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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

FREDERICK PEREGOY, individually,
and on behalf of other members of the
general public similarly situated and on
behalf of other aggrieved employees
pursuant to the California Private
Attorneys General Act;

Plaintiff,

vs.

KELLER DRILLING, INC., a California
corporation; KELLER GROUP, PLC, an
unknown business entity; KELLER
MANAGEMENT SERVICES, LLC, a
Delaware limited liability company;
HAYWARD BAKER, INC., an unknown
business entity; KELLER NORTH
AMERICA, INC., a Delaware corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 37-2023-00049125-CU-OE-CTL

Honorable Katherine Bacal
Department C-63

CLASS ACTION

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

Date: August 22, 2025
Time: 1:30 p.m.
Department: C-63

Complaint Filed: November 9, 2023
FAC Filed: February 24, 2025
Trial Date: None Set

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

3 **PLEASE TAKE NOTICE** that on August 22, 2025 at 1:30 p.m., or as soon thereafter as
4 the matter may be heard before the Honorable Katherine Bacal in Department C-63 of the Superior
5 Court of the State of California, for the County of San Diego, 330 West Broadway, San Diego,
6 California 92101, Plaintiff Frederick Peregoy (“Plaintiff”) will, and hereby does, move for an
7 order:

- 8 • Granting preliminary approval of the proposed class action settlement described herein
9 and as set forth in the parties’ Joint Stipulation of Class Action and PAGA Settlement
10 and Release (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as
11 “**EXHIBIT 2**” to the Declaration of Vartan Madoyan in Support of Plaintiff’s Motion
12 for Preliminary Approval of Class Action and PAGA Settlement;
- 13 • Certifying the proposed Class for settlement purposes;
- 14 • Appointing Frederick Peregoy as Class Representative;
- 15 • Appointing Arby Aiwarzian, Joanna Ghosh, Vartan Madoyan, and Scarlet Tunney of
16 Lawyers *for* Justice, PC as Class Counsel;
- 17 • Approving the proposed Notice of Class Action Settlement (“Class Notice”), attached
18 as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary Approval of Class
19 Action and PAGA Settlement, and directing the mailing thereof in accordance with
20 the Settlement Agreement;
- 21 • Approving ILYM Group, Inc., as the Settlement Administrator; and
- 22 • Scheduling a hearing to consider final approval of the Settlement.

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

27 Pursuant to Local Rule 2.1.19(C), the court may make a tentative ruling on the merits of
28 this matter prior to the hearing. The tentative ruling may be obtained through the court’s website

1 at <http://www.sdcourt.ca.gov> and by clicking on the tentative ruling link listed under the civil tab,
2 or by telephoning the independent calendar clerk for the assigned department. This rule does not
3 preclude posting a tentative ruling the day of the hearing pursuant to California Rules of Court,
4 rule 3.1308(b), nor does it mandate a tentative ruling be issued on all law and motion matters. If
5 no one appears for a hearing for which a tentative ruling has issued and the court has not been
6 notified that all parties submit on the tentative ruling, the court may take the matter off calendar or
7 order the tentative ruling to become the final ruling. The court may also make a different order at
8 the hearing. If a party does not have online access, they may call the dedicated phone number for
9 the department as referenced in the local telephone directory between the hours of 2:00 p.m. and
10 4:00 p.m. on the court day before the hearing and receive the tentative ruling.

11 This motion is based upon the following memorandum of points and authorities; the
12 Settlement Agreement; the Declarations of Proposed Class Counsel (Vartan Madoyan) and
13 Proposed Class Representative (Frederick Peregoy) in support thereof; as well as the pleadings
14 and other records on file with the Court in this matter, and such evidence and oral argument as
15 may be presented at the hearing on this motion.

16
17 Dated: July 31, 2025

LAWYERS for JUSTICE, PC

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19 By: 
20 Vartan Madoyan
21 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Frederick Perego ("Plaintiff" or "Class Representative") seeks preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Keller Drilling, Inc., Keller Group, PLC, Keller Foundations, LLC, Keller Management Services, LLC, Hayward Baker, Inc., and Keller North America, Inc. (collectively, "Defendants"), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (together, the "Parties") have agreed to settle the lawsuit for a Gross Settlement Amount of \$700,000.00.¹

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendant does not oppose: All current and former non-exempt employees of Defendants within the State of California at any time during the Class Period ("Class" or "Class Members").² Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement ("Participating Class Members") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"). The net payment of each Participating Class Member's Individual Settlement Share ("Individual Settlement Payment") will be distributed to Participating Class Members on a *pro rata* basis based upon the number of weeks each Class Member worked

¹ Settlement Agreement, attached as Exhibit 2 to Declaration of Vartan Madoyan ("Madoyan Decl."), ¶ 7(s). The Gross Settlement Amount could potentially increase pursuant to the Agreement's escalator clause. Specifically, Defendants represented that there were no more than 11,175 Workweeks during the period from November 9, 2019 to February 11, 2025. Should the Workweeks during the Class Period increase by more than 10% of 11,175 (i.e., more than 12,293 Workweeks), Defendants shall have the option to: (a) increase the Gross Settlement Amount proportionally by the Workweeks worked in excess of 12,293 (e.g., if the number of Workweeks is 12% higher than 11,175, the Gross Settlement Amount will increase by 2%); or (b) end the Class Period and PAGA Period on a date when there are no more than 12,293 Workweeks worked by Class Members. If Defendants elect to end the Class Period and PAGA Period pursuant to this escalator clause, Defendants must notify Class Counsel and the Settlement Administrator of such decision at least three (3) business days prior to the mailing of the Class Notice so that the Class Notice can be revised accordingly. Settlement Agreement, ¶ 38.

² Settlement Agreement, ¶ 7(g); "Class Period" is defined as the time period from November 9, 2019 to February 11, 2025. *See id.*, ¶ 7(h).

1 at least one shift for Defendants as a non-exempt employee in California during the Class Period
2 (“Workweeks”).³

3 The Settlement, upon final approval by the Court and funding of the Gross Settlement
4 Amount, will operate to resolve the Released Class Claims of Plaintiff and Participating Class
5 Members and the Released PAGA Claims of the State of California.⁴

6 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

7 Defendants are geotechnical specialist contractors whose services include preparing the
8 ground at construction sites for construction projects and providing solutions to geotechnical
9 challenges across the construction sector. Plaintiff is a former non-exempt employee of
10 Defendants.

11 On September 5, 2023, Plaintiff provided written notice via online submission to the
12 LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code
13 that were alleged to be violated (“PAGA Notice”).⁵

14 On November 9, 2023, Plaintiff filed the Class Action Complaint for Damages in the
15 Superior Court for the County of San Diego, thereby commencing the above-captioned lawsuit.⁶

16 On November 9, 2023, Plaintiff also filed a separate Complaint for Enforcement Under the
17 Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* in the Superior Court for
18 the County of San Diego (“PAGA Complaint”).⁷

19 On January 19, 2024, Defendants filed an Answer to Plaintiff’s Class Action Complaint
20 filed in the above-captioned action.⁸

21 On January 19, 2024, Defendants filed an Answer to Plaintiff’s PAGA Complaint filed in
22 the PAGA action.⁹

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25 ³ *Id.*, ¶¶ 7(u-v) and 15(a)(i-ii).

26 ⁴ *See id.*, at ¶ 31, for the full scope of the “Released Class Claims;” *See id.*, at ¶ 32, for the full scope of the
“Released PAGA Claims” and *id.* at ¶ 33 for the full scope of the “Released Parties.”

27 ⁵ Madoyan Decl., ¶ 2.

28 ⁶ *Id.*, ¶ 3.

⁷ *Id.*, ¶ 4.

⁸ *Id.*, ¶ 5.

⁹ *Id.*, ¶ 6.

On January 25, 2024, Plaintiff filed a Notice of Related Case, stating that *Peregoy v. Keller Drilling, Inc., et al.* (37-2023-00049125-CU-OE-CTL) and *Frederick Peregoy v. Keller Drilling, Inc., et al.* (37-2023-00049084-CU-OE-CTL) involve the same parties and are based on the same or similar claims, and arise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.¹⁰

On February 24, 2025, Plaintiff filed a First Amended Consolidated Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.* (“Operative Complaint”), which added the PAGA cause of action into the above-captioned case, thereby consolidating Plaintiff’s claims.¹¹

On February 24, 2025, Plaintiff submitted a new PAGA Claim Notice and a copy of the First Amended Consolidated Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.*, to the LWDA via the LWDA’s online website.¹²

On March 6, 2025, Defendants filed an Answer to Plaintiff’s First Amended Consolidated Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Labor Code § 2698, *Et Seq.*¹³

On May 6, 2025, Plaintiff filed a Request for Dismissal Without Prejudice in the PAGA action since the claims were now consolidated into the above-captioned case. The Court granted the Request for Dismissal on May 6, 2025¹⁴

Plaintiff’s core allegations are that Defendants violated California wage and hour law, including but not limited to laws set forth in the California Labor Code, by engaging in a uniform practice and procedure, with respect to Plaintiff, Class Members, and Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, at all or at the correct rate of pay, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant

¹⁰ Madoyan Decl., ¶ 7.

¹¹ *Id.*, ¶ 8.

¹² *Id.*, ¶ 9.

¹³ *Id.*, ¶ 10.

¹⁴ *Id.*, ¶ 11.

wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, et seq. and conduct that gives rise to penalties pursuant to PAGA. Plaintiff contends that he and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA for Class Members who are Aggrieved Employees), and attorneys' fees and costs.¹⁵

The Parties have actively litigated the Action since it was commenced on November 9, 2023. On November 11, 2024, the Parties participated in arm's-length and informed negotiations with Mediator David A. Rotman ("Mediator"), a well-respected mediator of complex wage and hour class actions and PAGA actions. With the aid of the Mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in its entirety.¹⁶

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount of \$700,000.00 to resolve the Action.¹⁷ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an amount not to exceed 35% of the Gross Settlement Amount (i.e., \$245,000.00, if the Gross Settlement Amount remains \$700,000.00) and litigation costs and expenses in an amount not to exceed \$30,000.00 ("Attorneys' Fees and Costs") to Class Counsel; (2) Settlement Administration Costs, which are currently estimated not to exceed \$9,950.00 to the Settlement Administrator ("Settlement Administration Costs"); (3) PAGA Payment of \$80,000.00 ("PAGA Payment"); and (4) payment in the amount of up to \$15,000.00 to Plaintiff ("Class Representative Service Award").¹⁸ The Parties have agreed to retain ILYM Group, Inc., ("ILYM" or "Settlement Administrator") to handle the notice and settlement administration process.¹⁹

The Parties have agreed that the Settlement Administrator will determine each Participating Class Member's share of the available Net Settlement Amount ("Individual Settlement Share"), in

¹⁵ Madoyan Decl., ¶¶ 21 & 37.

¹⁶ *Id.*, ¶ 28.

¹⁷ Settlement Agreement, ¶ 7(s).

¹⁸ *Id.*, ¶ 7(x).

¹⁹ *Id.*, ¶ 7(d).

1 accordance with the Settlement Agreement on a *pro rata* per Workweek basis.²⁰ The Parties have
2 agreed that the Settlement Administrator will determine each Aggrieved Employees' share of the
3 25% share of the PAGA Payment, in accordance with the Settlement Agreement on a *pro rata* per
4 PAGA Pay Period basis.²¹

5 The Parties agree, for purposes of this Settlement, that Individual Settlement Shares will
6 be allocated 20% to wages subject to withholdings and 80% to penalties, interest, and non-wage
7 damages.²² The Settlement Administrator will withhold the employee's share of taxes and
8 withholdings with respect to the wages portion of the Individual Settlement Shares, and issue
9 checks to Participating Class Members for their Individual Settlement Payments. Individual PAGA
10 Payments to Aggrieved Employees will be allocated as 100% penalties and will not be subject to
11 withholdings. Defendants will provide the funds for any employer-side taxes related to the
12 Individual Settlement Shares.²³

13 Individual Settlement Payment and Individual PAGA Payment checks shall remain valid
14 and negotiable for 180 calendar days from the date of their issuance, and thereafter, shall be
15 canceled.²⁴ Thereafter, funds from uncashed Individual Settlement Payment and/or Individual
16 PAGA Payment checks shall be tendered to The Children's Law Center of California.²⁵

17 Any Class Member may request to be excluded from the Class Settlement by mailing a
18 Request for Exclusion postmarked on or before the date that is 60 calendar days from the date of
19 the initial mailing of the Class Notice by the Settlement Administrator, which will be extended by
20 15 calendar days for Class Notices that must be re-mailed ("Response Deadline").²⁶ Aggrieved
21 Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their
22 option to opt out of the Class Settlement.²⁷

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25 ²⁰ Settlement Agreement, ¶ 15(a)(i-ii).

26 ²¹ *Id.*, ¶ 15(b)(i).

27 ²² Settlement Agreement, ¶ 26.

28 ²³ *Id.*, ¶ 26.

²⁴ *Id.*, ¶ 20.

²⁵ *Id.*, ¶ 20.

²⁶ *Id.*, ¶¶ 7(mm) & 21.

²⁷ Settlement Agreement, ¶ 21.

1 Only Class Members who have not submitted a Request for Exclusion (i.e., Participating
2 Class Members) may object to the Class Settlement by submitting a Notice of Objection, by mail,
3 to the Settlement Administrator on or before the Response Deadline, or by presenting their
4 objection orally at the Final Approval Hearing, regardless of whether they submitted a written
5 objection.²⁸

6 In order to dispute the number of Workweeks and/or PAGA Pay Periods attributable to an
7 individual Class Member and/or Aggrieved Employee, that Class Member and/or Aggrieved
8 Employee must submit a written letter to the Settlement Administrator on or before the Response
9 Deadline and include copies of any supporting evidence that they may have.²⁹

10 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
11 **SETTLEMENTS**

12 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.*
13 (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). Courts review class action
14 settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later
15 detailed review after the period during which notice is distributed to class members for their
16 comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002).
17 Preliminary approval of a settlement does not require a court to make a final determination that
18 the settlement is fair, reasonable, and adequate. Rather, that decision is made at the final approval
19 stage. Cal. R. Ct. 3.769(g).

20 In considering a potential class settlement, a court need not reach any ultimate conclusions
21 on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial
22 on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456;
23 *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir.
24 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant
25 provisional class certification and preliminary approval; the court may grant such relief upon an
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28 ²⁸ Settlement Agreement, ¶ 23.

²⁹ *Id.*, ¶ 19.

informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT

The trial court has broad discretion to determine whether a proposed settlement is fair under the circumstances of the case. *Dunk*, 48 Cal.App.4th at 1800. To make this fairness determination, courts must consider several relevant factors, including “the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and view of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. Furthermore, courts must give “proper deference to the private consensual decision of the parties.” *Hanlon*, 150 F.3d at 1027 (citation omitted).

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. “A presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Id.*; *Dunk*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Discovery.

The Parties have actively litigated the Action since it commenced on November 9, 2023. Both sides investigated the veracity, strength, and scope of the claims throughout the case, and Class Counsel was actively preparing the matter for class certification and trial.³⁰

Class Counsel conducted significant investigation and informal discovery regarding the

³⁰ Madoyan Decl., ¶ 28.

1 facts of the case, including and not limited to, the exchange, review, and analysis of a large volume
2 of documents and data from Plaintiff, Defendants, and other sources.³¹ The volume of data and
3 documents that Class Counsel reviewed and analyzed included and was not limited to: Class
4 Members' and Aggrieved Employees' timekeeping and payroll data, Plaintiff's personnel records,
5 timekeeping, and payroll data, Defendants' Employee Handbooks, policies, procedures, and
6 practices, numerous collective bargaining agreements potentially applicable to the Class Members,
7 and earning statements, among other information and documents.³² Class Counsel had the
8 opportunity to interview Plaintiff and others to gather facts and to identify potential witnesses. In
9 addition, Class Counsel has extensive experience in California wage-and-hour class actions.³³

10 The Parties engaged in extensive settlement negotiations and participated in a full-day
11 mediation, conducted by David A. Rotman, a well-respected mediator experienced in mediating
12 complex wage and hour class action and PAGA action matters.³⁴ Prior to and during the mediation
13 and settlement discussions, the Parties exchanged extensive information and engaged in
14 discussions regarding their evaluations of the case and various aspects of the case, including but
15 not limited to, the risks and delays of further litigation, including the risks of proceeding with class
16 certification and/or representative adjudication; the law relating to off-the-clock theory, regular
17 rate, meal and rest periods, PAGA representative claims, wage-and-hour enforcement, and
18 defenses based on the collective bargaining agreements, as well as the evidence produced and
19 analyzed, and the possibility of appeals.³⁵ During all settlement discussions, the Parties conducted
20 their negotiations at arm's length in an adversarial position.³⁶ Arriving at a settlement that was
21 acceptable to both Parties was not easy. Both sides felt strongly about their ability to prevail at
22 certification and at trial.³⁷ After conducting investigations, informal discovery, extensive
23 settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that
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25 ³¹ Madoyan Decl., ¶ 29.

26 ³² Ibid.

27 ³³ Madoyan Decl., ¶¶ 22-26.

28 ³⁴ *Id.*, ¶ 28.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

the matter is well-suited for settlement given the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.³⁸

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

The Settlement represents a fair, adequate, and reasonable resolution of the matter.³⁹ The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the informal exchange of information.⁴⁰ The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue. Moreover, considering all of the facts and circumstances of the case, the Settlement represents a fair, reasonable, and adequate recovery for the Class.⁴¹

Assuming that the Attorneys' Fees and Costs, Class Representative Service Award, PAGA Payment, and Settlement Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount of at least \$320,050.00.⁴² Additionally, 25% of the PAGA Payment (i.e., Individual PAGA Payment), which is \$20,000.00 out of \$80,000.00 PAGA Payment, will be distributed to the Aggrieved Employees. The entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement, without any reversion or claims-made processes.

The amount of each Participating Class Member's Individual Settlement Payment and each Aggrieved Employee's Individual PAGA Payment will be calculated based on his or her Workweeks and/or PAGA Pay Periods during the Class Period and PAGA Period, respectively.⁴³ "An allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. Here,

³⁸ Madoyan Decl., ¶ 28.

³⁹ Ibid.

⁴⁰ Madoyan Decl., ¶ 28.

⁴¹ *Id.*, ¶ 30.

⁴² *Id.*, ¶ 13.

⁴³ Settlement Agreement, ¶ 15.

the allocation is reasonably related to the number of Workweeks and/or PAGA Pay Periods actually worked for Defendants during the relevant period and should be approved.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, Aggrieved Employees, and the State of California.⁴⁴ Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigations have been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. The Settlement Is of Significant Value.

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted extensive informal discovery and exchanged a large volume of documents, data, and information prior to mediation.⁴⁵ The information that Class Counsel obtained from Plaintiff, Defendants, and other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of Defendants' defenses thereto.⁴⁶ As outlined in the Declaration of Vartan Madoyan, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.⁴⁷

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.⁴⁸ California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.

⁴⁴ Madoyan Decl., ¶ 39.

⁴⁵ *Id.*, ¶ 37.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

⁴⁸ Settlement Agreement, ¶¶ 9 & 34(a).

California courts certify class actions where the Plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” *Id.*

A. The Class Is Ascertainable and Sufficiently Numerous.

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of unnamed Plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed Class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; *see also Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 607 individuals, which is sufficiently numerous.⁴⁹ Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants’ employment records regarding non-exempt employees of Defendants in California during the Class Period. As such, the Class is ascertainable.⁵⁰

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

The community of interest requirement “embodies three factors: (1) predominant common questions of law or fact; (2) Class Representative with claims or defenses typical of the class; and (3) Class Representative who can adequately represent the class.” *Sav-On, supra*, 34 Cal.4th at 326. “[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims.*” *Capitol People First v. Dep’t of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts focus on the Defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated Plaintiff renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal.4th at 333).

⁴⁹ Madoyan Decl. ¶ 19.

⁵⁰ *Id.*, ¶ 18.

Here, common issues of law and fact predominate as to each of the claims alleged and asserted in the Action. Based on the documents and information obtained through informal discovery and exchange of information in the case, Plaintiff contends that Class Members performed similar job duties and were subject to uniform operations and employment policies, practices, and procedures during the Class Period, including payroll and recordkeeping practices.⁵¹ As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue. Plaintiff maintains that the outcome of this litigation would be determined by Defendants' alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees who worked in California during the Class Period.

As a member of the Class who was subject to these same policies, practices, and procedures, Plaintiff's claims are typical of the Class. Moreover, Plaintiff has no interests adverse to the Class. Plaintiff has taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.⁵² Importantly, Plaintiff has retained a law firm well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiff and the Class.⁵³

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

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

Class Counsel has litigated the matter for nearly two years and was actively preparing the matter for class certification and trial.⁵⁴ The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed a large volume of documents and data and also interviewed and obtained information from Plaintiff and other percipient witnesses, researched applicable law, undertook damages/valuation

⁵¹ Madoyan Decl., ¶ 20.

⁵² Declaration of Frederick Peregoy in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement ("Peregoy Decl."), ¶¶ 3-8.

⁵³ Madoyan Decl., ¶ 22.

⁵⁴ *Id.*, ¶ 28.

1 calculations, and met and conferred with Defendants' counsel regarding the pleadings and the
2 production of documents and data prior to the mediation.⁵⁵ Counsel for the Parties also undertook
3 extensive settlement discussions, which included participating in mediation.⁵⁶ Class Counsel is
4 well-experienced in wage-and-hour class action litigation and used that experience to obtain a great
5 result for the Class.⁵⁷

6 The Settlement establishes a Gross Settlement Amount of \$700,000.00, and provides for
7 Class Counsel to apply to the Court consisting of attorneys' fees in an amount up to 35% of the
8 Gross Settlement Amount (i.e., \$245,000.00 if the Gross Settlement Amount remains
9 \$700,000.00), and reimbursement of actual costs and expenses in an amount up to \$30,000.00.⁵⁸
10 The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class
11 Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that
12 Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown,
13 (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the
14 Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that
15 Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed
16 Class Notice provides notice to Class Members that an award of the Attorneys' Fees and Costs
17 will be sought and the amount allocated toward the Attorneys' Fees and Costs by the Settlement.⁵⁹

18 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
19 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
20 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced
21 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
22 *v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should
23 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
24 incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 citing *Lealao*, 82 Cal.App.4th
25 at 48-49. In *Lealao*, the court held that, when an action leads to a recovery that can be "monetized"

26 ⁵⁵ Madoyan Decl., ¶¶ 29-30.

27 ⁵⁶ *Id.*, ¶ 28.

28 ⁵⁷ *Id.*, ¶ 27.

⁵⁸ Settlement Agreement, ¶ 11.

⁵⁹ *Id.*, Exh. A.

1 with a reasonable degree of certainty, the trial court should “ensure that the fee awarded is within
2 the range of fees freely negotiated in the legal marketplace in comparable litigation.” *Lealao*, 82
3 Cal.App.4th at 50.

4 The California Supreme Court has confirmed the propriety of calculating and awarding
5 attorneys’ fees as a percentage of a settlement that has, by litigation, been preserved or recovered
6 for the benefit of others. *Laffitte*, 1 Cal.5th 480 at 486 & 506. The Court has taken the position that
7 while “[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee,” “they
8 also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
9 reasonableness of a requested percentage fee[,]” and “[t]he percentage of fund method survives in
10 California.” *Id.* (internal quotation marks omitted).

11 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
12 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
13 *Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3
14 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979)
15 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys’ fees). California
16 courts routinely approve class action attorneys’ fee awards “averag[ing] around one-third of the
17 recovery.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40
18 percent range of contingency fee in marketplace was appropriate in class actions); *see also Estrada*
19 *v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005)
20 (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept.
21 2006) (wage and hour).

22 Class Counsel has borne all of the risks and costs of litigation and will not receive any
23 compensation until recovery is obtained.⁶⁰ Class Counsel will provide evidence as to the time
24 worked, tasks performed, litigation efforts, and further argument at the time of filing Plaintiff’s
25 Motion for Final Approval of the Settlement and application for the Attorneys’ Fees and Costs at
26 the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys’
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28 ⁶⁰ Madoyan Decl., ¶ 14.

fees provided for by the Settlement are well within the range of reasonableness for preliminary approval.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

California statutory authority and case law vests the Court with broad discretion in fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177). “Sufficient information about the case should be provided to enable class members to make an informed decision about their participation.” *Manual for Complex Litigation* § 21.311 at 413 (4th ed. 2004).

The proposed Class Notice describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.⁶¹ The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.⁶² The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.⁶³ The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Settlement Payment and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.⁶⁴ The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39.

Thus, the proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e);

⁶¹ Settlement Agreement, Exh. A.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Settlement Agreement, Exh. A.

Newberg, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960. Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected ILYM Group, Inc. as the Settlement Administrator. Within 15 calendar days of receipt of the Class Data and List, the Settlement Administrator will perform an NCOA check and will mail the Class Notice to each Class Member and Aggrieved Employee.⁶⁵ The Settlement Administrator will skip-trace returned Class Notices and re-mail the Class Notice to the new addresses within five calendar days.⁶⁶ In the case of a re-mailed Class Notice, the Class Member will have an additional 15 days to submit a Request for Exclusion, Notice of Objection, or dispute of Workweeks and/or PAGA Pay Periods.⁶⁷ The Administrator will receive and process Requests for Exclusion, Notices of Objection, or disputes regarding Workweeks and/or PAGA Pay Periods.⁶⁸ In addition, the Settlement Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for the Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances; providing necessary reports and declarations; and other duties and responsibilities to process the Settlement and as requested by the Parties.⁶⁹ The Settlement Administration Costs are currently estimated to be \$9,950.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.⁷⁰ Accordingly, Plaintiff respectfully requests that the Court appoint ILYM Group, Inc., as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employees in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. CLASS REPRESENTATIVE SERVICE AWARD

⁶⁵ Settlement Agreement, ¶ 18(a).

⁶⁶ *Id.*, ¶ 18(b).

⁶⁷ *Ibid.*

⁶⁸ Settlement Agreement, ¶¶ 19 & 21.

⁶⁹ *Id.*, ¶ 27.

⁷⁰ *Id.*, ¶ 13.

Plaintiff respectfully requests that the Court appoint him as the Class Representative and preliminarily approve the Class Representative Service Award in an amount up to \$15,000.00.⁷¹ It is within the Court's discretion to award payment to a Class Representative for her efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. The factors that courts may consider in determining whether to make a Service Award include: (1) the risk to the Class Representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the Class Representative; (3) the amount of time and effort spent by the Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. *Id.*

The Class Representative Service Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.⁷² Plaintiff was available whenever Class Counsel needed him and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.⁷³ Accordingly, it is appropriate and just for Plaintiff to receive a Class Representative Service Award for his services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to his individual settlement payment.

XI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Preliminary Approval of the Settlement; conditionally certify the Class for settlement purposes; appoint Lawyers for Justice, PC as Class Counsel; appoint Plaintiff Frederick Peregoy as Class Representative; appoint ILYM Group, Inc., as Settlement Administrator; preliminarily approve the allocations for Attorneys' Fees and Costs, Class Representative Service Award, PAGA Payment, and Settlement Administration Costs; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with

⁷¹ *Id.*, ¶ 12 & 34(c).

⁷² Madoyan Decl., ¶ 15; Peregoy Decl., ¶¶ 3-4.

⁷³ Madoyan Decl., ¶ 21; Peregoy Decl., ¶¶ 3-7.

1 the deadlines and procedures provided by the Settlement Agreement; and to schedule a Final
2 Approval Hearing to take place in approximately 6 months.

3
4 Dated: July 31, 2025

LAWYERS for JUSTICE, PC

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6 By: 
7 Vartan Madoyan
8 *Attorneys for Plaintiff*
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