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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

JANE A. BARRETT, an individual, on behalf of herself and others similarly situated, Plaintiff, v. CALIFORNIA WATER SERVICE GROUP, a Delaware corporation and DOES 1 through 50, inclusive, Defendants.	Case No.: 24CV431249 <u>CLASS ACTION</u> <u>Assigned for All Purposes To:</u> To: Hon. Charles F. Adams Department: 7 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND RELEASE** *[Filed concurrently with Notice of Motion and Declarations of Enoch J. Kim, Jane A. Barrett, Lisa Mullins, and Jarrett Gorlick]* Date: September 25, 2025 Time: 1:30 p.m. Dept.: 7 Original Complaint Filed: February 21, 2024 First Amended Complaint Filed: April 26, 2024 Second Amended Complaint Filed: August 6, 2024 Trial Date: None Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jane A. Barrett ("Plaintiff") seeks preliminary approval of a putative class and representative action settlement with Defendant California Water Service Group ("Defendant" or "Cal Water") on behalf of herself and a proposed class of all current and former hourly non-exempt Cal Water employees within the State of California who were (1) hired by Cal Water at any time on or after August 9, 2022, or (2) given the scope of a release in a prior settlement, *Hicks v. California Water Service* (Santa Clara County Superior Court, Case No. 21CV376394), hired by Cal Water at any time on or before August 8, 2022 and who remained employed by Cal Water on or after December 1, 2022. The Settlement Class shall not include any individuals hired by Cal Water after May 9, 2025. After participating in mediation and accepting the mediator's proposal, the Parties reached a settlement in the gross amount of $650,000.00 to resolve this lawsuit, subject to this Court's final approval.

Pursuant to California Rules of Court 3.769(d) and (e), Plaintiff respectfully requests that this Court grant preliminary approval of the proposed settlement agreement between the Parties, the terms of which are set forth in the Class Action Settlement and Release ("Settlement Agreement" or "Settlement"). (*See* Declaration of Enoch J. Kim ("Kim Decl."), **Exhibit 1**). The Settlement Agreement was reached after the Parties engaged in informal and formal discovery and investigation, participated in mediation with a skilled mediator, and negotiated at arms-length through experienced counsel on both sides.

As discussed below, the proposed Settlement Agreement satisfies all criteria for preliminary approval under California law and falls well within the range of reasonableness. Indeed, the Settlement was the product of hard-fought negotiations with the assistance of an experienced mediator. The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. Accordingly, Plaintiff respectfully requests that the Court: (1) grant preliminary approval of the settlement; (2) conditionally grant certification of the proposed Settlement Class solely for the purposes of settlement; (3) approve the appointment of ILYM Group, Inc ("ILYM") as Settlement Administrator; (4) authorize the Settlement Administrator to send the Notice of Class and PAGA Action Settlement ("Class Notice") to the Settlement Class Members; (5) appoint Plaintiff as the Class Representative and Plaintiff's Counsel as Class Counsel; and (6) schedule a final fairness and approval of settlement hearing.

II. STATUS OF THE LITIGATION

A. Procedural History

On February 21, 2024, Plaintiff Jane A. Barrett commenced a putative class action by filing a Complaint alleging causes of action against Defendant for: (1) failure to pay minimum wages in violation of Labor Code §§ 1194, 1197; (2) failure to pay all wages and overtime owed in violation of Labor Code §§ 510, 1194, 1197, 1197.1 and 1198; (3) failure to pay meal period premiums at the regular rate of pay in violation of Labor Code §§ 512 and 226.7 and the applicable Industrial Welfare Commission ("IWC") Wage Order; (4) failure to pay rest break premiums at the regular rate of pay in violation of Labor Code § 226.7 and the applicable IWC Wage Order; (5) failure to pay all wages timely upon separation of employment in violation of Labor Code §§ 201-203; (6) failure to timely pay earned wages during employment in violation of Labor Code § 204; (7) failure to provide complete and accurate wage statements in violation of Labor Code § 226; (8) failure to reimburse and indemnify employees for losses and expenditures in violation of Labor Code §§ 2800 and 2802; (9) unlawful collection of wages in violation of Labor Code § 221; and (10) violations of California Business & Professions Code § 17200 *et seq*. ("the Action") (Kim Decl., ¶ 3.)

Pursuant to Labor Code section 2699.3, subd(a), Plaintiff Jane A. Barrett gave timely written notice to Defendant and California's Labor and Workforce Development Agency ("LWDA") by sending her PAGA Notice on February 21, 2024 (LWDA-CM-1012307-24). (*Id*. at ¶ 4.) On April 26, 2024, Plaintiff filed a First Amended Complaint adding a cause of action for penalties under PAGA, Labor Code § 2698, *et seq*. (*Id*.) On August 6, 2024, Plaintiff filed a Second Amended Complaint, amending the putative class definition. (*Id*.)

After meeting and conferring regarding the claims and defenses in the Action, the Parties agreed to explore resolution via mediation and engage in informal and formal discovery prior to mediation. (*Id*. at ¶ 5).

B. Plaintiff's Claims and Defendant's Denials

Plaintiff's claims are based on Defendant's alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to reimburse business expenses, unlawful deduction of wages, failure to timely pay wages during employment, the resulting failure to pay final wages when required and failure to provide accurate wage statements, and largely derivative claims under the UCL and PAGA. (*Id*. at ¶ 6.)

Specifically, Plaintiff alleges Defendant's policy and practice of requiring systematic off-the-clock work flowed in part from their unlawful timekeeping procedures. (Kim Decl., ¶ 7.) Plaintiff alleges that Defendant required that Plaintiff and Settlement Class Members clock in via a timekeeping application on their cellphone or on a desktop computer. (*Id*.) Plaintiff alleges that Defendant did not require that Plaintiff and Settlement Class Members record their actual time worked to the minute, despite having the capability to do so. (*Id*.) Plaintiff also alleges that Defendant required Plaintiff and Settlement Class Members to work prior to the start of their scheduled shifts and after the end of their scheduled shifts, including entering a single-lane gated facility often delayed by utility vehicles, searching for parking in the inner and outer lots prior to clocking in, walking through multiple access points with a badge to get to the desk, organizing files, and waiting for the computer to bootup. (*Id*.) Plaintiff further alleges that Defendant implemented an unlawful time policy and practice, which required that Plaintiff and Settlement Class Members reconcile their clock-in and/or clock-out times as much as needed to unlawfully round down their actual timekeeping entries to conform to their scheduled hours in order to avoid overtime pay. (*Id*.)

Defendant contends that these claims are not suitable for class treatment given the individualized issues they raise and the manageability difficulties. (Kim Decl., ¶ 8.) Defendant also argues it prohibits off-the-clock work, requires employees to accurately record all hours worked in Defendant's timekeeping system, always instructs its employees to accurately record their time, and that any alleged off-the-clock work was minimal and performed without Defendant's knowledge. (*Id*.) Defendant further contends that Plaintiff and Settlement Class Members were paid all overtime wages and that Defendant did not intentionally and improperly round Plaintiff and Settlement Class Members' time to avoid paying overtime wages. (*Id.*)

Plaintiff also alleges that Defendant failed to always provide Plaintiff and Settlement Class Members with compliant meal and/or rest breaks. (*Id.* at ¶ 9.) For instance, Plaintiff alleges that she regularly worked shifts exceeding ten hours. (*Id.*) However, she contends that Defendant failed to provide two meal periods as meal periods were contingent on whether coverage was available. (*Id.*) In addition, Plaintiff alleges that Defendant's timekeeping record required Plaintiff and Settlement Class Members to reconcile and adjust meal breaks to reflect record-compliant meal breaks without regard to whether they were actually taken on time or for the full duration or were interrupted by management demands and other work requirements. (*Id.*) Plaintiff further alleges that Defendant failed to pay the legally required meal break premium at the regular rate of pay whenever meal periods were missed, interrupted, short, and/or late. (*Id.*) With regard to rest breaks, Plaintiff similarly alleges that Plaintiff and Settlement Class Members were unable to take two duty-free rest periods during their work shifts of at least eight hours because they were either interrupted or missed. (*Id.*) She also alleges that on occasions when Defendant authorized and permitted Plaintiff and Settlement Class Members to take a first rest break, they were not permitted to take a second or a third break, and those that were provided were often late and interrupted by job duties and requirements. (*Id.*) Plaintiff also alleges that Defendant failed to pay the legally required rest break premium at the regular rate of pay whenever rest periods were missed, interrupted, short, and/or late. (*Id.*)

Defendant contends that Plaintiff and Settlement Class Members were given a reasonable opportunity to take their meal periods. (Kim Decl., ¶ 9.) Defendant further contends that Plaintiff and Settlement Class Members received a full hour for their meal break every day and that Defendant goes above and beyond minimum requirements, on top of paying a meal period premium if an employee is unable to take their meal period before the fifth hour. (*Id.*) Similarly, Defendant maintains that it provided the reasonable opportunity for Plaintiff and Settlement Class Members to take duty-free rest breaks. (*Id.*)

Plaintiff additionally alleges Defendant issued wage statements to Plaintiff and the Settlement

Class Members that did not accurately list all hours worked by omitting off-the-clock work, unlawful rounding, and inaccurately listing applicable hourly rates. (Kim Decl., ¶ 10.) Further, Plaintiff alleges that Defendant failed to provide all legally requisite information on wage statements. (*Id.*) For instance, Plaintiff's wage statements list "California Water Service" as her employer; however, the company is listed slightly differently on the California Secretary of State website: "California Water Service Group" or "California Water Service Company." (*Id.*)

Defendant challenged Plaintiff's claim for Labor Code § 226(e) penalties, including by arguing they were merely derivative of the other claims that lacked merit, and Plaintiff's failure to prove the underlying claims could result in the dismissal of these derivative claims. (Kim Decl., ¶ 10.) Defendant also maintains that it did not knowingly and intentionally commit these alleged violations. *See, e.g.,* Labor Code § 226(e) (recovery of penalties requires showing there was "a knowing and intentional failure by an employer"). (*Id.*)

Additionally, Plaintiff alleges that Defendant required Plaintiff and Settlement Class Members to use their personal mobile phone devices for work purposes, such as downloading and using a timekeeping mobile application, for which they were not reimbursed. (*Id.* at ¶ 11.) Defendant maintains that Plaintiff and Settlement Class Members were not required to download or use the timekeeping mobile application and that any unreimbursed business expenses pertaining to personal cell phone usage were not necessary expenditures as required by Labor Code section 2802. (*Id.*)

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement purposes only. (*Id.* at ¶ 12.) However, after careful consideration, Defendant has concluded that further litigation would require undue cost and burden, and that it is therefore desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein. (*Id.*)

C. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. (Kim Decl., ¶ 13.)

This required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to the above-described research into the various legal issues involved in the case. (*Id.*) After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the Action, including (1) conducting informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff regarding potential Settlement Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendant; and (7) reviewing information provided by Defendant in response to informal discovery and in advance of the mediation. (*Id.*) The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts. (*Id.*)

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (*Id.* at ¶ 14). After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

D. Settlement Efforts

On February 11, 2025, the Parties participated in an all-day mediation with Mark S. Rudy, Esq., a respected and highly experienced mediator in wage and hour class actions. (Kim Decl., ¶ 15.) During mediation, counsel for Plaintiff and Defendant discussed all aspects of the case, including the risks of litigation, the risks to both Parties, and the law and how it applied to the facts of this case. (*Id.*) Following a full day of mediation, the mediator issued a mediator's proposal which the Parties accepted on March 10, 2025, and agreed to general settlement terms to resolve the lawsuit. (*Id.*) The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement. (*Id.*)

Based on their own independent investigations and evaluations, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and terms set forth herein, considering the representative and class claims, and the risk of loss, is fair, reasonable, and adequate in light of all known facts and circumstances, and is in the best interests of the Settlement Class. (*Id.* at ¶ 16). Class Counsel is also of the opinion that the total consideration and payment set forth in this Settlement Agreement is adequate in light of the uncertainties surrounding the risk of further litigation, the possibility of losing class certification, that the PAGA claim could be deemed unmanageable, and the defenses that Defendant has asserted and/or could assert as to the substantive merit of the claims. (*Id.*) Based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating wage and hour class action cases, the Settlement was the product of a non-collusive settlement process and compromises in the interest of reaching a full and complete settlement. (*Id.*) As a result, Class Counsel has determined that the Settlement set forth in this Settlement Agreement is in the best interests of the Settlement Class. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay $650,000.00 ("Gross Settlement Fund") on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the Operative Complaint on behalf of the proposed Settlement Class. (Kim Decl. ¶ 17, Exhibit 1, Settlement Agreement, ¶ 16.) The Settlement Agreement defines "Settlement Class Members" as "all current and former hourly non-exempt Cal Water employees within the State of California who were hired by Cal Water at any time on or after August 9, 2022, or hired by Cal Water at any time on or before August 8, 2022, who remained employed by Cal Water on or after December 1, 2022." (*Id.* at ¶ 36.) The Settlement Class shall not include any individuals hired by Cal Water after May 9, 2025. (*Id.*) The Class Period is from August 9, 2022 to May 9, 2025. (*Id.* at ¶ 7.)[1] The "Net Settlement Amount" means the portion of the Gross Settlement Fund remaining after

[1] For those employees hired on or before August 8, 2022 and who are in the Class because they remained employed by Cal Water on or after December 1, 2022, as long as they did not opt out of the settlement class in *Hicks v. California Water Service* (Santa Clara County Superior Court, Case No. 21CV376394), their Workweeks shall be calculated as the number of weeks worked between December 1, 2022 and May 9, 2025, rather than the full Class Period, given the terms of the release in *Hicks*.

deducting the Class Representative Enhancement Payment, Attorneys' Fees and Costs, Settlement Administration Costs, and the PAGA Settlement Amount. (*Id.* at ¶ 19.) These amounts are detailed as follows:

- Attorneys' Fees: Up to one-third (1/3) of the Gross Settlement Fund, or **$216,667.67**, to Class Counsel (Kim Decl. ¶ 17, Exhibit 1, Settlement Agreement, ¶ 44);
- Attorneys' Costs: Up to $**40,000.00** to Class Counsel for reimbursement of reasonable expenses incurred to prosecute the Action (*Id.*);
- Class Representative Enhancement Payment: Up to **$5,000.00** to Plaintiff as an award for her service as the Class Representative (*Id.* at ¶ 8);
- Settlement Administration Costs: Up to **$20,000.00** to the Settlement Administrator for its fees and costs to administer the Settlement[2] (*Id.* at ¶ 34); and
- PAGA Settlement Amount: **$20,000.00** for settlement of claims for civil penalties under PAGA, with 25% allocated to the Individual PAGA Payments ($5,000.00) and 75% allocated to the LWDA ($15,000.00) to be paid to the LWDA ("LWDA Payment") (*Id.* at ¶ 23.)

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **$348,332.33**. (Kim Decl. ¶ 18.) Each Settlement Class Member's share of the Net Settlement Amount ("Individual Settlement Payment") will be calculated by dividing the final Net Settlement Amount by the Workweeks of all Participating Settlement Class Members to yield the "Final Workweek Value," and multiplying each Participating Settlement Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Payment. (Kim Decl. ¶ 18, Exhibit 1, Settlement Agreement, ¶ 48.b.) For the approximately 775 Settlement Class Members (if no exclusions), the average Individual Settlement Payment, using a straight average, is **$449.46**. (Kim Decl. ¶ 18.) If the Court approves a lesser amount

[2] The Settlement Administrator's bid, attached as Exhibit C to the Declaration of Lisa Mullins of ILYM Group, Inc. in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement and Release, states that the estimated fees and expenses for management of this Settlement is $10,950.00. However, the Parties have included a buffer of $9,050.00, for a total of $20,000.00, to account for any unexpected expenses incurred by the Settlement Administrator.

for any of the above requested allocations from the Net Settlement Amount, none of the Gross Settlement Amount would revert to Defendant. (Kim Decl. ¶ 18, Exhibit 1, Settlement Agreement, ¶ 43.) Instead, the remainder will be added to the Net Settlement Amount to be distributed to Participating Settlement Class Members. (*Id.*)

Within fifteen (15) calendar days after the entry of the Court's order granting Preliminary Approval, Defendant will provide the confidential Class List to the Settlement Administrator. (Kim Decl. ¶ 19, Exhibit 1, Settlement Agreement, ¶ 53.) The Settlement Administrator will mail the Class Notice, attached to the Declaration of Enoch J. Kim as Exhibit A, within fifteen (15) calendar days to all Settlement Class Members identified in the Class List via regular First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator. (*Id.* at ¶ 54.) The Class Notice includes a summary of the case and settlement terms and provides Settlement Class Members with detailed instructions on how to exclude themselves, object to the Settlement, and dispute the number of Workweeks and/or pay periods attributed to each Settlement Class Member per Defendant's records. (Kim Decl. ¶ 19, Exhibit 1, Settlement Agreement, Exhibit A, Class Notice.) Settlement Class Members will have sixty (60) calendar days from the mailing of the Class Notice (plus an additional fifteen (15) calendar days for Settlement Class Members whose Class Notice is re-mailed) to submit a Request for Exclusion, Notice of Objection, or Workweeks Dispute ("Response Deadline"). (Kim Decl. ¶ 19, Exhibit 1, Settlement Agreement, ¶¶ 33, 58, 59, 64.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. (*Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462, 474.) Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, 29 Cal. 3d at 473.) The decision to certify a class is a procedural one and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.)

To certify a settlement class, the Court must find the two primary requirements for maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. (See *Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 704.) These criteria are met here for the reasons set forth below.

A. There Is a Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. (See *Vasquez* , *supra*, 4 Cal. 3d at pp. 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.) Settlement Class members are "ascertainable" where they may be readily identified without unreasonable expense or time.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Settlement Class Members are all current and former hourly non-exempt Cal Water employees within the State of California who were hired by Cal Water at any time on or after August 9, 2022, or hired by Cal Water at any time on or before August 8, 2022, who remained employed by Cal Water on or after December 1, 2022. (Kim Decl., ¶ 21, Exhibit 1, Settlement Agreement, ¶¶ 7, 36.) The Settlement Class shall not include any individuals hired by Cal Water after May 9, 2025. (*Id.*) Defendant has identified 775 Settlement Class Members based on review of its payroll and personnel records. (Kim Decl., ¶ 21.)

Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

B. There Is a Well-Defined Community of Interest

A community of interest is established by the predominance of common issues of law and fact. (See *Vasquez*, *supra*, 4 Cal. 3d at p. 811.) The requirement of a community of interest:

> [D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered ... The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover subsequent to the rendering of any class judgment which determined in plaintiffs' favor whatever questions were common to the class.

(*Id.* at 809.)

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Settlement Class is united in its proof. (Kim Decl., ¶ 22.) Because Plaintiff has alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." (See *In re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518 *In re NASDAQ Market-Makers Antitrust Litigation* 172 F.R.D. 119, 123 (SDNY 1997)). California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen* (1987) 191 Cal.App.3d 1341, 1350.) This inference "'eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her.'" (*Id.* at p. 1351 [quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753. emphasis added].]

This action involves, *inter alia*, a determination about Defendant's alleged failure to provide meal and rest periods, failure to pay wages and overtime due to allegedly common off-the-clock work and time rounding policies, failure to reimburse business expenses, unlawful deduction of wages, failure to timely pay wages during employment, the resulting failure to pay final wages when required and failure to provide accurate wage statements, and largely derivative claims under the UCL and PAGA. (Kim Decl., ¶ 22.) Plaintiff contends Defendant's practices affected Settlement Class Members in the same way and present questions that are suitable for common adjudication because all Settlement Class Members were subject to the same employment policies and practices. (*Id.*) The outcome of litigation in this matter depends upon questions that are common to Settlement Class Members. (*Id.*)

C. The Named Plaintiff's Claims Are Typical

A class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative's claims must be "typical" but not necessarily identical to the claims of other class members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ["[I]t has never been the law in California that the class representative must have identical interests with the class members."].) Thus, it is not necessary that the class representative should have personally incurred all the damages suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that Plaintiff's claims are typical of Settlement Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Kim Decl., ¶ 23.) Thus, Plaintiff's claims are typical of the claims of the putative Settlement Class. (*Id.*)

D. Adequacy of Class Counsel and Class Representative

As detailed below, Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (Kim Decl., ¶¶ 24, 66-70.) The Class Representative's interests are aligned with those of the Settlement Class Members, as she has suffered the same injuries as the Settlement Class Members and has no conflicts of interest. (*Id.* at ¶ 24.) Plaintiff has not shrunk from this responsibility. (*Id.*) Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this Action and effectuating a settlement. (*Id.*) Therefore, Class Counsel and the Class Representative are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the Settlement Class. (Kim Decl., ¶ 25.) As explained, *supra*, Plaintiff alleges there are common issues of law and fact given that Plaintiff and all Settlement Class Members were subjected to the same policies and pay practices during the relevant time period. (*Id.*) Plaintiff and Settlement Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendant. (*Id.*) Plaintiff alleges that these issues are suitable for common adjudication because all Settlement Class Members were allegedly subject to the same employment policies, and Plaintiff contends the practices applied uniformly to all Settlement Class Members. (*Id.*)

Plaintiff contends that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy as there is little interest or incentive for Settlement Class Members to individually control the prosecution of separate actions. (Kim Decl., ¶ 26.) Although the alleged injury resulting from Defendant's policies and practices is significant, the cost of individually litigating each such case against Defendant would easily exceed the value of any relief that could be obtained by any one Settlement Class Member individually. (*Id.*) If Settlement Class Members are forced to litigate their claims individually, it would potentially result in over 775 individual actions against Defendant, each for relatively small amounts. (*Id.*) Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id.*)

V. THE THREE STEP APPROVAL PROCESS

California Rule of Court 3.769 requires court approval of class action settlements. Preliminary approval is merely the first of three steps that comprise the approval procedure for settlements of class actions. (See Manual for Complex Litigation, Second § 30.44 (1993); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The second approval step is the dissemination of notice of the settlement to all Class Members. (*Ibid.*) The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented and Class Members may be heard. (*Ibid.*)

The determination of whether a settlement should be preliminarily approved requires "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) However, the record need not contain an explicit statement of the maximum theoretical amount that the class could recover. (See *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)186 Cal. App. 4th 399, 409 ["*Kullar* does not,… require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."].) "If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement." (Manual for Complex Litigation, Second § 30.44, at 229.)

In deciding whether to approve a proposed class action settlement, the Court must find that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of approval." (*Dunk*, *supra*, 48 Cal.App.4th at pp. 1801-02.) The trial court considers all relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement." (*Ibid.*) The Settlement satisfies all of these requirements.

VI. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

The Court's decision to preliminarily approve a settlement is granted great deference, as an exercise within its broad discretion. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234-235.) As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. (See, e.g., *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 ["Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system."]); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 ["[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned."].) Applying the above factors, the proposed Settlement provides a substantial benefit to the Settlement Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations

The proposed Settlement was reached as a result of arm's length negotiations after the completion of pertinent discovery and the exchange of necessary class data. (Kim Decl. ¶ 28.) The negotiations have been, at all times, adversarial and non-collusive in nature. (*Id.*; 5 Newberg on Class Actions § 13:45 (5th ed.) [due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."].) Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. (*Id.*) As discussed above, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. (*Id.*) Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. (*Id.*) Assistance from a well-respected mediator ensured negotiations between the Parties were non-collusive and well-informed. (*Id.*)

B. Extent of Discovery and Stage of Proceedings

As stated above, the Parties engaged in substantial informal and formal discovery, including the deposition of Plaintiff and exchanging information, documents, and voluminous data, before the Settlement was reached to allow them to fully evaluate the class claims and Defendant's defenses, as well as the likely outcomes, risks, and expense of pursuing litigation. (*Id.* at ¶ 29.) This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses in this case. (*Id.*)

C. The Strength of Plaintiff's Case and the Risk, Expense, Complexity and Likely Duration of Any Litigation

As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense and delay of continued litigation. (*Id.* at ¶ 30.) Although the Parties engaged in significant informal and formal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not settled. (*Id.*) This would have required expenditure of substantial time and resources by the Parties that would have very likely spanned several years. (*Id.*) Even if Plaintiff were to certify the class, the Parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. (*Id.*) This Settlement avoids those risks and the accompanying expense. (*Id.*)

D. The Risk of Maintaining Class Action Status Through Trial

Plaintiff has not yet filed her motion for class certification, and as such, the extent to which Plaintiff's proposed class is certifiable is somewhat speculative. (Kim Decl. ¶ 31.) Absent a settlement, there is a risk that there would not be a certified class at the time of trial, or if there were, it could consist of a significantly smaller group of employees than the proposed Settlement Class resulting in less overall recovery. (*Id.*)

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. (*Id.* at ¶ 32.) Cases like *Duran v. U.S. Bank Nat. Assn*. (2014) 59 Cal. 4th 1, 34, address the complexity of using statistical samples in class actions and demonstrate that decertification is a real risk that Class Counsel must consider. (*Id.*) A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. (*Id.*) Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Settlement Class Members who have already waited years for resolution in this matter. (*Id.*) Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of compromise accounting for those risks and uncertainty. (*Id.*)

E. The Presence of a Governmental Participant

Class Counsel will be submitting the Settlement Agreement to the LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(l)(2). (*Id.* at ¶ 33.)

F. The Amount Offered in Settlement is Fair Given the Potential Value of the Claims

If the Court approves the requested allocations from the Gross Settlement Fund of $650,000.00 as addressed above, the Net Settlement Amount is estimated to be $348,332.33. (*Id.* at ¶ 18.) There are approximately 775 total Settlement Class Members. (*Id.*) If there are no exclusions from the Settlement Class, the average Individual Settlement Payment share per Settlement Class

Member, using a straight average, is $449.46. (*Id.*)

Based on an analysis of Plaintiff's time and pay records and a sampling of time and pay records for the Settlement Class, Plaintiff estimated the potential exposure for the main claims as follows: $285,007.50 for meal period violations; $738,464.20 for rest period violations; $225,573.00 for unpaid wages, including minimum and overtime wages, due to off the clock work; $258,100.00 in wage statement penalties; $246,689.10 in waiting time penalties; $1,550.00 for reimbursement for necessary business expenditures; and $131,005.00 for PAGA penalties. (*Id.* at ¶¶ 36-57.) As such, the total estimated exposure Defendant could face is $1,886,388.80.

The Gross Settlement Fund of $650,000.00 represents a recovery for the Settlement Class Members of approximately 34.46% of the total realistic exposure Plaintiff estimated that Defendant could face on the main claims in this case. (*Id.* at ¶ 60.) Plaintiff and Class Counsel submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial.

G. A Balance of Risk Factors and *Kullar* Analysis Support Approval

In deciding whether to approve the settlement, the Court must balance these risk factors against an "understanding of the amount in controversy and the realistic range of outcomes of the litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09.) The court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case …." (*Munoz*, *supra*, 186 Cal.App. 4th at p. 408.) Plaintiff's counsel used the comprehensive data and documents provided to perform an analysis of the potential liability exposure Defendant faced on Plaintiff's main class-wide claims, establishing the realistic range of outcomes in this case. As noted above, the Gross Settlement Fund represents a recovery of approximately 34.46% of the estimated total realistic exposure (Kim Decl., ¶ 60.)

There was a very real prospect that nothing would be recovered by the Settlement Class if litigation continued and class certification were ultimately denied. At the same time, further litigation would require the expenditure of significant time and financial resources, and there is always the possibility of adverse developments in the law and the likelihood of extended battles in both the trial court and courts of appeal. Settlement is a prudent compromise that benefits the Settlement Class Members promptly.

H. Experience and Views of Counsel

Experienced counsel, operating at arm's length, have weighed the strengths of the case, examined all the issues and risks of litigation, and endorsed the proposed Settlement. Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 66-70.) Class Counsel submits the Settlement is fair, adequate, and reasonable in view of the risks and other considerations addressed and is well-suited for final approval upon completion of the administration process. (Kim Decl., ¶ 71.)

VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND REASONABLE

"At the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class." (5 Newberg on Class Actions § 17:1 (5th ed.).)

Plaintiff is entitled to a reasonable service payment for her efforts and initiatives in bringing and helping to prosecute this Action. (Kim Decl., ¶ 62.) Plaintiff spent significant time better apprising herself of her rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the case and the law. (*Id.*)

Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel to discuss every aspect of her case. (*Id.*) Plaintiff provided Class Counsel with information about Defendant and about the industry generally, produced and reviewed documents, identified witnesses, consulted with Class Counsel regarding litigation strategy, provided discovery responses and produced documents in response to Defendant's formal discovery request, attended her deposition taken by Defendant, participated in the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement. (*Id.*)

In light of the foregoing, Class Counsel believes that the Class Representative Enhancement

Payment in the amount of $5,000.00 to the Class Representative is fair and reasonable. (*Id*.)

VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE SETTLEMENT CLASS MEMBERS

To be deemed proper, a notice must provide the Class Members with sufficient information to make an informed decision as to whether to accept or object to the settlement. (*Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314.) The notice must apprise the Class Members of the pendency of the action; reasonably convey information regarding the settlement and the Class Members' rights, entitlements, and obligations; and affords Class Members the opportunity to present their objections. (*Ibid.*)

The proposed Class Notice includes a summary of the case and settlement terms and provides Settlement Class Members with detailed instructions on how to exclude themselves, object to the Settlement, and dispute the number of Workweeks and/or pay periods attributed to each Settlement Class Member per Defendant's records. (Kim Decl., ¶ 64, Exhibit 1, Settlement Agreement, Exhibit A, Class Notice.)

The standard for determining the adequacy of notice is whether it has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) Here, the Class Notice will be sent via regular First-Class U.S. Mail to each of the Settlement Class Members based on Defendant's records. (Kim Decl., ¶ 64, Exhibit 1, Settlement Agreement, ¶ 54.) Within fifteen (15) calendar days after entry of the Court's order granting Preliminary Approval, Defendant will provide the confidential Class List to the Settlement Administrator. (Kim Decl., ¶ 64, Exhibit 1, Settlement Agreement, ¶ 53.) Within fifteen (15) calendar days after receiving the Class List, the Settlement Administrator will mail the Class Notices (Kim Decl., ¶ 64, Exhibit 1, Settlement Agreement, ¶ 54.)

IX. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED

Class Counsel respectfully requests, without opposition from Defendant, an award of attorneys' fees of $216,667.67 (up to one-third of the Gross Settlement Fund) and reasonable litigation costs not to exceed $40,000.00, subject to approval by the Court. (Kim Decl., ¶¶ 17, 61.)

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Settlement Class. (Kim Decl., ¶¶ 66-70.) Class Counsel has incurred substantial hours in prosecuting this Action on a contingency basis and will not receive any compensation for their efforts until recovery is obtained for the Settlement Class. (Kim Decl. ¶ 61.) In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Settlement Class will confer a significant benefit to the Settlement Class. As such, the requested award of attorneys' fees and costs are reasonable.

X. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL

The Parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement;

2. Review and approve the Class Notice, attached to the Settlement Agreement as **Exhibit A**;

3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;

4. Enter an order conditionally certifying the Action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;

5. Preliminarily approve and appoint D.Law, Inc. to serve as Class Counsel for settlement purposes;

6. Preliminarily approve and appoint Plaintiff Jane A. Barrett as Class Representative;

7. Preliminarily approve and appoint ILYM Group, Inc. as the Settlement Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;

8. Preliminarily approve the proposed settlement's allocations for Attorneys' Fees and Costs, Class Representative Enhancement Payment, LWDA Payment, and Settlement Administration Costs;

9. Order Defendant to disclose to ILYM Group, Inc. each Settlement Class Member's full name; most recent mailing address and telephone number contained in Defendant's personnel

records; Social Security number; dates worked as hourly-paid or non-exempt employees of Defendant in California during the Class Period; information sufficient to calculate the number of Workweeks that each Settlement Class Member worked during the Class Period and the number of pay periods that each Allegedly Aggrieved Employee worked during the PAGA Period according to Defendant's records; and any other information needed to calculate Individual Settlement Payments as set forth in the Settlement Agreement;

10. Order ILYM Group, Inc. to mail the Class Notice to Settlement Class Members; and

11. Set a date for the Final Approval Hearing.

Dated: September 3, 2025

D.LAW, INC.

By ______________________________

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Alvin B. Lindsay
Enoch J. Kim
Arianna Razi
Attorneys for Plaintiff and Settlement Class