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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

LETICIA ACEVEDO, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

vs.

TURBONETICS HOLDINGS, INC., a Delaware corporation; TURBONETICS, INC., an unknown business entity; WABTEC CORPORATION, an unknown business entity; and DOES 1 through 100, inclusive,

Defendants

Case No.: 2023CUOE008785

Honorable Mark S. Borrell
Department 40

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Ryan Slinger); Declaration of Proposed Class Representative (Leticia Acevedo); and [Proposed] Order filed concurrently herewith]

Date:	September 2, 2025
Time:	8:30 a.m.
Department:	40
Complaint Filed:	May 9, 2023
Trial Date:	None Set

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

PLEASE TAKE NOTICE that on September 2, 2025, at 8:30 a.m. or as soon thereafter as the matter may be heard before the Honorable Mark S. Borrell in Department 40 of the Superior Court of California for the County of Ventura, located at 800 South Victoria Avenue, Ventura, California 93009, Plaintiff Leticia Acevedo ("Plaintiff" or "Class Representative") 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 Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement"), attached as "**EXHIBIT 3**" to the Declaration of Ryan Slinger in Support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement;
- Certifying the proposed Class for settlement purposes;
- Appointing Plaintiff Leticia Acevedo as Class Representative;
- Appointing Joanna Ghosh, Yasmin Hosseini, and Ryan Slinger of Lawyers *for* Justice, PC as Class Counsel;
- Approving the proposed Court Approved Notice of Class Action Settlement ("Class Notice"), attached as "**EXHIBIT 1**" 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 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 require 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.

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This motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declaration of Proposed Class Counsel (Ryan Slinger) and Proposed Class Representative (Leticia Acevedo) 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: August 8, 2025

LAWYERS *for* JUSTICE, PC

By: Ryan Slinger

Ryan Slinger
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiff Leticia Acevedo ("Plaintiff" or "Class Representative") seeks preliminary approval of the Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendants Turbonetics Holdings, Inc., MotivePower, Inc., Nordco Rail Services, LLC, Nordco, Inc., Ricon Corp., Shuttlewagon, Inc., Transportation Systems Services Operations Inc., Wabtec Manufacturing Solution LLC, Wabtec Railway Electronics, Inc., Wabtec US Rail, Inc., Westinghouse Air Brake Technologies Corporation, Xorail, Inc., Wabtec Transportation Systems, LLC, Turbonetics, Inc., and Wabtec Corporation (collectively, "Defendants"), on the other hand. Subject to approval by the Court, Plaintiff and Defendants (collectively, the "Parties") have agreed to settle the lawsuit for a Total Settlement Amount of $1,450,000.00.[1]

Plaintiff also seeks to provisionally certify the following Class for settlement purposes, which Defendants do not oppose:

> All individuals who were employed by Defendants as non-exempt employees in the State of California during the Class Period ("Class" or "Class Member(s)").[2]

Class Members who do not submit a valid and timely Request for Exclusion from the Class Settlement ("Participating Class Members") will receive a *pro rata* share of the Net Settlement Amount ("Individual Settlement Share").[3] The net payment of each Participating Class Member's Individual Settlement Share ("Individual Settlement Payment") will be distributed to Participating Class Members on a *pro rata* basis based upon the number of weeks each Class Member worked

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[1] Settlement Agreement, attached as "**EXHIBIT 3**" to Declaration of Ryan Slinger ("Slinger Decl."), ¶ 1.43. Defendants represent that there are 34,868 Workweeks during the period from May 9, 2019 through May 15, 2024. This is a material representation for Plaintiff to enter into this agreement. Should the qualifying Workweeks worked by Class Members during the Class Period increase beyond 10% of 34,868 (i.e., beyond 38,355 workweeks), then—at the sole discretion of Defendants—either (a) Defendants shall increase the Total Settlement Amount proportionally by the number of workweeks worked in excess of 38,355 multiplied by the workweeks value (e.g., if the number of workweeks increases by 11% to 38,703 workweeks, the Total Settlement Amount will increase by 1%), or (b) the Class Period and PAGA Period shall end on the last day on which the workweeks do not exceed 38,355 ("Alternate End Date"). The Parties agree that the workweek value is $41.59 ($1,450,000.00 / 34,868). *See id.*, ¶ 8.

[2] *Id.*, ¶ 1.5. "Class Period" is defined as the period from May 9, 2019 to July 31, 2024, or, if applicable, the Alternate End Date. *See id.*, ¶ 1.10.

[3] *Id.*, ¶¶ 1.22 & 1.36.

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for Defendants for at least one day as a non-exempt employee within California during the Class Period, which will be calculated by Defendants based on the number of workweeks worked by each Class Member in a nonexempt position in California for Defendants during the Class Period ("Workweeks").[4]

Aggrieved Employees will receive a *pro rata* share of twenty-five percent (25%) of the PAGA Penalties ("Individual PAGA Payment") based upon the number of pay periods each Aggrieved Employee worked for Defendants for at least one day as a non-exempt employee within California during the PAGA Period, which will be calculated by Defendants based on the number of pay periods worked by each Aggrieved Employee in a nonexempt position in California for Defendants during the PAGA Period ("PAGA Pay Periods").[5]

The Settlement, upon the Effective Date and full funding of the Total Settlement Amount, will operate to resolve the Released Class Claims of Plaintiff and Participating Class Members and the Released PAGA Claims of the State of California, against the Released Parties.[6]

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants are a global provider of equipment, systems, digital solutions, and value-added services for the locomotive, freight, and transit rail sectors.

On May 9, 2023, Plaintiff filed the Class Action Complaint for Damages ("Complaint") against Defendants Turbonetics Holding, Inc., Turbonetics, Inc., and Wabtec Corporation in the Superior Court for the County of Ventura ("Court"), thereby commencing the above-captioned action (the "Action").[7]

On July 10, 2023, Defendants Turbonetics Holding, Inc., Turbonetics, Inc., and Wabtec Corporation filed an Answer to the Complaint.[8]

On August 25, 2023, Plaintiff propounded multiple sets of discovery, including Form Interrogatories – General (Set One), Requests for Production of Documents (Set One), and Special

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[4] Settlement Agreement, ¶¶ 1.21 & 1.44.
[5] *Id.*, ¶¶ 1.20 & 1.30.
[6] *Id.,* ¶ 5.
[7] Slinger Decl., ¶ 2.
[8] *Id.*, ¶ 3.

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Interrogatories (Sets One and Two) on Defendants Turbonetics Holdings, Inc., Turbonetics, Inc., and Wabtec Corporation.[9]

On August 31, 2023, Plaintiff noticed the depositions of Defendants Turbonetics Holdings, Inc., Turbonetics, Inc., and Wabtec Corporation's Person Most Knowledgeable designees along with accompanying requests for production of documents.[10]

On December 11, 2023, Plaintiff provided written notice by certified mail to the California Labor and Workforce Development Agency ("LWDA") and Defendants Turbonetics Holding, Inc., Turbonetics, Inc., and Wabtec Corporation of the specific provisions of the California Labor Code that were alleged to be violated ("PAGA Notice I").[11]

On February 26, 2025, Plaintiff provided an amended 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 ("PAGA Notice II") (together with PAGA Notice I, the "PAGA Notices").[12]

On August 4, 2025, Plaintiff sought leave to file First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code, §2698, Et Seq. ("Operative Complaint"), thereby seeking to add a claim for civil penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA").[13]

Plaintiff's core allegations is 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 Plaintiff, Class Members, and Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, at all or at the correct rate of pay, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, failing to provide paid sick leave, failing to pay reporting time pay, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code

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[9] Slinger Decl., ¶ 4.
[10] *Id.*, ¶ 5.
[11] *Id.*, ¶ 6.
[12] *Id.*, ¶ 7.
[13] *Id.*, ¶ 8.

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section 17200, *et seq*., and conduct giving rise to civil penalties recoverable under the Private Attorneys General Act of 2004 (California Labor Code sections 2698, *et seq*.). Plaintiff contends that she, and the Class Members, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees and costs.

The Parties have actively litigated the Action since it was commenced on May 9, 2023. On May 29, 2024, the Parties participated in arm's-length and informed negotiations with Mediator Monique Ngo-Bonnici, Esq. ("Mediator"), a respected mediator of complex wage and hour actions.[14] With the aid of the mediator, the Parties reached the Settlement described herein to resolve the Action in its entirety.[15]

III. SUMMARY OF THE SETTLEMENT TERMS

Under the terms of the Settlement, Defendant will pay a Total Settlement Amount of $1,450,000.00 to resolve the Action.[16] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Total Settlement Amount: (1) attorneys' fees in an amount not to exceed 35% of the Total Settlement Amount (i.e., $507,500.00 if the Total Settlement Amount remains $1,450,000.00) and litigation costs and expenses in an amount not to exceed $50,000.00 ("Attorneys' Fees and Costs") to Lawyers *for* Justice, PC ("Class Counsel"); (2) Administration Costs, which are currently estimated not to exceed $7,500.00 to the Administrator ("Administration Costs"); (3) PAGA Penalties in the amount of $175,000.00 ("PAGA Penalties"); and (4) payment in the amount of up to $10,000.00 to Plaintiff ("Enhancement Award").[17] The Parties have agreed to retain ILYM Group, Inc. ("ILYM" or "Administrator") to handle the notice and settlement administration process.[18]

The Parties have agreed that the Administrator will determine each Participating Class Member's *pro rata* share of the Net Settlement Amount (i.e., Individual Settlement Share), in accordance with the Settlement Agreement on a *pro rata* per Workweeks basis, which will be adjusted after Final Approval to reflect the total Workweeks credited to Participating Class

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[14] Slinger Decl., ¶ 10.
[15] Ibid.
[16] Settlement Agreement, ¶ 1.43.
[17] *Id.*, ¶¶ 3.2.1-3.2.4.
[18] *Id.*, ¶ 1.1.

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Members.[19] The Parties have agreed that the Administrator will determine each Aggrieved Employee's *pro rata* share of the 25% of the PAGA Penalties (i.e., Individual PAGA Payment), in accordance with the Settlement Agreement on a *pro rata* per PAGA Pay Periods basis.[20]

The Parties agree, for purposes of this Settlement, that Individual Settlement Shares will be allocated as 25% wages and 75% non-wages, including interest and penalties.[21] The Administrator will withhold the employee's share of taxes and withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks to Participating Class Members for their Individual Settlement Payment (i.e., payment of their Individual Settlement Share net of these taxes and withholdings).[22] Each Individual PAGA Payment will be allocated as 100% penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099.[23] All employer payroll taxes owed on the Wage Portion of the Individual Settlement Payments will be paid separately and in addition to the Total Settlement Amount.[24]

Individual Settlement Payment and Individual PAGA Payment checks will be valid and negotiable for 180 calendar days from the date of their issuance, and thereafter, shall be canceled.[25] Thereafter, funds from uncashed Individual Settlement Payment and/or Individual PAGA Payment checks shall be transmitted to the California State Controller's Unclaimed Property Fund in the name of the Class Member thereby no "unpaid residue" subject to the requirements of the California Code of Civil Procedure Section 3844, subd. (b).[26]

Any Class Member may request to be excluded from the Class Settlement by submitting a written letter indicating a request to be excluded from the Class Settlement ("Request for Exclusion") on or before the date that is forty-five (45) calendar days after the Administrator mails the Class Notice to Class Members and Aggrieved Employees ("Response Deadline").[27]

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[19] Settlement Agreement, ¶ 3.2.5.
[20] *Id.*, ¶ 3.2.6.
[21] *Id.,* ¶ 3.2.7.
[22] Ibid.
[23] Ibid.
[24] *Id.*, ¶ 3.1.
[25] *Id.*, ¶ 4.4.1.
[26] *Id.*, ¶ 4.4.3.
[27] *Id.*, ¶¶ 1.41 & 1.42.

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Aggrieved Employees shall be bound to the PAGA Settlement irrespective of whether they exercise their option to opt out of the Class Settlement.[28]

Only Class Members who have not submitted a Request for Exclusion (i.e., Participating Class Members) may object to the Class Settlement by submitting a written objection to the Class Settlement ("Objection") to the Administrator prior to the Response Deadline or by presenting their objection orally at the Final Approval hearing, regardless of whether they submitted a written objection.[29]

In order to dispute 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 submit a written letter disputing the pre-printed information on the Class Notice ("Workweeks/PAGA Pay Periods Dispute") to the Administrator and include copies of any supporting evidence they may have.[30]

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). 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 only 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.

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[28] Settlement Agreement, ¶ 7.5.1.
[29] *Id.*, ¶ 1.28, 7.7.1 & 7.7.2.
[30] *Id.*, ¶¶ 1.45 & 7.6.

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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 PRELIMINARY 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 give "proper deference to the private consensual decision of the parties." *Hanlon*, 150 F.3d at 1027 (citation omitted).

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

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

The Parties have actively litigated the Action since it was commenced on May 9, 2023. Both sides investigated the veracity, strength, and scope of the claims throughout the cases, and Class Counsels were actively preparing the matter for class certification and trial.[31]

[31] Slinger Decl., ¶ 26.

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Class Counsel conducted significant investigation and formal 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 obtained from Defendants, Plaintiff, and other sources.[32] Class Counsel served multiple sets of formal written discovery requests onto Defendants Turbonetics Holdings, Inc., Turbonetics, Inc., and Wabtec Corporation (specifically, Form Interrogatories – General (Set One), Requests for Production of Documents (Set One), and Special Interrogatories (Sets One and Two)) and noticed the depositions of Defendants Turbonetics Holdings, Inc., Turbonetics, Inc., and Wabtec Corporation's Person Most Knowledgeable designees along with accompanying requests for production of documents.[33] The volume of data and documents that Class Counsel reviewed and analyzed included and was not limited to: Plaintiff's employment records, a sampling of Plaintiffs' and other Class Members' time data and pay records, Defendants' Employee Handbooks, internal memoranda, new hire orientation checklists, job descriptions, company policy acknowledgements (including but not limited to Employee Acknowledgment, Confirmation of Receipt of Employee Handbook, and Final Paycheck Acknowledgment), forms (including but not limited to Time Off Request Form and Leave of Absence Request Form), procedures (including but not limited to Termination Checklist), and policies (including but not limited to Agreement of Confidentiality, Confidential and Non-Disclosure Policy, and Sick Leave Policy), among other information and documents.[34] Class Counsel had the opportunity to interview Plaintiff and other Class Members to gather facts and to identify potential witnesses.[35] In addition, Class Counsel has extensive experience in California wage-and-hour class actions.[36]

The Parties have engaged in extensive settlement negotiations and participated in a mediation on May 29, 2024 conducted by Monique Ngo-Bonnici, Esq., a well-respected mediator experienced in mediating complex labor and employment matters.[37] Prior to and during the

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[32] Slinger Decl., ¶ 26.
[33] Ibid.
[34] Ibid.
[35] Ibid.
[36] *Id.*, ¶¶ 19-23.
[37] *Id.*, ¶ 25.

mediation and settlement negotiations, the Parties exchanged extensive information and engaged in discussions regarding their evaluations of the cases and various aspects of the cases, 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, regular rate of pay, meal and rest periods, PAGA representative actions, and wage-and-hour law and enforcement; the evidence produced and analyzed; and the possibility of appeals.[38] During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.[39] 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.[40] After conducting investigations, formal and 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 Plaintiff's principal claims, as well as the costs and risks to both sides that would attend further litigation.[41]

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

The Settlement represents a fair, adequate, and reasonable resolution of the matter.[42] The Settlement was calculated using the information and data uncovered during litigation, case investigation, and the informal exchange of information.[43] The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in the matter at issue.[44] Moreover, considering all of the facts and circumstances of the lawsuit, the Settlement represents a fair, reasonable, and adequate recovery for the Class.[45]

Assuming that the Attorneys' Fees and Costs, Enhancement Award, PAGA Penalties, and Administration Costs are approved by the Court and paid in the full amounts provided for by the Settlement, the Settlement provides for a Net Settlement Amount that is currently estimated to be

[38] Slinger Decl., ¶ 25.
[39] Ibid.
[40] Ibid.
[41] *Id.*, ¶¶ 25 & 30.
[42] *Id.*, ¶¶ 25, 27 & 30.
[43] *Id.*, ¶¶ 25-27.
[44] *Id.*, ¶¶ 28 & 29.
[45] *Id.*, ¶¶ 25, 27 & 30.

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$700,000.00.[46] Additionally, 25% of the PAGA Penalties, which is $43,750.00 out of $175,000.00, will be distributed to the Aggrieved Employees.[47] The entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the Settlement Agreement.

The amount of each Participating Class Member's Individual Settlement Share and each Aggrieved Employee's Individual PAGA Payment will be calculated based on their Workweeks and/or PAGA Pay Periods during the Class Period and PAGA Period, respectively.[48] "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 employed by Defendant during the relevant period and should be approved.

In light of the foregoing considerations, Class Counsels believe 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.[49] 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 have been completed, as is the case here. *Newberg,* §11.47. Accordingly, the Court should grant preliminary approval of the Settlement.

VI. <u>CERTIFICATION OF THE CLASS IS APPROPRIATE</u>

The requisites for establishing class certification are met, and the Parties have stipulated to conditional certification of the Class for settlement purposes only.[50] 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.

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[46] Slinger Decl., ¶ 10.
[47] Ibid.
[48] Settlement Agreement, ¶¶ 3.2.5 & 3.2.6.
[49] Slinger Decl., ¶¶ 25, 27 & 30.
[50] Settlement Agreement, ¶ 12.1.

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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. <u>The Class Is Ascertainable and Sufficiently Numerous.</u>

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be *res judicata*." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed Plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed Class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435; *see also Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the numerosity requirement as joinder is not practical at that point). The Class here is estimated to be approximately 322 individuals, which is sufficiently numerous.[51] Further, all Class Members can and will be identified by Defendants to the Administrator through a review of Defendants' employment records of non-exempt employees of Defendants in California employed during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

B. <u>The Class Shares 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).

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[51] Slinger Decl., ¶ 16.

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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 formal and informal discovery and exchange of information in the case, Plaintiff contends that Class Members performed similar job duties and were subject to uniform operations and employment policies, practices, and procedures during the Class Period, including payroll and recordkeeping practices.[52] As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendants during the time period at issue. Plaintiff maintains that the outcome of this litigation would be determined by Defendants' alleged uniform operations and employment policies and procedures that applied across its non-exempt employees who were employed in California during the Class Period.

As a member of the Class who was subject to these same policies, practices, and procedures, Plaintiff's claims are typical of the Class. Moreover, Plaintiff has no interests adverse to the Class. Plaintiff has taken steps to initiate and maintain this action and to ensure that it comes to a fair and reasonable resolution.[53] Importantly, Plaintiff has retained a law firm well-versed in wage and hour class actions, which has at all times represented the best interests of Plaintiff and the Class.[54]

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 AND COSTS

Class Counsel has litigated the matter for over two (2) years and was actively preparing the matter for class certification and trial.[55] 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[56] and also interviewed and obtained information from Plaintiff and other percipient witnesses, researched applicable law, undertook damages/valuation

[52] Slinger Decl., ¶ 17.
[53] Declaration of Leticia Acevedo ("Acevedo Decl."), ¶¶ 3-7.
[54] Slinger Decl., ¶¶ 19-23.
[55] *Id.*, ¶ 25.
[56] *Id.*, ¶ 26.

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calculations, and met and conferred with Defendants' counsel regarding the pleadings and the production of documents and data prior to mediation.[57] Counsel for the Parties also undertook extensive settlement discussions, which included participating in mediation.[58]

Class Counsel is well-experienced in wage-and-hour class action litigation and used that experience to obtain a great result for the Class.[59]

The Settlement establishes a Total Settlement Amount of $1,450,000.00, and provides for Class Counsel to apply to the Court consisting of attorneys' fees in an amount not to exceed 35% of the Total Settlement Amount (i.e., $507,500.00 if the Total Settlement Amount remains $1,450,000.00) and reimbursement of actual costs and expenses in an amount up to $50,000.00.[60] 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 Settlement that Class Counsel has achieved for the Class Members, Aggrieved Employees, and the State of California, and (6) the other cases that Class Counsel had to turn down in order to devote their time and efforts to this matter. The proposed Class Notice provides Class Members that an award of the Attorneys' Fees and Costs will be sought, and the amount allocated toward the Attorneys' Fees and Costs by the Settlement.[61]

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

[57] Slinger Decl., ¶¶ 27-29.
[58] *Id.*, ¶ 25.
[59] *Id.*, ¶¶ 19-23.
[60] Settlement Agreement, ¶¶ 3.1 & 3.2.2.
[61] *Id.*, Exh. A.

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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." *Id.* 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*, *supra*, 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 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.[62]

Class Counsel will provide extensive evidence as to the time worked, litigation efforts, and further argument at the time of filing Plaintiff's Motion for Final Approval of the Settlement and application for the Attorneys' Fees and Costs at the Final Approval Hearing. Considering the work

[62] Slinger Decl., ¶ 11.

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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 an Objection to the Class Settlement, submit a Request for Exclusion from the Class Settlement, and/or dispute regarding Workweeks and/or PAGA Pay Periods, and the date and time set for the Final Approval Hearing.[63] The proposed Class Notice summarizes the proceedings to date and the terms and conditions of the Settlement in an informative and coherent manner.[64] The proposed Class Notice recognizes that the Court has not yet granted final approval of the settlement.[65] The proposed Class Notice also apprises the Class Members and Aggrieved Employees of, *inter alia*, how their Individual Settlement Share and if applicable, their Individual PAGA Payment is calculated and the number of Workweeks and/or PAGA Pay Periods credited to them.[66] 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.

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[63] Settlement Agreement, Exh. A.
[64] Ibid.
[65] Ibid.
[66] Ibid.

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IX. APPOINTMENT OF THE ADMINISTRATOR

The Parties have selected ILYM Group, Inc., as the Administrator. Within 14 calendar days after receiving the Class Data, the Administrator shall mail the Class Notice to all Class Members identified in the Class Data.[67] Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS.[68] If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained.[69] The deadlines for Class Members' written objections to the Class Settlement, disputes regarding Workweeks and/or Pay Periods, and Requests for Exclusion from the Class Settlement will be extended an additional fourteen (14) calendar days beyond the sixty (60) calendar days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed.[70] The Administrator will receive and process Requests for Exclusion, Objections, and any Workweeks/PAGA Pay Period Disputes.[71] In addition, the Settlement Administrator will be responsible for printing, distributing, and tracking Class Notices and other documents for the Settlement; calculating and distributing payments due under the Settlement; issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances; providing necessary reports and declarations; and other duties and responsibilities to process the Settlement and as requested by the Parties.[72] The Administration Costs are currently estimated to be $7,500.00 and will be paid out of the Total Settlement Amount, subject to approval by the Court.[73] Accordingly, Plaintiff respectfully requests that the Court appoint ILYM Group, Inc. as the 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.

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[67] Settlement Agreement, ¶ 7.4.2.
[68] *Id.*, ¶ 7.4.3.
[69] Ibid.
[70] *Id.*, ¶ 7.4.4.
[71] *Id.*, ¶¶ 7.5, 7.6 & 7.7.
[72] *Id.*, ¶ 7.8.
[73] *Id.*, ¶ 3.2.3.

X. CLASS REPRESENTATIVE ENHANCEMENT AWARD

Plaintiff respectfully requests that the Court appoint her as the Class Representative and preliminarily approve the Enhancement Award in an amount up to $10,000.00.[74] 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 an Enhancement Award include: (1) the risk to the Class Representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the Class Representative; (3) the amount of time and effort spent by the Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the Class Representative as a result of the litigation. *Id*.

The Enhancement Award is fair and appropriate. Plaintiff spent a substantial amount of time and effort in producing relevant documents and past employment records and providing the facts and evidence necessary to attempt to prove the allegations.[75] Plaintiff was available whenever Class Counsel needed her and actively tried to obtain and provide information that would facilitate the pursuit of the class and PAGA claims.[76] Accordingly, it is appropriate and just for Plaintiff to receive $10,000.00 for her services on behalf of the Class, Aggrieved Employees, and the State of California, in addition to her Individual Settlement Payment and Individual PAGA Payment.

XI. CONCLUSION

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

[74] Settlement Agreement, ¶ 3.2.1.
[75] Slinger Decl., ¶ 18; Acevedo Decl., ¶ 4.
[76] Slinger Decl., ¶ 18; Acevedo Decl., ¶¶ 3-6.

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

Dated: August 8, 2025 **LAWYERS *for* JUSTICE, PC**

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