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DE ORNELAS and MARGARITA URRUTIA,
on behalf of themselves and others similarly situated

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

MARISELA MARTINEZ DE ORNELAS
and MARGARITA URRUTIA, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

MAGNOLIA FOODS, LLC, a California
limited liability company; and DOES 1 to 10,
inclusive,

Defendant.

CASE NO. CIVSB2308953

[Consolidated with CASE NO. CIVSB2324321]

Assigned to Hon. Christian Towns, Department S-26

CLASS ACTION

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

*(Filed concurrently with the Declarations of Marcus J.
Bradley, Paul K. Haines, Sean M. Blakely, Plaintiff
Marisela Martinez de Ornelas, Plaintiff Margarita
Urrutia, and Lisa Mullins; [Proposed] Order)*

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Action Filed: March 29, 2023

Trial Date: None Set

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3 **Statutes**

4 Civ. Proc. Code § 3825

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 3, 2024, at 10:00 a.m. or as soon thereafter as
3 the matter may be heard in Department S-26 of the above-entitled Court located at 247 W 3rd Street.
4 Sn Bernardino, California 92415, Plaintiffs Marisela Martinez De Ornelas and Margarita Urrutia
5 (“Plaintiffs”) will and do hereby move the Court for an Order:

6 1. Preliminarily approving the CLASS ACTION AND PAGA SETTLEMENT
7 AGREEMENT (“Settlement Agreement”) between Plaintiffs and Defendant attached as **Exhibit 1** to
8 the Declaration of Marcus J. Bradley;

9 2. Preliminarily certifying the proposed settlement class, defined in the Settlement
10 Agreement as: all persons directly employed by Defendants as non-exempt employees by Defendant
11 in California at any time from March 29, 2019 through March 15, 2024 (the “Class Period”).

12 3. Appointing Plaintiffs as Settlement Class Representative and Plaintiffs’ Counsel as
13 Settlement Class Counsel;

14 4. Appointing ILYM Group, Inc., as the Settlement Administrator;

15 5. Preliminarily approving the procedural and administrative procedures proposed by the
16 Parties to effectuate the settlement, as are contained in the Settlement Agreement and proposed order
17 submitted with this motion;

18 6. Approving the content of the proposed settlement notice and the proposed procedures
19 for administrating the notice;

20 7. Setting the date for Plaintiffs to file a motion for final approval of the proposed
21 settlement and for attorney’s fees and costs and a service award to be paid out of the agreed upon total
22 settlement sum;

23 8. Setting the date for a fairness hearing consistent with the schedule for class notice,
24 objections, and requests for exclusions, as set forth in this Motion.

25 This Motion is based upon this Notice the Motion, the accompanying Memorandum of Points
26 and Authorities, the declarations of Marcus J. Bradley, Paul K. Haines, Sean M. Blakely, Plaintiff
27 Marisela Martinez De Ornelas, Plaintiff Margarita Urrutia, and Lisa Mullins of ILYM Group, Inc., the
28 Settlement Agreement attached as an **Exhibit 1** to the Declaration of Marcus J. Bradley and the Notice

1 of Proposed Class Action Settlement attached to the Settlement Agreement; and all pleadings, records,
2 and papers on file in this action, and such other further evidence and arguments as may be presented
3 at the time of the hearing in this matter.

4
5 DATED: November 7, 2024

BRADLEY/GROMBACHER, LLP

6
7 By: 
8 _____
9 Marcus Bradley, Esq.
10 Kiley Grombacher, Esq.
11 Corey S. Smith, Esq.
12 Attorneys for Plaintiffs and others similarly
13 situated
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1 **I. INTRODUCTION**

2 Plaintiffs Marisela Martinez De Ornelas (“Plaintiff Ornelas” or “Ms. Ornelas”) and Margarita
3 Urrutia (“Plaintiff Urrutia” or “Ms. Urrutia”) (collectively, “Plaintiffs”) seek preliminary approval of a
4 proposed \$670,000.00 non-reversionary, class-action and PAGA settlement to resolve this wage and
5 hour case brought on behalf of approximately 260 individuals who worked for Defendant Magnolia
6 Foods LLC (“Defendant”) in California (Plaintiffs and Defendant are collectively referred to as the
7 “Parties.”) The Settlement Agreement achieves beneficial monetary payments to the Class Members,
8 which are fair and reasonable in light of the potential value of the case as moderated by the potential
9 risks attending further litigation. And, as set forth more fully below, the proposed settlement satisfies
10 all the criteria for settlement approval.

11 The average net settlement payment to the individual Class Members will be approximately
12 \$1,399.61 each. This is the net amount after subtracting out the maximum attorneys’ fees and costs that
13 may be sought, as well as the settlement administration costs, proposed service award to named
14 Plaintiffs, and payment to the Labor & Workforce Development Agency (LWDA) and individual
15 PAGA payments. The amount for each individual will increase or decrease proportionally based on
16 the number of weeks worked for Defendant during the liability period. The Class Members will not
17 need to submit claim forms to receive a check, which will be sent automatically to those Class Members
18 who do not opt-out. None of the \$670,000.00 will revert back to Defendant. Any residual remaining
19 in the settlement fund after the payment of all claims will be paid to the designated *cy pres* beneficiary,
20 Legal Aid at Work (LAAW), a non-profit organization that provides legal consultation and assistance
21 to employees and is dedicated to strengthening civil and workplace protections.

22 Additionally, the process for reaching the proposed settlement was informed and reasonable.
23 First, Plaintiffs and her counsel did not enter into settlement negotiations without first reviewing
24 extensive documentation and data, and preparing, *inter alia*, a liability and exposure analysis. Plaintiffs
25 and her counsel also vetted the strengths and weakness of the claims through pre-discovery
26 investigation, informal (mediation) discovery, and by drawing from their experience in analogous class
27 action cases. The parties and their counsel then conducted their negotiations at arms-length, with the
28 assistance of a highly regarded mediator experienced in the area of wage-and-hour class actions.

Further, Plaintiffs’ counsel brought substantial experience and expertise in wage and hour class actions to the negotiation process. As discussed in the Declaration of Marcus J. Bradley (submitted herewith), Plaintiffs’ counsel submits that the benefits of the proposed settlement for the Class are substantial as weighed against the potential exposure and the risks and delays of continued litigation.

In sum, the proposed settlement satisfies all the criteria for settlement approval. As discussed in more detail below, it falls comfortably within the “ballpark of reasonableness” standard for preliminary approval. *See Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 133; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802; Alba Conte & Herbert Newberg, *Newberg on Class Actions*, § 11:25-11:26, (4th ed. 2002) (“Newberg”). Accordingly, Plaintiffs request that the Court preliminarily approve the proposed settlement, approve distribution of the notice of the proposed settlement, set the deadline(s) for Plaintiffs to file their motion for final approval, attorneys’ fees and costs and service awards, and set a final approval hearing.

II. SUMMARY OF THE CASE AND SETTLEMENT

On March 28, 2023, Plaintiff Marisela Martinez De Ornelas submitted a Private Attorneys General Act (“PAGA”) Notice to the Labor and Workforce Development Agency, alleging violations of the California Labor Code and the Industrial Welfare Commission Wage Order. Declaration of Marcus J. Bradley at ¶ 7. On March 29, 2023, Ms. Ornelas filed a class action in the Superior Court of California, County of San Bernardino (“the Ornelas Action”) alleging: 1) Failure to Pay Overtime Wages in Violation of Labor Code sections 510 and 1198; 2) Failure to pay all Wages and Minimum Wages in Violation of Labor Code sections 221,223, 1182, 1194, 1197, and 1198; 3) Failure to Provide Meal Periods in Violation of Labor Code sections 226.7, 512, 516 and 1198; 4) Failure to Provide Rest Periods in Violation of Labor Code sections 226.7, 516, 1198; 5) Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Labor Code section 226(a) and Failure to Maintain Accurate Records; 6) Failure to Provide Suitable Seating in Violation of Labor Code section 1198; 7) Failure to Provide Sick Pay in Violation of Labor Code Section 246; 8) Failure to Timely Pay Wages During Employment in Violation of Labor Code Section 204; 9) Waiting Time Penalties Pursuant to Labor Code sections 201 and 203; 10) Violations of Business & Professions Code section 17200 et seq. *Id.* at ¶¶ 5-8.

1 Plaintiff Ornelas filed her First Amended Complaint on June 7, 2023 adding a cause of action
2 for Civil Penalties Pursuant to PAGA Labor Code §§ 2698, et seq. . *Id.* at ¶ 9.

3 On or about June 23, 2023, the Parties submitted a stipulation to stay this action, including a
4 stay all formal discovery in order to focus on an informal resolution to this matter with data and
5 information to be exchanged informally in advance of the mediation. *Id.* at ¶ 10.

6 On September 27, 2023, Plaintiff Margarita Urrutia filed her lawsuit against Magnolia Foods,
7 LLC in Superior Court of California, San Bernadino County, titled *Margarita Urrutia v. Magnolia*
8 *Foods, LLC, et al.* Case No. CIVSB2324321 (“the Urrutia Action”). On December 4, 2023, Plaintiff
9 Margarita Urrutia filed a First Amended Complaint adding a claim for PAGA Penalties. The Urrutia
10 Action included an additional claim for unpaid business expenses. *Id.* at ¶ 11.

11 On March 14, 2024, the Parties engaged in a global mediation before Steve Pearl, Esq., an
12 experienced and well-regarded mediator in this area of law. Bradley Decl. at ¶¶ 13.

13 To prepare for the mediation, Plaintiffs requested, and Defendant provided, timekeeping and
14 compensation figures and data and documents reflecting Defendant’s wage and hour policies that
15 assisted us in assessing the value of Plaintiffs’ claims and estimating damages. *Id.* at ¶ 12. Plaintiffs
16 also prepared a detailed mediation statement, which included excerpts from declarations from putative
17 class members, and citations to documentary evidence. *Id.*

18 The mediator, Steve Pearl, explored and challenged the Parties and counsel on many issues.
19 *Id.* at ¶ 20. At the close of the mediation, Plaintiffs and Defendant agreed on the principal terms of a
20 settlement, which was reached after arms’ length negotiations. *Id.* at 13

21 On March 14, 2024, the Parties agreed to all of the key terms of the settlement and executed a
22 memorandum of understanding. *Id.* at ¶ 24. Thereafter the Parties began preparing the long-form
23 settlement agreement, which was fully executed in October 2024 and is presented with this motion.
24 *Id.* at ¶ 15.

25 On November 4, 2024, the Parties submitted a Joint Stipulation to Consolidate the *Ornelas* and
26 *Urrutia* actions. *Id.* at ¶ 16. The Court granted the stipulation, and on November 6, 2024, the Parties
27 filed the Operative Consolidated Complaint. *Id.*

28 ///

III. KEY TERMS OF THE PROPOSED SETTLEMENT

Under the Settlement Agreement, Defendants will pay \$670,000.00 to resolve this litigation (“Gross Settlement Fund”). Bradley Decl., ¶ 3 Ex. 1 (“Settlement Agreement”) at ¶ 1.23. This entire amount will be disbursed pursuant to the terms of the Settlement Agreement, and none of it will revert to Defendant. Any residual still remaining after this will be donated to Legal Aid at Work (LAAW), the parties’ agreed-upon *cy pres* beneficiary. *Id.* at ¶ 4.4.3. The organization bears a substantial nexus to the interests of the absent class members because it exists to protect employees by furthering and enforcing their rights under the labor laws. Bradley Decl. at ¶ 36.

The key terms of the Settlement Agreement include:

- Gross Settlement Amount: The Gross Settlement Amount is \$670,000.00 for approximately 260 Class Members. It is the total sum that Defendant has agreed to pay in exchange for Plaintiffs’ and the Settlement Class Members’ releases to fully and finally settle this matter. Settlement Agreement, at ¶ 1.23.
- Released Class Claims: The Released Class Claims with respect to the Settlement Class Members are limited to the wage and hour claims that were pled or could have been pled based on the alleged facts in the LWDA letter and operative Complaint. *Id.* at ¶ 5.2, 5.3.
- Settlement Class: The Settlement Class consists of all persons directly employed by Defendant as non-exempt employees in California during the Class Period (March 29, 2019 through March 15, 2024), and includes Aggrieved Employees – all persons directly employed by Defendants as non-exempt employees in California during the PAGA Period (March 29, 2022 through March 15, 2024). *Id.* at ¶ 1.4, 1.5, 1.9, 1.32. Defendant represented that there were 44,000 workweeks collectively worked by the Class Members during the Class Period. *Id.* at ¶ 4.1.
- LWDA Payment: \$20,000.00 shall be allocated as a settlement of Plaintiffs’ claims under the Private Attorney General Act of 2004 (“PAGA”), California Labor Code section 2699 *et seq.*, with 75% thereof earmarked for the California Labor Workforce Development Agency (LWDA), and 25% earmarked for pro rata distribution to Aggrieved Employees. *Id.* at ¶ 3.2.5.
- Net Settlement Amount: The Net Settlement Amount is the amount that remains after the following are deducted from the Gross Settlement Amount: (1) the fees and costs of the third-party administrator charged with administering the settlement (not to exceed \$20,000.00); (2) \$20,000.00 LWDA Payment; (3) any service awards approved by the Court for the Class Representatives; and (4) any attorneys’ fees and costs approved by the Court. *Id.* at ¶¶ 1.29, 3.2.
- Direct Payments to Settlement Class Members / No Claim Forms: Settlement Class Members who do not opt out of the Settlement will not need to submit claims to receive their pro-rata settlement payment. *Id.* at ¶ 7.5.3. Rather, Individual Settlement Payments (i.e., settlement checks) will be automatically sent to all class members for whom a valid address can be located either through Defendant’s records, and/or by the Settlement Administrator through the National Change of Address database (NCOA). *Id.* at ¶ 4.4.1; *see also* Declaration of Lisa Mullins, representative of Settlement Administrator, ILYM Group, Inc., (“Mullins (Admin) Decl.”), at ¶ 9.
- Distribution Formula: Each Settlement Class Member’s individual share of the Settlement will be proportional to the number of weeks the Class Member worked for Defendant during the applicable time period, in comparison to the aggregate number of weeks all Settlement Class Members

combined worked for Defendant during the same period. Settlement Agreement, at ¶ 3.2.4. The formula is set forth in the Settlement Agreement as well as the proposed class notice. ***Attached as an exhibit to Settlement Agreement.*** Similarly, each individual PAGA payment to the PAGA Employees will be calculated and apportioned from the percentage of the PAGA Allocation allocated to the PAGA Employees (i.e., 25% of the PAGA Allocation or \$5,000) based on the number of Pay Periods the PAGA Employee worked during the PAGA Period. Settlement Agreement, at ¶ 3.2.5. The formula is also set forth in the Settlement Agreement as well as the proposed class notice.

- **Tax Allocation:** The Settlement provides that settlement awards to Class Members will be allocated as follows: Twenty-five Percent (20%) shall be treated as unpaid wages and Seventy-five Percent (80%) shall be treated as expense reimbursement, statutory penalties and interest. Settlement Agreement, at ¶ 3.2.4.1. All Individual PAGA Payments will be allocated as one hundred percent (100%) penalties. *Id.* at ¶ 3.2.5.1.
- **Notice of Proposed Settlement:** The Notice sets forth in plain terms, in English and Spanish a statement of the case, the terms of the Settlement, the amount of attorneys' fees, costs, and the service award being sought, an explanation of how the settlement allocations are calculated, among other pertinent information. *See* proposed Notice to Class, ***attached as an exhibit to Settlement Agreement.*** The Notice also is tailored to provide each Class Member with the number of workweeks credited to that Class Member and an estimate of the amount of money that the Class Member will receive if all Class Members participate in the Settlement. *Id.* Class members will be notified by first class U.S. mail of the settlement. SA at ¶¶ 4.4.1. ILYM Group, Inc., the Parties' selected Settlement Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of class members, including conducting a national change of address search and re-mailing the notice to updated addresses. Settlement Agreement at ¶ 4.4.1; Mullins (Admin) Decl., at ¶ 6.
- **Right to Challenge Defendant's Workweek Records:** Settlement Class Members will have the opportunity, should they disagree with Defendant's records regarding the dates of employment stated on their Class Notice, to provide documentation and/or an explanation to show contrary employment dates. Settlement Agreement at ¶ 7.6. The Settlement Administrator's determination of the eligibility for and amount of any Individual Settlement Payment shall be binding upon the Settlement Class Member and the Parties. *Id.*
- **Right to Object:** The Class Notice states that Settlement Class Members who wish to object to the Settlement must mail to the Settlement Administrator a written statement of objection by the Response Deadline. Settlement Agreement, at ¶ 7.7; *see also*, Proposed Notice. The notice informs Settlement Class Members of the procedures for making objections and explains that failure to do so in the manner specified shall be deemed a waiver of any objections (whether by appeal or otherwise) to the Settlement. *Id.*
- **Right to Opt Out:** The Class Notice shall state that Class Members who wish to exclude themselves from the Settlement must submit a written Request for Exclusion to the Settlement Administrator by the Response Deadline. Settlement Agreement, at ¶ 7.5. Any Class Member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the Settlement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon, except that all PAGA Employees are bound by the Court's resolution of that claim as released by Plaintiff, as agent and proxy of the State of California (including the LWDA), and the State of California, regardless of whether they submitted timely and valid Requests for Exclusion as Class Members. *Id.* at 7.5.4.

1 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL**

2 California law favors fair settlements in the class action context. *In re Cellphone Termination*
3 *Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 (noting that public policy favors “the compromise of
4 complex class action litigation”); *Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th
5 1037, 1054 (citation omitted) (Kennard, J., concurring and dissenting) (“[p]ublic policy favoring
6 settlement is especially weighty for class actions”).

7 The Court has broad powers to determine whether a proposed settlement is fair under the
8 particular circumstances of the case. *See, e.g., Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App.
9 4th 224, 234-35; *Rebney v. Wells Fargo Bank* (1990) 220 Cal. App. 3d 1117, 1138 (“The trial court has
10 broad discretion to determine whether the settlement is fair.”). The decisions in *Dunk v. Ford Motor*
11 *Co.* (1996) 48 Cal. App. 4th 1794, 1800 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th
12 116, 128, set forth the factors the Court should consider in assessing the fairness of a proposed class
13 action settlement:

14 The well-recognized factors that the trial court should consider in evaluating
15 the reasonableness of a class action settlement agreement include “the
16 strength of plaintiffs’ case, the risk, expense, complexity and likely duration
17 of further litigation, the risk of maintaining class action status through trial,
18 the amount offered in settlement, the extent of discovery completed and stage
19 of the proceedings, the experience and views of counsel, the presence of a
20 governmental participant, and the reaction of the class members to the
21 proposed settlement.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
22 1801; *see* 4 Newberg on Class Actions (4th ed.2002) §§ 11.41, 11.43,
23 13.68.).

19 *Kullar*, 168 Cal. App. 4th at 128, citing *Dunk*, 48 Cal. App. 4th at 1800. The Court in *Kullar* went to
20 on to cite *Dunk* for the proposition that:

21 a presumption of fairness exists where: (1) the settlement is reached through
22 arm's-length bargaining; (2) investigation and discovery are sufficient to
23 allow counsel and the court to act intelligently; (3) counsel is experienced in
24 similar litigation; and (4) the percentage of objectors is small.

24 *Kullar*, 168 Cal. App. 4th at 128.

25 **V. CLASS CERTIFICATION IS APPROPRIATE FOR SETTLEMENT PURPOSES**

26 The proposed Settlement Class is defined as:

27 all persons directly employed by Defendants as non-exempt employees by
28 Defendant (sic) in California during the Class Period (March 29, 2019 through
Settlement Agreement at ¶ 1.5, 1.12.

1 Under California Code of Civil Procedure § 382, certification is proper “when the question is
2 one of a common or general interest, of many persons, or when the parties are numerous, and it is
3 impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.”
4 Cal. Civ. Proc. Code § 382; *see also* Cal. R. Ct. 3.769(d) (“The court may make an order approving . . .
5 certification of a provisional settlement class after the preliminary settlement hearing.”). Courts have
6 interpreted Section 382 as imposing two requirements that must be met in order for a class to be
7 certified: (1) “there must be an ascertainable class” and (2) “there must be a well-defined community
8 of interest in the questions of law and fact involved affecting the parties to be represented.” *Daar v.*
9 *Yellow Cab* (1967) 67 Cal. 2d 695, 704 (internal citations omitted). “The community of interest
10 requirement embodies three factors: (1) predominant common questions of law or fact; (2) class
11 representatives with claims or defenses typical of the class; and (3) class representatives who can
12 adequately represent the class.” *Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462, 470. Finally,
13 in making a class certification decision, the Court must determine whether “the class action proceeding
14 is superior to alternate means for a fair and efficient adjudication of the litigation.” *Sav-On Drug*
15 *Stores, Inc. v. Super. Ct.* (2004) 34 Cal. 4th 319, 332 (internal quotation omitted). In doing so, Courts
16 may relax certain manageability concerns that may arise with litigation classes, given that there is no
longer ongoing litigation to manage and that the absentees’ interests are protected by the court’s
fairness review. *Dunk*, 48 Cal. App. 4th at 1807, fn.19.¹

17 **A. The Proposed Class is Numerous and Ascertainable**

18 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382
19 is “determined by examining (1) the class definition, (2) the size of the class, and (3) the means
20 available for identifying class members.” *Reyes v. Bd. of Supervisors* (1987) 196 Cal.App.3d 1263,
21 1271. In this case, Defendant’s records show approximately 260 prospective Class Members as of
22 making joinder of all Class Members impracticable. Bradley Decl. at ¶ 40. Further, the Class is readily
ascertainable from Defendant’s business records because all Class Members are current or former
employees of Defendants. *Id.* at 41.

23 **B. The Central Issues that Are Common to All Settlement Class Members**
24 **Predominate Over Any Individual Issues**

25 The test for predominance is whether the issues that are common to all class members “would
26 be the principal issues in any individual action, both in terms of time to be expended in their proof and
27

28 ¹ For settlement purposes only, Defendant has stipulated and agreed that the requisites for establishing class
certification have been met. Settlement Agreement at ¶ 12.1.

1 of their importance, and that if a class suit were not permitted, a multiplicity of legal actions dealing
2 with identical basic issues would be required in order to permit recovery by each [individual member
3 of the class].” *Vasquez v. Super. Ct.* (1971) 4 Cal. 3d 800, 810.

4 Here, commonality is satisfied as to all of Plaintiffs’ class claims because they turn upon
5 answers to overarching common questions regarding Defendant’s policies and procedures that are
6 capable of class wide resolution. The claims brought by the proposed Settlement Class all arise from
7 the same policies and practices. Plaintiffs challenge Defendant’s uniform failure to pay their
8 employees and alleged failure to provide meal and rest breaks or compensation in lieu thereof. *See*
9 Consolidated Complaint. Bradley Decl. ¶ 42.

10 Additionally, Plaintiffs’ allegations present common legal and factual questions of, *inter alia*,
11 whether Defendant applied the same compensation, meal period and rest break policies to all Class
12 Members; whether those policies or their implementation resulted in Labor Code violations; whether
13 Defendant’s conduct was intentional; and whether Class Members are entitled to damages and/or
14 penalties. Bradley Decl. ¶ 43. These questions can be resolved using Defendant’s time and payroll
15 records, corporate representative testimony, and written policies and practices. *Ibid.*

16 Plaintiffs allege that they and other Class Members share the same claims stemming from
17 Defendant’s alleged violations of the Labor Code and relevant wage order. In addition, Defendant’s
18 main defenses, including that the wage and hour policies and practices fully comply with California
19 law, apply equally to the claims of all Class Members. Thus, Plaintiffs’ claims are typical of the Class.
20 Bradley Decl., ¶ 44. Accordingly, the Court should exercise its discretion to grant conditional class
21 certification for settlement purposes.

22 **C. Plaintiffs’ Claims are Typical of the Claims of the Settlement Class.**

23 To satisfy the typicality requirement, California law requires that the named plaintiffs be
24 “similarly situated” to the other members of the proposed class. *Classen v. Weller* (1983) 145 Cal.
25 App. 3d 27, 46. Where, as Plaintiffs contend is true here, the same underlying conduct affects the
26 named plaintiffs and the class sought to be represented, the typicality requirement is met irrespective
27 of any differences that may underlie individual claims. *Rosack v. Volvo of Am. Corp.*, (1982) 131 Cal.
28 App. 3d 741, 763.

Here, the named Plaintiffs seeking to represent the proposed Settlement Class satisfies the
typicality requirement because they assert the same types of injuries arising from the same conduct by
Defendant as the absent class members. Bradley Decl. at ¶ 45; Declaration of Marisela Martinez de
Ornelas (“Ornelas Decl.”) at ¶¶ 4-10; Declaration of Margarita Urrutia (“Urrutia Decl.”) at ¶¶ 2-6.

1 Plaintiffs performed the same kind of work and were subject to the same uniform policies and practices
2 as the other members of the proposed Settlement Class, including Defendant's common policies and
3 practices related to its pay structure. Bradley Decl. at ¶ 45; Ornelas Decl. at ¶¶ 4-10; Urrutia Decl. at
4 ¶¶ 2-6. Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members.
5 *Id.* Thus, Plaintiffs' claims arise from the same employment practices and are based on the same legal
6 theories as those applicable to the other Class Members. *Id.*

7 **D. The Named Plaintiffs and Their Counsel Adequately Represent the Class.**

8 Adequacy of representation consists of two components: (1) no disabling conflict of interest
9 between the class representative and the class, and (2) the named representative must be represented by
10 counsel competent and experienced in the kind of litigation to be undertaken. *McGhee v. Bank of Am.*
(1976) 60 Cal. App. 3d 442, 450-51. Both requirements are satisfied here.

11 Plaintiffs are represented by counsel with substantial experience in wage and hour class action
12 litigation. *See generally* Bradley Decl. ¶¶ 17-28, 46; Declaration of Paul K. Haines ("Haines Decl.")
13 at ¶¶ 2-8; Declaration of Sean M. Blakely ("Blakely Decl.") at ¶¶ 2-6. Second, Plaintiffs do not have
14 any conflicts with other Settlement Class members. Bradley Decl., ¶ 46; Ornelas Decl. at ¶ 3; Urrutia
15 Decl., at ¶ 8. Plaintiffs' interests are co-extensive with those of other Settlement Class Members and
16 their agreement to serve as a class representatives and in mediation demonstrates their serious
17 commitment to bringing about the best results possible for fellow Settlement Class Members. Bradley
18 Decl. at ¶¶ 46-47; *see McGhee*, 60 Cal. App. 3d at 451. Accordingly, Plaintiffs should be appointed
19 as Class Representatives, and Plaintiffs' Counsel should be appointed Class Counsel.

20 **E. A Class Action is Superior to a Multiplicity of Litigation.**

21 A lawsuit warrants certification as a class action when doing so would be superior to alternative
22 means for the fair and efficient adjudication of the litigation. This is the case here. Consolidating
23 hundreds of individual actions into a single proceeding saves the parties and the Court substantial time,
24 effort, and expense. Additionally, particularly in the context of settlement, the case management
25 concerns are manageable. Accordingly, certification of the Settlement Class is superior to any other
26 method of resolving this matter, since it will promote economy, expediency, and efficiency.

27 **VI. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

28 **A. The Settlement is entitled to a presumption of fairness because it is the product of serious, informed and non-collusive negotiations.**

A settlement that is the product of an arms-length negotiation is entitled to a presumption of

1 fairness. *See, e.g., Dunk*, 48 Cal. App. 4th at 1802.

2 The Settlement was reached after informed, arms-length settlement negotiations supervised by
3 a well-respected mediator experienced in wage-and-hour class action cases, Steve Pearl, Esq. Bradley
4 Decl. at ¶ 13. Before the mediation, counsel vetted the claims through rigorous legal analysis, both
5 on the class certification and merits issues. *Id.* at ¶ 12. Counsel also evaluated updated class data
6 provided by Defendant showing class size, workdays, pay periods (in addition to what was produced
7 in formal discovery) and electronic time and payroll records, which allowed for further vetting of the
8 claims and preparation of an exposure analysis. *Id.* Counsel also drew upon their extensive experience
9 litigating, trying, and settling complex wage and hour class actions, similar to this one. Bradley Decl.
10 at ¶¶ 24-37.; Haines Decl., ¶¶ 2-8; Blakely Decl. ¶¶ 2-6. The parties then participated in a mediation
11 before a very experienced and highly regarded mediator. Bradley Decl.. at ¶ 13. Although respectful,
12 the negotiations were rigorous and at arms-length. *Id.* at ¶ 13. Additionally, both Defendant and
13 Plaintiffs were represented by experienced counsel through the negotiations. *Kullar*, 168 Cal.App.4th
14 at 129 (courts should weigh “the competency and integrity of counsel and the involvement of a neutral
15 mediator in assuring ... that a settlement agreement represents an arm’s length transaction entered
16 without self-dealing or other potential misconduct.”). Accordingly, the settlement here is the product
17 of extensive and hard-fought adversarial litigation and arms-length negotiations between the parties
18 and is therefore fair. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. The
19 Settlement has no obvious deficiencies but rather provides a very strong result for the Class Members.
20 *Id.* at ¶ 58.

21 A proposed settlement is not to be measured against a hypothetical ideal result that might have
22 been achieved. *See Wershba*, 91 Cal.App.4th at 246 (citing *Linney v. Cellular Alaska Partnership*
23 (9th Cir.1998) 151 F.3d 1234, 1242.). “The test is not the maximum amount plaintiffs might have
24 obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the
25 circumstances.” *Id.* at 250; *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495,
26 510.

27 The Settlement provides a very beneficial result for the Class. Bradley Decl. ¶ 58; Haines Decl.
28 ¶ 9; Blakely Decl. ¶ 7. Even after estimated attorneys’ fees and costs, the proposed service awards,
the LWDA payment, and the estimated costs of settlement administration, there will be an estimated
\$363,900.00 for distribution to the Settlement Class Members. Bradley Decl. at ¶ 58. This works out
to an average share of approximately \$1,399.00 per person if all estimated 260 Class Members
participate in the Settlement. *Id.* at ¶ 58. Ultimately, this will bring substantial relief to the Class.

1 Additionally, the Settlement Agreement and Notice provide Settlement Class Members the
2 opportunity, should they disagree with Defendant's records regarding the number of workweeks they
3 worked, to provide documentation and/or an explanation to show contrary dates. *See Proposed Notice*,
4 attached to Settlement Agreement. If there is a dispute, the Settlement Administrator will evaluate the
5 evidence submitted by the Class Member and Defendant to determine whether an adjustment is
6 warranted. Settlement Agreement at ¶ 7.6.

7 Settlement Class Members will also be given the opportunity to object to the settlement and to
8 appear at the Final Approval/Fairness Hearing to have their objections heard by the Court. Settlement
9 Agreement at ¶ 7.7. Class Members will further have the opportunity to opt-out of the settlement
10 should they so desire. *Id.* at ¶ 7.5. These procedural safeguards are explained in the proposed Notice
11 to the Class. *See Exhibit* to the Settlement Agreement.

12 The settlement amount is reasonable given the risks associated with continued litigation.

13 A settlement does not have to provide 100% of the damages sought to be considered a fair and
14 reasonable settlement. *Rebney*, 220 Cal.App.3d at 1139. Rather, compromise is expected:

15 Compromise is inherent and necessary in the settlement process...even if
16 “the relief afforded by the proposed settlement is substantially narrower
17 than it would be if the suits were to be successfully litigated,” this is no bar
18 to a class settlement because “the public interest may indeed be served by a
19 voluntary settlement in which each side gives ground in the interest of
20 avoiding litigation.”

21 *Wershba*, 91 Cal. App. 4th at 250.

22 Although there is uncertainty in projecting trial-ready damages before significant post-
23 certification merits discovery has been conducted, the \$670,000.00 recovery still compares favorably
24 with Plaintiffs' estimates of Defendant's exposure. Bradley Decl. ¶ 59.

25 Based upon the analysis of Defendant's records, Class Counsel's expert estimated that the total
26 damages interest, and penalties that the Class would be awarded if successful at trial would be
27 approximately \$2,703,481; \$1,460,293 when excluding PAGA penalties. Bradley Decl. ¶ 61.
28 However, this figure is based on Plaintiffs' assessment of a best-case-scenario. *Ibid.* To have obtained
such a result at trial, Plaintiffs would have had to prove, *inter alia*, that all Class Members were denied
at least one compliant meal period and at least one compliant rest period on fifty percent of their shifts,
and that they incurred unpaid wages, including overtime, as a result of working off-the-clock during
meal periods, prove that Defendant's meal waivers were invalid, that all employees incurred unpaid

1 business expenses, all figures that Defendant strongly disputed. *Ibid.*²

2 For mediation, Plaintiffs' Counsel also considered the arguable presence of various penalties,
3 including waiting time penalties, wage statement penalties, and penalties pursuant to PAGA. Bradley
4 Decl. ¶¶ 68-71. Plaintiffs calculated Defendant's exposure for waiting time penalties at approximately
5 \$675,885 *Id.* ¶ 70. Plaintiffs' potential recovery of waiting time penalties is limited. This is because
6 Plaintiffs faced the risk that Defendant would be able to defeat the waiting time claim by showing they
acted in good faith. *Id.*

7 Plaintiffs' expert estimated wage statement penalties at approximately \$157,554 which assumed
8 violations in each workweek. Bradley Decl. ¶¶ 68. A key basis for this claim was Plaintiffs' allegation
9 that Defendant's failure to properly pay all wages due caused Plaintiffs' wage statements to show
10 inaccurate hours and compensation. *Id.* Thus, Plaintiffs would have likely been required to demonstrate
11 overtime violations in each workweek to recover wage statement penalties on this scale. *Ibid.* Plaintiffs
12 also would have been required to demonstrate that Defendant acted intentionally, which Defendant
strongly disputed. *Id.* at 69.

13 Plaintiffs' expert calculated the maximum exposure on Plaintiffs' meal and rest break claims
14 would be approximately \$501,980, and the total exposure based on Defendant's failure to pay all wages
15 including overtime at approximately \$94,262. Bradley Decl. ¶¶ 62-66. Plaintiffs alleged that Defendant
16 did not pay employees for time spent working off-the-clock during their meal periods. *Ibid.* However,
17 Defendant argued this claim would not succeed because Defendant did not maintain any policies
requiring off-the-clock work. *Ibid.*

18 Class Counsel estimated a maximum exposure of \$30,612.00 for unpaid business expenses,
19 which Defendant similarly argued was untenable as Defendant did not maintain illegal policies
20 pertaining to such business expenses. Bradley Decl. ¶ 67.

21 Plaintiffs' calculation of Defendant's outside exposure for PAGA penalties was substantial.
22 Conceivably, Plaintiffs could have recovered as much as \$1,243,188 in PAGA penalties at trial. Bradley
23 Decl. ¶ 71. However, it is unlikely that Plaintiffs would have recovered PAGA penalties on this scale.
24 To have triggered such PAGA penalties, Plaintiffs would have had to prevail on all of their underlying
25 claims. Under such circumstances, the Court may well have determined that awarding full PAGA
26 penalties would have been "unjust, arbitrary and oppressive, or confiscatory" under Cal. Lab. Code §
2699(e)(2), and reduced them accordingly. *Ibid.* Moreover, Plaintiffs' exposure figures for the PAGA

27 ² Plaintiffs' discussion of risk is not intended to be a concession on any issue, but offered to illustrate the
28 litigation risks faced and the reasonableness of the Settlement achieved. Plaintiffs explicitly reserve their
positions on all of their claims.

1 penalties were calculated by applying the higher “subsequent” penalty rate for any violations that
2 occurred after the first violation within the liability period.³ *Ibid.* Defendant would have strongly
3 challenged this approach by pointing to case law that the subsequent rate is not used until there is notice
4 of a violation by a court or commissioner. *See, e.g., Jimenez v. Menzies Aviation, Inc.* (N.D.Cal., Apr.
5 8, 2013, No. C 10–03477 SBA) 2013 WL 1411228 , at *4; *Trang v. Turbine Engine Components Techs.*
6 *Corp.* (C.D.Cal., Dec. 19, 2012, No. CV 12–07658 DDP (RZx)) 2012 WL 6618854, at *5. While
7 Plaintiffs do not read the language of the statute this way, these authorities present a risk that the Court
8 might. Plaintiffs also faced the risk that the Court would follow authority precluding Plaintiffs from
9 “stacking” penalties for the same or similar underlying violations or that substantial penalties would be
10 confiscatory. Bradley Decl. ¶ 71. For all these reasons, the final settlement amount compares very
11 favorably with Plaintiffs’ estimates of Defendant’s exposure.

12 The class-wide recovery here also compares very favorably with settlement amounts in several
13 other wage-and-hour class action settlements. *See, e.g., Osegueda v. N. California Inalliance*
14 *(E.D.Cal., Jan. 15, 2020, No. 18-cv-00835 WBS EFB) 2020 WL 230201, at *6; (preliminary approval*
15 *of a wage and hour class action settlement with an approximate recovery of \$328.06 per class*
16 *member); Bolton v. U.S. Nursing Corp.* (N.D.Cal., Oct. 18, 2013, No. C 12–4466 LB) 2013 WL
17 5700403, at *2 (finally approving class action settlement of California state law wage and hour class
18 action, with approximate per-person recovery of \$595); *Saldivar v. Priority One Med. Transp., Inc.*
19 *(C.D.Cal., Mar. 22, 2011, No. CV 09–04789 MMM (Ex)) 2011 WL 13213889, at *7 (finally*
20 *approving class action settlement of wage and hour class claims for approximate per-person recovery*
21 *of \$530).*

22 The potential risks attending further litigation also support preliminary approval. Courts have
23 long recognized the inherent risks of litigation and emphasized the comparative benefits of immediate
24 recovery by way of the compromise to the mere possibility of relief in the future, after protracted and
25 expensive litigation. *See In re Sutter Health Uninsured Pricing Cases*, 171 Cal.App.4th at 510-511.
26 Proceeding to trial (and potential appeals) could add years and possibly a decade to the resolution of
27 this case. Instead of having to wait many years for relief, settlement Class Members will receive
28 payments in a reasonably prompt timeframe.

³ For violations of Labor Code provisions without their own penalty, such as Labor Code § 226.7, PAGA establishes civil penalties of “one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Labor Code § 2699(f)(2).

1 Here, although Plaintiffs strongly believe that they would prevail on their motion for class
2 certification, denial of class certification remains a risk. Bradley Decl. ¶¶ 60. Obtaining class
3 certification of a pattern and practice claim—even when meritorious—is difficult without facially
4 unlawful policies. *See, e.g., Civil Rights Education and Enforcement Center v. Hospitality Properties*
5 *Trust*, (9th Cir. 2017) 867 F.3d 1093, 1104 (citing *Nordstrom v. Ryan*, (9th Cir. 2014) 762 F.3d 903,
6 911). If Plaintiffs’ wage and/or meal and rest period claims were not certified, all or many of those
7 eligible to recover under this settlement would have lost significant compensation, and may have been
8 left with nothing at all. Bradley Decl. ¶ 74. Plaintiffs also faced the risk, post-certification, that they
9 would not be able to prove class-wide liability on the merits based on “pattern and practice” evidence,
10 without being able to point to written policies that were, by themselves, contrary to law. *Id.* ¶¶ 74-77.
11 Further, assuming Plaintiffs would prevail at summary judgment or trial on the issue of class liability,
12 there still would be uncertainty in terms of the damages that would be proved and collected. *Ibid.*
13 Again, Defendant strongly disputed the exposure figures Plaintiffs have presented, and the parties had
14 considerable disagreement about the amount of damages Plaintiffs could recover even in a best-case
15 scenario for Plaintiffs. *Ibid.*

16 In reaching the settlement, Plaintiffs weighed the value of the prospective relief and actual
17 payments to the settlement Class Members against the risks of achieving and maintaining class status
18 through the damages phase, proving liability and damages, and the consequences of further delay to
19 class members. Bradley Decl. ¶ 57. Moreover, even if Plaintiffs prevailed on all the claims and
20 damages theories through verdict, one or more appeals would have been likely given the nature of this
21 case and the defense presented. *Id.* ¶ 55-57, 77. Given these risks, costs and delays associated with
22 litigating the case through a trial and appeals, the total settlement amount of \$670,000.00 provides
23 very strong recovery for the 260 members of the Settlement Class. *Id.* ¶ 58. The formula for each Class
24 Member’s share is fair and reasonable.

25 The proposed formula for allocation of class member payments is subject to the same standard
26 of review as class action settlements—it must be “fair, adequate and reasonable.” *See, e.g., 7-Eleven*
27 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1166-1167 (holding
28 that plans of allocation within the context of settlement agreements are subject to a fair, adequate, and

reasonable standard). *Accord Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 55-56 (holding that courts do not decide whether plans of allocation are the best plans possible, but rather whether they are fair, adequate, and reasonable).

Here, the distribution formula is designed to take into account objective data, specifically the length of time worked by each member of the Settlement Class. Bradley Decl. at ¶ 50. Each Settlement Class Member's share will increase or decrease proportionally based on the number of workweeks he or she has in comparison to the workweeks of the Settlement Class Members combined. *Id.* This is reasonable because the Settlement Class Members' share will increase or decrease proportionally based on the amount of time worked (and by extrapolation, amount of meal and rest period not provided or permitted incurred). *Id.*

Additionally, any individual Settlement Payment that remains uncashed or undistributed in the settlement fund after the payment of all claims, including any accrued interest thereon, will be donated to the parties' designated *cy pres* beneficiary, Legal Aid At Work (LAAW). Settlement Agreement at ¶¶ 6.1-6.2. LAAW and its mission of strengthening civil and workplace rights through legal aid are closely related to the goals of this case. Bradley Decl. at ¶ 36.

B. The Proposed Service Award to the Class Representatives is Reasonable and Will Be Further Supported By a Separate Motion.

Service awards are common in class action cases. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412; *Newberg on Class Actions* § 11:38; Manual for Complex Litigation § 21.62 n.971 (4th ed. 2004). The purpose of such awards is to compensate named plaintiffs for work done on behalf of the class and to make up for financial or reputational risk undertaken in bringing the action. *Clark v. American Residential Services* (2009) LLC, 175 Cal. App. 4th 785, 806. The Court has discretion to approve a class representative service award that it considers reasonable. In its discretionary role as a fiduciary for absent class members, the Court may determine the amount of any service awards for class representatives. *See Clark*, 175 Cal. App. 4th at 800.

Pursuant to the Settlement Agreement, Ms. Ornelas and Ms. Urrutia may seek service awards of up to \$10,000.00 each. Settlement Agreement at ¶ 3.2.1. Plaintiffs have each devoted substantial time and effort on this case by producing relevant documents, meeting and communicating with and assisting their attorneys in prosecuting the case, reviewing complex legal documents, and engaging in settlement negotiations for the benefit of the Class. Bradley Decl. at ¶¶ 80-81; Ms. Ornelas Decl. at

¶¶ 18-23; Ms. Urrutia Decl. at ¶¶ 7-9. These factors support the requested service awards. Bradley Decl. at ¶¶ 80-81. Both Plaintiffs will submit declarations further detailing their efforts and service in connection with their request for service awards.

Furthermore, courts often approve service awards substantially larger than that requested by Plaintiffs here, where the named plaintiffs have made significant contributions to the prosecution of the class action, and the settlement has yielded a substantial benefit for the class. *See, e.g., Helmick v. Air Methods Corp.* (Sup Ct. Alameda County. Oct. 16, 2020) No. RG13-665373 at p. 9 (approving service awards of ranging from \$19,000 to \$38,000 for four Class Representatives); *Wisniewski v. Pacific Maritime Assoc.* (Super. Ct., Los Angeles County, Nov. 20, 2006) No. BC293134 (approving \$50,000 service payment); *Clark v. Am. Residential Servs. LLC* (Super. Ct., Los Angeles County, Aug. 29, 2007) No. BC332632 (approving \$25,000 service payment); *Kirschenbaum v. Elec. Arts, Inc.* (Super. Ct., San Mateo County, Jan. 27, 2006) No. Civ. 440876 (approving \$30,000 and \$15,000 service payments); *Crespo-Szabo v. Hollywood Entm't Corp.* (Super. Ct., Alameda County, May 31, 2005) No. RG04-135321 (approving \$25,000 service payment); *Junglas v. General Motors Corp* (Sup.Ct. Alameda County, April 20, 1990) No. 558-051-6 (awarding choice of \$12,000 or free new Cadillac to named plaintiffs); *Gaudin v. Saxon Mortgage Servs., Inc.* (N.D. Cal. 2015) 2015 WL 7454183, at *10 (finding service award of \$15,000 to be “fair and reasonable”).

C. The attorneys’ fees and litigation costs sought are reasonable and will be supported by a separate motion.

The purpose of an attorneys’ fee award in class action litigation is to reward counsel who invested in a case despite the risk of non-payment and achieved a substantial positive result for the class. California courts routinely award attorneys’ fees equaling one-third or more of the potential value of the common fund. *See Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (“Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery”). In accordance with the Settlement Agreement, Plaintiffs will seek Court approval of attorneys’ fees in the amount of \$221,100.00, which is 33% of the Gross Settlement Amount of \$670,000.00 *See Settlement Agreement at ¶ 3.2.2*

Plaintiffs’ final approval motion will support the reasonableness of the fee requested with details as to the work Class Counsel performed for the benefit of the class and the hours devoted to such work, the market hourly rates for each significant biller on this matter, and the reasonableness of their corresponding lodestar. Bradley Decl. at ¶¶ 82-83. The fee motion will show that the attorneys’

1 fees provided under the settlement are fair and reasonable under the lodestar-multiplier and percentage
2 of the fund approaches to awarding fee requests in similar cases. *Id.* The Settlement Agreement also
3 provides for up to \$25,000 for actual out of pocket costs such as filing and service fees, mediation
4 fees, and other litigation costs. *Id.* at ¶ 84. The fees and costs requested are commensurate with the
5 overall relief obtained and there are no indicia that the fees were negotiated at the expense of class
6 members. Additionally, the Notice of Settlement contains a statement specifying the maximum
7 amount of the fees and costs to be sought by motion. *See* Notice, attached as an exhibit to Settlement
8 Agreement.

9 **VII. THE COURT SHOULD ORDER DISTRIBUTION OF THE PROPOSED NOTICE**

10 Rule 3.769(f) of the California Rules of Court sets forth the requirements for class notice of
11 settlement after class certification is granted. Rule 3.769(f) states as follows:

12 If the court has certified the action as a class action, notice of the final
13 approval hearing must be given to the class members in the manner
14 specified by the court. The notice must contain an explanation of the
15 proposed settlement and procedures for class members to follow in
16 filing written objections to it and in arranging to appear for the
17 settlement hearing and state any objections to the proposed settlement.

18 As discussed below, the proposed class notice in this case meets these requirements.

19 The primary purpose of procedural due process is to provide affected parties with the right to
20 be heard at a meaningful time and in a meaningful manner. It does not guarantee any particular
21 procedure but rather requires only notice reasonably calculated to apprise interested parties of the
22 pendency of the action affecting their interests and an opportunity to present their objections. *Ryan v.*
23 *Cal. Interscholastic Fed* (2001) 94 Cal.App.4th 1048, 1072. Indeed, courts have approved class
24 notices, even when they provide only general information about a settlement. *See, e.g., Mendoza v.*
25 *United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (“very general description of the proposed
26 settlement” satisfies standards), disapproved on other grounds by *Evans v. Jeff D.* (1986) 475 U.S.
27 717, 725, n. 10; *In re Michael Milken & Assoc. Sec. Lit.* (S.D.N.Y. 1993) 150 F.R.D. 57, 60,
28 (“settlement notices need only describe the terms of the settlement generally.”).

29 As set forth in the Settlement Agreement, within fifteen (15) calendar days after Preliminary
30 Approval of the Settlement Agreement, Defendant will provide the Settlement Administrator with the
31 class information for purposes of mailing the Class Notice to Class Members. *See* Settlement
32 Agreement at ¶ 4.2. The parties have agreed on a notice plan that would provide class members with

1 individual notice by First Class U.S. mail. *Id.* at 7.4.2. Upon receipt of the Class Information, the
2 Settlement Administrator will perform a search based on the National Change of Address Database to
3 update and correct any known or identifiable address changes. *Id.* No more than fourteen (14) days
4 after receipt of the Class Information, the Settlement Administrator shall mail copies of the Class
5 Notice to all Class Members via regular U.S. Mail. *Id.* Additionally, ILYM will establish and maintain
6 a webpage on their website dedicated to this settlement on which ILYM will post the Class Notice, a
7 copy of the Settlement Agreement, the documents filed in connection with the preliminary and final
8 approval motions, and the Court’s Orders relating to the settlement. *Id.* at ¶ 7.8.1. Any Class Notices
9 returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall
10 be re-mailed to the forwarding address affixed thereto. *Id.* at ¶ 7.4.3. If no forwarding address is
11 provided, the Settlement Administrator shall promptly attempt to determine a correct address by use
12 of skip-tracing, or other search of the Class Member involved, and shall then perform a re-mailing, if
13 another mailing address is identified by the Settlement Administrator. *Id.* This notice procedure is
14 reasonable and adequate under applicable law. *See, e.g., Cartt v. Superior Court* (1975) 50
15 Cal. App. 3d 960, 974 (holding that class notice is adequate if it has “a reasonable chance of reaching
16 a substantial percentage of the class members”).

17 **A. The Notice Fairly Apprises Settlement Class Members of the Settlement Terms**
18 **and Their Rights Under the Settlement.**

19 The “notice given to the class must fairly apprise the class members of the terms of the proposed
20 compromise and of the options open to dissenting class members.” *Trotsky v. Los Angeles Fed. Sav.*
21 *& Loan Assn.* (1975) 48 Cal. App. 3d 134, 152-153. The purpose of a class notice in the context of a
22 settlement is to give class members sufficient information to decide whether they should accept the
23 benefits offered, opt out, or object to the settlement. *Id.*

24 Here, the notice clearly and accurately informs class members of the material terms of the
25 settlement and their rights pertaining to it, including the right to opt out from or object to the settlement.
26 *See* proposed Notice to Class, attached as an Exhibit to Settlement Agreement. The notice also will be
27 tailored for each individual and provide the class member’s total workweeks and an estimate of his or
28 her settlement share in the event that all class members participate in the settlement. *Id.* Thus, the

proposed notice to class members in this case satisfies all of the requirements of Rule 3.769(f) of the California Rules of Court. Additionally, the notice includes: contact information for class counsel to answer questions and a URL to a web site, maintained by the claims administrator or plaintiffs' counsel, that has links to the notice and the most important documents in the case. *Id.*

B. Preliminary Approval Should Be Granted

Given the favorable terms of the settlement and informed, arms-length negotiations, the proposed settlement should be preliminarily viewed as a fair, reasonable, and adequate compromise of the issues in dispute. The Court should therefore grant preliminary approval of the settlement, order dissemination of notice to the Class for comment, and proceed to a formal fairness hearing.

C. The Court Should Set A Schedule For Final Approval.

The next steps in the settlement approval process are to notify the class of the proposed settlement, allow class members an opportunity to file any objections or opt-out, and hold a final approval hearing. Toward those ends, the parties propose the following schedule:

Deadline for Defendant to provide class data to Settlement Administrator	15 calendar days after entry of Preliminary Approval
Deadline for Settlement Administrator to mail Notice of Settlement to Class Members	14 days after receipt of class list to Settlement Administrator
Last day for Class Members to dispute claim amounts, submit any requests for exclusions or objections	45 calendar days from date notice is mailed
Settlement Administrator to provide update to class counsel regarding requests for exclusion, disputed amounts and objections	55 calendar days from date notice mailed
Deadline for the parties' responses to any class member objections	16 Calendar days before Final Approval Hearing
Deadline for Plaintiffs to file motion for final approval of class action settlement, attorneys' fees, costs and service awards	16 Calendar days before Final Approval
Final Fairness Hearing and hearing on Plaintiffs' motion for fees, costs and service awards	To be determined by the Court

1 **VIII. CONCLUSION**

2 For each of the foregoing reasons, Plaintiffs respectfully request that the Court enter an order:
3 (1) preliminarily approving the proposed Settlement; (2) approving the form and method for providing
4 notice of the Settlement to the class; (3) setting the date(s) for Plaintiffs to file their motion for final
5 approval, attorneys' fees and costs and for service award; and (4) scheduling a fairness hearing to
6 consider final approval of the Settlement.

7 DATED: November 7, 2024

BRADLEY/GROMBACHER, LLP

9
10 By: 
11 _____
12 Marcus Bradley, Esq.
13 Kiley Grombacher, Esq.
14 Corey S. Smith, Esq.
15 Attorneys for Plaintiffs and others similarly
16 situated
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STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address 31365 Oak Crest Drive, Suite 240, Westlake Village, CA 91361.

On November 7, 2024, I served the foregoing documents described as

- 1) NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT;**
- 2) DECLARATION OF MARCUS J. BRADLEY;**
- 3) DECLARATION OF PAUL HAINES;**
- 4) DECLARATION OF SEAN M. BLAKELY;**
- 5) DECLARATION OF PLAINTIFF MARISELA MARTINEZ DE ORNELAS;**
- 6) DECLARATION OF PLAINTIFF MARGARITA URRUTIA;**
- 7) DECLARATION OF LISA MULLINS OF ILYM GROUP, INC. (PROPOSED ADMINISTRATOR); AND**
- 8) [PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

on all interested parties in this action as follows: **SEE ATTACHED SERVICE LIST**

[X] **(BY ELECTRONIC MAIL)** On the above date, I served the aforementioned document(s) by electronic mail to the parties' email addresses as they are known to me on the attached Service List. My email address is sboucher@bradleygrombacher.com. I did not receive, under a reasonable period of time, any indication that the email did not go through.

[X] **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed November 7, 2024, at Westlake Village, California.

Suzette Decker

Suzette Boucher

Marisela Martinez De Ornelas v. Magnolia Foods, LLC
San Bernardino County Superior Court Case No. CIV SB 2308953

Service List

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