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

ROSS PHILLIPS, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

KING'S CASINO MANAGEMENT CORP., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 23CV007240

*Assigned for all purposes to:
Hon. Lauri A. Damrell
Dept. 22*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

PRELIMINARY APPROVAL HEARING

Date: September 19, 2025

Time: 9:00 a.m.

Dept: 22

Complaint Filed: August 22, 2023

Trial Date: Not set

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on **September 19, 2025 at 9:00 a.m.**, in the Sacramento
3 County Superior Court, located at 720 Ninth Street, Sacramento, California 95814, pursuant to
4 California Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769, *et seq.*,
5 Plaintiff Ross Phillips (“Plaintiff”) on behalf of himself, the State of California, as a private
6 attorney general, and on behalf of all others similarly situated, will and hereby does move the Court
7 for an Order granting preliminary approval of the proposed class action and PAGA settlement on
8 the terms and conditions set forth in the Class Action and PAGA Settlement Agreement, Release
9 and Class Notice (“Settlement” or “Settlement Agreement”)) between Plaintiff and Defendant
10 King’s Casino Management Corp. (“Defendant”) (collectively, “Parties”), a copy of which is
11 attached to the Declaration of Arrash T. Fattahi as **Exhibit “3.”** Plaintiff further moves the Court
12 for an Order:

- 13 1. Granting preliminary approval of the proposed Settlement Agreement;
- 14 2. Conditionally certifying the proposed Class for settlement purposes only pursuant to
15 California Code of Civil Procedure section 382 and California Rules of Court, rule
16 3.769;
- 17 3. Approving the proposed Class Notice and the plan for distribution of the Class Notice;
18 as provided by the Settlement Agreement;
- 19 4. Appointing Plaintiff Ross Phillips as class representative for settlement purposes;
- 20 5. Appointing Plaintiff’s Counsel, Arrash T. Fattahi, Lisa B. Iturriaga, and Arman A.
21 Salehi of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
- 22 6. Permitting Plaintiff to file a First Amended Class & Representative Action Complaint;
- 23 7. Appointing ILYM Group, Inc. (“ILYM”) as the Settlement Administrator and
24 authorizing ILYM Group, Inc. to send notice of the Settlement to the Class Members
25 and proceed as provided by the Settlement Agreement;
- 26 8. Approving the proposed deadlines for the notice and administration process as
27 reflected in this Motion and in the Settlement Agreement; and
- 28 9. Scheduling a Final Approval Hearing.

1 Pursuant to California Rules of Court 3.769(d) and (e), the Motion for Preliminary
2 Approval of Class Action and PAGA Settlement (“Motion”) is made on the grounds that the
3 proposed Settlement Agreement satisfies all criteria for preliminary approval under California law
4 and falls well within the range of reasonableness; the Agreement was reached through informed,
5 arms-length bargaining between experienced attorneys, and Plaintiff and Class Counsel will fairly
6 and adequately represent the Class Members.

7 The Motion will be based upon this notice, the attached memorandum of points and
8 authorities, the [Proposed] Order Granting Preliminary Approval, the accompanying declarations,
9 filed concurrently herewith, the records and files in this action, and any other further evidence or
10 argument that the Court may properly receive at or before the hearing.

11 Respectfully submitted,

12 Dated: September 5, 2025

13 **WILSHIRE LAW FIRM, PLC**

14 By: *Lisa Iturriaga*
15 Arrash T. Fattahi
16 Lisa B. Iturriaga
17 Arman A. Salehi

18 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Ross Phillips (“Plaintiff”) seeks preliminary approval of a proposed \$795,000.00 non-reversionary, wage and hour class action settlement with Defendant King’s Casino Management Corp. (“Defendant,” and together with Plaintiff, the “Parties”). This motion for preliminary approval is unopposed. The Settlement will provide substantial monetary payments to approximately 1,078 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law. The Settlement was reached after extensive investigation, discovery, and negotiations. The negotiations were at arm’s length and were facilitated by an experienced class action mediator, Eve Wagner, over the course of a full day of mediation. After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement. As discussed below, the proposed Settlement satisfies all criteria for preliminary settlement approval under California law and falls within the range of reasonableness. Accordingly, Plaintiff respectfully requests that the Court preliminarily approve the proposed Settlement, certify the proposed settlement class, approve the proposed notice, and set a final approval hearing.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims

This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class members worked as non-exempt, hourly-paid employees for Defendant in the state of California during the class period. (Declaration of Arrash T. Fattahi in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and PAGA Settlement [“Fattahi Decl.”], ¶ 2.) Defendant operates Stones Gambling Hall (a dba of King’s Casino), a Sacramento-area poker and card room. (*Id.*) The business holds two licenses – The “Tavern,” offering California table games such as Baccarat, Three Card Poker, and Blackjack, and The “Saloon,” offering various games of poker. (*Id.*) Stones Gambling Hall operates 24/7 and there is an on-sight 24/7 dining facility, Sammy’s Restaurant + Bar. (*Id.*)

1 Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices resulted
2 in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked. Plaintiff
3 further alleges that Defendant failed to provide employees with legally compliant meal and rest
4 periods, and Defendant failed to reimburse business expenses. Based on these allegations, Plaintiff
5 asserts related claims for failure to provide accurate wage statements, failure to pay all final wages
6 at termination, unfair business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

7 4. On August 22, 2023, Plaintiff filed a putative wage and hour class action
8 complaint against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure
9 to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit
10 rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate
11 itemized wage statements; (7) failure to indemnify employees for expenditures; and (8) violation
12 of Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) (“Class Claims”)
13 (Fattahi Decl., ¶ 4.) On September 22, 2023, Plaintiff sent a notice to Defendant and the
14 California Labor & Workforce Development Agency (“LWDA”) alleging similar wage and
15 hour violations pursuant to the PAGA. (“PAGA Claims”) (*Id.*) Plaintiff intends on filing a First
16 Amended Class & Representative Action Complaint in this action adding a cause of action under
17 the PAGA. (*Id.*)

18 **B. Discovery and Investigation**

19 Following the filing of the initial complaint, the Parties exchanged documents and
20 information before mediating this action. (Fattahi Decl., ¶ 5.) Defendant produced a sampling
21 of timekeeping and pay records for the class members. (*Id.*) Defendant also provided a
22 significant number of documents of its wage and hour policies and practices during the class
23 and PAGA periods, exemplar wage statements, Plaintiff’s personnel file, information regarding
24 the total number of current and former employees, and total number of workweeks and pay
25 periods during the relevant period, and other requested information in its informal discovery
26 responses. (*Id.*)

27 After reviewing documents regarding Defendant’s wage and hour policies and practices
28 and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able to evaluate

1 the probability of class certification, success on the merits, and Defendant’s maximum monetary
2 exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law regarding
3 the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records
4 and utilized an expert to prepare a damages analysis prior to mediation. (*Id.*)

5 **C. Settlement Negotiations**

6 On September 5, 2024, the Parties participated in a private mediation with experienced
7 class action mediator, Eve Wagner. (*Id.* at ¶ 7.) The settlement negotiations were at arm’s length
8 and, although conducted in a professional manner, were adversarial. The Parties went into the
9 mediation willing to explore the potential for a settlement of the dispute, but each side was also
10 prepared to litigate their position through trial and appeal if a settlement had not been reached.
11 (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of
12 Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement, the material terms
13 of which are encompassed within the Settlement. (*Id.* at ¶ 8, **Ex. 3** [Class Action and PAGA
14 Settlement Agreement, Release and Class Notice].) The Parties spent the next several months
15 negotiating the terms of the Settlement, which was finalized in July of 2025. (*Id.*) The
16 negotiations were adversarial, conducted at arm’s length and tempered by the efforts of both
17 sides to serve the interests of their clients.

18 Class Counsel has conducted a thorough investigation into the facts of this case. Based
19 on the Parties’ informal exchange of documents and information and Class Counsel’s own
20 independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is
21 fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in
22 light of all known facts and circumstances, the risk of significant delay, the defenses that could
23 be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk.
24 (*Id.* at ¶ 13.)

25 Indeed, the \$795,000.00 Settlement represents approximately **98.9%** of the **realistic**
26 **maximum recovery** of \$803,317.13. (*Id.* at ¶ 22.) Although Class Counsel estimated that
27 Defendant’s maximum potential liability for all claims was approximately \$11.2 million, when
28 the risk of prevailing at certification and trial are factored into the equation, Class Counsel

believes that Defendant’s realistic exposure was \$803,317.13, meaning the Settlement achieves a significant recovery. (*Id.* at ¶¶ 13-26.) Considering the risk and uncertainty of prevailing at class certification and at trial, this is an excellent result for the Class (particularly because of Defendant’s contention that Class Members signed arbitration agreements). (*Id.* at ¶ 22.) Indeed, because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. (*Id.*)

D. Key Terms of the Proposed Settlement

The Settlement’s key terms include:

1. Class Definition: For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: “all persons currently or formerly employed by Defendant as non-exempt, hourly-paid employees during the Settlement Period in the State of California. Any Class Member who does not opt out or submit a Request for Exclusion is a ‘Settlement Class Member’ and shall be bound by the terms of the Agreement.” (Settlement, § 2.02.)

2. Settlement Period: “means the time period from August 22, 2019 up to December 31, 2024. This provision is subject to escalator clause provision in Paragraph 4.5.” (Settlement, § 2.45.)

3. Settlement Class Members: “means all Class Members who have not timely and properly submitted a Request for Exclusion. All Settlement Class Members shall be bound by the terms of the Agreement.” (Settlement, § 2.44.)

4. Aggrieved Employee or PAGA Releasee: “means any individual who was employed by Defendant in the State of California, whether current or former, as a non-exempt or hourly-paid employee at any time during the PAGA Settlement Period. Where applicable, this definition also includes the Labor and Workforce Development Agency (“LWDA”) and the State of California.” (Settlement, § 2.26.)

5. PAGA Settlement Period: “means the period beginning on September 23, 2022 through December 31, 2024. This provision is subject to escalator clause provision in Paragraph 4.5.” (Settlement, § 2.28.)

1 6. Gross Settlement Amount: “In exchange for the releases, obligations, and promises
2 set forth in this Settlement (and subject to the terms and conditions contained in this Settlement),
3 Defendant agrees to pay the Gross Settlement Amount of Seven Hundred Ninety-Five Thousand
4 Dollars and Zero Cents (\$795,000.00), subject only to a pro-rata increase based upon the escalator
5 provision set forth in Paragraph 4.5, which is the total and all-inclusive amount Defendant shall be
6 obligated to pay under the Settlement embodied by this Agreement (except that Defendant shall
7 pay the Employer Taxes and withholdings with respect to the wages portion of Individual
8 Settlement Payment separately and in addition to the GSA), for the full resolution of the Action,
9 Plaintiff’s Released Claims, Released Class Claims, and Released PAGA Claims. The GSA
10 includes amounts appropriated to the Settlement Class Members, the PAGA Payment, Settlement
11 Administration Costs to the Settlement Administrator, Attorney’s Fees and Costs to Class Counsel,
12 and the Service Award. Defendant will deposit money into a Qualified Settlement Fund (“QSF”),
13 established by the Administrator.” (Settlement, § 4.4.)

14 7. Cy Pres: In the event that any Individual Settlement Payment checks are not
15 deposited, cashed, or otherwise negotiated within the 180-day period, they shall be void. Any funds
16 not distributed after the expiration of the Individual Settlement Payment checks shall cancelled
17 and the corresponding funds will be donated to *cy pres* thereby leaving no “unpaid residue” subject
18 to the requirements of California Code of Civil Procedure section 384, subd (c). Pursuant to CCP
19 § 384, the *cy pres* recipient shall be WEAVE, Inc. WEAVE’s mission is to promote safe and
20 healthy relationships and support survivors of sexual assault, domestic violence, and sex
21 trafficking. As the only nonprofit legal service provider focused specifically on victims of sexual
22 assault and sex trafficking, WEAVE offers trauma-informed legal services that are responsive to
23 the needs of the diverse and indigent communities it serves. Its work addresses critical gaps in
24 access to justice for vulnerable populations. WEAVE’s vision is that when everyone acts, violence
25 ends. The Settlement Administrator shall distribute any *cy pres* payment. (Settlement, § 4.6.1(b);
26 *see also* Fattahi Decl., ¶ 47.)

27 8. Release of Settlement Class Members’ Claims: “After Defendant funds the GSA
28 and Employer Taxes, each Settlement Class Member will be deemed to have released, waived, and

1 discharged the Released Parties from his or her Released Class Claims as defined in the Settlement.
2 Each Settlement Class Member further covenants and agrees that, since each Settlement Class
3 Member is settling disputed claims, a Settlement Class Member will not accept, recover, or receive
4 any overtime compensation, back pay, liquidated damages, restitution, losses, fines, liens,
5 exemplary damages, punitive damages, penalties, interest, attorneys' fees and costs, expenses,
6 debts, interest, injunctive relief, declaratory relief, other damages, or any other form of relief based
7 on any Released Class Claims settled in the Action, or in connection with any other individual,
8 class, collective, representative, administrative, or arbitral proceeding pursued by any individua,
9 class, or federal, state or local governmental agency against the Released Parties for Released Class
10 Claims during the Settlement Period. Settlement Class Members further acknowledge and agree
11 that they are enjoined from pursuing any Released Class Claims settled as part of this Settlement
12 and will not file, cause to be filed, or affirmatively join or opt in, as a collective member,
13 beneficiary or other participant in any action that pursues any claim released under the Released
14 Class Claims and will not seek to obtain recovery based on the facts giving rise to the claims pled
15 of which could have pled in the Action. If involuntarily joined in any Action against Released
16 Parties regarding claims released under the Released Class Claims, Settlement Class Members
17 agree to waive their rights to any recovery that may result from such action or proceedings, and
18 not to pursue claims on their own behalf. Notwithstanding the foregoing, nothing in this Agreement
19 releases any claims that may not be released as a matter of law.” (Settlement, § 8.2.)

20 i. Settlement Class Release: “Each Settlement Class Member who has been
21 issued a settlement check for their Individual Settlement Payment knowingly,
22 voluntarily, and fully releases the Released Parties (as defined in this Settlement)
23 from all Released Class Claims, as well as any other claims that were alleged or
24 could reasonably have been alleged based on the facts set forth in the Operative
25 Complaint during the Settlement Period, including but not limited to: (1) Failure to
26 Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and
27 1197); (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198); (3)
28 Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to

1 Authorize and Permit Rest Periods (Cal. Lab. Code §§ 226.7); (5) Failure to Timely
2 Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (6) Failure to Provide
3 Accurate Itemized Wage Statements (Cal. Lab. Code § 226); (7) Failure to
4 Indemnify Employees for Expenditures (Cal. Lab. Code § 2802); and (8) Unfair
5 Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.), arising from the
6 Labor Code violations referenced in the Operative Complaint and as defined above
7 as the “Released Class Claims.” Settlement Class members are bound by the
8 Settlement regardless of whether they cash their Individual Settlement Payment.
9 The Settlement Class Release shall include all claims and/or causes of action arising
10 from or related to the Operative Complaint, or which arise out of or directly or
11 indirectly relate to such facts, whether known or unknown, including but not limited
12 to, the failure to pay wages, the failure to pay for all hours worked, including “off
13 the clock” claims, and other claims whatsoever that were alleged in the Actions.”
14 (Settlement, § 8.2.1.)

15 ii. Released of PAGA Claims: “Upon the Court’s approval of the PAGA
16 Payment and this release of PAGA Claims, the LWDA, and the State of California,
17 by and through Plaintiff as an agent and proxy of the LWDA, and on behalf of the
18 Aggrieved Employees, hereby do and shall be deemed to have fully, finally, and
19 forever released, settled, compromised, relinquished and discharged any and all of
20 the Released Parties of and from any and all PAGA Claims premised in whole or in
21 part on any of the claims set forth in the Operative Complaint, and LWDA Letter,
22 including, pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1 and
23 2699, in connection with alleged violations of Labor Code sections 96, 98.6, 201,
24 202, 203, 204, 226, 226.7, 227.3, 232, 232.5, 246, et seq., 432, 510, 512, 1102.5,
25 1174, 1194, 1197, 1197.5, 1198.5, 2802, and 2810.5 that arose at any time during
26 the PAGA Settlement Period and as defined above as “Released PAGA Claims.”
27 The PAGA Releasees will be issued a check for their share of the PAGA Payment
28 and will not have the opportunity to opt out of, or object to, the PAGA Payment and

1 release of the PAGA Claims set forth in this Paragraph. The PAGA Releasees are
2 bound by the release of the PAGA Claims regardless of whether they cash their
3 PAGA Payment Check. PAGA Releasees shall release all Released PAGA Claims
4 that accrued during the PAGA Settlement Period as to the Released Parties upon
5 Defendants' funding of the GSA, as set forth herein." (Settlement, § 8.4.)

6 9. PAGA Penalties & PAGA Payment: "Subject to Court approval, the Parties agree
7 to allocate an amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) to the settlement of
8 all claims for civil penalties under the Labor Code Private Attorneys General Act of 2004, Labor
9 Code sections 2698, et seq. ("PAGA Payment"), which will be paid from the Gross Settlement
10 Amount. Of this, an amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00),
11 which is 75% of the PAGA Payment, shall be paid to the State of California LWDA. The remaining
12 25% of the PAGA Payment, which amounts to Two Thousand Five Hundred Dollars and Zero
13 Cents (\$2,500.00), shall be distributed pro rata to all PAGA Releasees, based on the number of
14 PAGA Pay Periods worked by a PAGA Releasee, as a fraction of the total PAGA Pay Periods
15 worked of all PAGA Releasees. The portion of the PAGA payment to the PAGA Releasees shall
16 be treated entirely as penalties. Although the PAGA Settlement will be subject to Court approval,
17 PAGA Releasees will not have the opportunity to opt-out or object to the PAGA Payment or the
18 release of PAGA Claims set forth in this Agreement. In the event the LWDA or the Court rejects
19 this allocation, the Parties will meet and confer with the Court and the LWDA to reach a penalty
20 allocation acceptable to all parties that does not materially alter the terms of Settlement, nor require
21 Defendant to pay more than the GSA. Concurrently, when Plaintiff files their Motion for
22 Preliminary Approval, Plaintiff shall send a copy of the Settlement to the LWDA pursuant to the
23 2016 amendments to PAGA. The PAGA Payment shall be paid from the Gross Settlement
24 Amount." (Settlement, § 4.7.) Class Counsel submitted the proposed settlement to the LWDA
25 before filing this Motion for Preliminary Approval. (Fattahi Decl., ¶ 9.)

26 10. Net Settlement Amount & Distribution Formula: "The Net Settlement Amount shall
27 be allocated among the members of the Settlement Class on a *pro rata* basis based on the number
28 of Workweeks at Issue for each Settlement Class Member, and number of PAGA Pay Periods for

1 each PAGA Releasee. The allocations to the Class Settlement Amount and the PAGA Settlement
2 Amount is based on Workweeks at Issue and PAGA Pay Periods within each allocation group and
3 the applicable statute of limitations periods. The initial calculation prior to the mailing of the Class
4 Notice shall estimate (1) the gross Individual Settlement Payment that each Settlement Class
5 Member may be eligible to receive based on their Workweeks at Issue, assuming that no Class
6 Members opt out of the Class Settlement; and (2) the gross PAGA Payment that each PAGA
7 Releasee may be eligible to receive based on the PAGA Pay Periods. To the extent that individuals
8 are both Settlement Class Members and PAGA Releasees, they shall be eligible to receive both an
9 Individual Settlement Payment and a PAGA Payment. Separate check payments may be issued for
10 Individual Settlement Payment checks and PAGA Payment checks; thus, individuals that are both
11 Settlement Class Members and PAGA Releasees may be issued two separate check payments. The
12 Net Settlement Amount shall be fully distributed, as follows:

13 Class Members who do not opt out of the Class Settlement (i.e., Settlement Class Members)
14 will receive a *pro rata* share of the Class Settlement Amount, as follows: (a) Settlement
15 Class Members will receive a *pro rata* share of the Net Settlement Amount, based on their
16 respective number of Workweeks at Issue in the Settlement Period as compared to the total
17 Workweeks of all Settlement Class Members in the Settlement Period” (Settlement, §§ 4.6,
18 4.6.1.)

19 11. Tax Allocation: “Each Settlement Class Member’s payment shall be treated 33% as
20 wages and will be reported as such to each Settlement Class Member on an IRS Form W-2; and
21 67% as civil penalties or liquidated damages, and as interest, will be reported as such to each
22 Settlement Class Member on an IRS Form 1099, if applicable, and as interest and will be reported
23 as such to each Settlement Class Member on an IRS Form 1099, if applicable. The wage portion
24 shall be paid net of all Employee’s Taxes and Required Withholdings, including federal, state, and
25 local income tax, FICA taxes, and federal and state unemployment taxes. The Parties further agree
26 that the PAGA Payment distributed to each PAGA Releasee will be treated entirely as civil
27 penalties and will be reported as such to each PAGA Releasee on an IRS Form 1099, if applicable.”
28 (Settlement, § 4.11.)

1 12. Service Award: “In return for services rendered to the Class Members, Plaintiff will
2 request that the Court approve a Service Award of up to Ten Thousand Dollars and Zero Cents
3 (\$10,000.00) for themselves from the GSA. Defendant will not oppose such an application. The
4 terms of this Agreement will not be abrogated and will continue in full force even if the Court
5 awards a lesser amount for the Service Award. The outcome of the Court’s ruling on the application
6 for a Service Award shall not terminate this Settlement or otherwise affect the Court’s Final
7 Approval Order. Any amount not approved by the Court shall become part of the Net Settlement
8 Amount for distribution to the Settlement Class Members on a *pro rata* basis. In return for the
9 Service Award, Plaintiff will release Plaintiff’s Released Claims upon Defendant’s funding of the
10 GSA. The Service Award payable to Plaintiff shall be in addition to any Individual Settlement
11 Payments they may receive. Notwithstanding the foregoing, nothing in this Agreement releases
12 any claims that may not be released as a matter of law.” (Settlement, § 4.9.) This payment shall be
13 in addition to the *pro rata* recovery received by Plaintiff as part of the settlement.

14 13. Class Counsel Fees and Costs: “Class Counsel shall request attorneys’ fees up to
15 one third (1/3) of the GSA, currently estimated at Two Hundred Sixty-Five Thousand Dollars and
16 Zero Cents (\$265,000.00), for attorneys’ fees; and up to Thirty-Five Thousand Dollars and Zero
17 Cents (\$35,000.00) for reimbursement of reasonable out-of-pocket litigation costs and expenses
18 according to proof (“Attorneys’ Fees and Costs”). Class Counsel agrees not to seek from Defendant
19 any additional attorneys’ fees, costs and/or expenses stemming from their involvement in the
20 Action. Plaintiff and Class Counsel will apply to the Court for payment of Class Counsel’s request
21 for Attorneys’ Fees and Costs. Defendant agrees not to oppose Class Counsel’s request for
22 Attorneys’ Fees and Costs in these amounts. The terms of this Agreement will not be abrogated
23 and will continue in full force even if the Court awards a lesser amount for Attorneys’ Fees and
24 Costs than requested by Class Counsel. The outcome of the Court’s ruling on the application for
25 Attorneys’ Fees and Costs shall not terminate the Settlement or otherwise affect the Court’s ruling
26 on the Final Approval Order. To the extent the Court does not approve payment of Attorneys’ Fees
27 and Costs in the amount set forth herein, the amount that is not awarded to Class Counsel shall
28 remain a part of the NSA for distribution to the Settlement Class Members on a *pro rata* basis.

1 Except as provided in this Paragraph, upon final approval, each Party shall bear their or its own
2 attorneys' fees, costs, and expenses incurred in the prosecution, defense, and settlement of the
3 Action. Attorneys' Fees and Costs shall be paid without withholding, and an IRS Form 1099 will
4 be issued for such payments. Class Counsel will provide the Settlement Administrator with IRS
5 Form W-9, with all corresponding taxpayer identification entered, so that an IRS Form 1099 may
6 be issued." (Settlement, § 4.8.)

7 14. Notice of Proposed Class Action Settlement: The Notice sets forth in plain terms, a
8 statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys'
9 fees, costs, and service payment being sought, and an explanation of how the settlement allocations
10 are calculated. (*See generally* Settlement, Ex. A, Class Notice.) Class Members will be notified by
11 first-class mail of the settlement. (Settlement, § 5.3.1.) ILYM Group, Inc. ("ILYM"), the proposed
12 Settlement Administrator, will undertake its best efforts to ensure that the notice is provided to the
13 current addresses of class members, including conducting a national change of address search and
14 re-mailing the notice to updated addresses. (*Id.*; Fattahi Decl., ¶ 10; *see generally*, Mullins Decl.)

15 **III. DISCUSSION**

16 To prevent fraud, collusion, or unfairness to the class, the settlement of a class action
17 requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800-01.) This
18 Court has wide discretion to determine whether the proposed settlement is fair. (*Mallick v. Super.*
19 *Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness is presumed when: (1) the settlement is reached
20 through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to
21 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
22 is small. (*Dunk*, 48 Cal.App.4th at p. 1800.)

23 In considering whether a settlement is reasonable, the trial court should consider relevant
24 factors, which may include the strength of plaintiff's case, the risk, expense, complexity and likely
25 duration of further litigation, the risk of maintaining class action status through trial, the amount
26 offered in settlement, the extent of discovery completed and the stage of the proceedings, the
27 experience and views of counsel, the presence of a governmental participant, and the reaction of
28 the class members to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168

Cal.App.4th 116, 128.) In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the “ballpark” of reasonableness. (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-9 [holding that *Kullar* does not require “an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims”, but instead, only an “understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.”].)

As discussed below, Class Counsel has provided information exceeding the threshold required to provide this Court with materials and information necessary to determine that the proposed settlement is fair, adequate, and reasonable.

A. The Settlement Is Fair, Reasonable, Adequate, and the Product of Investigation, Litigation, and Negotiation

1. The Settlement Is the Product of Discovery, Investigation, and Informed and Non-Collusive Arm’s-Length Negotiations

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption here that the negotiations were conducted in good faith. (Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 11.51.) Settlement is favored, and settlement agreements are realistically assessed. (*Stamburgh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447 [“The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.”].)

The Settlement was reached following extensive negotiations following one day of mediation with experienced class action employment mediator, Eve Wagner. (Fattahi Decl., ¶ 7.) The settlement negotiations were at arm’s length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses,

1 the Parties reached an agreement. (*Id.* at ¶ 8.)

2 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
3 the claims set forth in the litigation, such as a sample of class member timekeeping and payroll
4 records, Defendant’s policies and procedures concerning the payment of wages, the provision of
5 meal and rest breaks, and issuance of wage statements, as well as information regarding the number
6 of putative class members and the mix of current versus former employees, the wage rates in effect,
7 and the amount of meal and rest period premium wages paid to class members. (*Id.* at ¶¶ 5-6.) In
8 conjunction with their extensive factual investigation, Class Counsel investigated the applicable
9 law regarding the claims and defenses asserted in the litigation. (*Id.* at ¶ 6.) Thus, Plaintiff and his
10 counsel were able to act intelligently and effectively in negotiating the proposed Settlement.

11 Class Counsel also has considerable experience and has demonstrated competence with
12 litigating wage and hour class actions. (*Id.* at ¶¶ 37-46.) Again, this supports the position that
13 the terms of the Settlement are premised on objective evidence that has been considered and
14 weighed in light of the risks, expenses, and time consumption to both sides of continued
15 litigation of this action.

16 **2. The Settlement Is Fair and Reasonable in Light of the Parties’** 17 **Respective Legal Positions**

18 A settlement is not judged against what might plaintiff recover had he prevailed at trial, nor
19 does the settlement have to provide 100% of the damages sought to be fair and reasonable.
20 (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250 [“Compromise is inherent
21 and necessary in the settlement process . . . even if the relief afforded by the proposed settlement
22 is substantially narrower than it would be if the suits were to be successfully litigated, this is no
23 bar to a class settlement because the public interest may indeed be served by a voluntary settlement
24 in which each side gives ground in the interest of avoiding litigation.”].)

25 This settlement avoids the risks and the accompanying expense of further litigation. (Fattahi
26 Decl., ¶ 24.) While Plaintiff is confident in the merits of his claims, a legitimate controversy exists
27 as to each cause of action. (*Id.* at ¶ 23.) Plaintiff also recognizes that proving the amount of wages
28 due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id.*)

1 The proposed settlement of \$795,000.00 therefore represents a substantial recovery when
2 compared to Plaintiff's reasonably forecasted recovery. (*Id.* at ¶¶ 13-26.) Because of the proposed
3 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
4 unfavorable judgment. When considering the risks of litigation, the uncertainties involved in
5 achieving class certification, the burdens of proof necessary to establish liability, the probability
6 of appeal of a favorable judgment, it is clear that the settlement amount of \$795,000.00 is well
7 within the "ballpark" of reasonableness, and preliminary settlement approval is appropriate. (*Id.*)
8 ***Indeed, each Settlement Class Member is eligible to receive an average net benefit of***
9 ***approximately \$428.99.*** (*Id.* at ¶ 25.)

10 **3. Class Counsel Has Extensive Experience in Class Action Litigation**

11 The settlement negotiations were conducted by highly capable and experienced counsel.
12 Class Counsel have a strong record of vigorous and effective advocacy for their clients and are
13 experienced in handling complex wage and hour class action litigation. (Fattahi Decl., ¶¶ 37-46.)
14 Although Plaintiff and his counsel were prepared to litigate the claims alleged in the litigation,
15 they support the proposed Settlement as being in the best interests of the class.

16 **B. The Proposed Class Notice of Settlement Should Be Approved**

17 Class Members are entitled to the best practical notice under the circumstances. (*Kass v.*
18 *Young*, 67 Cal. App. 3d 100, 106 (1977).) The purpose of the notice is to give class members
19 sufficient information to decide whether they should accept the benefits offered, opt out and pursue
20 their own remedies, or object to the settlement. (*Trotsky v. Los Angeles Fed. Savings & Loan Assn.*,
21 48 Cal. App. 3d 143, 151-52 (1975).) The notice must advise class members "that they may be
22 excluded from the class if they so request and that they will be bound by the judgment, whether
23 favorable or not, if they do not request exclusion." (*Kass*, 67 Cal. App. 3d at 106.) In a case such
24 as this involving a significant number of class members, California authorities generally require
25 service of the class notice by mail or similar reliable means. (*Chance v. Super. Ct.*, 58 Cal. 2d 275,
26 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972 (1975).)

27 The proposed Notice, in the form attached to the Settlement Agreement, should be approved
28 for dissemination to the class. The Notice informs the class of the terms of the settlement and of

1 their rights to be excluded from the settlement. And if there are class members who wish to object
2 to this proposed class action settlement, they will have the opportunity to file their objections and
3 be heard at the Final Approval Hearing. Accordingly, the proposed Notice meets all the
4 requirements of Rule 3.769(f) of the California Rules of Court.

5 **C. The Proposed Attorneys' Fees and Costs Are Reasonable**

6 Under the Settlement, subject to the Court's approval, the Parties agreed to allocate
7 reasonable attorneys' fees in an amount currently estimated to be \$265,000.00, and up to
8 \$35,000.00 in costs. (Settlement, § 4.8.) These amounts are disclosed to all class members in the
9 proposed Notice and are reasonable.

10 **1. Class Counsel Request an Award of Fees Based on the "Common Fund"**
11 **Method**

12 California courts have long awarded attorneys' fees as a percentage of the benefit created
13 by counsel in creating a common fund. The California Supreme Court held that "when a number
14 of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs
15 for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs
16 may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34,
17 quoting *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

18 Class Counsel seeks an award of attorneys' fees on the "percentage of recovery/common
19 fund" theory. The purpose of this approach is to "spread litigation costs proportionally among all
20 the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v.*
21 *Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995)
22 15 Cal.3d 162, the California Supreme Court stated: "[O]ne who expends attorneys' fees in
23 winning a suit which creates a fund from which others derive benefits may require those passive
24 beneficiaries to bear a fair share of the litigation costs." (*Id.* at p. 167.) Similarly, in *City and*
25 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized
26 that the common fund doctrine has been applied "consistently in California when an action brought
27 by one party creates a fund in which other persons are entitled to share." (*Id.* at p. 110.)

28 The California Supreme Court affirmed in *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th

1 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
2 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
3 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
4 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
5 method—including relative ease of calculation, alignment of incentives between counsel and the
6 class, a better approximation of market conditions in a contingency case, and the encouragement
7 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
8 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
9 (*Id.* [internal citations omitted].)

10 **2. The Requested Fee Award Is in Line with Typical Cases**

11 According to a leading treatise on class actions, “[n]o general rule can be articulated on what
12 is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a
13 reasonable fee award from a common fund in order to assure that the fees do not consume a
14 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
15 are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.)
16 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with thirty
17 to forty percent commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also*
18 *Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most
19 cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

20 Here, Plaintiff requests attorneys’ fees equal to one-third (1/3) of the Settlement Amount,
21 which is in line with the prevailing guidelines established in California case law and academic
22 literature and is consistent with awards in California. (*See Chavez v. Netflix, Inc.* (2008) 162
23 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method
24 or the lodestar method is used, fee awards in class actions average around one-third of the
25 recovery.”].) Accordingly, Plaintiff respectfully requests that the Court approve the attorneys’ fees
26 as negotiated by the Parties and requested herein.

27 **3. This Matter Involves A “Fee-Shifting” Provision of the Labor Code**

28 Labor Code § 1194 (a) provides for the recovery of “minimum wage or overtime

1 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Under this
2 section, Plaintiff would be permitted to recover her actual attorneys’ fees, even if those fees were
3 larger than the total class recovery at the conclusion of this case. This settlement is beneficial in
4 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
5 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by
6 taking on this matter. In fact, prosecution of this action involved significant financial risk for Class
7 Counsel. (Fattahi Decl., ¶¶ 35-36.) Class Counsel undertook this matter solely on a contingent
8 basis, with no guarantee of recovery. (*Id.*) Once counsel undertook this litigation on behalf of the
9 Class, Class Counsel committed to pursue it to its conclusion, placing its fiduciary duty to the Class
10 ahead of all other concerns.

11 **4. The Experience, Reputation and Ability of Class Counsel Support the** 12 **Requested Fee Award**

13 As demonstrated by their past experience in pursuing class actions on behalf of consumers
14 and employees, Class Counsel possesses considerable expertise in litigating class actions. (Fattahi
15 Decl., ¶¶ 37-46.) Class Counsel has been involved as lead counsel or co-counsel in several class
16 actions that resulted in millions in recovery. (*Id.*) Because it is reasonable to compensate class
17 counsel commensurate with their skill, reputation and experience, Class Counsel’s requested fee
18 award is supported here.

19 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
20 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
21 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
22 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
23 action litigation. Based on these and other factors, Class Counsel has frequently received fee
24 awards of this percentage from the gross recovery for the class. Therefore, the requested fee award
25 is reasonable and fair.

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

27 Where settlements negotiate a good faith amount for PAGA penalties and “there is no
28 indication that this amount was the result of self-interest at the expense of other” class members,

1 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr.
2 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133 at *1, 9.) Courts have approved amounts for
3 PAGA penalties in the range of zero to two percent of the total maximum amount of the Settlement.
4 (*Id.* [approving a PAGA payment of 0.3%, or \$1,500]; *see also Jack v. Hartford Fire Ins. Co.* (S.D.
5 Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v.*
6 *Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts
7 approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here,
8 the amount to be paid to the LWDA is larger than many other PAGA settlement amounts approved
9 by the courts where seemingly nominal amounts were allocated for such claims. (*See, e.g., Zubia*
10 *v. Shamrock Foods Co.* (C.D. Cal. Dec. 21, 2017) No. CV1603128ABAGRX, 2017 WL 10541431,
11 at *14 [approving a PAGA settlement of 0.1%]; *Hopson*, 2008 WL 3385452, at *1 [approving a
12 PAGA settlement of 0.3% or \$1,500]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012)
13 No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575, at *3 [approving a PAGA settlement of
14 0.27%].) Here, the Parties negotiated a good faith amount of \$10,000.00, 75% percent of which
15 (\$7,500.00) will be paid to the LWDA and 25% (\$2,500.00) to be distributed to the Aggrieved
16 Employees. (Settlement, § 4.7.) The \$10,000.00 allocation equates to 1.3% of the Gross Settlement
17 Amount, which far exceeds amounts that are routinely approved. The Parties negotiated to allocate
18 1.3% of the Settlement to PAGA penalties in good faith and this amount is reasonable considering
19 that the maximum PAGA penalties were estimated at \$1,407,100.00 (which assumed \$100 per pay
20 period). (Fattahi Decl., ¶ 21.)

21 **E. The Service Payment to Named Plaintiff Is Reasonable**

22 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
23 compensate them for the expense or risk they have incurred in conferring a benefit on other
24 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
25 of class action settlement agreements containing enhancements for the class representatives, which
26 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
27 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
28 2009) 563 F.3d 948, 958-59.)

1 Service awards are particularly important to plaintiffs in wage and hour cases because they
2 promote the important public policies underlying the wage and hour laws. This strong policy is
3 codified in California Labor Code § 90.5, which provides, “it is the policy of this state to vigorously
4 enforce minimum labor standards in order to ensure employees are not required or permitted to
5 work under substandard unlawful conditions” Nonetheless, the California Supreme Court has
6 noted that “retaliation against employees for asserting statutory rights under the Labor Code is
7 widespread,” despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.*
8 (2007) 42 Cal.4th 443, 460-61.) In this context, class representatives should be rewarded for
9 assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.*
10 (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

11 Under the Settlement, subject to the Court’s approval, Defendant agreed to pay a Service
12 Award in the amount of \$10,000.00 to Plaintiff. (Settlement, § 4.9.) Courts routinely approve a
13 \$10,000 enhancement award for plaintiffs represented by Class Counsel. (*See, e.g., Moreno v.*
14 *Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 [“The Court concludes
15 a \$10,000 incentive award is appropriate.”]; *Suarez v. Bank of America, National Association* (N.D.
16 Cal., Jan. 11, 2024, No. 18-CV-01202-LB) 2024 WL 150721, at *4 [“The court approves awards
17 of \$10,000 for each class representative.”].) Class Counsel represent that Plaintiff devoted a great
18 deal of time and work assisting counsel in the case, communicated with counsel very frequently
19 for litigation and to prepare for mediation, and was frequently in contact with Class Counsel during
20 the mediation. (Fattahi Decl., ¶¶ 27-31) This amount is reasonable particularly in light of the
21 substantial benefits Plaintiff generated for all class members. (*Id.*)

22 When compared with the amounts awarded in typical class action cases, the amount
23 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
24 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
25 representative was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg
26 & Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L.Rev.
27 1303, 1308.) That same study found that named plaintiffs in employment discrimination class
28 actions received an average award of \$69,850 and a median award of \$31,081, while named

1 plaintiffs in other employment class actions received an average award of \$12,121 and a median
2 award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in
3 employment cases reflected the “courts’ wish to make representative plaintiffs whole by
4 compensating them for the high costs of their service to the class, including risks of stigmatization
5 or retaliation on the job.” (*Id.* at p. 1308.)

6 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED**

7 **A. Legal Standard**

8 The proposed Settlement Class is well suited for class certification. All of the claims derive
9 from a core set of alleged violations of California’s wage and hour laws and regulations. For the
10 reasons set forth more fully below, for purposes of settlement only, the Class satisfies the
11 prerequisites for certification under California Code of Civil Procedure § 382. Section 382
12 provides: “when the question is one of a common or general interest, of many persons, or when
13 the parties are numerous, and it is impracticable to bring them all before the court, one or more
14 may sue or defend for the benefit of all.” (Code Civ. Proc., § 382.) There are two requirements to
15 section 382: “(1) There must be an ascertainable class; and (2) there must be a well-defined
16 community of interest in the questions of law and fact involved affecting the parties to be
17 represented.” (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704 [citations omitted].) To clarify
18 these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure
19 23 to explain that the community-of-interest requirement itself embodies three factors: “(1)
20 predominant questions of law or fact; (2) class representatives with claims or defenses typical of
21 the class; and (3) class representatives who can adequately represent the class.” (*Richmond v. Dart*
22 *Indus., Inc.* (1981) 29 Cal.3d 462, 470.)

23 California law and policy favor the fullest and most flexible use of the class action device.
24 (*Id.* at pp. 469-73.) Indeed, “Courts long have acknowledged the importance of class actions as a
25 means to prevent a failure of justice in our judicial system” particularly where the rights of
26 consumers are at issue. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434.) Any doubt as to the
27 appropriateness of class treatment should be resolved in favor of certification. (*Richmond, supra*,
28 29 Cal.3d at pp. 473-75.)

1 **B. Plaintiff Maintains That the Criteria for Class Certification Are Satisfied for**
2 **Settlement Purposes.**

3 **1. The Class is Ascertainable and Numerous**

4 The proposed class that Plaintiff seeks to represent is easily ascertainable and includes
5 approximately 1,078 employees of Defendant.

6 Plaintiff maintains that there is an easily ascertainable class, defined by objective and
7 precise criteria. Because class members are identified using specific criteria in the regular business
8 records of Defendant, i.e., job position, the class is ascertainable. (*Wilner v. Sunset Life Ins. Co.*
9 (2000) 78 Cal.App.4th 952, 959-60 [class membership defined by ownership of product that is the
10 subject of the lawsuit is sufficient to make the class ascertainable].)

11 “The requirement of Code of Civil Procedure section 382 that there be ‘many’ parties to a class
12 action suit is indefinite and has been construed liberally.” (*Rose v. City of Hayward* (1981) 126 Cal.App.3d
13 926, 934.) “Where a question is of common interest to ‘many’ persons, an action may be maintained as a
14 class action even where the parties are numerous and it is in fact practicable to join them all.” (*Id.*) “No set
15 number is required as a matter of law for the maintenance of a class action.” (*Id.*) “Thus, our Supreme Court
16 has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees.” (*Id.*,
17 citing *Bowles v. Super. Ct.* (1955) 44 Cal.2d 574; *see also Collins v. Rocha* (1972) 7 Cal.3d 232 [upholding
18 a 35 member class.]) Therefore, Plaintiff contends that numerosity is plainly satisfied.

19 **2. There are Many Common Issues of Law and Fact Which Predominate**

20 The Court should grant conditional class certification for settlement purposes here on the
21 grounds that questions of law and fact common to all class and subclass predominate over any
22 individual questions. This inquiry tests whether proposed classes are sufficiently cohesive to
23 warrant adjudication by representation. (*See, e.g., Clothesrigger, Inc. v. GTE Corp.* (1987) 191
24 Cal.App.3d 605.)

25 Here, the employment practices at issue are: whether Defendant had legally compliant
26 policies and practices for all hours worked, including overtime wages; whether Defendant had
27 legally compliant policies and practices to provide employees with meal periods; whether
28 Defendant had legally compliant policies and practices authorizing and permitting its employees

1 to take rest periods; whether Defendant reimbursed employees for business expenses; and whether
2 the wage statements were consequently non-compliant. Plaintiff contends that the factual and legal
3 issues are the same for all of the identified class members, including Plaintiff. Further, all class
4 members suffered from, and seek redress for, the same alleged injuries.

5 **3. Plaintiff's Claims Are Typical of the Claims of the Class**

6 The typicality requirement does not focus on the individual characteristics or
7 circumstances of the representative plaintiff compared to those of the remainder of the class,
8 but rather upon the typicality of the proposed representative's claims as they relate to the
9 defendant's conduct and activities. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47 ["[t]he
10 only requirements are that common questions of law and fact predominate and that the class
11 representative be similarly situated" vis-à-vis the class.]) A representative plaintiff's claims
12 are typical of the class if they arise from the same event, practice or course of conduct, and if
13 the claims rest on the same legal theories. (*Id.*) That is precisely the case here. Plaintiff is a
14 former employee of Defendant; as such, he alleges that he was subject to the same policies and
15 practices as other similarly situated employees.

16 **4. Plaintiff and His Counsel Meet the Adequacy Requirement**

17 The adequacy of representation requirements is met by fulfilling two conditions: first, a
18 named plaintiff must be represented by counsel qualified to conduct the pending litigation; second,
19 a named plaintiff's interests cannot be antagonistic to those of the class. (*McGhee v. Bank of*
20 *America* (1976) 60 Cal.App.3d 442, 451.)

21 All of these requirements are met here for settlement purposes. Plaintiff retained counsel
22 with extensive experience in prosecuting complex class actions, including similar class actions that
23 previously settled. (Fattahi Decl., ¶¶ 37-46.) Class Counsel unquestionably is "qualified,
24 experienced and generally able to conduct the proposed litigation." (*Miller v. Woods* (1983) 148
25 Cal.App.3d 862, 875.) In addition, Plaintiff has no conflicts, and Plaintiff has, with counsel,
26 litigated this case and diligently reviewed the settlement terms, showing his dedication. Plaintiff's
27 willingness to serve as a representative demonstrates his serious commitment to bringing about the
28 best results possible for the class. (*McGhee, supra*, 60 Cal.App.3d at p. 451.)

1 **5. A Class Action is Superior to a Multiplicity of Litigation**

2 Finally, in making its class certification decision, the Court must determine that a class
3 action would be superior to alternative means for the fair and efficient adjudication of the litigation.
4 By consolidating many potential individual actions into a single proceeding, this Court’s use of the
5 class action device enables it to manage this litigation in a manner that serves the economics of
6 time, effort and expense for the litigants and the judicial system. Absent class treatment, similarly
7 situated employees with small but nevertheless meritorious claims for damages would, as a
8 practical matter, have no means of redress because of the time, effort and expense required to
9 prosecute individual actions. (*Gentry, supra*, 42 Cal.4th at pp. 457-62; *Leyva v. Medline Ind.* (9th
10 Cir. 2013) 716 F.3d 510, 515.) Moreover, in the context of settlement, the superiority concerns are
11 essentially non-existent.

12 **V. THE PROPOSED NOTICE IS CONSTITUTIONALLY SOUND**

13 **A. The Proposed Notice Plan Satisfies Due Process**

14 Notice requirements are set forth in the California Rules of Court. (Cal. Rules of Court,
15 Rule 3.766 (e), (f).) California law vests the Court with broad discretion in fashioning an
16 appropriate notice program. (*Cartt v. Super Ct.* (1975) 50 Cal.App.3d 960, 973-74.) There is no
17 statutory or due process requirement that all class members receive actual notice, but in this matter,
18 the class members will receive direct mailed notice. As the Court of Appeals has explained, “[t]he
19 notice given should have a reasonable chance of reaching a substantial percentage of the Class
20 Members . . .” (*Id.* at p. 974.) In this case, notice of the proposed settlement will be provided by
21 direct mailing, the best possible form of notice.

22 **B. The Notice is Accurate and Informative**

23 The proposed Notice should be approved. It will be disseminated through direct U.S. first
24 class mail to the last known address for each Class Member. It informs the Class Members of the
25 terms of the Settlement and their right to be excluded from the Settlement. And if there are Class
26 Members who wish to object to this proposed class action settlement, they will have the
27 opportunity to file their objections and be heard at the Final Approval Hearing.

28 The Notice also fulfills the requirement of neutrality in class notices. (Conte & Newberg,

1 *Newberg on Class Actions* (3rd Ed.) § 8.39.) It summarizes the proceedings to date and the terms
2 and conditions of the settlement agreement, in an informative and coherent manner. It makes
3 clear that the settlement agreement does not constitute an admission of liability by the
4 Defendant, who denies all liability, and it recognizes that this Court has not ruled on the merits
5 of the action. It also states that the final settlement approval decision has yet to be made. The
6 Notice thus complies with the standards of fairness, completeness, and neutrality required of a
7 combined settlement-certification class notice.

8 **VI. CONCLUSION**

9 The Parties have negotiated a fair and reasonable Settlement of the class claims in light of
10 the risks present in this case. Plaintiff has appropriately presented the materials and information
11 necessary for preliminary approval, and therefore, respectfully request that the Court preliminarily
12 approve the Settlement and schedule a date to conduct the Final Approval Hearing.

13
14 Respectfully submitted,

15 Dated: September 5, 2025

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