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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

RHINA BLANCO, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act; CARLOS GONZALEZ, individually, and on behalf of other members of the general public similarly situated and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act;

Plaintiffs,

vs.

AUTISM LEARNING PARTNERS, an unknown business entity; AUTISM LEARNING PARTNERS, LLC, a Delaware limited liability company; PACIFIC CHILD & FAMILY ASSOCIATES, LLC, an unknown business entity; PROOF POSITIVE ABA THERAPIES, LLC, a California limited liability company; CHILDREN'S LEARNING CONNECTION, INC., a California corporation; A IS FOR APPLE, INC., a California corporation; and DOES 2 through 100, inclusive,

Defendants.

Case No. 24STCV01979

Honorable Kenneth R. Freeman
Department 14

CLASS ACTION

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

Date:	September 16, 2025
Time:	10:00 A.M.
Department:	14
Complaint Filed:	January 24, 2024
FAC Filed:	February 24, 2025
Trial Date:	None set

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

PLEASE TAKE NOTICE that on September 16, 2025 at 10:00 A.M., or as soon thereafter as the matter may be heard before the Honorable Kenneth R. Freeman in Department 14 of the Superior Court of the State of California, for the County of Los Angeles, 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Rhina Blanco and Carlos Gonzalez (collectively, "Plaintiffs") will, and hereby does, move for an order:

- Granting preliminary approval of the proposed class action settlement described herein and as set forth in the parties' Class, Collective and PAGA Representative Action Settlement Agreement and Class Notice ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 5**" to the Declaration of Tara Zabehi in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Rhina Blanco and Carlos Gonzalez as Class Representatives;
- Appointing Arby Aiwazian, Joanna Ghosh, and Tara Zabehi as Class Counsel;
- Approving the proposed Notice of Class, Collective and PAGA Representative Action Settlement ("Class Notice"), attached as "**EXHIBIT A**" to the [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement, and directing the mailing thereof in accordance with the Settlement Agreement;
- Approving ILYM Group, Inc., as the Settlement Administrator; and
- Scheduling a hearing to consider final approval of the Settlement.

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

This motion is based upon the following memorandum of points and authorities; the Settlement Agreement; the Declarations of Proposed Class Counsel (Tara Zabehi) and Proposed Class Representatives (Rhina Blanco and Carlos Gonzalez) in support thereof; as well as the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this motion.

Dated: March 21, 2025

LAWYERS *for* JUSTICE, PC

By: ______________________

Tara Zabehi
Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Rhina Blanco and Carlos Gonzalez (collectively, "Plaintiffs" or "Class Representatives") seek preliminary approval of the Class, Collective and PAGA Representative Action Settlement Agreement and Class Notice ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiffs, individually and on behalf of all others similarly situated and other Aggrieved Employees, on the one hand, and Defendants Autism Learning Partner; Autism Learning Partners, LLC, Pacific Child & Family Associates, LLC, Proof Positive ABA Therapies, LLC, Children's Learning Connection, Inc., and A is for Apple, Inc. (collectively, "Defendants" or "ALP"), on the other hand. Subject to approval by the Court, Plaintiffs and Defendants (together, the "Parties") have agreed to settle the lawsuit for a Gross Settlement Amount of $2,500,000.00.[1]

Plaintiffs also seek to provisionally certify the following Class for settlement purposes, which Defendants do not oppose: all California current and former hourly-paid or non-exempt employees who worked for Defendants during the Class Period ("Class").[2] Class Members who do not submit a timely and valid Request for Exclusion from the Class Settlement ("Class Member" or "Settlement Class Member") will receive a *pro rata* share of the Net Settlement Amount ("Individual Class Payment"). The net payment of each Settlement Class Member's Individual Class Payment will be distributed to Settlement Class Members on a *pro rata* basis calculated according to the number of workweeks each Class Member worked at least one day for Defendants as an hourly-paid or non-exempt employee in California during the Class Period

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[1] Settlement Agreement, attached as Exhibit 5 to Declaration of Tara Zabehi ("Zabehi Decl."), § 1.23. Defendants represented that there were 525,000 Workweeks during the period from January 24, 2020 to September 10, 2024 and 120,844 PAGA Pay Periods from November 20, 2022 to September 10, 2024. Should the Workweeks or Pay Periods during the Class Period and PAGA Period increase by more than 10% of 525,000 or 120,844 (i.e., more than 52,500 Workweeks or more than 12,084 PAGA Pay Periods), Defendants shall have the option to: (1) increase the Gross Settlement Amount on a *pro rata* basis equal to the percentage increase in the number of Workweeks or PAGA Pay Periods worked by the Class Members or Aggrieved Employees above 10% (e.g., if the number of Workweeks or PAGA Pay Periods increase by 11%, the Gross Settlement Amount will increase by 1%); or (2) end the Class Period and/or PAGA Period on the day that the total Workweeks reach 577,500 Workweeks and/or 132,928 PAGA Pay Periods. § 4.1.

[2] Settlement Agreement, § 1.5.; "Class Period" is defined as the time period from January 24, 2020 to November 10, 2024. *See id.*, § 1.12.

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("Workweeks").[3] Aggrieved Employees will also receive a *pro rata* share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.[4]

The Settlement, upon final approval by the Court and funding of the Gross Settlement Amount, will operate to resolve the Released Claims of Plaintiffs, Released Class Claims of Settlement Class Members, and the Released PAGA Claims of Aggrieved Employees and the State of California.[5]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendant Autism Learning Partners was founded in 1988 and provides services to autistic children and their families. Defendant Autism Learning Partners operates approximately 25 locations in California, in addition to locations in Colorado, Connecticut, Florida, Georgia, Maryland, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Rhode Island, Texas, and Virginia. Defendants Autism Learning Partners, LLC, Pacific Child & Family Associates, LLC, Proof Positive ABA Therapies, LLC, Children's Learning Connection, Inc., and A is for Apple, Inc. are related entities.

On November 20, 2023, Plaintiff Blanco provided written notice by certified mail to the LWDA and Defendants of the specific provisions of the California Labor Code that were alleged to be violated ("Blanco's PAGA Notice").[6]

On January 24, 2024, Plaintiff Blanco filed the Class Action Complaint for Restitution and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code § 2698, *et seq*. in the Superior Court for the County of Los Angeles, thereby commencing the above-captioned lawsuit.[7]

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[3] Settlement Agreement, §§ 1.24 and 1.49.
[4] *Id.*, § 1.25.
[5] *See id.*, at § 6.1, for the full scope of "Plaintiffs' Release;" *See id.*, at § 6.2, for the full scope of the "Released Class Claims*;" See id*. at § 6.3 for the full scope of the "Released PAGA Claims;" and *id*. at § 1.44 for the full scope of the "Released Parties."
[6] Zabehi Decl. ¶ 2, Exh. 1.
[7] *Id.*, ¶ 3.

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On February 9, 2024, Plaintiff Gonzalez provided written notice by certified mail to the LWDA and Defendants of the specific provisions of the California Labor Code that were alleged to be violated ("Gonzalez's PAGA Notice").[8]

On November 22, 2024, Plaintiff Blanco provided amended written noticed by certified mail to the LWDA and Defendants of the specific provisions of the California Labor Code that were alleged to be violated ("Blanco's Amended PAGA Notice").[9]

On November 22, 2024, Plaintiff Gonzalez provided amended written noticed by certified mail to the LWDA and Defendants of the specific provisions of the California Labor Code that were alleged to be violated ("Gonzalez's Amended PAGA Notice").[10]

On February 7, 2025, Plaintiff Blanco sought leave to file a First Amended Complaint for Damages and Enforcement Under the Private Attorneys General Act, Cal. Lab. Code § 2698, *Et Seq*. ("Operative Complaint"), to: (1) add Carlos Gonzalez as a plaintiff/class representative, and add his PAGA representative claims, (2) add A is for Apple, Inc., as a Defendant, and (3) add the following causes of action: (1) unpaid overtime pursuant to California Labor Code sections 510 and 1198, (2) unpaid meal period premiums pursuant to California Labor Code sections 226.7 and 512(a), (3) unpaid rest period premiums pursuant to California Labor Code section 226.7, (4) unpaid minimum wages pursuant to California Labor Code sections 1194, 1197 and 1197.1, (5) final wages not timely paid pursuant to California Labor Code sections 201 and 202, (6) wages not timely paid during employment pursuant to California Labor Code section 204, (7) non-compliant wage statements pursuant to California Labor Code section 226(a), (8) failure to keep requisite payroll records pursuant to California Labor Code section 1174(d), (9) unreimbursed business expenses pursuant to California Labor Code sections 2800 and 2802, (10) unpaid reporting time pay pursuant to California Labor Code section 1198, (11) unpaid vacation wages pursuant to California Labor Code section 227.3, and (12) unpaid sick pay pursuant to California Labor Code sections 246 and 248.5. The Court granted Plaintiff Blanco leave to file the proposed First Amended Complaint on February 19, 2025, and Plaintiffs filed the First Amended Complaint on

[8] Zabehi Decl., ¶ 4, Exh. 2.
[9] *Id.*, ¶ 5, Exh. 3.
[10] *Id.*, ¶ 6, Exh. 4.

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February 24, 2025.[11]

Plaintiffs' core allegations are that Defendants have violated California wage and hour law, including but not limited to laws set forth in the California Labor Code, by engaging in a uniform practice and procedure, with respect to Plaintiffs, Class Members, and Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, at all or at the correct rate of pay, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, failing to reimburse necessary business expenses, failing to pay reporting time pay, failing to pay vacation pay, failing to pay sick pay at the legal pay rate, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contends that they, and the Class Members, are entitled to, *inter alia*, unpaid wages, interest, restitution, penalties (including and not limited to, penalties pursuant to PAGA), and Class Counsel Fees and Costs.[12]

The Parties have actively litigated the Action since it commenced on January 24, 2024. On September 10, 2024, the Parties participated in arm's-length and informed negotiations with Mediator Lynn Frank, Esq. ("Mediator"), a respected mediator of complex wage and hour actions. With the aid of the Mediator's evaluation, the Parties ultimately reached the Settlement described herein to resolve the Action in their entirety.[13]

III. <u>SUMMARY OF THE SETTLEMENT TERMS</u>

Under the terms of the Settlement, Defendants will pay a Gross Settlement Amount of $2,500,000.00 to resolve the Action.[14] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Class Counsel Fees in an amount not to exceed 33.33% of the Gross Settlement Amount (i.e., $833,333.33, if the Gross Settlement Amount remains $2,500,000.00) and litigation

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[11] Zabehi Decl., ¶ 7.
[12] *Id.*, ¶ 29.
[13] *Id.*, ¶ 24.
[14] Settlement Agreement, § 3.1.

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costs and expenses in an amount not to exceed $25,000.00 ("Class Counsel Fees and Costs") to Class Counsel; (2) Administration Expenses, which are currently estimated not to exceed $60,000.00 to the Settlement Administrator ("Administration Expenses"); (3) PAGA Penalties of $750,000.00 ("PAGA Penalties"); and (4) payment in the amount of up to $7,500.00 to each Plaintiff for a total of $15,000.00 ("Class Representative Service Payment").[15] The Parties have agreed to retain ILYM Group, Inc. ("ILYM" or "Settlement Administrator") to handle the notice and settlement administration process.[16]

The Parties have agreed that the Settlement Administrator will determine each Settlement Class Member's share of the available Net Settlement Amount ("Individual Class Payment"), in accordance with the Settlement Agreement on a *pro rata* per Workweek basis, which will be adjusted after Final Approval to reflect the total Workweeks worked by the Settlement Class Members.[17] The Parties have agreed that the Settlement Administrator will determine each Aggrieved Employees' share of the 25% share of the PAGA Penalties, in accordance with the Settlement Agreement on a *pro rata* per PAGA Pay Period basis.[18]

The Parties agree, for purposes of this Settlement, that Individual Class Payments will be allocated 20% to wages subject to withholdings and 80% to penalties and interest.[19] The Settlement Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Class Payments, and issue checks to Settlement Class Members for their Individual Class Payments. Individual PAGA Payments to Aggrieved Employees will be allocated as 100% penalties and will not be subject to withholdings. Defendants will provide the funds for any employer-side taxes related to the Individual Settlement Payments.[20]

Individual Class Payment and Individual PAGA Payment checks shall remain valid and negotiable for one hundred eights (180) calendar days from the date of their issuance, and thereafter, shall be canceled.[21] Thereafter, funds from uncashed Individual Class Payment and/or

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[15] Settlement Agreement, §§ 3.2.1, 3.2.2, and 3.2.3.
[16] *Id.*, § 1.2.
[17] *Id.*, § 1.24.
[18] *Id.*, § 1.25.
[19] *Id.*, § 3.2.4.1.
[20] *Id.*, § 3.2.5.2.
[21] *Id.*, § 4.4.1.

Individual PAGA Payment checks shall be transmitted to the California Controller's Office for Unclaimed Property Fund in the name of each Class Member to whom the checks were issued.[22]

Any Class Member may request to be excluded from the Class Settlement by mailing a Request for Exclusion postmarked by the date that is forty-five (45) calendar days after the Administrator mails the Class Notice ("Response Deadline").[23] The Response Deadline shall be extended by fourteen (14) calendar days for those Class Members who had their Class Notices remailed after having been returned undeliverable to the Administrator.[24] Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[25]

Only Class Members who have not submitted a Request for Exclusion (i.e., Settlement Class Members) may object to the Class Settlement by submitting a timely written objection ("Notice of Objection") to the Settlement Administrator prior to the Response Deadline, or, in the alternative, by presenting their objection verbally at the Final Approval Hearing.[26]

In order to challenge the number of Workweeks and/or PAGA Pay Periods attributable to an Individual Class Member and/or Aggrieved Employee, that Class Member and/or Aggrieved Employee must communicate with the Settlement Administrator via fax, email or mail and include copies of any supporting evidence they may have.[27]

IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

The settlement of a class action requires approval by the court. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). Courts review class action settlements in a two-step process: (1) an earlier conditional review by the court; and (2) a later detailed review after the period during which notice is distributed to class members for their comments or objections. Conte & Newberg, *Newberg on Class Actions* § 11.24 (4th Ed. 2002).

[22] Settlement Agreement, § 4.4.3.
[23] *Id.*, § 1.46.
[24] *Ibid.*
[25] *Id.*, § 6.3.
[26] *Id.*, §§ 1.31, 1.46, 8.5.4, 8.7.1 and 8.7.2.
[27] *Id.*, § 8.6.

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Preliminary approval of a settlement does not require a court to make a final determination that the settlement is fair, reasonable, and adequate. Rather, that decision is made at the final approval stage. Cal. R. Ct. 3.769(g).

In considering a potential class settlement, a court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and need not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a hearing is required for the trial court to grant provisional class certification and preliminary approval; the court may grant such relief upon an informal application by the settling parties and may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*, § 11.25.

V. <u>THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT</u>

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

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba*, 91 Cal.App.4th at 245. "A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)

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the percentage of objectors is small." *Id.*; *Dunk*, 48 Cal.App.4th at 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

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

The Parties have actively litigated the Action since it commenced on January 24, 2024. Both sides investigated the veracity, strength, and scope of the claims throughout the case, and Class Counsel was actively preparing the matter for class certification and trial.[28]

Class Counsel conducted significant investigation and informal discovery regarding the facts of the case, including and not limited to, the exchange, review, and analysis of a large volume of documents and data from Plaintiffs, Defendants, and other sources.[29] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: a sampling of Class Members' time and payroll data, Plaintiffs' personnel records, Defendants' Handbooks, earning statements, arbitration agreements, company policy acknowledgements (e.g., Policy Acknowledgement Status Report, Employee Acknowledgement, Meal and Rest Period Policy and Acknowledgement, Employee Handbook acknowledgment, Frequently Asked Questions Acknowledgement, Job Description Review, Training Review, Transportation Policy, Confidentiality Agreement, Returning Company Property Agreement, Supplemental Policies Packet, Video Recording Policy, Zero Tolerance Policy), among other information and documents.[30] Class Counsel had the opportunity to interview Plaintiffs and others to gather facts and to identify potential witnesses. In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[31]

The Parties engaged in extensive settlement negotiations and participated in a full-day mediation, conducted by Lynn Frank, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[32] Prior to and during the mediation and settlement discussions, the Parties exchanged extensive information and engaged in discussions regarding

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[28] Zabehi Decl., ¶ 24.
[29] *Id.*, ¶ 25.
[30] Ibid.
[31] *Id.*, ¶¶ 18-22.
[32] *Id.*, ¶ 24.

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their evaluations of the case and various aspects of the case, including but not limited to, the risks and delays of further litigation, including the risks of proceeding with class certification and/or representative adjudication; the law relating to off-the-clock theory, arbitration agreements, regular rate, meal and rest periods, PAGA representative claims, and wage-and-hour enforcement; the evidence produced and analyzed; and the possibility of appeals.[33] While the Parties did not settle at mediation, the Parties continued settlement discussions and, with the help of the mediator, agreed to a mediator's proposal which ultimately led to the global resolution reached here. During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[34] Arriving at a settlement that was acceptable to both Parties was not easy. Both sides felt strongly about their ability to prevail at certification and at trial.[35] After conducting investigations, informal discovery, extensive settlement negotiations, and with the aid of the mediator's evaluation, the Parties have agreed that the matter is well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that would attend further litigation.[36]

B. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[37] The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the informal exchange of information.[38] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue. Moreover, considering all of the facts and circumstances of the case, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[39]

Assuming that the Class Counsel Fees and Costs, Class Representative Service Payment, PAGA Penalties, and Administration Expenses are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that

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[33] Zabehi Decl., ¶ 24.
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] *Id.*, ¶ 33.
[39] *Id.*, ¶ 27.

is currently estimated to be $816,666.67.[40] Additionally, 25% of the PAGA Allocation (i.e., Individual PAGA Payment), which is $187,500.00 out of $750,000.00, will be distributed to the Aggrieved Employees. The entire Net Settlement Amount will be fully paid out to the Settlement Class Members, in accordance with the Settlement Agreement.

The amount of each Settlement Class Member's Individual Class Payment and each Aggrieved Employees' Individual PAGA Payment will be calculated based on his or her Workweeks and/or PAGA Pay Periods during the Class Period and PAGA Period, respectively.[41] "An allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. Here, the allocation is reasonably related to the number of Workweeks and/or PAGA Pay Periods actually worked for Defendants during the relevant period and should be approved.

In light of the foregoing considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members, Aggrieved Employees, and the State of California.[42] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, and has experience with this type of litigation, and investigation has been completed, as is the case here. *Newberg*, §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

C. <u>The Settlement Is of Significant Value.</u>

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties conducted extensive informal discovery and exchanged a large volume of documents, data, and information prior to mediation.[43] The information that Class Counsel obtained from Plaintiffs, Defendants, and other sources allowed Class Counsel to develop valuation models in order to evaluate the potential value and merit of the claims, and perform a complete evaluation of

[40] Zabehi Decl., ¶ 9.
[41] Settlement Agreement, §§1.24 and 1.25.
[42] Zabehi Decl., ¶ 35.
[43] *Id.*, ¶ 25.

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Defendants' defenses thereto.[44] As outlined in the Declaration of Tara Zabehi, Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar* prior to entering into the Settlement.[45]

VI. CERTIFICATION OF THE CLASS IS APPROPRIATE

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[46] California Code of Civil Procedure Section 382 "authorizes class actions when the question is one of a common or general interest, of many persons, or when the Parties are numerous, and it is impracticable to bring them all before the court." *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify class actions where the Plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." *Id.*

A. The Class Is Ascertainable and Sufficiently Numerous.

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed Plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed Class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; s*ee also Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 13,282 individuals, which is sufficiently numerous.[47] Further, all Class Members can and will be identified by Defendants to the Settlement Administrator through a review of Defendants' employment records regarding hourly-paid or non-exempt employees of Defendants in California during the Class Period. As such, the Class is ascertainable.[48]

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[44] Zabehi Decl., ¶ 33.
[45] Ibid.
[46] Settlement Agreement, § 12.1.
[47] Zabehi Decl. ¶ 13.
[48] *Id.*, ¶ 14.

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B. <u>The Class Members Share a Well-Defined Community of Interest.</u>

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

Here, common issues of law and fact predominate as to each of the claims alleged and asserted in the Action. Based on the documents and information obtained through informal discovery and exchange of information in the case, Plaintiffs contend that Class Members performed similar job duties and were subject to uniform operations and employment policies, practices, and procedures during the Class Period, including payroll and recordkeeping practices.[49] As a result, Plaintiffs claim that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue. Plaintiffs maintain that the outcome of this litigation would be determined by Defendants' alleged uniform operations and employment policies and procedures that applied across its hourly-paid or non-exempt employees who worked in California during the Class Period.

As a member of the Class who was subject to these same policies, practices, and procedures, Plaintiffs' claims are typical of the Class. Moreover, Plaintiffs have no interests adverse to the Class. Plaintiffs have taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.[50] Importantly, Plaintiffs have retained a law firm

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[49] Zabehi Decl., ¶ 16.

[50] Declaration of Rhina Blanco in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Blanco Decl."), ¶ 2-5; Declaration of Carlos Gonzalez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Gonzalez Decl."), ¶ 2-5.

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well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiffs and the Class.[51]

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

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

Class Counsel has litigated the matter for over one (1) year and was actively preparing the matter for class certification and trial.[52] The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed a large volume of documents and data and also interviewed and obtained information from Plaintiffs and other percipient witnesses, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendants' counsel regarding the pleadings and the production of documents and data prior to the mediation.[53] Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.[54] Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[55]

The Settlement establishes a Gross Settlement Amount of $2,500,000.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount up to 33.33% of the Gross Settlement Amount (i.e., $833,333.33 if the Gross Settlement Amount remains $2,500,000.00), and reimbursement of actual costs and expenses in an amount up to $25,000.00.[56] The attorneys' fees provided for by the Settlement are commensurate with: (1) the risk that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and expense that Class Counsel dedicated to the case, (3) the skill and determination that Class Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation, (5) the value of the

[51] Zabehi Decl., ¶ 18-22.
[52] *Id.*, ¶ 24.
[53] *Id.*, ¶¶ 25-28.
[54] *Id.*, ¶ 24.
[55] *Id.*, ¶ 18-22.
[56] Settlement Agreement, §§ 3.1 and 3.2.2.

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Settlement that Class Counsel has achieved for the Class Members, and (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts to this matter. The proposed Class Notice provides Class Members that an award of the Class Counsel Fees and Costs will be sought and the amount allocated toward the Class Counsel Fees and Costs by the Settlement.[57]

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court." *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132. California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503 citing *Lealao*, 82 Cal.App.4th at 48-49. In *Lealao*, the court held that, when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Lealao*, 82 Cal.App.4th at 50.

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

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the $7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement as attorneys' fees). California

[57] Settlement Agreement, Exh. A.

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courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and hour).

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.[58] Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiffs' Motion for Final Approval of the Settlement and application for the Class Counsel Fees and Costs at the Final Approval Hearing. Considering the work performed and the risks incurred, the attorneys' fees provided for by the Settlement are well within the range of reasonableness for preliminary approval.

VIII. THE PROPOSED CLASS NOTICE IS ADEQUATE

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

The proposed Class Notice describes the Settlement, the deadlines and procedures to submit a Notice of Objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or challenge regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[59] The proposed Class Notice summarizes the

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[58] Zabehi Decl., ¶ 10.
[59] Settlement Agreement, Exh. A.

proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[60] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[61] The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Class Payment and, if applicable, Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.[62] The proposed Class Notice fulfills the requirement of neutrality in notice procedure. *Newberg*, at § 8.39.

Thus, the proposed Class Notice satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e); *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt*, *supra*, 50 Cal.App.3d at 960. Accordingly, the Court should approve the proposed Class Notice.

IX. APPOINTMENT OF THE SETTLEMENT ADMINISTRATOR

The Parties have selected ILYM Group, Inc. as the Settlement Administrator. Within fourteen (14) calendar days of receipt of the Class Data, the Settlement Administrator will perform an NCOA check and will mail the Class Notice to each Class Member and Aggrieved Employee.[63] The Settlement Administrator will skip-trace returned Class Notices and re-mail the Class Notice to the new addresses within 7 calendar days.[64] In the case of a re-mailed Class Notice, the Response Deadline will be extended an additional fourteen (14) calendar days beyond the forty-five (45) calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed.[65] The Administrator will receive and process Requests for Exclusion, Notices of Objection, and challenges regarding Workweeks.[66] In addition, the Settlement Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for the Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances; providing

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[60] Settlement Agreement, Exh. A.
[61] Ibid.
[62] Ibid.
[63] *Id.*, § 8.4.2.
[64] *Id*,. § 4.4.2.
[65] *Id.*, § 8.4.4.
[66] *Id.*, § 8.8.3.

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necessary reports and declarations; and other duties and responsibilities to process the Settlement and as requested by the Parties.[67] The Administration Expenses are currently estimated to be $60,000.00 and will be paid out of the Gross Settlement Amount, subject to approval by the Court.[68] Accordingly, Plaintiffs respectfully request that the Court appoint ILYM Group, Inc., as the Settlement Administrator and direct the mailing of the Class Notice to the Class Members and Aggrieved Employees in the manner outlined and based on the proposed deadlines as described herein and set forth in the Settlement Agreement.

X. CLASS REPRESENTATIVE SERVICE PAYMENT

Plaintiffs respectfully request that the Court appoint them as the Class Representatives and preliminarily approve the Service Payment in an amount up to $7,500.00 each.[69] It is within the Court's discretion to award payment to a Class Representative for her efforts and work. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299. The factors that courts may consider in determining whether to make a Service Payment include: (1) the risk to the Class Representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the Class Representative; (3) the amount of time and effort spent by the Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. *Id*.

The Service Payments are fair and appropriate. Plaintiffs spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[70] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain and provide information that would facilitate the pursuit of class and PAGA claims.[71] Accordingly, it is appropriate and just for Plaintiffs to receive a Service Payment for their services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to their individual settlement payment.

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[67] Settlement Agreement, § 8.2, 8.4.2, 8.8.5 .
[68] *Id.*, § 3.2 and 3.2.3.
[69] *Id.*, § 3.2.1.
[70] Zabehi Decl., ¶ 11; Declaration of Rhina Blanco in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Blanco Decl."), ¶ 3; Declaration of Carlos Gonzalez in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement ("Gonzalez Decl."), ¶ 3.
[71] Zabehi Decl., ¶ 11; Blanco Decl., ¶¶ 4-5; Gonzalez Decl., ¶¶ 4-5.

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XI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant Preliminary Approval of the Settlement; conditionally certify the Class for settlement purposes; appoint Lawyers *for* Justice, PC as Class Counsel; appoint Plaintiffs Rhina Blanco and Carlos Gonzalez as Class Representatives; appoint ILYM Group, Inc., as Settlement Administrator; preliminarily approve the allocations for Class Counsel Fees and Costs, Class Representative Service Payment, PAGA Penalties, and Administration Expenses; approve the proposed Class Notice; direct the Settlement Administrator to undertake the notice and settlement administration process in conformity with the deadlines and procedures provided by the Settlement Agreement; and to schedule a Final Approval Hearing to take place in approximately six (6) months.

Dated: March 21, 2025

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