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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO**

PAUL SCHWARTZENBERGER, ANTHONY  
PEREZ, individually, and on behalf of other  
members of the general public similarly situated,

Plaintiffs,

vs.

BERGER STEEL CORPORATION, a California  
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: 34-2022-00319703-CU-OE-GDS

*Assigned for all purposes to the Honorable  
Laurie Damrell, Dept. 28*

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION AND  
PAGA SETTLEMENT; MEMORANDUM  
OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: October 27, 2023

Time: 9:00 a.m.

Dept.: 28

Complaint Filed: May 10, 2022

FAC Filed: June 8, 2022

Trial Date: Not Set

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

**PLEASE TAKE NOTICE** that on October 27, 2023, at 9:00 a.m. or as soon thereafter as may be heard in Department 28 of the above-entitled court, located at located at 720 9<sup>th</sup> Street, Sacramento, California 95814, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Plaintiffs Paul Schwartzenberger and Anthony Perez (“Plaintiffs”) will, and hereby do, move the Court for entry of an order granting preliminary approval of the proposed Joint Stipulation of Class Action and PAGA Settlement entered between Plaintiffs and Defendant Berger Steel Corporation (“Defendant”). Specifically, Plaintiffs request that the Court enter an order:

1. Granting preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement attached as Exhibit 1 to the Declaration of S. Emi Minne in support of Motion for Preliminary Approval (“Agreement” or “Settlement”);

2. Approving the proposed Notice of Proposed Class Action Settlement (“Class Notice”) attached as Exhibit A to the Agreement, and the proposed deadlines for the settlement administration process;

3. Approving the opt-out and objection procedures set forth in the Agreement and Class Notice;

4. Provisionally certifying the proposed Class for settlement purposes;

5. Appointing Plaintiffs as the Class Representatives for the Class for settlement purposes;

6. Appointing S. Emi Minne and Jill J. Parker of Parker & Minne, LLP and Edwin Aiwazian, Arby Aiwazian, Joanna Ghosh, and Vartan Madoyan of Lawyers for Justice, PC as Class Counsel for settlement purposes;

7. Appointing ILYM Group, Inc. as the Settlement Administrator;

8. Directing Defendant to furnish the names, last known mailing address, social security numbers, and start and end dates of active employment as a non-exempt employee of Defendant in the State of California, total Workweeks during the Class Period, and total workweeks during the PAGA Period for all Class Members to the Administrator no later than 14 days calendar days after the Court

1 grants preliminary approval of the Settlement, as well as any other information the Administrator may  
2 reasonably require to administer the Settlement;

3 9. Scheduling a final approval hearing.

4 Good cause exists for the granting of this motion as the proposed Settlement is fair, adequate,  
5 and reasonable. Additionally, the proposed notice process complies with California Rules of Court,  
6 Rules 3.766 and 3.769, and mailing the proposed Class Notice to the Class Members' last known  
7 addresses is an appropriate form of giving notice.

8 Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Settlement, as well as  
9 information regarding the preliminary approval hearing on this matter, were submitted to the  
10 California Labor Workforce Development Agency via online filing at [https://www.dir.ca.gov/Private-](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html)  
11 [Attorneys-General-Act/Private-Attorneys-General-Act.html](https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html) on October 5, 2023. *See* Minne Decl. ¶  
12 69, Exh. 8.

13 Per the terms of the Settlement, Defendant has agreed not to oppose this motion. As the motion  
14 is unopposed, Plaintiffs respectfully request that the Court extend the page limit for the supporting  
15 memorandum of points and authorities pursuant to Rule 3.1113(e) of the California Rules of Court so  
16 that Plaintiffs can provide the Court with adequate information to determine whether to grant  
17 preliminary approval of the Settlement and preliminarily certify a class for settlement purposes.

18 The motion is based upon this notice, the attached memorandum of points and authorities; the  
19 Declaration of S. Emi Minne and exhibits thereto; the Declaration of Vartan Madoyan; the Declaration  
20 of Paul Schwartzenberger; the Declaration of Anthony Perez; the Declaration of Kimberly Sutherland  
21 on behalf of ILYM Group, Inc.; the pleadings and other records on file with the Court in this matter;  
22 and any other further evidence or argument that the Court may properly receive at or before the  
23 hearing.

24 Respectfully submitted,

25 Dated: October 5, 2023

**PARKER & MINNE, LLP**

26  
27 By:



28 S. Emi Minne  
Attorneys for Plaintiffs

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

This is a putative class and representative wage and hour action brought by Plaintiffs Paul Schwartzenberger and Anthony Perez (“Plaintiffs”) against Defendant Berger Steel Corporation (“Defendant”) on behalf of Defendant’s current and former non-exempt employees. By way of this Motion, Plaintiffs seek preliminary approval of a non-reversionary Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Agreement”)<sup>1</sup>, which will resolve the Action in its entirety. The key terms of the Agreement are as follows:

- Size of the Class: approximately 303 individuals.
- Gross Settlement Amount: \$750,000.00, exclusive of employer payroll taxes.
- Settlement Administration Costs: estimated not to exceed \$9,000.00.
- Requested Class Representative Enhancement Payments: \$7,500.00 to each Plaintiff.
- Requested Attorney’s Fees and Costs: \$262,500.00, plus costs not to exceed \$30,000.00.
- PAGA Penalties: \$37,500.00, 75% of which will be paid to the LWDA, with the remaining 25% paid to PAGA Members.
- Estimated Net Settlement Amount: \$396,0000.00.
- Average Estimated Individual Class Payment: \$1,306.93.
- Average Estimated Individual PAGA Payment: \$77.48.

As set forth herein, the Agreement is the product of informed discovery, arms-length negotiations by experienced counsel, and provides a fair, adequate, and reasonable recovery for the Class. Plaintiffs therefore respectfully request that the Court enter an order granting preliminary approval of the proposed Settlement.

### **II. FACTUAL AND PROCEDURAL BACKGROUND**

Defendant is a structural steel and miscellaneous metals fabricator and erector headquartered in McClellan, California. (Minne Decl., ¶ 3.) Plaintiff Paul Schwartzenberger was employed by

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<sup>1</sup> The Joint Stipulation of Class Action and PAGA Settlement is attached as Exhibit 1 to the Declaration of S. Emi Minne in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Minne Decl.”).

1 Defendant from approximately August 2018 to February 2020 as a non-exempt, hourly-paid structural  
2 iron and steel worker. (*Id.*, ¶ 4; Declaration of Paul Schwitzenberger [“Schwitzenberger Decl.”], ¶  
3 3.) Plaintiff Anthony Perez was employed by Defendant from approximately April 2019 to October  
4 2020 as a non-exempt, hourly-paid structural iron and steel worker. (Minne Decl., ¶ 5; Declaration of  
5 Anthony Perez [“Perez Decl.”], ¶ 3.)

6 On May 10, 2022, Plaintiff Paul Schwitzenberger filed a putative class action complaint  
7 entitled *Paul Schwitzenberger v. Berger Steel Corporation* (Sacramento County Superior Court Case  
8 No. 34-2022-00319703-CU-OE-GDS, hereinafter “Action”). (Minne Decl., ¶ 6.) On June 8, 2022, a  
9 First Amended Complaint (“FAC”) adding Plaintiff Anthony Perez as a named plaintiff and potential  
10 class representative was filed in the Action. The FAC alleges the following ten (10) causes of action:  
11 (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime Wages); (2) Violation of  
12 California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of  
13 California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor  
14 Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code  
15 §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages  
16 Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-  
17 Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep  
18 Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed  
19 Business Expenses); and (10) Violation of California Business and Professions Code §§ 17200, et seq.  
20 (*Id.*) On July 21, 2022, Defendant filed its Answer to the FAC. (*Id.*, ¶ 7.)

21 On September 26, 2022, Plaintiffs served their first set of written discovery requests on  
22 Defendant, which consisted of Form Interrogatories – General, Special Interrogatories, and Requests  
23 for Production of Documents. (*Id.*, ¶ 8.) Plaintiffs also noticed the deposition of Defendant’s person  
24 most qualified. (*Id.*) On November 14, 2023, Defendant served its responses to Plaintiffs’ discovery  
25 requests. (*Id.*, ¶ 9.) Defendant’s responses included production of numerous documents relevant to  
26 the case, including Defendant’s employee handbook, job descriptions, Plaintiffs’ personnel files, and  
27 onboarding documents. (*Id.*)

1 On or about November 22, 2022, Plaintiffs' counsel sent Defendant's counsel a meet and  
2 confer letter regarding various deficiencies in Defendant's discovery responses. (*Id.*, ¶ 10.) Shortly  
3 thereafter counsel for the Parties met and conferred regarding the potential for class-wide resolution.  
4 (*Id.*) Pursuant to these discussions, the Parties agreed to stay formal discovery, exchange informal  
5 discovery, and engage in private mediation. (*Id.*) As a further pre-condition for early mediation,  
6 Defendant also formally stipulated that: (1) the Parties would finalize the format of a *Belaire-West*  
7 notice prior to mediation, and that the *Belaire-West* notice would be promptly sent to all putative class  
8 members in the event mediation was unsuccessful; (2) that Defendant would not obtain new arbitration  
9 agreements from putative class members during the pendency of mediation; and (3) that Defendant  
10 would not engage in a mass release campaign (commonly known as a "*Pick-up Stix*" process) prior to  
11 mediation. (*Id.*) An order approving the Parties' stipulations was entered by this Court on May 31,  
12 2023. (*Id.*)

13 Consistent with the Parties' agreement regarding informal discovery, Defendant provided  
14 Plaintiffs' counsel with extensive informal discovery prior to mediation, which included a 50%  
15 sampling of Class Members' time and payroll records. (*Id.*, ¶ 11.) The sampling was randomly selected  
16 and included employees across the Class Period. (*Id.*) Defendant also provided Plaintiffs' counsel with  
17 key data points regarding the size and composition of the Class, such as the number of Class Members  
18 and PAGA Members (including the number of current versus former employees), and Class Members'  
19 average rates of pay. (*Id.*) Defendant also provided Plaintiffs' counsel with a list containing the specific  
20 dates of employment and rates of pay for all Class Members. (*Id.*) Finally, Defendant provided  
21 Plaintiffs' counsel with a substantial number of written meal period waivers purportedly signed by  
22 Class Members. (*Id.*)

23 Prior to mediation, Plaintiffs' counsel thoroughly reviewed both the formal and informal  
24 discovery produced by Defendant, which included consulting with an expert in data analysis to analyze  
25 Class Members' time and payroll records for potential wage and hour violations. (*Id.*, ¶ 12.) Plaintiffs'  
26 counsel also engaged in further independent investigation, and conducted further legal research  
27 regarding the merits of Plaintiffs' claims and Defendant's potential defenses thereto. (*Id.*) Based on  
28 this investigation and informal discovery, Plaintiffs' counsel prepared a detailed and informed

1 assessment of Defendant’s potential liability in advance of mediation. (*Id.*) Plaintiffs’ counsel also  
2 extensively briefed the strengths and weaknesses of Plaintiffs’ claims and Defendant’s anticipated  
3 defenses, and provided their analysis to the mediator for his consideration. (*Id.*)

4 After completing a thorough investigation and analysis of Plaintiffs’ claims, on July 31, 2023,  
5 the Parties attended a formal mediation with Paul Grossman, Esq., a neutral and respected mediator  
6 with extensive experience in complex wage and hour matters. (*Id.*, ¶ 13.) The Parties engaged in a full  
7 day of negotiations, during which the Parties debated their respective positions and exchanged views  
8 regarding the strengths and weaknesses of their claims and defenses. (*Id.*) The settlement discussions  
9 were at all times at arm’s length and, although conducted with appropriate professional decorum, were  
10 adversarial. (*Id.*) Plaintiffs and their counsel went into mediation willing to explore the potential for a  
11 settlement of the Action, but were also prepared to litigate Plaintiffs’ claims through class certification,  
12 trial, and appeal if a settlement was not reached. (*Id.*) Following a full day of negotiations, the  
13 mediation culminated in the issuance of a mediator’s proposal, which was accepted by all Parties. (*Id.*)

14 On August 3, 2023, Plaintiffs provided notice to the California Labor & Workforce  
15 Development Agency (“LWDA”) and Defendant of their intent to seek civil penalties pursuant to  
16 Labor Code §§ 2698, et seq. (“PAGA”). (*Id.*, ¶ 14, Exh. 2.) On or about October 4, 2023, a Joint  
17 Stipulation to allow the filing of a Second Amended Complaint (“SAC”) to add a representative cause  
18 of action seeking civil penalties under PAGA was filed with the Court. The stipulation to allow the  
19 filing of the SAC is currently pending approval by the Court. (*Id.*, ¶ 15.)

20 On or about October 5, 2023, after months of further negotiation, the Parties fully executed a  
21 long form Joint Stipulation of Class Action and PAGA Settlement. (*Id.*, ¶ 16, Exh. 1.)

### 22 **III. SUMMARY OF THE SETTLEMENT TERMS**

#### 23 **A. Definition of the Proposed Class and PAGA Members.**

24 For purposes of Settlement only, the Parties have agreed to certify the following class: “All  
25 current and former hourly-paid, non-exempt employees of Defendant who were employed by  
26 Defendant in the State of California at any time during the Class Period.” (Minne Decl., ¶ 14;  
27 Agreement, ¶ 6) The Class Period commences on May 10, 2018 and ends on the earlier of: (i) the date  
28

the Court grants preliminary approval of the Settlement, or (ii) October 29, 2023. (Minne Decl., ¶ 18; Agreement, ¶ 7.) There are approximately 303 Class Members. (Minne Decl., ¶ 19.)

The Settlement also includes a subgroup of “PAGA Members” which consists of all current and former non-exempt employees of Defendant who were employed by Defendant in the state of California at any time during the PAGA Period. (Minne Decl., ¶ 20; Agreement, ¶ 22.) The PAGA Period commences on August 3, 2022, and ends on the earlier of: (i) the date the Court grants preliminary approval of the Settlement, or (ii) October 29, 2023. (Minne Decl., ¶ 20; Agreement, ¶ 24.) There are approximately 121 PAGA Members. (Minne Decl., ¶ 21.)

### **B. Gross Settlement Amount**

The Parties have agreed to settle the Class and PAGA claims at issue for Gross Settlement Amount of \$750,000.00. (Minne Decl., ¶ 22; Agreement, ¶¶ 15, 49.) The Gross Settlement Amount is non-reversionary, and does not include employer-side payroll taxes, which shall be separately paid by Defendant. (*Id.*) The Gross Settlement Amount shall be allocated as follows:

- Attorneys’ Fees to Class Counsel in the amount of 35% of the Gross Settlement Amount (i.e., \$262,500.00). (Minne Decl., ¶ 23; Agreement, ¶¶ 4, 53.)
- Reimbursement of Class Counsel’s actual litigation costs and expenses, not to exceed \$30,000.00. (Minne Decl., ¶ 23; Agreement, ¶¶ 4, 53.)
- Class Representative Enhancement Payment of \$7,500.00 to each Plaintiff. (Minne Decl., ¶ 23; Agreement, ¶¶ 8, 54.)
- Settlement Administration Costs not to exceed \$9,000.00. (Minne Decl., ¶ 23; Agreement, ¶¶ 37, 55.)
- PAGA Penalties in the amount of \$37,500.00, 75% of which shall be allocated to the LWDA, and 25% of which shall be distributed to PAGA Members. (Minne Decl., ¶ 23; Agreement, ¶¶ 21, 56.)

The Gross Settlement Amount, less the payments listed above, shall be the “Net Settlement Amount”, which shall be distributed to Participating Class Members as Individual Class Payments on a pro rata basis according to the number of workweeks worked during the Class Period. (Minne Decl., ¶¶ 24-25; Agreement ¶¶ 16, 57, 58.) Individual Class Payments shall be allocated as 20% wages

1 subject to all applicable tax withholdings, 40% interest and 40% penalties not subject to tax  
2 withholdings. (Minne Decl., ¶ 27; Agreement, ¶ 59.) The Net Settlement Amount is currently  
3 estimated to be approximately \$396,000.00. (Minne Decl., ¶ 24; Agreement, ¶ 57.) It is currently  
4 estimated that Class Members will receive an average Individual Class Payment of \$1,303.63. (Minne  
5 Decl., ¶ 22.)

6 In addition to the Individual Class Payments from the Net Settlement Amount, PAGA  
7 Members shall receive a pro-rata share of the 25% portion of PAGA Penalties allocated for distribution  
8 to PAGA Members. (Minne Decl., ¶ 28; Agreement, ¶ 17, 60.) Individual PAGA Payments will be  
9 distributed on a pro-rata basis based on the number of workweeks worked by PAGA Members during  
10 the PAGA Period. (*Id.*) The estimated average Individual PAGA Payment to PAGA Members is  
11 \$50.81. (Minne Decl., ¶ 28.)

12 The Settlement Administrator shall determine the eligibility for, and the amounts of, each  
13 Individual Settlement Award under the terms of the Settlement Agreement. (Minne Decl., ¶ 29;  
14 Agreement, ¶¶ 37, 52, 63) All payments owed under the Settlement shall be disbursed within 14  
15 calendar days of the funding of the Gross Settlement Amount. (Minne Decl., ¶ 29; Agreement ¶ 52.)  
16 If an Individual Class Payment check or Individual PAGA Payment check remains uncashed after one  
17 hundred eighty (180) days from the initial mailing, the Settlement Administrator shall transfer the  
18 value of the uncashed checks to the California Controller's Unclaimed Property Fund in the name of  
19 the Participating Class Member or PAGA Member. (Minne Decl., ¶ 29, Agreement ¶ 77.) As such, no  
20 "unpaid residue" under California Code of Civil Procedure §384 will result from the Settlement.  
21 (Minne Decl., ¶ 29.)

### 22 **C. Release of Class and PAGA Claims.**

23 Upon the funding of the Gross Settlement Amount and all employer payroll taxes, Plaintiffs,  
24 Participating Class Members, and PAGA Members shall be deemed to have released their respective  
25 Released Claims against the Released Parties. (Agreement ¶¶ 30, 84.) The scope of the release is  
26 narrowly tailored to release claims based on facts alleged in the SAC, depending on whether Class  
27 Members elect to opt-out of the settlement and whether such individuals qualify as PAGA Members.  
28 (*Id.*) All Class Members who are PAGA Members will release PAGA claims even if they request

1 exclusion from the Class. (*Id.*, ¶¶ 31, 84.) In addition to the release of claims made by all Participating  
2 Class Members and PAGA Members, as set forth above, Plaintiffs, in their individual capacity, agree  
3 to a general release of all claims against Defendant. (*Id.*, ¶ 85.)

#### 4 **D. The Settlement Administrator**

5 The Parties have selected ILYM Group, Inc. to administer the Settlement. (Minne Decl., ¶ 30;  
6 Agreement ¶ 36.)<sup>2</sup> ILYM Group, Inc. has extensive experience in administering class action and  
7 PAGA settlements, and has procedures in place to protect the security of class data as well as adequate  
8 insurance for errors and omissions. (Declaration of Kimberly Sutherland [“Sutherland Decl.”], ¶¶ 2,  
9 Exh. A-B.) The Parties and their counsel do not have any financial interest in ILYM Group, Inc. that  
10 would create a conflict of interest. (Agreement, ¶ 36; Minne Decl., ¶ 63; Sutherland Decl., ¶ 3.)

#### 11 **E. Other Pending Cases Against Defendant**

12 Plaintiffs’ counsel is aware of one other putative class action lawsuit pending in this Court that  
13 asserts claims that similar to those asserted in this Action: *Morgan Crooms v. Berger Steel*  
14 *Corporation*, Sacramento County Superior Court Case No. 34-2022-00324334 (“*Crooms* Action”).  
15 (Minne Decl., ¶ 66.) The *Crooms* Action was originally filed on July 27, 2023, and alleges the  
16 following eight (8) causes of action: (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid  
17 Overtime Wages); (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period  
18 Premiums); (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4)  
19 Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages); (5) Violation of  
20 California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California  
21 Labor Code § 226(a) (Non-Compliant Wage Statements); (7) Violation of California Labor Code §§  
22 2800 and 2802 (Unreimbursed Business Expenses); and (8). Violation of California Business and  
23 Professions Code §§ 17200, et seq. (*Id.*)

24 Plaintiffs’ counsel informed counsel for the plaintiff in the *Crooms* Action of the Parties’  
25 agreement to engage in private mediation of Plaintiffs’ class-wide claims in this Action. Based on  
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27 <sup>2</sup> Plaintiff’s counsel also obtained administration estimates from Phoenix Settlement Administrators,  
28 Simpluris, Inc., and Apex Class Action Administration. ILYM Group, Inc. was ultimately selected as  
the Settlement Administrator because it provided the lowest estimate and, consequently, would result  
in the highest net recovery by Participating Class Members. (Minne Decl., ¶ 30, Exh. 3-6.)

1 these conversations as well as Joint CMC Report filed on August 23, 2023 in the *Crooms* Action, it is  
2 Plaintiff's counsel's understanding that the plaintiff in the *Crooms* Action intends to opt-out of the  
3 Settlement in this Action and pursue his claims against Defendant on an individual basis. A Joint CMC  
4 Report filed in the *Crooms* Action on August 23, 2023 confirms that the parties in that matter are  
5 engaged in individual settlement negotiations. (*Id.*, ¶ 67, Exh. 7.)

6 Other than the *Crooms* Action, Plaintiffs' counsel is unaware of any other pending matters or  
7 actions that assert claims that will be extinguished to adversely affected by the Settlement. (Minne  
8 Decl., ¶ 68.)

#### 9 **IV. THE COURT SHOULD GRANT PRELIMINARY APPROVAL.**

##### 10 **A. Standard of Review for Preliminary Approval**

11 The review and approval of a proposed class action settlement involves a two-step process. *See*  
12 Cal. Rules of Court, Rule 3.769(c). First, counsel submit the proposed terms of settlement and the  
13 Court makes a preliminary assessment of whether the settlement appears to be sufficiently within the  
14 range of a fair settlement to justify providing notice of the proposed settlement to class members.  
15 Second, after notice is provided to the class, the Court must conduct a second inquiry into whether the  
16 proposed settlement is fair, reasonable and adequate. *Id.*

17 The initial evaluation of a settlement at preliminary approval "is not a fairness hearing."  
18 *Armstrong v. Bd. of Sch. Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980), overruled  
19 on other grounds by *Felzen v. Andreas*, 134 F.3d 873, 875 (7th Cir. 1998). Rather, the limited purpose  
20 of this initial inquiry is to determine, at a threshold level, whether the proposed settlement is within  
21 the range of possible approval and, as a result, "whether there is any reason to notify the class members  
22 of the proposed settlement and to proceed with a fairness hearing." *Id.* As set forth below, the  
23 Settlement is within the range of possible approval. Accordingly, preliminary approval should be  
24 granted.

##### 25 **B. The Settlement is Entitled to a Presumption of Fairness.**

26 California Courts recognize that a presumption of fairness exists where: (1) the settlement is  
27 reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow  
28 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the  
percentage of objectors is small. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006); *7-Eleven*

1 *Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). Because the  
2 proposed Settlement was reached through arm’s-length negotiations based on sufficient investigation  
3 and discovery by qualified counsel, it is entitled to a presumption of fairness.<sup>3</sup>

4 1. The Proposed Settlement Was Reached Through Arm’s Length Bargaining.

5 The Settlement was reached following a full day of mediation with Paul Grossman, Esq., a  
6 highly respected mediator with extensive experience in complex wage and hour litigation. (Minne  
7 Decl., ¶ 13.) The settlement negotiations were at arm’s length and, although conducted in a  
8 professional manner, were adversarial. (Minne Decl., ¶ 13.) The Parties went into settlement  
9 discussions willing to explore the potential for a settlement of the dispute, but each side was also  
10 prepared to litigate its position through class certification, trial, and appeal if a settlement was not  
11 reached. (Minne Decl., ¶ 13.) The Settlement was ultimately reached pursuant to a mediator’s proposal  
12 which was accepted by the Parties. (Minne Decl., ¶ 9.) The proposed Settlement was reached at the  
13 end of a process that was neither fraudulent nor collusive. (Minne Decl., ¶¶ 13, 17.) To the contrary,  
14 counsel for the Parties advanced their respective positions throughout the settlement negotiations.  
15 (Minne Decl., ¶¶ 13, 17; see also Declaration of Vartan Madoyan [“Madoyan Decl.”], ¶ 12.)

16 2. Plaintiffs and Their Counsel Conducted Sufficient Investigation and Discovery to  
17 Allow the Court and the Parties Act Intelligently.

18 Courts typically assess the status of discovery in determining whether a proposed class action  
19 settlement is fair, reasonable, and adequate. *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801  
20 (1996). As detailed above, prior to reaching the Settlement, Plaintiffs’ counsel obtained extensive  
21 formal and informal discovery before the mediation, which included: a representative 50% sampling  
22 of Class Members’ time and payroll documents; the employee handbook, onboarding documents, and  
23 meal period waivers utilized by Defendant during the Class Period; data points regarding the size,  
24 composition, and average rate of pay of the putative class; and a list containing all Class Members’  
25 dates of employment and rates of pay. (Minne Decl., ¶ 9, 11.) Plaintiffs’ counsel thoroughly reviewed  
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27  
28 <sup>3</sup> At preliminary approval, the fourth factor – the percentage of objectors – is not applicable, as notice  
has not yet been provided to the Class and Class Members have not yet had an opportunity to object to  
the Settlement.

1 this informal discovery prior to mediation, which included consulting with an expert to fully analyze  
2 Class Members' time and payroll records for potential wage and hour violations. (*Id.*, ¶ 12.) Plaintiffs'  
3 counsel also conducted further independent investigation, and researched Plaintiffs' claims and  
4 Defendant's defenses thereto. (*Id.*) Based on this investigation, Plaintiffs' counsel prepared a detailed  
5 assessment of Defendant's potential liability, and extensively briefed the strengths and weaknesses of  
6 Plaintiffs' claims and Defendant's anticipated defenses prior to mediation. Thus, Plaintiffs' counsel  
7 was able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*; see also  
8 Madoyan Decl., ¶¶ 10-12.)

9 **3. Plaintiffs' Counsel is Experienced in Class Action Litigation.**

10 The settlement negotiations were conducted by highly capable and experienced counsel.  
11 Plaintiffs' counsel are respected members of the bar with strong records of effective advocacy for their  
12 clients, and are experienced in handling complex wage-and-hour class action litigation. (Minne Decl.,  
13 ¶¶ 58-63; Madoyan Decl., ¶¶ 2-8.) Although Plaintiffs and their counsel were prepared to litigate the  
14 claims in this action, they support the proposed Settlement as being in the best interests of the Class  
15 Members. (Minne Decl., ¶ 54; Schwartzenberger Decl., ¶ 8; Perez Decl., ¶ 8.)

16 **C. The Settlement is Fair, Adequate, and Reasonable in Light of the Parties' Respective**  
17 **Positions and Risks of Continued Litigation**

18 A settlement is not judged against what might have been recovered had a plaintiff prevailed at  
19 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.  
20 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 246, 250 (2001). In evaluating the  
21 reasonableness of a settlement, a trial court must consider "the strength of plaintiffs' case, the risk,  
22 expense, complexity and likely duration of further litigation, the risk of maintaining class action status  
23 through trial, the amount offered in settlement, the extent of discovery completed and the stage of the  
24 proceedings, the experience and views of counsel, the presence of a governmental participant, and the  
25 reaction of the class members to the proposed settlement." *Kullar v. Foot Locker Retail, Inc.*, 168  
26 Cal.App.4th 116, 128 (2008).

27 Plaintiffs' counsel has carefully considered Plaintiffs' claims and analyzed class-wide  
28 violation rates. Based on information gathered by Plaintiffs' counsel, including calculations of

Defendant's maximum potential liability exposure and the risks associated with continued litigation, Plaintiffs' counsel has determined that the proposed Settlement is fair, adequate, and reasonable. (Minne Decl., ¶¶ 31-55.)

a. Defendant's Maximum Potential Exposure.

Based on information gathered through discovery, Plaintiffs' counsel estimated that if all class claims were adjudicated in favor of the Class, Defendant's maximum potential liability for the Class claims is \$4,998,414.70 (*Id.*, ¶ 31.) This estimate can be broken down by claim as follows: \$599,300.24 in unpaid minimum wages and overtime compensation; \$1,258,764.13 in unpaid meal period premiums; \$918,805.93 in unpaid rest period premiums; \$315,920.00 in unreimbursed business expenses; \$1,602,374.40 in waiting time penalties under Labor Code § 203; and \$303,250.00 in wage statement penalties under Labor Code § 226. (*Id.*, ¶¶ 31-37.)<sup>4</sup>

In addition to the damages for the Class claims, Plaintiffs' counsel also separately calculated Defendant's potential liability for civil penalties under PAGA to be \$1,702,264.40, which can be broken down by violation as follows: \$154,650.00 for unpaid overtime; \$309,300.00 for unpaid minimum wages; \$249,914.40 for meal period violations; \$309,300.00 for rest period violations; \$309,300.00 for failure to timely pay wages during employment under Labor Code section 204; \$60,500.00 for failure to maintain required payroll records under Labor Code section 1174; and \$309,300.00 for failure to reimburse business expenses. (*Id.*, ¶ 38.)<sup>5</sup>

b. Strengths and Weaknesses of Plaintiffs' Claims and Risks of Continued Litigation.

While Defendant's maximum potential liability is substantial, such calculations assume that Plaintiffs fully prevail on all causes of action at every stage of litigation, from class certification through trial and appeals. Defendant vociferously denied liability, and proffered several defenses to both class certification and the merits of Plaintiffs' claims. While Plaintiffs and Plaintiffs' counsel

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<sup>4</sup> Penalties associated with violations of Labor Code §§ 204 and 1174, were not considered as part of the Class analysis, but were instead included in Plaintiffs' counsel's separate calculations regarding Defendant's potential exposure for civil penalties under PAGA. (Minne Decl., ¶ 31.)

<sup>5</sup> These calculations did not include duplicative penalties that would likely be considered duplicative of statutory penalties recoverable as part of the Plaintiffs' Class claims, such as waiting time penalties under Labor Code § 203 and wage statement penalties under Labor Code § 226. (Minne Decl., ¶ 38.)

1 believed that Plaintiffs' claims are fundamentally meritorious, they recognized that there is significant  
2 risk and uncertainty associated with protracted litigation of this Action. Consideration of the specific  
3 risks associated with each of Plaintiffs' primary considerations factored into their decision to enter  
4 into the Settlement at this point of litigation. (Minne Decl., ¶¶ 39-55.)

5 For example, a significant portion of Defendant's estimated liability is based on Plaintiffs'  
6 meal period claim. Plaintiffs contend that Defendant's formal meal period policies were facially  
7 deficient, as they failed to provide employees with all meal periods to which they were legally entitled  
8 and further failed to provide guidance as to the timing of meal periods. Plaintiffs further contend that,  
9 as a matter of actual practice, Class Members were often required to skip meal periods, to delay meal  
10 periods after their fifth hour of work, and to cut their meal periods short, and were not paid meal period  
11 premiums for such violations. At mediation, Defendant asserted that its written meal period policies  
12 substantially complied with California law. Defendant also maintained that Class Members were  
13 provided ample opportunity to take meal periods, and that if Class Members did not take compliant  
14 meal breaks, it is because they voluntarily chose not to do so. Defendant argued that questions of  
15 whether employees had received compliant meal periods, why such meal periods were not taken, and  
16 whether such meal periods were voluntarily waived were individualized issues that would bar  
17 certification. Defendant also asserted that Class Members worked in a variety of different job positions  
18 with different job duties in different locations, and that this variation between employees raised highly  
19 individualized questions of fact. While Plaintiffs' counsel strongly disagreed with Defendant's  
20 arguments and contentions, they recognized there was a risk that the Court could ultimately deny class  
21 certification based on concerns regarding manageability and/or individualized issues. Plaintiffs'  
22 counsel also recognized that even if class certification is granted, Plaintiffs will be required to oppose  
23 attempts to decertify the class, as well as a potential motion for summary judgment. Defendants will  
24 also undoubtedly present numerous defenses at trial, including but not limited to arguments that  
25 employees voluntarily chose to skip, shorten, or delay meal periods. (Minne Decl., ¶ 41.)

26 Plaintiffs' counsel was also cognizant of the challenges associated with maintaining Plaintiffs'  
27 rest period claims on a class-wide basis. Plaintiffs further contend that, as a matter of actual practice,  
28 Class Members were often required to skip or shorten their rest periods, and were not paid rest period

1 premiums for such violations. As with meal periods, Defendant asserted that its written policies  
2 substantially complied with California law, that Class Members were allowed to take rest periods, and  
3 that Class Members who worked through their rest periods did so voluntarily. Defendant likewise  
4 argued that whether Class Members had received compliant rest periods and the reasons why Class  
5 Members failed to receive compliant rest periods raised individualized issues that could not be  
6 certified. Defendant likewise argued that whether Class Members had received a compliant rest period  
7 and the reasons why Class Members failed to receive compliant rest periods raised individualized  
8 issues that could not be certified. While Plaintiffs' counsel disagreed with Defendant's positions, they  
9 also recognized that rest period claims are inherently difficult to certify and prove, given that an  
10 employer has no obligation to maintain records of rest periods. Further, just as with meal periods, even  
11 if this claim is certified, Plaintiffs will be required to defend against an anticipated motion to decertify  
12 and motion for summary judgment, and will ultimately bear the burden of establishing liability with  
13 at trial. (Minne Decl., ¶ 42.)

14 Plaintiffs also faced challenges related to their minimum wage and overtime claims. Such  
15 claims were based on Plaintiffs' allegations that Defendant implemented policies and practices that  
16 placed substantial pressure on Class Members to work off-the-clock without compensation. Defendant  
17 denied that employees were required to do any work off-the-clock, and that if employees performed  
18 such work it was done without Defendant's knowledge. Defendant also argued that individual liability  
19 issues predominate, including: (1) whether each employee worked off-the-clock; and (2) whether  
20 Defendant knew or should have known about each employee's off-the-clock work. (*Id.*) Moreover,  
21 given that these claims were based on off-the-clock work not reflected in Defendant's time records,  
22 Defendant argued that proving damages at trial would not be manageable. (Minne Decl., ¶ 40.)

23 In addition to meal period, rest period, overtime, and minimum wage claims, Plaintiffs also  
24 contends that Defendant failed to reimburse Class Members for necessary business expenses, such as  
25 use of their personal cell phones, tools, and vehicles. Defendant asserted that Class Members were not  
26 required to use their personal cells phones for work, and that all necessary tools and transportation  
27 were provided by the company. Defendant also contended that it provided per diems which reimbursed  
28 Class Members for the cost of any work-related travel. Defendant further asserted that individualized

1 inquiries regarding why a Class Member failed to receive reimbursement for certain expenses would  
2 predominate. (Minne Decl., ¶ 43.)

3 There are also substantial risks attached to Plaintiffs' claims for waiting time penalties and  
4 wage statement penalties. Such claims are derivative of Plaintiffs' primary claims for meal period, rest  
5 period, minimum wage and overtime violations. Thus, if certification is denied on the primary claims,  
6 these derivative claims would also likely fail. Moreover, even if Plaintiffs prevail on the underlying  
7 claims, Plaintiffs would still be required to show that Defendant's conduct was willful in order to  
8 obtain Labor Code § 203 penalties, a difficult prospect. *See, e.g., Choate v. Celite Corp.*, 215 Cal App.  
9 4th 1460, 1468 (2013) (holding that "an employer's reasonable, good faith belief that wages are not  
10 owed may negate a finding of willfulness"). Wage statement claims have also seen varying treatment  
11 at the appellate level because such claims have an element of discretion attached to them. *Cf., Jaimez*  
12 *v. DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) with *Price v. Starbucks Corp.*, 192 Cal.App.4th  
13 1136 (2011). Accordingly, these claims presented significant risk and uncertainty. (Minne Decl., ¶¶  
14 44-45.)

15 Plaintiffs' counsel also separately contemplated the numerous risks of proceeding with a  
16 PAGA claim. First, the same defenses and merits-based risks associated with Plaintiffs' direct Labor  
17 Code claims are also applicable to a PAGA claim. *See Green v. Lawrence Service Co.*, 2013 U.S. Dist.  
18 LEXIS 109270, at \*5, fn. 5 (C.D. Cal. 2013) ("whether each PAGA claims succeeds or fails is  
19 determined by the merits of the substantive claims on which each is based.") Second, although  
20 California law is clear that PAGA actions need not satisfy class action requirements, there is currently  
21 a split in authority over whether PAGA claims may nevertheless be stricken based on manageability  
22 concerns. *Cf. Wesson v. Staples The Office Superstore*, 68 Cal.App.5th 746 (2021) with *Estrada v.*  
23 *Royalty Carpet Mills, Inc.*, 76 Cal.App.5th 685 (2022). Even if Plaintiffs defeated any challenges to  
24 manageability, the Court could ultimately exercise its discretion to find that the imposition of  
25 heightened civil penalties was inappropriate, particularly if Plaintiffs prevailed on their class claims.  
26 Cal. Lab. Code § 2699(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1122  
27  
28

(2012).<sup>6</sup> Plaintiffs' counsel also was cognizant that PAGA is not intended to be compensatory in nature, but is instead is instead intended to facilitate enforcement of California's labor laws by financing state activities and educating and deterring non-compliance. See Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980 *Williams v. Sup. Ct.*, 3 Cal.5th 531, 546 (2017). (Minne Decl., ¶¶ 47-51.)

Taking into account the specific strengths and weaknesses of each claim, and the unique risks associated therewith, Plaintiffs' counsel estimated that Defendant faced a risk-adjusted liability of \$907,230.62 for Plaintiffs' Class claims, and \$212,783.05 for Plaintiffs' PAGA claim. (Minne Decl., ¶¶ 40-52.)

Finally, Plaintiffs' counsel recognized the significant risk and expense generally associated with continued litigation, trial, and possible appeals, all of which would substantially delay and reduce any recovery by the Class Members. Even if Plaintiffs prevailed at class certification, proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely uncertain proposition. In order to prove liability and damages, Plaintiffs' counsel will need to request and analyze thousands of pages of documents, and obtain numerous declarations at great expense. Obtaining the cooperation of current employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer. On the other hand, Defendant would likely be able to obtain the cooperation of its current employees. Moreover, even if Plaintiffs successfully certify the class on a contested motion and prevails on all claims at trial, possible appeals would substantially delay any recovery by the Class. These risks are all obviated by the Settlement, which if approved by the Court will ensure that class members receive timely relief without the risk of an unfavorable judgment. (Minne Decl., ¶ 53.)

Therefore, after considering the strengths and weaknesses of each claim, and the unique risks associated therewith, the general risks of continue litigation, and the significant costs, expenses, and delay that would result from continued litigation, it is clear that the Settlement is fair, reasonable, and

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<sup>6</sup> See also, *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing penalties by 97.5%); *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590, \*8-9 (C.D. Cal. 2011) (reducing potential PAGA penalties by over 80 percent); *Magadia v. Wal-Mart Assocs. et al.*, 384 F. Supp. 3d 1058, 1069 (N.D. Cal. 2019)(applying 67% and 80% reductions to PAGA Penalties).

adequate, and is in the best interest of the Class. (Minne Decl., ¶ 54; Madoyan Decl., ¶ 12.) Moreover, the Gross Settlement Amount of \$750,000.00 falls within an acceptable range of recovery for this type of litigation given the strengths and weaknesses of the case and the inherent costs and risks associated with class certification, representative adjudication, trial, and/or appeals. (Minne Decl., ¶ 54.)<sup>7</sup>

**D. The PAGA Allocation is Reasonable.**

The \$37,500.00 allocated for penalties under PAGA is fair and reasonable. PAGA is fundamentally not intended to be compensatory in nature, but is instead intended to facilitate enforcement of California’s labor laws by financing state activities and educating and deterring non-compliance. *See* Cal. Labor Code § 2699(i); *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3 Cal.5th at 546; *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal.4th 348, 379 (2014). Where, as here, the parties reach a substantial class-wide settlement providing employees with monetary compensation for underlying Labor Code violations, many of PAGA’s underlying policy objectives are satisfied. Indeed, the \$37,500.00 PAGA Payment is well-within the range approved by California courts. *See Nordstrom Comm. Cases*, 186 Cal.App.4th 576, 589 (2010)(finding no abuse of trial court’s discretion in approval of release that included PAGA claims but allocated \$0 to PAGA penalties); *Alcala v. Meyer Logistics, Inc.*, 2019 WL 4452961, \*9 (C.D. Cal. June 17, 2019) (settlement of claims for PAGA penalties representing 1.25% of gross settlement amount was reasonable, as it “falls within the zero to two percent range for PAGA claims approved by courts.”); *In re M.L. Stern Overtime Litig.*, 2009 WL 995864, \*1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2%); *Hopson v. Hanesbrands, Inc.*, 2008 WL 3385452, \*1 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 0.3%). (Minne Decl., ¶ 55.)

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<sup>7</sup> *See, e.g., Cavazos v. Salas Concrete, Inc.*, 2022 U.S. Dist. LEXIS 132056 (E.D. Cal. 2022)(granting preliminary approval of settlement representing approximately 5.8% of maximum damages); *Ayala v. UPS Supply Chain Solutions, Inc.*, 2021 U.S. Dist. LEXIS 194362 (C.D. Cal. 2021)(granting preliminary approval of settlement representing approximately 7.8% of maximum damages); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal 2017) (approving settlement where gross recovery was 11% of the maximum damages); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015) (granting final approval of settlement amount representing approximately 10% of the maximum ); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) (approving settlement representing approximately 8.5% of the maximum damages).

1 **V. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED.**

2 Code of Civil Procedure § 382 provides that three basic requirements must be met in order to  
3 sustain any class action: (1) there must be an ascertainable class; (2) there must be a well-defined  
4 community of interest in the question of law or fact affecting the parties to be represented; and (3)  
5 certification will provide substantial benefits to litigants and the courts, i.e., proceeding as a class is  
6 superior to other methods. *Fireside Bank v. Superior Court*, 40 Cal.4th 1069, 1089 (2007); *see also*  
7 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326 (2004). Courts utilize a less stringent  
8 standard for class certification during settlement. *Global Minerals & Metals Corp. v. Superior Court*,  
9 113 Cal.App.4th 836, 859 (2003). The reason: “no trial is anticipated in a settlement class case, so the  
10 case management issues inherent in the ascertainable class determination need not be confronted.” *Id.*

11 As demonstrated below, all three requirements for certification of the Class as defined by the  
12 Settlement are satisfied. Furthermore, Defendant has stipulated to certification of the proposed Class  
13 for settlement purposes only. (Agreement, ¶ 48.)

14 **A. There is an Ascertainable Class.**

15 Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size  
16 of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal.App.3d  
17 862, 873 (1983). In this case, all three considerations strongly favor class certification. Here, the Class  
18 is defined as all persons employed by Defendant in California and classified as hourly-paid and/or non-  
19 exempt who worked for Defendant at any time from May 10, 2018, to the earlier of: (1) the date of  
20 preliminary approval, or (2) October 29, 2023. (Agreement, ¶¶ 6-7.) This provides a clear and definite  
21 scope for the proposed class.

22 Next, the class is sufficiently numerous. There is no magic number that satisfies the numerosity  
23 requirement. Under the Federal Rules, the minimum number of a class is 100 individuals. Under  
24 California law, that number is significantly less. *See e.g., Rose v. City of Haywood*, 126 Cal.App.3d  
25 926, 934 (1981) (holding 42 class members sufficient to satisfy numerosity); *Bowles v. Superior Court*,  
26 44 Cal.2d 574 (1955) (class with 10 members sufficiently numerous). Here, the estimated Class size  
27 of 303 individuals plainly favors class certification. (Minne Decl., ¶ 15.)  
28

1 Finally, the question whether class members are easily identifiable turns on whether a plaintiff  
2 can establish “the existence of an ascertainable class.” *Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 706  
3 (1967). The existence of an ascertainable class in this case can be established through Defendant’s  
4 payroll records, and the class definition is sufficiently specific to enable the parties, potential Class  
5 Members and the Court to determine the parameters of the Class.

6 **B. The Class Shares a Well-Defined Community of Interest.**

7 The community of interest requirement embodies three factors: (1) predominant questions of  
8 law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class  
9 representatives who can adequately represent the class. *Dunk*, 48 Cal.App.4th at 1806. This case  
10 satisfies all three requirements.

11 1. Common Issues of Law and Fact Predominate.

12 The commonality criterion requires the existence of common question of law or fact and is  
13 generally established with the issues of predominance and typicality. *See Daar*, 67 Cal.2d 695, 706.  
14 What is required is that a common question of fact or law exist which predominates over issues unique  
15 to individual plaintiffs. The existence of individual issues or facts—generally present in any case  
16 arising from employment—is not a bar to class certification as long as they do not render class  
17 litigation unmanageable or predominate over the common issues. *See B.W.I. Custom Kitchen v.*  
18 *Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1354 (1987).

19 Here, Plaintiffs’ claims present sufficient common issues of law and fact that predominate and  
20 warrant class certification. Plaintiffs allege that Defendant prohibited employees from taking  
21 compliant meal and rest periods, required Class Members to perform work off-the-clock, and required  
22 Class Members to pay for work-related expenses out of pocket. These policies and practices meant  
23 that Defendant failed to pay required meal period premiums, minimum wages, and overtime wages,  
24 failed to reimburse necessary business expenses, and other related claims. Plaintiffs allege that  
25 Defendant’s policies and practices were uniform as to all Class Members. Thus, class treatment is  
26 appropriate.  
27  
28

1                   2. Plaintiffs' Claims are Typical of the Class.

2           To satisfy the typicality requirement, California law does not require that Plaintiffs have claims  
3 identical to the other class members. Rather, the test of typicality for a class representative is whether  
4 other members have the same or similar injury, whether the action is based on conduct which is not  
5 unique to the named plaintiff, and whether other class members have been injured by the same course  
6 of conduct. *See Seastrom v. Neways, Inc.*, 149 Cal.App.4th 1496, 1502 (2007). The typicality  
7 requirement for a class representative refers to the nature of the claim or defense of the representative,  
8 and not to the specific facts from which it arose or the relief sought. *See Id.*

9           Here, Plaintiffs allege that their claims are based on the same legal theories, arise out of the  
10 same unlawful policies and practices, and seek the same relief. Because Plaintiffs' claims are based  
11 on the same alleged conduct and business practices as the claims of the other Class Members, the  
12 typicality requirement is satisfied.

13                   3. Plaintiffs and Their Counsel Will Fairly and Adequately Represent the Class.

14           The question of adequacy of representation "depends on whether the plaintiff's attorney  
15 qualifies to conduct the proposed litigation in the plaintiff's interest or not antagonistic to the interests  
16 of the class." *McGee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Here, these considerations  
17 are satisfied. Class Counsel are well-regarded and accomplished lawyers who are qualified and  
18 experienced in employment-related, class-action litigation, and who do not have any conflicts of  
19 interest which would impede their representation of the Class. (Minne Decl., ¶¶ 58-65; Madoyan Decl.,  
20 ¶¶ 2-8.) Furthermore, because Plaintiffs' claims are typical of those of other Class Members, and are  
21 not based on unique circumstances that might jeopardize the claims of the class, there is no antagonism  
22 of interests between Plaintiffs and the Class. Plaintiffs are also fully aware of their duties as class  
23 representatives, and will vigorously and adequately represent the interests of the Class.  
24 (Schwartzengerger Decl., ¶¶ 4-10; Perez Decl., ¶¶ 4-10.) Therefore, the adequacy requirement is  
25 satisfied.

26                   **C. A Class Action is Superior to a Multiplicity of Litigation.**

27           Under the circumstances, proceeding as a class action is a superior means of resolving this  
28 dispute, as the Class Members and the court will derive substantial benefits. Class certification would

1 serve as the only means to deter and redress the alleged violations. *See Linder v. Thrifty Oil Co.*, 23  
2 Cal.4th 429, 434 (2000) (relevant considerations include the probability that each class member will  
3 come forward to prove her or her separate claim and whether the class approach would actually serve  
4 to deter and redress the alleged wrongdoing). Further, individual actions arising out of the same  
5 operative facts would unduly burden the courts and could result in inconsistent results. Therefore, class  
6 action proceedings are superior to individual litigation.

7 **VI. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE.**

8 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions  
9 will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal, Inc.*,  
10 82 Cal.App.4th 19, 41 (2000). California law provides that attorney fee awards should be equivalent  
11 to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Id.* at 47.  
12 In cases where class members present claims against a common fund and the defendant agrees a  
13 percentage of the fund as part of the settlement, use of the percentage method is appropriate. *Id.* at 32.

14 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,  
15 depending on the circumstances of the case. *Newberg on Class Actions*, § 14.03 (4<sup>th</sup> Ed.); *see also In*  
16 *re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) (awarding attorneys’ fees in the amount  
17 of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*  
18 (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees).  
19 California courts routinely approve class action attorneys’ fee awards averaging around one-third of  
20 the recovery. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545, 558 at n.13 (2009); *Chavez v.*  
21 *Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of  
22 contingency fee in marketplace was appropriate in class actions.)

23 Here, the requested attorneys’ fees of \$262,500.00 which is 35% of the common fund, is  
24 disclosed to Class Members in the proposed Notice of Class Action Settlement. (Agreement, Exh. A.)  
25 The requested fee was freely negotiated, is common in the legal marketplace, and is not opposed by  
26 Defendant. The Motion for Final Approval will elaborate on the nature of the legal services provided  
27 and will also support Class Counsel’s request for the reimbursement of litigation costs not to exceed  
28 \$30,000.00. (Minne Decl., ¶ 57.)

1 **VII. THE PROPOSED ENHANCEMENT PAYMENTS ARE REASONABLE.**

2 Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as  
3 compensation “for the expense or risk they have incurred in conferring a benefit on other members of  
4 the class.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely  
5 grant approval of class action settlement agreements containing enhancements for the class  
6 representative, which are necessary to provide incentive to represent the class and are appropriate  
7 given the benefit the class representatives help to bring about for the class. *See Van Vranken v. Atlantic*  
8 *Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995) (approving \$50,000.00 enhancement); *In re*  
9 *Online DVD Rental*, 779 F.3d 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times  
10 larger than individual payments where incentive award made up a mere .17% of the settlement);  
11 *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at \*10 (N.D. Cal. Nov. 23, 2015) (finding  
12 service award of \$15,000 to be “fair and reasonable”); *Miller v. CEVA Logistics USA, Inc.*, 2015 WL  
13 4730176, at \* 9 (E.D. Cal. Aug. 10, 2015)(approving service award of \$15,000 to each plaintiff); *Glass*  
14 *v. UBS Financial Services, Inc.*, 2007 WL 221862 at \*16 (N.D. Cal. 2007) (approving payments of \$25,000  
15 to each named plaintiff); *In re Heritage Bond Litigation*, 2005 WL 1594403 at \*18 (C.D. Cal. 2005)  
16 (awarding incentive payments between \$5,000 and \$18,000).

17 Plaintiffs initiated this litigation on behalf of their former co-workers who can now collect  
18 monetary payment from the Settlement. Plaintiffs invested substantial time and effort into litigation  
19 including their own research, reviewing documents, and extensive discussions with Class Counsel.  
20 (Schwartzenger Decl., ¶¶ 4-8; Perez Decl., ¶¶ 4-8.) Further, the requested Enhancement Payments  
21 are extremely reasonable given the benefit gained by other Class Members. The requested  
22 Enhancement Payments of \$7,500.00 to each Plaintiff is disclosed to Class Members in the Class  
23 Notice. (Agreement, Exh. A.) For these reasons, Plaintiffs request that Enhancement Payments of  
24 \$7,500.00 be preliminarily approved by the Court. (Minne Decl., ¶ 56; Madoyan Decl., ¶ 13;  
25 Schwartzenger Decl., ¶ 11; Perez Decl., ¶ 11.)

26 **VIII. THE PROPOSED CLASS NOTICE, AND OPT-OUT AND OBJECTION**  
27 **PROCEDURES SATISFY DUE PROCESS REQUIREMENTS**

28 “The principal purpose of notice to the class is the protection of the integrity of the class action

process.” *Cartt v. Superior Court*, 50 Cal.App.3d 960, 970 (1975). The notice ““must fairly apprise the class members of the terms of the proposed compromise and of the options open to the dissenting class members.”” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 251 (2001). Additionally, the notice given should have a reasonable chance of reaching a substantial percentage of the class members. *Cartt*, 50 Cal.App.3d at 974.

The Parties have jointly drafted a Notice of Class Action Settlement (“Class Notice”) which will be sent to Class Members in both in both English and Spanish. (Agreement, ¶¶ 19, 67, Exh. A). The Class Notice describes the nature of the lawsuit, the key terms of the Settlement, the scope of the Released Class Claims and Released PAGA Claims, Class Members’ estimated Individual Settlement Payment and Individual PAGA Payment, Class Members’ total workweeks during the Class Period, and PAGA Member’s total workweeks during the PAGA Period. (Agreement, Exh. A.) The Class Notice also informs Class Members how to opt-out of the Settlement, object to the Settlement, and challenge their reported workweeks. (*Id.*) The Class Notice will indicate that the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate and reasonable, and a final determination of such issues will be made at the final hearing. (*Id.*) The Class Notice also include instructions on how to obtain all relevant Settlement documents (including the contact information for Class counsel, a URL to a website maintained by the Administrator containing the key documents related to the Settlement, and a URL to the Court’s public online portal), and informs Class Members of their right to attend the final approval hearing. (*Id.*).

No later than 14 calendar days after the Court grants Preliminary Approval of the Settlement, Defendant shall provide the Administrator with the Class List containing all Class Members’ names, last-known mailing addresses, Social Security numbers, start and end dates of active employment with Defendant, total Workweeks during the Class Period, and total Workweeks during the PAGA Period. (*Id.*, ¶¶ 5, 64.) No later than 14 calendar days after receiving the Class List from Defendant, the Administrator shall mail copies of the Class Notice to all Class Members via regular First Class U.S. Mail. (*Id.*, ¶ 65.) Before mailing the Class Notice to Class Members, the Administrator shall perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. (*Id.*, ¶ 66.)

1 If any Class Notice as undeliverable, the Administer shall promptly re-mail such returned Class  
2 Notices to the forwarding address provided by the USPS. (*Id.*) If no forwarding address is provided,  
3 the Administrator shall search for a current address using all readily available resources, such as skip  
4 tracing, and re-mail the Class Notice to the most current address obtained. (*Id.*) The Administrator has  
5 no obligation to make further attempts to locate or send Class Notice to Class Members whose Class  
6 Notice is returned by the USPS a second time. (*Id.*) Class Members shall have 60 days after the mailing  
7 of the Class Notice to submit request for exclusions, objection, or workweek dispute by fax, email, or  
8 mail. (*Id.*, ¶¶ 34, 68, 69, 73.) Further, Class Members who receive a re-mailed Notice, whether by  
9 skip-trace or by request, will have an additional fifteen (15) calendar days to submit an Objection,  
10 Request for Exclusion, or Workweek Dispute. (*Id.*)

11 Direct mail notice to Class Members' last known addresses is the best possible notice under  
12 the circumstances. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950); *Eisen*  
13 *v. Carlisle & Jacquelin*, 417 U.S. 156, 173-176 (1974). Furthermore, the Class Notice comports with  
14 the requirements of California Rules of Court, Rules 3.769 and 3.766. Pursuant to Rule 3.769(f), the  
15 class notice must contain an explanation of the proposed settlement and procedures for class members  
16 to follow in filing written objections to it and arranging to appear at the hearing and state objections to  
17 the proposed settlement. Cal. R. Ct. 3.769(f). Rule 3.766 further requires that the class notice include  
18 (1) a brief explanation of the case, including the basic contentions and denials of the parties; (2) a  
19 procedure for the class member to follow in requesting exclusion, and a statement that the Court will  
20 exclude the Class Member from the Class if he or she so requests by the specified deadline; (3) a  
21 statement that the judgment, whether favorable or not, will bind all class members who do not request  
22 exclusion; and (4) a statement that any Class Member who does not request exclusion may, if the class  
23 member so desires, object and enter an appearance through counsel. The proposed Class Notice satisfies  
24 each of these requirements. *See Agreement, Exh. A.*

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

28 ///

1 **IX. CONCLUSION**

2 For the reasons set forth above, Plaintiffs respectfully request that the Court: (1) grant  
3 Preliminary Approval of the Settlement; (2) approve the Class Notice and plan for distribution of the  
4 Class Notice; (3) provisionally certify the Class for settlement purposes only; and (4) schedule a  
5 hearing on Final Approval of the Settlement.

6 Respectfully submitted,

7 Dated: October 5, 2023

**PARKER & MINNE, LLP**

8  
9 By:



10 S. Emi Minne  
11 Attorneys for Plaintiffs  
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