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

ALEXANDER COTA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

J.W. FLOOR COVERING, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2023-00046498-CU-OE-CTL

*[Assigned for all purposes to the Hon.
Marcella O. McLaughlin, Dept. C-72]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: January 30, 2026
Time: 9:30 a.m.
Dept.: C-72

Action Filed: October 25, 2023
Trial Date: None Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on January 30, 2026 at 9:30 a.m. in Department C-72 of the above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Plaintiff Alexander Cota (“Plaintiff”) individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:
All current and former non-exempt employees who worked for Defendant J.W. Floor Covering, Inc. in California from March 21, 2023 through July 28, 2025 (the “Class Period”).
3. Preliminary appointment of Alexander Cota as Class Representative for Settlement Class;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Joel M. Gordon of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Class Representative Enhancement Payment to Plaintiff, settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice Packet (comprised of the Class Notice and Notice of Estimated Individual Settlement Payment) and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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This Motion is based on this Notice of Motion; the attached Memorandum of Points and Authorities; the supporting declarations of Sean M. Blakely, Paul K. Haines, Joel M. Gordon, Plaintiff Alexander Cota, and Anthony Rogers of ILYM Group, Inc., and the exhibits attached thereto; the pleadings, and other papers filed in this Action; and on any further oral or documentary evidence or argument presented at the time of the hearing.

Respectfully submitted,

Dated: January 7, 2026

HAINES LAW GROUP, APC

By:

Sen Blahf

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alexander Cota (hereinafter “Plaintiff”) brought this class action for various
4 wage and hour violations on behalf of current and former non-exempt employees who worked for
5 Defendant J.W. Floor Covering, Inc. (“J.W. Floor”) in California from March 21, 2023 through
6 July 28, 2025 (the “Class Period”). Plaintiff’s primary allegations are that J.W. Floor failed to pay
7 all minimum and overtime wages, failed to provide all legally compliant meal and rest periods,
8 and failed to reimburse for all necessary business expenditures. As a result of these alleged
9 violations, Plaintiff also brought derivative claims for J.W. Floor’s alleged failure to pay all final
10 wages owed, failure to issue accurate and compliant wage statements, and for civil penalties under
11 the Private Attorneys’ General Act (“PAGA”).¹

12 Plaintiff now respectfully requests that this Court preliminarily approve this non
13 reversionary, common-fund class action settlement,² in which J.W. Floor has agreed to pay Two
14 Hundred Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) to the following
15 Settlement Class:

16 All current and former non-exempt employees who worked for Defendant
17 J.W. Floor Covering, Inc. in California from March 21, 2023 through July
18 28, 2025³ (the “Class Period”).

19 If the Settlement is approved, J.W. Floor will pay a non-reversionary Gross Settlement
20 Amount of \$275,000.00. After deducting administration costs, Plaintiff’s requested Class

21 ¹ Plaintiff’s operative Second Amended Class and Representative Action Complaint (“SAC”)
22 pleads the following causes of action: (1) minimum wage violations; (2) failure to pay all overtime
23 wages; (3) meal period violations; (4) rest period violations; (5) failure to reimburse for all
24 necessary business expenditures; (6) wage statement penalties; (7) unfair competition; and (8)
civil penalties under the PAGA.

25 ² The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
26 as **Exhibit 1**. The proposed Class Notice and Notice of Estimated Individual Settlement Payment
27 are attached to the Settlement as **Exhibits A** and **B**, respectively. All defined terms in this motion
have the same definition as that in the Settlement.

28 ³ The Class Period is truncated due to a prior class action settlement in the matter entitled *Ugarte,*
et al. v. S.P. Carpet Pros, Inc., et al., Los Angeles County Superior Court Case No. BC613043.

1 Representative Enhancement Payment, the amount set aside as PAGA civil penalties, and
2 requested attorneys' fees and costs, the Net Settlement Amount of approximately \$118,383.33
3 will be distributed to all Settlement Class members who do not opt out of the Settlement based
4 on the proportionate number of workweeks worked by each Settlement Class member during the
5 Class Period.

6 Significantly, Settlement Class members do not need to file a claim to reap the financial
7 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
8 unless they affirmatively opt-out. There are approximately 245 Settlement Class members, and
9 the average Individual Settlement Payment to participating Settlement Class members is projected
10 to be approximately \$483.20. This is a favorable result for Settlement Class members, who will
11 be releasing only those claims alleged in the Action.

12 The proposed Settlement is within the range of possible approval in light of the significant
13 legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation, and the
14 tangible monetary benefits to be received by Plaintiff and the Settlement Class. For the reasons
15 discussed herein, Plaintiff respectfully requests that this Court grant preliminary approval of the
16 Settlement.

17 **II. SUMMARY OF THE LITIGATION**

18 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

19 J.W. Floor is a full-service flooring company with eight facilities located throughout
20 California. *See* Declaration of Sean M. Blakely ("Blakely Decl."), ¶ 8. Plaintiff worked for J.W.
21 Floor as a non-exempt employee in the position of "Residential Installer" from approximately
22 February 2022 until approximately August 2023. *See* Declaration of Alexander Cota In Support
23 of Approval of Class Action Settlement ("Cota Decl."), ¶ 2.

24 On October 25, 2023, Plaintiff filed his Class Action Complaint in San Diego County
25 Superior Court, alleging that J.W. Floor: (i) failed to pay all minimum wages; (ii) failed to pay all
26 overtime wages; (iii) failed to provide all lawful meal periods; (iv) failed to authorize and permit
27 all legally compliant rest periods; (v) failed to reimburse for all necessary business expenditures;
28 (vi) failed to issue accurate, itemized wage statements; and (vii) engaged in unfair competition in

violation of California Business & Professions Code § 17200 *et seq.* Blakely Decl., ¶ 9. On that same day, Plaintiff sent his PAGA notice letter to the LWDA. *Id.*; Exhibit 2 (LWDA Letter). Subsequently, on January 2, 2024, Plaintiff filed the First Amended Class and Representative Action Complaint (“FAC”) adding a cause of action for civil penalties under the Private Attorneys’ General Act of 2004, Labor Code Section 2698, *et seq.* Blakely Decl., ¶ 9. On March 15, 2024, J.W. Floor filed a demurrer to the FAC, alleging that claims asserted by Plaintiff for the period between October 25, 2019 and March 20, 2023 had been previously resolved by way of a court-approved class-wide settlement in *Ugarte, et al. v. Professional Flooring Installation, Inc., et al.*, Los Angeles Superior Court, Case. No. BC613043. *Id.* On April 8, 2024, Plaintiff filed the operative Second Amended Class and Representative Action Complaint (“SAC”), changing the proposed class period to begin on March 21, 2023 to correspond to the end of the class period in the *Ugarte* settlement. *Id.*

B. PLAINTIFF’S CLAIMS AND J.W. FLOOR’S DEFENSES

1. Meal Period Claims

Plaintiff alleges that due to J.W. Floor’s meal policies/practices, first meal periods were frequently late (commencing after the fifth hour of work), short (i.e., less than a full 30 minutes), and/or missed. Blakely Decl., ¶ 14. Plaintiff contends that even when he was able to take his first meal periods, they were usually interrupted with work demands. *Id.* In addition, Plaintiff contends that despite the appearance of facially compliant meal periods, the tablets on which he and other non-exempt employees recorded their meal periods were often broken and supervisors would enter punches that reflected compliant meal periods even when Plaintiff and other non-exempt employees were not able to take compliant meal periods. *Id.*

J.W. Floor counters that it has maintained compliant written meal period policies throughout the Class Period and has always provided compliant meal periods in line with those policies. Blakely Decl., ¶ 14. J.W. Floor further contends that it always provides employees the opportunity to take meal periods and is not required to *ensure* they are taken. *Id.*; *see Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012) (rejecting “ensure” standard). Thus, J.W. Floor argues that any non-compliant meal periods resulted from lawful employee waiver or

choice, rather than any policy and/or practice of J.W. Floor. Blakely Decl., ¶ 14. J.W. Floor also argues that employees were required to fill out daily attestations declaring that they received timely, compliant meal periods, and paid meal period premiums when employees indicated they did not receive a compliant meal period. *Id.* Finally, J.W. Floor maintains Plaintiff’s meal period claim is not suited for class certification since individual inquiries would be needed to assess which employees, if any, took non-compliant or missed meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee did not take a meal period on a particular shift. *Id.*, ¶ 14.

2. Failure to Pay All Overtime Wages

Plaintiff contends that J.W. Floor failed to pay all overtime wages to Settlement Class members due to its allegedly unlawful timekeeping policies/practices. Blakely Decl., ¶ 15. Specifically, Plaintiff contends that J.W. Floor’s timekeeping system would automatically clock out employees after working 8.0 hours, resulting in an underpayment of overtime wages to Settlement Class members. *Id.*

However, J.W. Floor argues that its timekeeping policies/practices were compliant and always compensated Settlement Class members for all hours worked throughout the Class Period. Blakely Decl., ¶ 15. J.W. Floor further argues that its timekeeping policies/practices were lawful, since it was the employees’ responsibility to have all overtime hours pre-approved prior to working over 8.0 hours in a shift. *Id.* Additionally, J.W. Floor asserts Plaintiff would be unable to certify an overtime class given the individualized inquiries as to whether Settlement Class members were in fact underpaid overtime wages for each workday in question, including whether each Settlement Class member was performing compensable work after they were automatically clocked out of their shift following 8.0 hours of work. *Id.*

3. Regular Rate Claims

Plaintiff alleges that J.W. Floor failed to pay Settlement Class members all overtime wages owed as a result of its failure to include the value of all non-discretionary bonuses into the “regular rate” of pay, including bonuses of Visa gift cards when employees earned a five-star customer review. Blakely Decl., ¶ 16; *see* Labor Code § 510(a) (requiring overtime to be paid at

“one and one-half times the regular rate of pay”); *see, e.g., Huntington Memorial Hospital v. Superior Court*, 131 Cal.App.4th 893, 902-903 (2005) (discussing regular rate calculation requirements).

J.W. Floor argues that it properly included all forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to Settlement Class members. Blakely Decl., ¶ 16. J.W. Floor contends the vast majority of additional payments at issue are discretionary bonuses and thus need not be included in the regular rate. *Id.*; *see also* 29 C.F.R. § 778.211 (discretionary bonuses need not be included in regular rate); 29 C.F.R. § 778.200(a)(1) (excluding from regular rate “sums paid as gifts; payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency”). J.W. Floor further argues that Settlement Class members received different types of bonuses throughout the Class Period, creating substantive differences among the Settlement Class members with respect to the incentives received, making class certification unlikely. Blakely Decl., ¶ 16.

4. Rest Period Claims⁴

Plaintiff alleges that J.W. Floor failed to authorize and permit all legally compliant off-duty rest periods. Blakely Decl., ¶ 18. Specifically, Plaintiff contends that he and other non-exempt employees were often interrupted during their rest periods and required to work through their off-duty rest periods due to work demands. Blakely Decl., ¶ 18. In addition, on occasions when all lawful rest periods were not authorized and permitted, Plaintiff alleges J.W. Floor failed to pay rest period premiums as required by Labor Code § 226.7. *Id.*

J.W. Floor counters that it has maintained compliant written rest period policies throughout the Class Period and has always authorized and permitted employees a 10-minute rest

⁴ Plaintiff initially alleged that J.W. Floor’s piece-rate compensation policies/practices failed to compensate Plaintiff for all “non-productive time” and failed to separately compensate Plaintiff for paid rest periods. Blakely Decl., ¶ 17. However, a review of Plaintiff’s timekeeping and payroll records revealed that Plaintiff was properly compensated for paid rest periods and non-productive time during the Class Period, and therefore, Plaintiff did not place any value on these theories of liability. *Id.*

1 period for each four (4) hours worked, or major fraction thereof, as required under the Wage
2 Order, and that any failure to take rest periods was a result of employee choice, rather than any
3 J.W. Floor policy and/or practice. Blakely Decl., ¶ 18. J.W. Floor also argues that Plaintiff's rest
4 period claim is not amenable to class treatment, since individual inquiries would be required to
5 determine which employees failed to take rest periods, how many rest periods they failed to take,
6 and the reasons why each employee failed to take rest period(s) on a particular shift. *Id.* These
7 manageability concerns are especially present with respect to rest period claims, J.W. Floor
8 argues, given that rest periods are not recorded. *Id.*

9 **5. Unreimbursed Business Expenses**

10 Plaintiff alleges that J.W. Floor failed to reimburse him and other non-exempt employees
11 members for all reasonable and necessary work expenditures, including personal cellular phone
12 expenses. Blakely Decl., ¶ 19. Specifically, Plaintiff alleges J.W. Floor required Plaintiff and
13 other non-exempt employees to use their personal cellular phones on a daily basis, however, J.W.
14 Floor failed to reimburse Plaintiff and other non-exempt employees for the costs associated with
15 their cellular phones. *Id.*

16 In response, J.W. Floor maintains that employees were not required to use their personal
17 cellular phones as part of their job. Blakely Decl., ¶ 19. J.W. Floor further argues that any
18 expenses incurred by employees were extremely minimal, given the wide availability of low-cost
19 cellular phone plans. *Id.* J.W. Floor further contends that this claim would require individual
20 inquiries into whether employees actually used their personal cellular phones for work purposes,
21 how much expense they incurred, whether they submitted a request for reimbursement, and the
22 reasonableness of that expense, thus precluding class certification. *Id.*; *see also, e.g., Gattuso v.*
23 *Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007) ("In calculating the reimbursement
24 amount due under section 2802, the employer may consider not only the actual expenses that the
25 employee incurred, but also whether each of those expenses was 'necessary,' which in turn
26 depends on the reasonableness of the employee's choices").

27 **6. Wage Statement Penalties**

28 As a result of the unpaid wages and unpaid meal and rest period premium wages described

1 above, Plaintiff alleges that J.W. Floor is liable for wage statement penalties pursuant to Labor
2 Code § 226. Blakely Decl., ¶ 20. J.W. Floor argues any alleged wage statement violations were
3 not “knowing and intentional,” and Plaintiff cannot show that he or other employees “suffer[ed]
4 injury” due to the alleged wage statement violations, as required by Labor Code § 226(e) for the
5 imposition of penalties. *Id.* Further, J.W. Floor contends its wage statements always accurately
6 reflected hours worked and amounts paid as well as all other required information, precluding
7 liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th
8 1308, 1336-37 (2018) (agreeing with employer’s “commonsense position that the pay stubs were
9 accurate in that they correctly reflected the hours worked and the pay received...The purpose of
10 section 226 is to document the paid wages to ensure the employee is fully informed regarding the
11 calculation of those wages.”) (Italics in original). Blakely Decl., ¶ 20.

12 **7. PAGA Penalties**

13 As a result of the foregoing Labor Code violations, Plaintiff alleges that J.W. Floor is
14 liable for civil penalties under the PAGA. Blakely Decl., ¶ 21. Since Plaintiff’s PAGA claim is
15 derivative of Plaintiff’s underlying wage claims, J.W. Floor asserts the PAGA claim would fail
16 with those claims. *Id.*; see *Price v. Starbucks Corp.* 192 Cal.App.4th 1136, 1147 (2011) (“Because
17 the underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). J.W. Floor
18 further maintains that, given its good-faith defenses, this Court would exercise its discretion to
19 substantially reduce any PAGA penalties if it were to find J.W. Floor liable for any of Plaintiff’s
20 claims. Blakely Decl., ¶ 21; see Lab. Code § 2699(e)(2); *Thurman v. Bayshore Transit Mgmt.,*
21 *Inc.* 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties); *Fleming v.*
22 *Covidien Inc.*, Case No. ED CV10-01487 RGK (OPx), 2011 WL 7563047, at *4 (C.D. Cal. 2011)
23 (reducing PAGA penalties by over 82% in part because employer “not aware” of violations);
24 *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018) (affirming PAGA civil penalty
25 of just \$5 per pay period where employer made “good faith attempts” to comply with the law).

26 **C. DISCOVERY AND MEDIATION**

27 The Parties engaged in extensive formal and informal discovery. Blakely Decl., ¶ 10.
28 Plaintiff served written discovery requests seeking, among other items, timekeeping and payroll

1 records for the putative class, J.W. Floor’s written wage and hour policies/p[rocedures, and other
2 information and documents. *Id.* The Parties extensively met and conferred regarding J.W. Floor’s
3 responses and objections and J.W. Floor ultimately produced a sampling of timekeeping and
4 payroll records for approximately 20% of the putative class, as well as its Employee Handbook
5 and its relevant written wage and hour policies/procedures. *Id.* In connection with mediation, J.W.
6 Floor produced relevant data points, including the number of putative class members, the number
7 of aggregate workweeks worked during the Class Period, and the aggregate number of pay periods
8 during the PAGA Period. *Id.* Plaintiff conducted a comprehensive analysis and extrapolation of
9 the payroll and timekeeping data produced by J.W. Floor to create a detailed exposure analysis
10 for all claims at issue. *Id.* This discovery allowed the Parties to assess the merits and value of
11 Plaintiff’s claims, the chances of certification of Plaintiff’s claims, and J.W. Floor’s potential
12 defenses. *Id.*

13 On May 29, 2025, the Parties participated in a full-day mediation with Steven J. Serratore,
14 Esq., a preeminent wage and hour class action mediator. Blakely Decl., ¶ 11. During mediation,
15 the Parties vigorously debated their opposing legal positions, the likelihood of certification of
16 Plaintiff’s claims, and the legal basis for the claims and defenses. *Id.* The Parties were able to
17 reach a settlement at mediation with the assistance of Mr. Serratore. *Id.* In the months following
18 mediation, the Parties negotiated and finalized the terms of the Settlement and executed the long-
19 form Settlement Agreement now before the Court. *Id.*

20 **III. THE PROPOSED SETTLEMENT**

21 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

22 If the Court preliminarily approves the Settlement, J.W. Floor will pay a Gross Settlement
23 Amount of \$275,000.00. *See* Settlement, § 3. Significantly, this Settlement is non-reversionary,
24 and no Settlement Class member will have to submit a claim form to receive an Individual
25 Settlement Payment. *Id.*, at §§ 3-4. Each Settlement Class member will automatically receive an
26 Individual Settlement Payment unless he or she affirmatively opts out of the Settlement. *Id.* The
27 monetary terms of the Settlement are summarized below:

28 ///

• Gross Settlement Amount:	\$275,000.00
• Minus Court-approved attorneys' fees:	\$91,666.67
• Minus Court-approved verified costs (up to):	\$30,000.00
• Minus Court-approved Enhancement Payment:	\$7,500.00
• Minus amount set aside as PAGA penalties:	\$20,000.00
• <u>Minus estimated settlement administration costs (up to):</u>	<u>\$7,450.00</u>
Net Settlement Amount:	\$118,383.33
• PLUS 25% "PAGA Amount" to Aggrieved Employees:	\$5,000.00
Total Amount Paid to Settlement Class members:	\$123,383.33

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys' fees and costs, Class Representative Enhancement Payment to Plaintiff, the amount set aside as PAGA civil penalties, and settlement administration costs, the Settlement requires J.W. Floor to pay a Net Settlement Amount of at least \$118,383.33 to all Settlement Class members who do not timely opt-out. *See* Settlement, § 4(A). The Settlement Administrator will calculate payments from the Net Settlement Amount based on each Settlement Class member's number of weeks worked as a non-exempt employee during the Class Period. *Id.*, at § 4(B)(i). Specifically, each participating Settlement Class member shall receive a proportionate settlement share based upon the number of weeks worked as a non-exempt employee during the Class Period, the numerator of which is the Settlement Class member's total weeks worked as a non-exempt employees during the Class Period, and the denominator of which is the total weeks worked as non-exempt employees by all Settlement Class members (who do not opt out) who worked during the Class Period. *Id.*

According to J.W. Floor, there are approximately 245 Settlement Class members. Blakely Decl., ¶ 13. Therefore, the average Individual Settlement Payment from the Net Settlement Amount is projected to be approximately \$483.20. *Id.* There are approximately 245 PAGA Employees who worked during the PAGA Period. *Id.* Therefore, the average PAGA Payment is estimated to be approximately \$20.41. *Id.*

Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, §§ 9(C)-(D). Those Settlement Class members who do not opt out of the Settlement will be bound by its terms and

will release all claims against J.W. Floor included within the Settlement. *Id.*, at § 2(A).

2. Attorneys’ Fees and Costs, Enhancement Payment, and PAGA Payment

Plaintiff will apply for Class Representative Enhancement Payment at the time of seeking final approval of the proposed class action settlement in the amount of \$7,500.00 for his service to the Settlement Class. *See* Settlement, §§ 3(C)(3), 6; Blakely Decl., ¶ 25. “[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Enhancement Payment is intended to recognize the time and effort Plaintiff expended on behalf of the Settlement Class, including providing substantial factual information and documents to Class Counsel, discussing the claims and theories at issue in the litigation, actively participating in the prosecution of his claims, as well as the significant risks Plaintiff undertook by agreeing to serve as the named plaintiff in this case. *See* Blakely Decl., ¶ 25; *see also* Cota Decl., ¶¶ 4-6.

Class Counsel will also apply for an attorneys’ fees award of one-third of the Gross Settlement Amount, which is currently estimated to be \$91,666.67, and up to \$30,000.00 in verified costs reimbursement. *See* Settlement, §§ 3(C)(4), 5; Blakely Decl., ¶ 24. Plaintiff submits the requested fee is fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent fee basis. *Id.* Class Counsel has incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, conducting extensive formal and informal discovery, analyzing Settlement Class members’ timekeeping and payroll records, creating a comprehensive damages model, preparing for and attending mediation, negotiating and preparing the long-form Stipulation of Settlement, preparing this Motion, and otherwise litigating the case. *Id.* Class Counsel expects to expend additional attorney time in attending the hearing on this Motion, overseeing the Notice process and fielding questions from Settlement Class members, preparing the Final Approval papers, and attending the Final Approval hearing. *Id.*

California courts recognize that an appropriate method for awarding attorneys’ fees in

1 class actions is to award a percentage of the “common fund” created as a result of a settlement.
2 *See, e.g., Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding “the percentage of
3 fund method survives in California class action cases”). Class Counsel’s request for fees of one-
4 third of the Gross Settlement Amount is well within the range of reasonableness and indeed is
5 considered the typical rate for common fund settlements. Historically, courts have awarded
6 percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4
7 Newberg on Class Actions § 14.6 (4th Ed. 2013).

8 Class Counsel submit that their request for attorneys’ fees is reasonable when viewed as
9 an overall percentage of the Settlement and in light of the substantial risks and significant work
10 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
11 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys’ fees
12 and verified costs upon seeking final approval.

13 Additionally, the parties have agreed to designate \$20,000.00 of the Gross Settlement
14 Amount as PAGA civil penalties, of which \$15,000.00 (75%) will be paid to the LWDA, with
15 the remaining \$5000.00 (25%) for distribution to the Aggrieved Employees, as the PAGA
16 requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3(C)(5).
17 Plaintiff submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g.,*
18 *Chu v. Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D.
19 Cal. 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
20 settlement); *Lazarin v. Pro Unlimited, Inc.*, Case No. C11-03609 HRL, 2013 WL 3541217 (N.D.
21 Cal. 2013) (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common-fund
22 settlement).

23 **IV. ARGUMENT**

24 **A. PRELIMINARY APPROVAL IS WARRANTED**

25 California Rule of Court 3.769 conditions settlement of a class action on court approval,
26 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
27 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
28 (2012) (Rule 3.769 requires trial court to determine “that the settlement is fair, reasonable and

adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires the trial court to determine “whether a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of dispute resolution, particularly in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). The Court’s role in evaluating a proposed settlement is limited to ensuring that the agreement taken as a whole is fair. *See e.g., Hanlon*, *supra*, 150 F.3d at 1027. There is an initial presumption of fairness where, as here, the Settlement was negotiated at arm’s-length by class counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g., Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

1. Standard for Preliminary Approval

To make a fairness determination, the Court should consider several factors, including: “the strength of Plaintiffs’ 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, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). “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.*, 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors in this case.

a. The Strength of Plaintiff’s Case

Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As described above in section II.B., *supra*, J.W. Floor presented multiple defenses to Plaintiff’s claims, both on the merits and with respect to class certification. Thus, while Plaintiff was prepared to litigate these claims through class certification and ultimately trial, success was far from certain.

b. Risk, Expense, Complexity, and Duration of Further Litigation

Although the Parties engaged in significant formal and informal discovery prior to

1 mediation, the Parties still had significant formal discovery to complete had the matter not been
2 settled. Blakely Decl., ¶ 23. This would have required the expenditure of substantial time and
3 resources by both Parties that would have very likely spanned several years. *Id.* Even if Plaintiff
4 was to certify the classes, the Parties would incur considerably more attorneys' fees and costs
5 through a possible decertification motion, trial, and possible appeal. *Id.* This Settlement avoids
6 those risks and the accompanying expense. *Id.*

7 **c. Risk of Maintaining Class Action Status**

8 Plaintiff has not yet filed his motion for class certification, and as such, the extent to which
9 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
10 was a risk that there would not be a certified class at the time of trial, or if there were, it would
11 consist of a significantly smaller group of employees than the proposed Settlement Class (either
12 due to a narrowing of the class definition in a Court order on a contested motion for class
13 certification, or through settlement agreements entered into by J.W. Floor with individual class
14 members by way of *Pick Up Stix* type settlement agreements⁵), and the expected recovery could
15 be significantly reduced, given the settlement amounts that are typically offered through the *Pick*
16 *Up Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

17 **d. Amount Offered in Settlement Given Realistic Value of Claims**

18 The Settlement provides a positive recovery for the Settlement Class in the face of
19 disputed claims. Plaintiff conducted a detailed analysis of alleged unpaid wages, meal and rest
20 period premium payments owing, unreimbursed business expenses, and wage statement penalties.
21 A summary of the results of Plaintiff's exposure analysis is discussed below:

22 **Meal Period Violations: \$119,272**

23 Plaintiff estimates there were approximately 40,104 non-compliant first meal periods
24

25 ⁵ In *Chindarah v. Pick Up Stix, Inc.*, 171 Cal.App.4th 796 (2009), the Court of Appeal held an
26 employer may enter into pre-certification settlement agreements with individual putative class
27 members in which the putative class members release claims for past unpaid wages and penalties
28 in exchange for consideration. The Court further held that such settlements could preclude those
individual employees from recovery in class action litigation against the employer for the same
wage claims.

1 during the Class Period. Blakely Decl., ¶ 14. Plaintiff also calculated the average hourly rate of
2 pay to be approximately \$24.36 per hour. *Id.* Therefore, Plaintiff calculated J.W. Floor’s
3 maximum exposure for first meal period violations at approximately \$973,645 [(40,104 first meal
4 period violations – 135 meal period premiums paid) * \$24.36 average premium]. *Id.*

5 However, as noted above, J.W. Floor contends that it maintained compliant meal period
6 policies throughout the Class Period and provided compliant meal periods in line with those
7 policies. Blakely Decl., ¶ 14. J.W. Floor further contends it had policies and practices in place
8 paying employees meal period premiums for shifts with non-compliant meal periods. *Id.* J.W.
9 Floor also asserts that under *Brinker* it is only required to “provide” the opportunity to take meal
10 periods, not “ensure” meal periods are taken, and that, as described above, it has always done so,
11 and any non-complaint first meal periods in the timekeeping records were the result of lawful
12 employee waiver or choice. *Id.* J.W. Floor also maintains that the meal period claim is not suited
13 for class certification, since individual inquiries would be needed to assess which employees took
14 non-compliant meal periods or missed meal periods, how many meal periods were non-compliant
15 or missed, and the reasons why a particular employee did not take a compliant meal period on a
16 particular shift. *Id.* In light of these defenses and arguments, Plaintiff discounted J.W. Floor’s
17 maximum exposure by 65% for the risk of non-certification, and an additional 65% to account
18 for J.W. Floor’s defenses on the merits or failing to recover the full amount sought, to arrive at
19 an estimated total of approximately \$119,272. *Id.*

20 Unpaid Overtime Wages: \$25,645

21 As a result of J.W. Floor’s timekeeping policies/practices, Plaintiff alleges that J.W. Floor
22 would automatically clock out an employee after working 8.0 hours, notwithstanding the fact that
23 employees consistently worked shifts in excess of 8.0 hours. Blakely Decl., ¶ 15. Based on
24 Plaintiff’s review of employee timekeeping records, approximately 30% of all shifts (20,052)
25 reflect a shift that ends exactly 8.0 hours after the shift began. *Id.* Plaintiff conservatively
26 estimates that the average unpaid time for each of these shifts was approximately 15 minutes,
27 resulting in approximately 5,013 unpaid hours. *Id.* Therefore, Plaintiff estimates that J.W. Floor’s
28 maximum exposure for this claim is approximately \$183,175 (5,013 unpaid hours * \$36.54

average overtime rate). *Id.* But as noted above, J.W. Floor raised several defenses to this claim, including its argument that its timekeeping policies/practices were lawful, since it was the employees' responsibility to have all overtime hours pre-approved prior to working over 8.0 hours in a shift, and that Plaintiff would be unable to certify this claim given the individualized inquiries as to whether employees were working "off-the-clock". *Id.* Based on these defenses, Plaintiff discounted the maximum exposure by 60% to account for the risk of non-certification, and an additional 65% to account for J.W. Floor's defenses on the merits, to arrive at an estimated exposure of approximately \$25,645. *Id.*

Regular Rate Violations: \$8,723

Plaintiff alleges that J.W. Floor failed to pay all overtime wages owed by not including the value of all non-discretionary remuneration into the regular rate of pay, including \$30 Visa gift cards given to employees when they received five-star customer reviews. Blakely Decl., ¶ 16. Based on Plaintiff's review of payroll records, overtimes wages owed due to the failure to include various payments into the regular rate were approximately \$23,261. *Id.*

However, as stated above, J.W. Floor contends that it properly included all forms of remuneration when calculating the regular rate of pay, and therefore, paid all overtime wages to Settlement Class members. Blakely Decl., ¶ 16. J.W. Floor further argues that Settlement Class members received different types of bonuses throughout the Class Period, creating substantive differences among the Settlement Class members with respect to the incentives received, making class certification unlikely. *Id.* In light of these defenses, Plaintiff discounted the maximum amount that the class could potentially recover by 25% for risk of non-certification and discounted an additional 50% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at an estimated total of approximately \$8,723. *Id.*

Rest Period Violations: \$50,882

According to Plaintiff's analysis, there were a total of 66,840 shifts over 3.5 hours, and Plaintiff contends that he and other non-exempt employees were not provided with duty-free rest periods on approximately 50% of all shifts. Blakely Decl., ¶ 18. Therefore, Plaintiff calculated J.W. Floor's maximum rest period exposure at approximately \$814,111 (33,420 rest period

violations * \$24.36 average premium). *Id.*

However, as discussed above, J.W. Floor argues that it always maintained and enforced lawful rest period policies and practices during the Class Period. Blakely Decl., ¶ 18. J.W. Floor also maintains that any failure to take rest periods was the result of employee waiver or choice, and that it is not required to police rest periods. *Id.* J.W. Floor further argues that Plaintiff's rest period claim is not amenable to class treatment as individualized inquiries would be required to determine which employees failed to take rest periods, and the reasons why each employee failed to take a rest period on a particular shift. *Id.* These considerations are particularly present with respect to rest periods, J.W. Floor argues, as rest periods are not—and need not be—recorded. *Id.* In light of these defenses, Plaintiff discounted the maximum amount that the class could potentially recover by 75% for risk of non-certification, and discounted an additional 75% for risk of being unsuccessful on the merits or failure to recover the full amount sought, to arrive at a projected exposure of approximately \$50,882. *Id.*

Unreimbursed Business Expenses: \$13,883

Plaintiff alleges that J.W. Floor failed to reimburse him and other putative class members for all reasonable and necessary work expenditures, including personal cellular phone expenses. Blakely Decl., ¶ 19. Assuming that employees are owed approximately \$25.00 per month for cellular phone usage, Plaintiff estimates J.W. Floor's maximum liability for its failure to reimburse employees for usage of their personal cellular phones at approximately \$77,125 (3,085 aggregate work months * \$25.00 per month). *Id.*

In response, J.W. Floor maintains that Settlement Class members were not required to use their personal cellular phones as part of their job. Blakely Decl., ¶ 19. J.W. Floor further argues that any expenses incurred by Settlement Class members were extremely minimal, given the wide availability of low-cost cellular phone plans. *Id.* J.W. Floor further contends that this claim would require individual inquiries into whether Settlement Class members actually used their personal cellular phones for work purposes, how much expense they incurred, whether they submitted a request for reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.* In light of J.W. Floor's defenses, Plaintiff discounted the maximum exposure by

55% for a risk of non-certification, and an additional 60% for a risk of being unsuccessful on the merits, to arrive at an estimated exposure of approximately \$13,883. *Id.*

Wage Statement Penalties: \$58,800

Plaintiff's analysis reflected that there were approximately 245 Settlement Class members and approximately 13,368 pay periods worked during the liability period applicable to Plaintiff's wage statement claim. Blakely Decl., ¶ 20. Those penalties are calculated as \$50 for each "initial" violation and \$100 for each "subsequent" violation, with a maximum of \$4,000 per employee. *See* Labor Code § 226(e). *Id.* Plaintiff, therefore, assumed the maximum \$4,000.00 penalty for each employee and calculated J.W. Floor's potential wage statement exposure at approximately \$980,000 (245 employees * \$4,000 maximum penalty). *Id.*; *see also* Labor Code § 226(e).

In light of J.W. Floor's arguments that no violations occurred, that employees suffered no "injury," that any alleged violations were not "knowing and intentional," that the wage statements always accurately reflected hours worked and amounts paid to employees, as well as risks associated with Plaintiff's underlying claims discussed above, Plaintiff discounted the maximum exposure by 70% for risk of non-certification, and by an additional 80% for risk of being unsuccessful on the merits, for an estimated realistic exposure of approximately \$58,800. Blakely Decl., ¶ 20.

PAGA Penalties: \$40,104

Plaintiff estimated a maximum total PAGA exposure at approximately \$1,336,800 (13,368 pay periods * \$100 "initial" penalty). Blakely Decl., ¶ 21; *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1207 (2008) (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derive from the underlying wage and hour violations discussed above, which J.W. Floor vigorously disputes. Blakely Decl., ¶ 21; *see e.g., Green v. Lawrence Service Co.* 2013 WL 3907506, *5, n.5 (C.D. Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its underlying claims). J.W. Floor also asserts the Court would drastically reduce any award of PAGA penalties as "confiscatory." Blakely Decl., ¶ 21; *see also Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties);

1 *Fleming v. Covidien Inc.* (C.D. Cal. 2011) Case No. ED CV10-01487 RGK (OPx), 2011 WL
2 7563047, at *4 (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiff
3 discounted the maximum figure by 80% for risk of losing on the merits and/or not recovering a
4 PAGA penalty for every pay period, and an additional 85% to account for the possibility of this
5 Court reducing penalties, to arrive at an estimated exposure of approximately \$40,104. Blakely
6 Decl., ¶ 21.

7 Using these estimated figures for each of the claims described above, Plaintiff predicted
8 that the potential realistic recovery for the Settlement Class would be approximately \$317,309.
9 Blakely Decl., ¶ 22. The proposed Settlement of \$275,000.00 represents approximately 86.7% of
10 the reasonably forecasted recovery for the Settlement Class. *Id.* Preliminary approval is
11 appropriate since the Settlement will provide significant monetary relief to the Settlement Class,
12 which is consistent with what Plaintiff's counsel believes could have been recovered had the case
13 proceeded through trial.

14 **e. The Experience and Views of Counsel**

15 "Parties represented by competent counsel are better positioned than courts to produce a
16 settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific*
17 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
18 by competent, experienced counsel who possess extensive experience prosecuting and defending
19 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
20 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines ("Haines
21 Decl."), ¶¶ 2-8; Declaration of Joel M. Gordon, ¶¶ 2-4 ("Gordon Decl."). Class Counsel
22 conducted an in-depth review of J.W. Floor's timekeeping and payroll records and drew on their
23 extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's case.
24 *See* Blakely Decl., ¶ 10. The Settlement was also reached with the assistance of an experienced
25 and respected wage-and-hour class action mediator. This factor strongly supports preliminary
26 approval of the Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

27 **2. The Preliminary Approval Standard Is Met**

28 At this stage, the Court can grant preliminary approval of the Settlement and direct that

notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

a. The Settlement Is Within the Range of Possible Approval

The proposed Settlement reflects approximately 86.7% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery); *Nat'l Rural Telecomm. Coop. v. DirecTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“it is well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery that might be available to the Settlement Class members at trial”). Further, the average Individual Settlement Payment of approximately \$483.20 exceeds average payments achieved in other wage and hour class action settlements.⁶ Thus, Plaintiff submits that the proposed settlement is within the range

⁶ *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9, 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (Los Angeles County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); *Palencia v. 99 Cents Only Stores*, Case No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average recovery of approximately \$65); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct. Jan. 20, 2006) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (Los Angeles County Super. Ct. July 23, 2010) (average net recovery of approximately \$20); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal. Dec. 17, 2008) (wage and hour class action settlement approved where average recovery was approximately \$60); *Schiller v. David's Bridal, Inc.*, Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001 at *17 (E.D. Cal. June 11, 2012) (“Class Members will receive an average of approximately \$198.70...[T]his is a substantial recovery where Defendants asserted

1 of possible approval, such that notice should be provided to the Settlement Class members so that
2 they can consider the Settlement. The Court will have the opportunity to again assess the
3 reasonableness of the Settlement after the Settlement Class members have had the opportunity to
4 opt-out or object.

5 **b. The Settlement Resulted from Serious, Informed Negotiations**

6 The Settlement resulted from an exchange of substantial information, arm's-length
7 negotiations by counsel and a full-day mediation before an experienced wage and hour mediator.
8 Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168
9 Cal.App.4th at 130. As discussed above, Plaintiff carefully vetted the claims at issue, reviewed
10 extensive timekeeping and payroll data, and conducted a detailed statistical analysis of the data
11 to arrive at his estimated class-wide damages figures. *See Blakely Decl.*, ¶¶ 14-22. Thus, this
12 factor supports preliminary approval.

13 **c. The Settlement Is Devoid of Obvious Deficiencies**

14 Preliminary approval of the Settlement is also warranted because there are no obvious
15 deficiencies. The Settlement will provide substantial monetary relief to Settlement Class
16 members. The amounts proposed for Class Counsel's attorneys' fees and costs, Plaintiff's Class
17 Representative Enhancement Payment, and settlement administration costs are all reasonable and
18 appropriate based on the facts of this case. Because the Settlement is devoid of obvious
19 deficiencies, this factor supports preliminary approval.

20 **B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

21 The Settlement Class satisfies the criteria for certification of a settlement class under
22 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
23 (2) common questions of law and fact predominate over individual questions such that class
24 certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff's
25 claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and his

26 _____
27 compelling defenses to liability; Plaintiff also notes several similar actions where the gross
28 recoveries per class member were less than \$90...[T]he Court finds that the results achieved are
good"); and *Williams v. Centerplate, Inc.*, Case Nos. 11-CV-2159-H-KSC, 12-CV-0008-H-KSC,
2013 WL 4525428 (S.D. Cal. Aug. 26, 2013) (average recovery of approximately \$108).

counsel will fairly and adequately represent Settlement Class members' interest. *See* Cal. Civ. Proc. § 382.

1. The Proposed Class Is Ascertainable and Numerous

A class is “ascertainable” where the members “may be readily identified without unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is defined as all current and former non-exempt employees who worked for J.W. Floor in California during the Class Period. *See* Settlement, at § 1. Therefore, Settlement Class members can be identified from J.W. Floor’s personnel and employment records. J.W. Floor represents that the Settlement Class consists of approximately 245 current and former non-exempt employees. *See* Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Settlement Class members before the Court or for each Settlement Class member to bring an individual lawsuit. Thus, the proposed Settlement Class satisfies numerosity. *See, e.g., Bowles v. Sup. Ct.*, 44 Cal.2d 574 (1955) (holding a class representing 10 beneficiaries of a trust sufficiently numerous).

2. Common Issues of Law and Fact Predominate

The focus in a certification dispute is not on the merits but rather on what types of questions, “common or individual,” are likely to arise in the Action. *See Sav-On Drug Store, Inc. v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on, among other issues, J.W. Floor’s uniform meal and rest period policies/practices. These types of claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

3. The Claims of the Named Plaintiff Are Typical

The typicality requirement is satisfied where class representatives have claims that are typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the same goods as the putative class in a consumer class action). Here, Plaintiff’s claims are typical of those held by the Settlement Class members. First, J.W. Floor employed Plaintiff as a non-exempt employee during the Class Period, and Plaintiff was subject to J.W. Floor’s wage and

hour policies at issue in this case. *See* Cota Decl., ¶ 2. Second, Plaintiff was injured by the same challenged policies/practices that allegedly injured the Settlement Class as a whole. For example, Plaintiff asserts that he is owed unpaid wages due to unlawful timekeeping policies/practices. *See* Cota Decl., ¶ 3. In addition, Plaintiff alleges he was deprived of all legally compliant meal and rest periods. *Id.* Plaintiff also alleges that he was not reimbursed for any cell phone expenses even though he was required to use his cell phone for work purposes. *Id.* Plaintiff further asserts that he did not receive accurate and compliant wage statements. *Id.* Because Plaintiff has suffered the same injuries as the other members of the Settlement Class, the typicality requirement is satisfied.

4. **Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class**

The adequacy requirement examines conflicts of interest between named parties and the class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services* 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class, and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v. Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no indication that Class Counsel were not qualified and the named plaintiff had no interests antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage and hour class action litigation. *See* Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 3-8; Gordon Decl., ¶¶ 2-4.

C. **THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

This Court should order distribution to the Settlement Class of the proposed Notice Packet by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address information provided by J.W. Floor. *See* Settlement, § 9. This manner of giving notice is the “best notice practicable” under the circumstances because it provides “individual notice to all members who can be identified through reasonable effort.” *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156, 173 (1974). Here, the Parties have agreed that the Settlement be administered by ILYM Group, Inc. (“ILYM”), an experienced class action settlement administrator. *See generally* Declaration

1 of Anthony Rogers (“Rogers Decl.”) and attached exhibits. Settlement Class members’ addresses
2 will be ascertainable through J.W. Floor’s personnel and payroll records, which J.W. Floor will
3 provide to ILYM within ten (10) business days after entry of an order preliminarily approving
4 this Settlement. *See* Settlement, § 9(A). Within ten (10) business days of receipt of the Settlement
5 Class members’ addresses, ILYM will run the names of all Settlement Class members through
6 the National Change of Address database to update addresses and mail a Notice Packet to each
7 Settlement Class member. *Id.*, at § 9(B). To the extent that any notices are returned, ILYM will
8 perform a “skip trace” to track any Settlement Class member’s current mailing address. *Id.*, at §
9 9(F).

10 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
11 because it advises Settlement Class members of the nature of the claims, basic contentions and
12 denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object
13 to the Settlement and the procedures by which to do so, explains the recovery formula and
14 expected recovery amount for each Settlement Class member, and advises them that they will be
15 bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. A & B to
16 Exh. 1. The proposed Class Notice will also notify Settlement Class members of the final approval
17 hearing date and provides the Settlement Class contact information for Class Counsel and advises
18 Settlement Class members that they may enter an appearance through counsel if they wish to. *Id.*
19 This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and
20 cost-effective method of reaching Settlement Class members.

21 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

22 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
23 appropriately scheduled to follow the deadline by which Settlement Class members must file
24 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
3 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
4 Proposed Order submitted concurrently herewith.

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6 Dated: January 7, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

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8 By:



9 Paul K. Haines
10 Sean M. Blakely
11 Attorneys for Plaintiff
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