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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ORANGE**

RIGOBERTO DURAN RAMIREZ, individually and on behalf of himself and all other similarly situated,

Plaintiff,

v.

FYDAQ COMPANY, INC., a California corporation, and DOES 1-50, inclusive,

Defendants.

Case No. 30-2023-01355489-CU-OE-CXC

*Assigned for All Purposes to*:
Hon. Melissa R. McCormick
Dept.: CX105

**MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**

Date: February 11, 2027
Time: 2:00 p.m.

Complaint Filed: October 12, 2023
Trial Date: None

Table of Contents


I) INTRODUCTION ..... 1

II) LITIGATION SUMMARY ..... 1

A) The Parties ..... 1

B) Procedural History ..... 2

III) SUMMARY OF THE PROPOSED SETTLEMENT ..... 2

A) Total Settlement Amount and Non-Reversionary Nature ..... 2

B) Financial Terms ..... 3

IV) THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE ..... 4

A) The Legal Standard ..... 4

B) The Settlement Was Hard-Fought ..... 4

C) Why This Settlement Amount Is Reasonable – Claim by Claim ..... 5

1) Unpaid Wages (Off-the-Clock Work and Rounding) ..... 5

V) CLASS COUNSEL ..... 10

VI) ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE PAYMENT ..... 10

A) Attorneys' Fees ..... 10

B) Litigation Costs ..... 11

C) Class Representative Service Payment ..... 11

VII) CLASS NOTICE AND ADMINISTRATION ..... 11

A) The Settlement Administrator ..... 11

B) How Class Members Will Receive Notice ..... 12

C) What the Notice Tells Class Members ..... 12

D) The Response Forms ..... 13

E) What Happens to Uncashed Checks ..... 13

VIII) THE SETTLEMENT CLASS SHOULD BE CONDITIONALLY CERTIFIED ..... 14

A) Numerosity and Ascertainability....14
B) Common Questions....14
C) Typicality....14
D) Adequacy of Representation....15
E) Superiority....15
IX) THE PAGA SETTLEMENT SHOULD BE APPROVED....15
X) THE PROPOSED PRELIMINARY APPROVAL ORDER....16
XI) CONCLUSION....17

Table of Authorities

**CASES**

*Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723 ..... 14

*Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785 ..... 11

*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 ..... 4, 5, 14

*Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251 ..... 11

*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116 ..... 4, 5

*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19 ..... 10

*Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89 ..... 14

*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56 ..... 15

*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399 ..... 5

*Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056 ..... 9

*O'Connor v. Uber*, 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016) ..... 10, 15

*Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906 ..... 14

**STATUTES**

Cal. Code Civ. Proc., section 382 ..... 14, 15

Cal. Labor Code, section 2699(e)(2) ..... 9, 15

Cal. Labor Code, section 2699(m) ..... 15

Cal. Labor Code, section 2699(s)(2) ..... 15

**RULES**

California Rule of Court 3.766(d) ..... 12

California Rule of Court 3.769 ..... 4, 14

## I) INTRODUCTION

Plaintiff Rigoberto Duran Ramirez ("Plaintiff"), on behalf of himself and all current and former non-exempt employees of Defendant FYDAQ Company, Inc. ("Defendant" or "FYDAQ") employed in California during the Class Period, respectfully moves for an order granting preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement" or "Agreement") reached between the Parties.

The proposed Settlement provides for a Gross Settlement Amount of Three Hundred Sixty-Eight Thousand Three Hundred Ninety-Nine Dollars and Thirty-Five Cents ($368,399.35) to resolve wage-and-hour claims on behalf of approximately 246 Class Members who collectively worked an estimated 16,337 workweeks during the Class Period. The Settlement is non-reversionary, none of the Gross Settlement Amount will revert to Defendant under any circumstances. The Settlement was reached following an arm's-length, all-day mediation conducted on December 16, 2024, before mediator Kristin Rizzo, Esq., after Plaintiff had conducted extensive formal and informal discovery, including review of representative payroll and timekeeping records.

The Settlement is fair, reasonable, and adequate. It provides meaningful relief to Class Members while avoiding the substantial risks, costs, and delay inherent in continued litigation. Accordingly, Plaintiff respectfully requests that the Court: (1) grant preliminary approval of the proposed Settlement; (2) conditionally certify the Settlement Class; (3) appoint Plaintiff as Class Representative; (4) appoint James Hawkins, Christina M. Lucio, and Nicholas Schieffelin of James Hawkins APLC as Class Counsel; (5) approve the proposed Class Notice and notice procedures; (6) appoint a ILYM Group, Inc. as the Settlement Administrator; and (7) schedule a final approval hearing.

## II) LITIGATION SUMMARY

### A) The Parties

Plaintiff Rigoberto Duran Ramirez is a former non-exempt employee of FYDAQ Company, Inc. He brings this action on behalf of himself and all current and former non-exempt employees of FYDAQ employed in California during the applicable Class Period. Defendant

FYDAQ Company, Inc. is a California corporation that employs non-exempt workers in California. Defendant denies all liability.

**B) Procedural History**

On October 12, 2023, Plaintiff commenced this putative class action by filing a complaint in the Superior Court of California, County of Orange (Case No. 30-2023-01355489-CU-OE-CXC) (the "Ramirez Class Action"), asserting causes of action for: (1) failure to pay minimum wages; (2) failure to pay overtime; (3) failure to authorize and permit rest periods; (4) failure to timely pay wages during employment; (5) failure to timely pay wages owed upon separation; (6) failure to reimburse necessary business expenses; (7) failure to comply with itemized wage statement requirements; and (8) violation of the Unfair Competition Law, Business & Professions Code section 17200.

On December 19, 2023, Plaintiff also filed a separate PAGA action (Case No. 30-2023-01368313-CU-OE-CXC) (the "Ramirez PAGA Action") pursuant to Labor Code section 2698 et seq. Prior to filing, Plaintiff provided timely written notice to both Defendant and the Labor and Workforce Development Agency ("LWDA") of the alleged violations as required by Labor Code section 2699.3. The Parties have agreed to consolidate the two actions, with the Ramirez Class Action remaining as the operative action through the filing of a First Amended Complaint. Plaintiff will dismiss the Ramirez PAGA Action without prejudice within 10 days after the Court accepts the First Amended Complaint. The First Amended Complaint adds a standalone cause of action for failure to provide lawful meal periods, a claim that was first raised in the PAGA Notice.

**III) SUMMARY OF THE PROPOSED SETTLEMENT**

A copy of the Class Action and PAGA Settlement Agreement, signed by all Parties, and is attached as Exhibit A to the Declaration of James Hawkins ("Hawkins Decl.") filed concurrently herewith. The key financial and procedural terms of the Settlement are summarized below.

**A) Total Settlement Amount and Non-Reversionary Nature**

The Gross Settlement Amount is $368,399.35. This is a fixed, non-reversionary common fund. Under no circumstances will any portion of the Gross Settlement Amount revert to Defendant. No claim form is required; Participating Class Members will receive an automatic

payment. Defendant will separately pay employer-side payroll taxes (e.g., FICA, FUTA) on the wage portion of the settlement in addition to, and not from, the Gross Settlement Amount.

**B) Financial Terms**

The Gross Settlement Amount of $368,399.35 shall be distributed as follows, subject to Court approval at the final approval hearing:

- Class Counsel Fees Payment: Not to exceed one-third (33.33%) of the Gross Settlement Amount, currently estimated at $112,799.78.
- Class Counsel Litigation Expenses Payment: Not to exceed $15,000.00.
- Settlement Administration Expenses: Not to exceed $6,950, as reflected in the Administrator's bid submitted to the Court.
- Class Representative Service Payment: Not to exceed $2,500.00 to Plaintiff.
- PAGA Penalties: $19,703.91, of which 75% ($14,777.93) is allocated to the LWDA PAGA Payment and 25% ($4,925.98) is allocated to Individual PAGA Payments to Aggrieved Employees.
- Net Settlement Amount: $211,445.66, distributed pro rata to all Participating Class Members based on the number of Workweeks each person worked during the Class Period. If the Court approves less than the amounts requested for any deduction, the difference gets added back into the Net Settlement Amount for the benefit of the Class.

At the per-person level, the Net Settlement Amount works out to an average net recovery of approximately $100.00 per Participating Class Member, or approximately $1.35 per Workweek.

**C) Tax Allocation**

This is an employment wage-and-hour matter. Ten percent (10%) of each Participating Class Member's Individual Class Payment is allocated to settlement of wage claims (the "Wage Portion") and will be reported on IRS Form W-2, subject to applicable tax withholding. The remaining 90% is allocated to claims for interest and penalties (the "Non-Wage Portion") and will be reported on IRS Form 1099. Employer-side payroll taxes on the Wage Portion will be paid separately by Defendant outside the Gross Settlement Amount. This treatment is appropriate because California law imposes the employer's share of payroll taxes on the employer, and that

obligation should not reduce the class members' recovery.

**D) Class Members' Release**

Participating Class Members will release FYDAQ and its identified affiliates, officers, directors, members, managers, employees, clients, partners, shareholders, insurers (including third-party administrators Davies North America and Premier Claims Management LLC), and successors or assigns from all of the wage-and-hour claims that were brought or that could have been brought in this case, covering the Class Period. A few important points about the release: it is tethered to the facts alleged in this case and does not sweep in unrelated claims; it does not include a Civil Code section 1542 "unknown claims" waiver for absent Class Members, which would be improper in this context; and it does not take effect until FYDAQ has fully funded the Gross Settlement Amount. Plaintiff himself is giving a broader individual release, including a section 1542 waiver, in exchange for his Service Payment. PAGA Members separately release their PAGA penalty claims for the PAGA Period, also without a section 1542 waiver. (Agreement, ¶¶ 5.1, 5.2, 5.3.)

## IV) THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

**A) The Legal Standard**

Under California Rule of Court 3.769, a court may grant preliminary approval of a class settlement when the settlement appears, on initial review, to fall within the range of what would ultimately be approved at a full fairness hearing. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) Courts look at whether the settlement was negotiated at arm's length, how much investigation counsel did before agreeing to settle, what experienced counsel think of the deal, and how the result compares to the risks of going to trial. (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 128.) This Settlement clears every one of those hurdles.

**B) The Settlement Was Hard-Fought**

There was nothing easy about getting here. The Parties did not walk into mediation and shake hands. Class Counsel spent months reviewing FYDAQ's payroll records, running the numbers with Berger Consulting Group, and building a detailed mediation brief before the December 16, 2024 session with mediator Kristin Rizzo. The negotiations themselves were

adversarial and difficult. The fact that a respected, neutral mediator was involved throughout is itself meaningful evidence that the Settlement reflects a genuine, arm's-length compromise rather than something manufactured to benefit counsel at the expense of the Class. (*Dunk, supra*, 48 Cal.App.4th at p. 1802.)

**C) Why This Settlement Amount Is Reasonable – Claim by Claim**

Consistent with the requirements of *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130, and *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409, what follows is a claim-by-claim explanation of the maximum exposure, the litigation risks that drove the discount applied to each claim, and the resulting risk-adjusted value. The analysis draws on the following figures from FYDAQ's records: approximately 246 Class Members; 16,337 Class Period Workweeks; approximately 111,635 estimated shifts; 131 separated employees; 152 employees and 9,428 pay periods in the wage statement and PAGA date ranges; and a weighted average regular rate of pay of $32.54 per hour. The maximum figures assume violations on every shift and full class-wide liability, a best-case scenario that was never a realistic prediction of what a jury would award after hearing FYDAQ's defenses.

**1) <u>Unpaid Wages (Off-the-Clock Work and Rounding)</u>**

Plaintiff alleged that FYDAQ required its construction workers to show up early, stay late, and communicate about work while off the clock - all without pay. Specifically, the claim covered uncompensated pre-shift and post-shift site preparation and tool gathering, time spent waiting to clock in at the start of the shift, work-related calls and messages outside of scheduled hours, and work done during purported meal and rest periods. There was also a rounding claim: Plaintiff alleged that FYDAQ's timekeeping practices consistently shaved time off employees' hours in a way that favored the company. At a 100% violation rate applied across all 111,635 estimated shifts, the maximum potential unpaid wage damages were $2,724,261 (30 unpaid minutes per shift x 111,635 shifts x $32.54 per hour).

FYDAQ's defense to this claim was grounded in its own records. All four versions of its employee handbook in effect during the Class Period contained an explicit written requirement that "time cards shall not reflect an automatic listing of scheduled hours, but must reflect actual hours worked, regardless of whether or not actual hours are the same as scheduled hours."

FYDAQ's Special Interrogatory responses confirmed this daily, employee-completed, supervisor-verified timecard system applied to the entire Class. Plaintiff's own timecards — which included separate columns for start time, lunch in and out, stop time, regular hours, overtime hours, the job number, what work was done, and supervisor initials — made it very hard to argue that the system was rigged to undercount hours. FYDAQ's position was that any employee who worked off the clock did so against company policy and without management's knowledge, which is not the kind of uniform class-wide practice that supports class certification. On top of that, FYDAQ's workforce is spread across different construction sites with different foremen, crew sizes, and daily conditions on every project, making it genuinely difficult to establish one common off-the-clock practice that applied to all 246 Class Members. FYDAQ also pointed out that overtime required pre-approval from a supervisor and that unauthorized overtime could get someone fired — another argument against class-wide liability. Taking all of this into account, Plaintiff applied a 10% multiplier to the $2,724,261 maximum, arriving at a risk-adjusted value of $272,426.

**2) Overtime Underpayment (Regular Rate of Pay)**

Plaintiff alleged that FYDAQ miscalculated overtime premiums by leaving certain additional compensation out of the regular rate calculation. The data, however, largely told FYDAQ's story. Of the 1,961 pay periods analyzed, only 144 (7.3%) showed any additional compensation beyond base wages, and only 31 of the 208 analyzed employees (14.9%) were affected at all. More importantly, the total additional compensation across those pay periods was reported as zero dollars in every year of the dataset, meaning the weighted average base rate ($32.54 per hour) and the weighted average reported regular rate ($32.59 per hour) were essentially the same — a difference of five cents per hour. Applying that differential to the 3,694 overtime hours in the data produced an actual underpayment in the sample of just $1,838, extrapolated to a class-wide maximum of $26,323. Given how thin the data was on this claim, and FYDAQ's strong argument that its overtime practices were lawful, Plaintiff applied a 15% multiplier, yielding a risk-adjusted value of $3,138.

**3) Rest Period Violations**

Plaintiff alleged that FYDAQ failed to authorize and permit the 10-minute rest periods

California law requires for every four hours worked, with workers instead staying on task due to work demands and managerial pressure. The maximum premium damages were $3,632,348 (111,635 shifts x $32.54 per hour x one premium per shift at a 100% violation rate).

Every version of FYDAQ's handbook stated that "the Company authorizes and permits non-exempt employees to take rest periods, which insofar as practicable shall be in the middle of each work period." FYDAQ's argument was that its policy was facially legal, and that any employee who missed a rest break did so by choice — not because of anything FYDAQ did. In a construction setting where crews work at different sites under different foremen with different daily conditions, that argument has real force: a court could easily conclude that individual questions about what happened on each shift at each site would overwhelm the common questions, making class certification impossible. Making things harder still, rest periods are not recorded anywhere in FYDAQ's timekeeping system, so Plaintiff had no objective documentary evidence to show, shift by shift, that rest periods were actually being missed rather than simply going unreported. FYDAQ also argued it acted in good faith, which would independently defeat the premium claim. All of those risks together supported a 20% multiplier, producing a risk-adjusted value of $726,470.

**4) <u>Meal Period Violations</u>**

The original class action complaint did not include a standalone meal period claim, but Plaintiff's October 12, 2023 PAGA Notice to the LWDA specifically alleged that FYDAQ was failing to provide timely, uninterrupted 30-minute first meal periods within the first five hours of each shift and was denying second meal periods on shifts longer than ten hours. The First Amended Complaint adds this as a standalone cause of action. Using the same calculation framework as the rest period analysis, the maximum potential meal period premium damages were $3,632,348 (111,635 shifts x $32.54 per hour x one premium per shift at a 100% violation rate).

FYDAQ's defenses were similar to its rest period defenses but arguably stronger on the meal period side. The handbook was explicit: employees "are provided an uninterrupted unpaid meal period of at least 30 minutes each day," the Company "relinquishes control over the employees' activities" during that time, and the Company "will do nothing to impede or discourage

employees from taking their meal and rest periods." What makes this claim genuinely harder than the rest period claim is that meal periods are partially documented. FYDAQ's timecards include a separate column where employees were required to record their lunch start and end times each day, which gave FYDAQ objective evidence that meal periods were being taken. FYDAQ also had a second meal period waiver defense for longer shifts and a written escalation procedure requiring employees to notify their supervisor or the CFO if they were being prevented from taking a break. The combination of a facially lawful policy, documented lunch times, valid waivers, and the escalation procedure all made this a risky claim to take to trial, supporting a 5% multiplier and a risk-adjusted value of $181,617.

**5) Unreimbursed Business Expenses**

Plaintiff alleged that FYDAQ required workers to use their personal cell phones for work — fielding calls, checking messages, coordinating with crews — but never reimbursed them for any portion of their phone bills. At $10.00 per Workweek applied at a 100% violation rate across all 16,337 Workweeks, the maximum potential damages were $223,270. FYDAQ's response was direct: its handbooks stated that the Company issues employees "tools, safety equipment, uniforms, portable computers, cellular phones, or other Company property which the Company considers essential for the satisfactory performance of the job" and that it "reimburses employees for all reasonable expenses that they incur directly in performing their job duties with prior approval." FYDAQ argued that company-issued equipment was available, that no one was required to use a personal phone, and that any personal cell phone use was purely voluntary. Beyond the merits, determining whether any particular employee actually needed to use a personal phone for work — as opposed to finding it convenient — would require a separate inquiry for each person, making class-wide resolution of this claim difficult. Plaintiff applied a 15% multiplier, producing a risk-adjusted value of $33,491.

**6) Waiting Time Penalties**

For the 131 Class Members who were terminated during the relevant period, Labor Code section 203 allows for waiting time penalties of up to 30 days of wages when an employer willfully fails to pay everything owed at separation. At 8 hours per day for 30 days at $32.54 per hour, the

maximum exposure for this claim was $1,022,986. The problem is that this claim cannot stand on its own — it only exists if one of the underlying wage claims succeeds, which means it inherits all the same certification and merits risks described above. On top of that, FYDAQ had a strong independent defense under *Naranjo v. Spectrum Sec. Servs., Inc.* (2024) 15 Cal.5th 1056, 1065, which makes clear that an employer cannot be penalized for willful nonpayment of wages when it genuinely and reasonably believed in good faith that it owed nothing. Given FYDAQ's comprehensive written policies and the depth of its defenses on each of the underlying claims, that good faith argument was credible — meaning this claim could well be worth zero dollars even if the underlying wage claims succeeded. Plaintiff applied a 5% multiplier, yielding a risk-adjusted value of $51,149.

**7) Wage Statement Penalties**

Labor Code section 226(e) allows employees to recover $50 for the first pay period with an inaccurate wage statement and $100 for each one after that, up to $4,000 per employee, but only if the employer's failure was "knowing and intentional." For 152 employees across 9,428 pay periods in the applicable date range, the maximum exposure was $608,000. Like waiting time penalties, this claim is entirely derivative of the underlying wage claims: the alleged inaccuracies in FYDAQ's wage statements existed only because Plaintiff contended wages and premiums were being underreported, and if those underlying claims fail, the wage statement claim fails too. On the "knowing and intentional" requirement, FYDAQ again invoked *Naranjo*, arguing that its good faith belief in the lawfulness of its pay practices is incompatible with a finding of knowing and intentional misconduct. FYDAQ also argued that employees could readily calculate their pay from the information provided, meaning there was no actual injury. Plaintiff applied a 5% multiplier, producing a risk-adjusted value of $30,400.

**8) PAGA Penalties**

Once a PAGA violation is established, a court must award civil penalties — but courts also have broad discretion to reduce them if the full amount would be "unjust, arbitrary and oppressive, or confiscatory" given the facts of the case. Cal. Lab. Code, section 2699(e)(2). Plaintiff calculated the maximum PAGA exposure at $942,800 (9,428 PAGA Pay Periods x $100 per period

for the principal violation, without stacking additional categories). FYDAQ argued that the PAGA claim rises and falls with the underlying Labor Code violations it denies committing, that individualized determinations would make representative PAGA treatment unworkable, and that any penalties awarded should be substantially reduced by the Court. Under the Settlement, $19,703.91 in PAGA Penalties comes out of the Gross Settlement Amount: 75% ($14,773.91) goes to the LWDA and 25% ($4,925.98) is distributed to PAGA Members as Individual PAGA Payments. That allocation represents a meaningful recovery on a genuinely contested claim. The class settlement as a whole also advances PAGA's enforcement goals, as courts have recognized. (*O'Connor v. Uber*, 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016).)

**9) <u>The Bottom Line</u>**

After applying the discounts described above to each claim, the total risk-adjusted exposure across all claims comes to approximately $1,320,705. The Gross Settlement Amount of $368,399.35 represents approximately 27.8% of that risk-adjusted figure — a meaningful recovery that reflects both the genuine strength of Plaintiff's claims and the very real risks that could have reduced the Class's recovery to far less, or nothing at all. An average gross recovery of approximately $1,497.56 per Class Member, with a net recovery of approximately $100.00 after deductions, is money in the hands of workers who might otherwise have received nothing.

## V) CLASS COUNSEL

James R. Hawkins, Christina M. Lucio, and Nicholas W. Schieffelin of James Hawkins APLC have spent decades handling wage-and-hour class actions in California. Their cases have included the largest wage-and-hour class action settlement in California history — $130 million in the Wackenhut litigation — and a case that went to a jury trial and settled for $8.5 million while the trial was underway. When experienced counsel who have seen these cases go well and go badly tell the Court that this settlement is fair and in the best interests of the Class, that assessment is entitled to weight. (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 47.)

## VI) ATTORNEYS' FEES, COSTS, AND CLASS REPRESENTATIVE SERVICE PAYMENT

### A) Attorneys' Fees

Class Counsel will seek a fee award of not more than one-third (33.33%) of the Gross Settlement

Amount, or $112,799.78, at the final approval hearing. The fees and costs motion will be filed and served at least 16 court days before that hearing and will give the Court everything it needs to evaluate the request: the name, position, and wage-and-hour experience of every attorney who worked on the case; their hourly rates; a description of the work done; a lodestar cross-check; and contemporaneously maintained time records. Class Counsel confirms there is no fee-splitting arrangement with any other attorney or firm in connection with this matter.

**B) Litigation Costs**

Class Counsel will seek reimbursement of out-of-pocket litigation costs not to exceed $15,000.00. The final approval papers will include an itemized cost breakdown. Overhead items such as postage, copying, and mailing will not be included in the request.

**C) Class Representative Service Payment**

Plaintiff Rigoberto Duran Ramirez is seeking a Service Payment of not more than $2,500.00 — an amount well within this Court's guidelines — in recognition of the time and effort he devoted to this case on behalf of his fellow Class Members. This payment is not consideration for releasing any claims beyond those already released by all Class Members; Plaintiff's broader individual release stands separately under the Agreement and has nothing to do with the Service Payment. At the final approval hearing, Plaintiff will submit his own declaration addressing the factors from *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272, and *Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 804, including what he did, how much time he spent, what risks he took on, and how his payment compares to what absent Class Members will receive. The Service Payment is on top of any Individual Class Payment and Individual PAGA Payment Plaintiff receives as a member of the Class.

## VII) CLASS NOTICE AND ADMINISTRATION

**A) The Settlement Administrator**

The Parties have selected ILYM Group, Inc. as the neutral Settlement Administrator. Filed with this motion is the Declaration of Anthony Rogers on behalf of ILYM Group, confirming: (a) the administration bid and not-to-exceed amount of $6,950.00; (b) ILYM Group's qualifications and track record; (c) the data security procedures ILYM Group has in place to protect Class

Members' personal information; and (d) insurance coverage sufficient to cover a data breach or mishandling of funds. Neither Class Counsel nor any party has a financial interest in ILYM Group beyond the professional relationship that comes from having worked together on prior settlements. (Agreement, ¶ 7.1.)

**B) How Class Members Will Receive Notice**

Within 30 calendar days after the Court enters the Preliminary Approval Order, FYDAQ will deliver the Class Data to ILYM Group. (Agreement, ¶ 4.2.) ILYM Group will then mail the Class Notice within 15 calendar days. (Agreement, ¶ 7.4.2.) Before mailing, ILYM Group will run every address through the National Change of Address database to catch any outdated information. For any notices that come back as undeliverable without a forwarding address, ILYM Group will conduct a skip trace and re-mail within 3 business days. (Agreement, ¶ 7.4.3.) Any Class Member whose notice is re-mailed automatically receives a 14-calendar-day extension on the Response Deadline. (Agreement, ¶ 7.4.4.) ILYM Group will also maintain a settlement website where Class Members can access the Class Notice, the Settlement Agreement, and other key case documents, including the Court's final judgment for at least 180 days after entry. (Agreement, ¶ 7.8.1.)

The key dates Class Members need to know, measured from the mailing date:

- Response Deadline: 45 days after mailing (plus 14 days for anyone whose notice was re-mailed). This is the deadline for opting out, objecting, or disputing a Workweek or PAGA Pay Period calculation.
- No Claim Form: Class Members do not need to do anything to get paid. Payment is automatic for anyone who does not opt out.
- Check-Cashing Period: 180 days from the date of mailing. (Agreement, ¶ 4.4.1.)

**C) What the Notice Tells Class Members**

The Class Notice will be written in plain language and provided in both English and Spanish, given the composition of FYDAQ's workforce. It will comply with California Rule of Court 3.766(d) and cover everything Class Members need to know, including: what this case is about and who is included in the Class; how to reach Class Counsel; the financial terms of the

Settlement, with each proposed deduction stated as a not-to-exceed amount and a clear explanation of how Individual Class Payments are calculated; the scope of the release, its effective date, and the fact that absent Class Members are not giving a Civil Code section 1542 waiver; how to opt out if a Class Member does not want to be part of the Settlement; how to object if a Class Member disagrees with something about the Settlement; the fact that the judgment — whether favorable or not — will bind every Class Member who does not opt out; the proposed fees, costs, and Service Payment; the date and time of the final approval hearing; how the payments will be taxed; when checks expire; and the URL of the settlement website. The first page of the notice will also display each Class Member's estimated Individual Class Payment and the number of Workweeks used to calculate it, so no one has to hunt for that information.

The notice will include the following prominent warning in bold on the first page: "Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it."

**D) The Response Forms**

Along with the Class Notice, Class Members will receive three separate one-page forms: an Exclusion Request Form, an Objection Form, and a Workweek and PAGA Pay Period Dispute Form. All three forms use the same submission method — fax, email, or mail to the Settlement Administrator — and the same Response Deadline. No court or department information appears on any form. The 14-day extension for re-mailed notices applies to all three forms equally, including the dispute form.

Objections go to the Administrator only — Class Members should not file them with the Court or serve them on counsel. Class Counsel will gather all written objections received and file them as a single packet with the Court ahead of the final approval hearing. Any Class Member who wants to speak at the final approval hearing may do so whether or not they submitted a written objection first. The Court will have the final word on any workweek or PAGA Pay Period disputes; the Administrator's initial determination is not final or binding. (Agreement, ¶¶ 7.6, 7.7.2.)

**E) What Happens to Uncashed Checks**

Checks are valid for 180 days from the date of mailing. Any funds from checks that go

uncashed or undeliverable after that period will be transmitted to the California Controller's Unclaimed Property Fund in the name of each applicable Class Member. This means there is no unclaimed residue left sitting in the settlement fund, consistent with Code of Civil Procedure section 384(b). (Agreement, ¶ 4.4.3.)

## VIII) THE SETTLEMENT CLASS SHOULD BE CONDITIONALLY CERTIFIED

California Rule of Court 3.769(d) permits the Court to conditionally certify the class for settlement purposes at the time of preliminary approval. Because the case is being settled rather than tried, the Court applies a more relaxed standard than it would on a contested certification motion. (*Dunk, supra*, 48 Cal.App.4th at p. 1807.) The Settlement Class meets all of the requirements.

### A) Numerosity and Ascertainability

With approximately 246 Class Members, the Class is too large for individual joinder to be practical. (Code Civ. Proc., section 382.) Every Class Member can be identified from FYDAQ's employment and payroll records, so the Class is readily ascertainable without unreasonable effort or expense. (*Medrazo v. Honda of N. Hollywood* (2008) 166 Cal.App.4th 89, 101.)

### B) Common Questions

Every member of the Class was subject to the same FYDAQ policies and practices on timekeeping, rest periods, meal periods, expense reimbursement, and wage statements. Whether those policies violated California law is a question common to the whole Class, and it predominates over any individual differences among Class Members. (*Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 913.)

### C) Typicality

Plaintiff's claims come from the same policies and the same legal theories as the rest of the Class. For settlement purposes, the only meaningful difference between Class Members is how many Workweeks each one worked, which is how their individual payment gets calculated. That is not the kind of difference that defeats typicality. (*Arenas v. El Torito Rests., Inc.* (2010) 183 Cal.App.4th 723, 732.)

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**D) Adequacy of Representation**

Plaintiff has no interests that conflict with those of the Class. Every Class Member is paid on the same per-workweek basis, without any special treatment for Plaintiff beyond the separately approved Service Payment. Class Counsel have prosecuted this case vigorously and have the experience to evaluate both its strengths and its weaknesses honestly.

**E) Superiority**

Most of these workers' individual claims are not large enough to litigate on their own. A class action is the only practical way for them to vindicate their rights, conserves judicial resources, and ensures that every Class Member's claim is resolved consistently. (Code Civ. Proc., section 382.)

## IX) THE PAGA SETTLEMENT SHOULD BE APPROVED

Labor Code section 2699(s)(2) requires the Court to review and approve any settlement of a PAGA civil action. The standard is whether the settlement is "fair, adequate, and reasonable" in light of PAGA's underlying purposes. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56.)

The Settlement allocates $19,703.91 in PAGA penalties from the Gross Settlement Amount. Of that amount, 75% ($14,773.91) goes to the LWDA, as required by Labor Code section 2699(m), and the remaining 25% ($4,925.98) is distributed to PAGA Members as Individual PAGA Payments. The LWDA has been served with this motion and the Agreement, as reflected in the accompanying proof of service.

The PAGA allocation is a fair compromise for the reasons detailed in the damages analysis above: the PAGA claim is derivative of Labor Code violations FYDAQ vigorously disputes, FYDAQ has strong good faith defenses that could reduce or eliminate penalty exposure, and the Court retains broad discretion to cut penalties that would be "unjust, arbitrary and oppressive, or confiscatory." Cal. Lab. Code, section 2699(e)(2). At the same time, the overall class settlement advances PAGA's enforcement goals by putting money in the hands of the aggrieved employees and, through the LWDA payment, contributing to the State's enforcement efforts. (*O'Connor v. Uber*, 201 F.Supp.3d 1110, 1133 (N.D. Cal. 2016).)

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## X) THE PROPOSED PRELIMINARY APPROVAL ORDER

Plaintiff respectfully asks the Court to enter a Preliminary Approval Order that does the following:

- Finds that the Settlement falls within the range of possible judicial approval and is in the best interests of the Class;
- Conditionally certifies the Settlement Class and the PAGA group for settlement purposes only;
- Appoints Rigoberto Duran Ramirez as Class Representative;
- Appoints James Hawkins APLC as Class Counsel;
- Approves ILYM Group, Inc. as Settlement Administrator and sets out its duties;
- Approves the Class Notice (in English and Spanish), the Exclusion Request Form, the Objection Form, and the Workweek and PAGA Pay Period Dispute Form, and authorizes the notice distribution procedures described in this brief;
- Sets the Response Deadline at no earlier than 45 days after the initial mailing, with the 14-day extension applying to all three response forms for Class Members whose notices were re-mailed;
- Attaches the fully executed Settlement Agreement (with all amendments and exhibits) and the complete Class Notice packet (in all languages) as exhibits, cross-referenced by ROA number;
- Specifies the not-to-exceed amounts for fees ($112,799.78), costs ($15,000.00), Service Payment ($2,500.00), administration ($6,950.00), and PAGA allocation ($19,703.91, with $14,773.91 to the LWDA and $4,925.98 to PAGA Members);
- Sets a schedule for all remaining deadlines and schedules the final approval hearing on a Thursday at 2:00 p.m. in Department CX105, at least four months after this Order is entered, with supporting papers due at least 16 court days before the hearing
- Sets a final accounting hearing with the Administrator's final report due at least nine court days before that date; and

- Retains jurisdiction under California Code of Civil Procedure section 664.6 and California Rules of Court, rule 3.769(h).

A proposed Preliminary Approval Order is lodged concurrently herewith.

**XI) CONCLUSION**

This Settlement is the product of genuine, hard-fought negotiations conducted at arm's length, supported by thorough pre-mediation investigation, and assessed honestly against the real risks that Plaintiff would have faced if this case had gone forward. The result — $368,399.35 delivered in full to Class Members and the State, with nothing going back to FYDAQ — is a fair and reasonable outcome for the workers this case was brought to protect.

Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement, conditionally certify the Settlement Class, approve the Class Notice and notice procedures, appoint ILYM Group, Inc. as Settlement Administrator, and set this matter for a final approval hearing.

**JAMES HAWKINS APLC**

Dated: October 7, 2026

By: /s/ Nicholas Schieffelin
James Hawkins, Esq.
Christina M. Lucio, Esq.
Mitchell J. Murray, Esq.
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