaged in substantial informal discovery whereby Defendant provided a sampling of timekeeping and records as to the putative class members and aggrieved employees. (Lebe Decl., ¶¶ 19, 25, 33.) In addition, prior to mediation, Defendant produced policy documents, employee handbooks, and other relevant documents and information, such as the number of putative class members and aggrieved employees, and the respective number of workweeks worked during the Class Period and aggregate pay periods worked during the PAGA Period. (*Id.*) Counsel for Plaintiffs hired an expert to assist with an extensive analysis and extrapolation of the data produced to calculate potential damages for all claims asserted. (Lebe Decl., ¶¶ 19, 26.) The investigation permitted counsel for Plaintiffs to perform a rigorous damages analysis and come up with Defendant's total exposure presented by this case, which is detailed below. Moreover, each of the claims in the SAC were considered by the Parties prior to the mediation and included in the damage analysis prepared by counsel for Plaintiffs. (*Id.*)

3. Plaintiffs and Their Counsel Support the Proposed Settlement and Counsel Is Experienced in Similar Litigation

Plaintiffs and their counsel fully support the settlement. (Lebe Decl., ¶ 11; Haines Decl., ¶ 12; Hawkins Decl., ¶ 19; Scalise Decl., ¶ 13; Cardoso Decl., ¶ 1; Evans Decl., ¶ 30.) Plaintiffs' counsel have considerable experience prosecuting class wage and hour litigation, having been approved as class counsel and co-class counsel in numerous class actions. (Lebe Decl., ¶¶ 3-13; Haines Decl., ¶¶ 3-10; Hawkins Decl., ¶¶ 24-32.)

Moreover, Plaintiffs' counsel are prepared to litigate Plaintiffs' claims through trial and any resulting appellate proceeding. (Lebe Decl., ¶ 11.) However, because of the risks and expenses associated with this litigation, and the substantial benefits the settlement confers upon settlement class members and the named Plaintiffs, Plaintiffs and their counsel have determined that the settlement is in the best interests of Plaintiffs and the class. (*Id*.)

4. There is No Known Opposition to the Settlement

To date, Plaintiffs are unaware of any opposition to the settlement. (Lebe Decl., ¶ 27.) There are no other pending cases filed against Defendant alleging the same claims as this present matter regarding the same group of class members. (*Id*.) Further, PAGA claims do not belong to all alleged aggrieved employees; they belong to the State and a particular individual who is deputized to litigate on behalf of the Labor and Workforce Development Agency. (*Arias v. Superior Court*, (2009) 46 Cal.4th 969, 980-981.) Thus, the LWDA is the real party in interest in this case, and the LWDA alone has the ability to express its views on the adequacy of a settlement of PAGA claims. (*See Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348, 382 (2014) ["The government entity on whose behalf the plaintiff files suit is always the real party in interest in [a PAGA] suit."].) Plaintiffs' counsel has submitted the Settlement in this matter to the LWDA on July 31, 2025 and has not received any opposition to the settlement to date. (Lebe Decl., ¶ 28.) Plaintiffs' counsel will update the Court if Plaintiffs' counsel receives any notice of response from the LWDA regarding the proposed settlement. (*Id.*) Further, following the mailing of the Notice Packet, Settlement Class members will have the opportunity to file objections to or opt-out of the settlement. (*Id.*)

5. The Proposed Settlement is Fair and Reasonable Given the Substantial Benefits to the Settlement Class Members and the Risks and Expense of Complex and Protracted Litigation

The Settlement confers substantial benefits on Settlement class members. Defendant has agreed to pay a non-reversionary Gross Settlement Amount of $6,755,000, which will be distributed to the Settlement Class, less Plaintiffs' counsel's approved fees and costs, settlement administration costs, the amount set aside as PAGA civil penalties, and service awards to Plaintiffs for their services to the class. There are approximately 11,100 Settlement class members. (Lebe Decl., ¶¶ 29, 45.) Once appropriate deductions have been made from the Gross Settlement Amount, Settlement Class members will recover an average of approximately $206.08. (*Id.*). Additionally, the LWDA will receive $1,485,652.50 for its share of PAGA penalties. (*Id.*) There are approximately 41,305 Aggrieved Employees during the

PAGA Period. (*Id.*) Accordingly, the average PAGA payment to each Aggrieved Employee is estimated to be approximately $11.99 (*Id.*) Plaintiffs respectfully request that the Court preliminarily approve this Settlement because it reflects a fair and reasonable compromise of the disputed claims in this action.

This concrete and substantial benefit compares favorably to the uncertainty associated with continued litigation over contested issues. (*See Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal. App. 4th 399, 410-11.) *Kullar* requires information be presented to the Court, acting as a fiduciary for the absent class members ". . . to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. . ." (*Kullar*, 168 Cal. App. 4th at 129.)

Munoz clarified that a *Kullar* showing does not require the parties to submit an illusory prediction of the outer reaches of exposure without taking into account the actual risks of certification, decertification, dispositive motions, and trial. *Kullar* does not require an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims provided there is a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz*, 186 Cal.App.4th at 409.) The *Munoz* court found the record before the trial court sufficient, having included the number of class members, payroll data, as well as variances in duties and rest and meal period experience, and the companion action alleging less than $5,000,000 in damages. This information constituted "an adequate basis from which to garner a reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*." (*Id.*)

Here, Plaintiffs' counsel has reviewed the class data and estimated damages based on the allegations and evidence in this case to be a maximum of approximately $108,094,761 — of which $66,029,000 are penalties under the PAGA. (Lebe Decl., ¶¶ 41-42.) The $6,755,000 settlement represents about 52.19% of actual damages at issue in this matter, excluding penalties, about 16.06% of damages in this case including penalties, but excluding PAGA penalties, and about 6.2% of total damages in this case including PAGA penalties. (*Id.*)

Moreover, the risks associated with proceeding to class certification and trial are meaningful and are discussed in depth in the Declaration of Jonathan M. Lebe (Lebe Decl., ¶¶ 30-43.) Indeed, Plaintiff Scalise had not yet briefed her motion for class certification, and Defendant argued that Plaintiff Scalise's class-wide claims would not proceed as Plaintiff Scalise and all minor Settlement Class members signed valid arbitration agreements during their employment which contained class action waivers. (Lebe Decl., ¶ 31.) While Plaintiff Scalise argues that she timely disaffirmed any arbitration agreement she signed during her employment, Defendant maintained that absent settlement, a class-wide recovery was not possible and that only PAGA civil penalties could potentially be recovered on behalf of a subset of the Settlement Class Members. (*Id.*)

Moreover, Defendant argues that individual issues predominate as to whether class members were denied minimum and overtime wages, not reimbursed for work-related expenses incurred, denied meal or rest periods, and to what extent they were denied each. (Lebe Decl., ¶¶ 34-41.) Moreover, Defendant also argues that none of its wage and hour policies as to meal and rest periods are facially invalid, that Defendant appropriately paid its employees overtime wages in compliance with all applicable wage-and-hour laws, and reimbursed all work-related expenses. (*Id.*) If Defendant were to defeat a class certification motion, the class would recover nothing as a result of this litigation. Class certification is a major hurdle for Plaintiff Scalise and the Settlement Class, especially in light of the fact that Settlement Class members signed arbitration agreements with class action waivers. (*See Munoz*, 186 Cal. App. 4th at 411 [uncertainty of class treatment was significant question which supported the decision to settle].) The class certification briefing would be expensive and both sides risked an unfavorable ruling.

Moreover, Courts have the discretion to reduce PAGA penalties. (Labor Code § 2699(e)(2).) For instance, it is within a trial court's discretion to significantly reduce PAGA penalties even when there is a finding that a violation of the Labor Code occurred. (*See Carrington v. Starbucks*, (2018) 30 Cal. App. 5th 504; *Thurman v. Bayshore Transit Mgmt., Inc*. 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v. Covidien Inc*., Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011) (reducing PAGA penalties by over 82% in part because employer "not aware" of violations)) In theory, the Court could reduce the PAGA award by 99% or more. (*Id.*)

Based on the significant benefits to the class and equally significant potential risks of proceeding to trial, Plaintiff Scalise believes the settlement is in the best interest of the class.

C. The Court Should Certify a Settlement Class

California courts may certify a "settlement class" for settlement purposes only. (*See Dunk*, 48 Cal. App. 4th at 1807.) Where a court evaluates class certification in the context of settlement, the evaluation may differ from the litigation context. (*Luckey*, 228 Cal. App. 4th at 93.) For example, protecting absent class members "by blocking unwarranted or overbroad class definitions require[s] heightened scrutiny in the settlement-only class context" since the court will lack the opportunity to adjust the class based on information ascertained through litigation. (*Id*. at 94.) "The court is, in short, acting in a fiduciary capacity as guardian of the rights" of absent class members. (*Id*. at 103.)

Before granting class certification in the settlement context, the court must find that the proposed class satisfies the requirements of California Code of Civil Procedure § 382. (*See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269–270.) The parties must show the existence of "an ascertainable class and a well-defined community of interest among class members." (*Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326.) Here, both elements are present.

1. The Proposed Settlement Class is Ascertainable

"Whether a class is ascertainable is determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members." (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal. App. 4th 836, 849.) Here, the proposed class consists of all current and former non-exempt employees who are or were minors and were employed by Defendant in the State of California at any time from August 10, 2019 through July 19, 2024. (*See* Settlement, at ¶ 1.) Therefore, Settlement Class members can be identified from Defendant's personnel and employment records. This class definition provides "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." (*Aguirre v. Amscan Holdings*, Inc. (2015) 234 Cal. App. 4th 1290, 1300, reh'g denied, review denied (June 17, 2015); *Bartold v. Glendale Fed. Bank* (2000) 81 Cal. App. 4th 816, 828, overturned due to legislative action on other grounds.)

The Settlement class includes approximately 11,100 individuals, which is sufficient to meet the numerosity requirement of section 382. (*See Rose v. Defendants of Hayward* (1981) 126 Cal. App. 3d 926, 934.)

2. The Proposed Settlement Class Shares a Community of Interest

The proposed settlement class comprises a sufficient community of interest. A community of interest exists where (i) legal or factual questions common to the class predominate over questions affecting individual class members; (ii) claims of the class representative are typical of the claims or defenses of the class; and (iii) the class representatives are able to protect adequately and fairly the interests of the class. (*See Sav-on*, 34 Cal. 4th at 326; *Wershba*, 91 Cal. App. 4th at 238.)

Here, the proposed settlement class satisfies the above three factors. For settlement purposes, the Settlement Class members share questions of law or fact that are substantially similar. (*Wershba*, 91 Cal. App. 4th at 238.) For example, Plaintiff Scalise alleges Defendant failed to compensate her and Settlement Class members for time worked off-the-clock and thus failed to pay all Settlement Class members for all time worked, including minimum and overtime wages, and failed to provide meal and rest periods. (Lebe Decl., ¶¶ 34-37.) Plaintiff Scalise similarly alleges that she and Settlement Class members were uniformly not reimbursed for necessary business expenses including for the use of their cell phones for work purposes. (Lebe Decl., ¶ 38.) Plaintiff Scalise further alleges that Defendant's failure to provide all compensation owed to the Settlement Class members resulted in derivative claims for failure to provide accurate wage statements and failure to timely pay all wages to terminated and separated employees. (Lebe Decl., ¶¶ 39, 40.) Moreover, Plaintiff Scalise alleges that Defendant failed to pay Settlement Class members all reporting time pay owed. (Lebe Decl., ¶ 39.) These purported wage and hour violations were suffered on a class wide basis because of Defendant's uniform policies and practices regarding their employees. For these same reasons, Plaintiff Scalise's claims are typical of the claims of those of the Settlement Class members, as they each suffered the purported wage and hour violations alleged in this matter.

Third, Plaintiff Scalise can adequately protect the interests of the Settlement Class. (*See Wershba*, 91 Cal. App. 4th at 238.) In determining whether Plaintiff Scalise is adequate to serve as class representative, the Court must also consider whether Plaintiff Scalise's attorneys are qualified to conduct the litigation and the Plaintiff Scalise's interests are not antagonistic to the interests of the class. (*McGhee v. Bank of Am*. (1976) 60 Cal. App. 3d 442, 450.) Here, Plaintiff Scalise's counsel have no conflicts of interest, have vigorously prosecuted this action on behalf of Plaintiff Scalise and the settlement class, and have significant experience litigating class actions, including those involving similar claims. (Lebe Decl., ¶¶ 3-12; Haines Decl., ¶¶ 3-11; Hawkins Decl., ¶¶ 23-32.) Further, no conflict exists between the named Plaintiff Scalise and the class. Based on the above, the Court should certify the class for settlement purposes only.

D. The Requested Attorneys' Fees, Costs, and Service Awards are Reasonable

California state and federal courts have recognized that an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits to Settlement Class members by the settlement, also known as the "common fund" method. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)[2] The California Supreme Court has positively affirmed attorneys' fees in common fund cases are properly granted based on a percentage of recovery. (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 503.)

Several studies of class action fee awards have found the median common fund fee award is approximately one-third of the total settlement fund. (*See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, fn.11 [numerous studies have shown "fee awards in class actions average around one-third of the recovery."]; Reagan W. Silber and Frank E. Goodrich, Common Funds and Common Problems: Fee Objections and Class Counsel's Response, 17 Rev. Litig. 525, 546 (1998); T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules, 90 (1996) [finding that attorneys' fees in class litigation "were generally in the traditional range of approximately one-third of the total settlement"].) Moreover, numerous state and federal courts in California routinely approve fee requests equal to or more than the amount sought herein. Some courts have found an award of 33% of the common fund represents the "benchmark" in California. (*Smith v. CRST Van Expedited, Inc.*

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[2]The California Supreme Court also authorizes trial courts to use Federal Rule 23 and cases applying it for guidance. (*See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146; *Dunk v. Ford Co.,* 48 Cal.App. 4th at 1801 fn.7.)

(S.D. Cal., Jan. 14, 2013) U.S. Dist. LEXIS 6049 at *14 ["These percentages compare favorably with both California (33%) and federal (25%) benchmarks."]; *Dennis v. Kellogg Co.* (S.D. Cal. Nov. 14, 2013) U.S. Dist. LEXIS 163118 at *7 ["This percentage compares favorably with both California (33%) and federal (25%) benchmarks and the requested fee compares well with a lodestar cross-check as well"]; *Chavez v. Netjlix, Inc.* (2008) 162 Cal.App.4th 43, 66, fn. 11 [regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery].)

Here, Class Counsel will apply for an award of attorneys' fees of up to one third of the GSA (estimated at $2,251,6667.67) and reimbursement of their litigation costs up to $100,000. (Settlement, ¶¶ 3(C)(4), 5) Class Counsel's fee request is in line with awards in similar wage and hour class actions in California and demonstrates Class Counsel's fee request is consistent with market rates and is reasonable. Additionally, the costs sought by Plaintiffs are the types of costs routinely approved by courts. (*See, e.g., Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19 (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"]; *In re Immune Response Securities Litigation* (S.D. Cal. 2007) 497 F. Supp. 2d 1166, 1177-78 [mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable].)

1. The Requested Service Awards are Reasonable

Lastly, courts routinely approve incentive payments to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation. (*See e.g., Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 726 [upholding "service payments" to named plaintiffs for their efforts in bringing the case]; *Van Vrankenv. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294 [approving $50,000 incentive payment].) Indeed, "[i]ncentive awards are fairly typical in class action cases." (*Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958.) The Court may award incentive payments "to compensate [plaintiffs] for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and...to recognize [their] willingness to act as a private attorney general." (*Id.* at 958-59.)

As will be discussed in more detail at final approval, Plaintiff Scalise respectfully requests a service award of $15,000.00 and Plaintiffs Cardoso and Evans respectfully request a service award of $10,000.00 each for having initiated and prosecuted this litigation for more than three years, for work performed, providing information and documents to Class Counsel, assisting Class Counsel in investigating the claims at issue in this lawsuit, providing a general release of all claims, taking the risk of being liable for Defendant's costs if this case was lost, the reputational risk of being the named plaintiffs in a wage and hour class and PAGA action against a former employer, and the substantial benefits to be received by the other Settlement Class members and Aggrieved Employees. (Scalise Decl., ¶¶ 8-10, 12, 14-15; Cardoso Decl., ¶¶ 5-8; Evans Decl., ¶¶11-27.) Plaintiffs' efforts resulted in an excellent result for class members, with an average payout of approximately $206.08. (Lebe Decl., ¶ 29.)

Given Plaintiffs' significant contributions to this case and the risks they undertook, Plaintiffs' requested service awards are appropriate and justified as part of the Settlement and should be preliminarily approved.

E. The Court Should Approve the Proposed Notice

Rule of Court 3.769(f) requires notice of the final approval hearing to be provided to class members in the manner specified by the court. "The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement." (*See Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal. App. 4th 877, 883.) Notice should provide each Settlement Class member sufficient information to decide whether to accept the benefit he would receive under the settlement, or to opt out and pursue his own claim. (*Chavez v. Netflix, Inc*. (2008) 162 Cal. App. 4th 43, 56.)

The proposed notice meets this standard: it reasonably informs all Settlement Class members of the nature and status of the litigation and the material terms of the Settlement. Specifically, the notice provides each Settlement Class member with an estimate of the value of their share of the settlement, explains their right to object to the settlement at the fairness hearing, and informs Settlement Class members of their right to opt out of the Settlement. (*See* Exhibits A & B to Settlement.) In short, the notice provides Settlement class members with ample information to allow an informed decision about their participation in the settlement. (*Id.*)

The proposed manner of notice and timetable for further proceedings are also reasonable. Here, the Parties have agreed that the Settlement be administered by ILYM Group, Inc. ("ILYM"), an experienced class action settlement administrator. *See generally* Declaration of Anthony Rogers ("Rogers Decl.") and attached exhibits. Under the proposed schedule, notice will be sent via first-class U.S. mail to all Settlement Class members no later than ten (10) business days after the Court preliminarily approves the settlement. (*See* Settlement, ¶¶ 9(A)-(B)). Settlement Class members will then have forty-five (45) days from the mailing date of notice to file a written request to be excluded from the settlement or submit an objection. (*See* Settlement, ¶¶ 9(C)-(D).) This is more than sufficient time. (*See Torrisi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1375 [31 day period for written objections]; *Williams v. Costco Wholesale Corp.* (S.D. Cal. July 7, 2010), 2010 U.S. Dist. LEXIS 67731 at *4-5 [30-day opt-out period].) After the response period has closed, Plaintiffs will file a motion for final approval of the settlement. The Parties will take all needed actions to secure final approval of the settlement.

IV. <u>CONCLUSION</u>

For the foregoing reasons, the Parties respectfully request that the Court grant preliminary approval of the proposed settlement, enter the proposed Order Granting Preliminary Approval, authorize mailing of the class notice, and set a date for a final approval hearing.

Dated: July 31, 2025

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