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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

ANGEL SOLIZ, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

vs.

DUST BOWL BREWING CO., LLC, a
California limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: CV-23-004243
Honorable Sonny S. Sandhu

Department 24

CLASS ACTION

Date: July 9, 2025

Time: 8:30 a.m.

Place: Dept. 24

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Declaration of Proposed Class Counsel
(Elizabeth Parker-Fawley and Aaron C.
Gundzik); Declaration of Proposed Class
Representative (Angel Soliz); Declaration
of Settlement Administrator (Nicole
Bench of ILYM Group, Inc.) and
[Proposed] Order filed concurrently
herewith]

Complaint Filed: July 28, 2023

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 9, 2025, at 8:30 a.m., or as soon thereafter
3 as the matter may be heard before the Honorable Sonny G. Sandhu in Department 24 of the
4 Superior Court of the State of California, for the County of Stanislaus, located at 801 10th
5 Street, Modesto, California 95354, Plaintiff Angel Soliz (“Plaintiff”) will, and hereby does,
6 move for an order:

7 1. Granting preliminary approval of the proposed class action settlement
8 described herein and as set forth in the parties’ Stipulation of Class Action Settlement
9 (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as “**EXHIBIT 3**” to the
10 Declaration of Elizabeth Parker-Fawley in Support of Plaintiff’s Motion for Preliminary
11 Approval of Class Action Settlement, including, but not limited to, the proposed total
12 settlement amount, means of allocation and distribution of funds, Attorneys’ Fees and Costs
13 to Class Counsel, Service and Release Award to Plaintiff, and Settlement Administration
14 Costs to the Settlement Administrator;

15 2. Granting preliminary approval of a class action settlement pursuant to Rules
16 of Court 3.766 and 3.769;

17 3. Provisionally certifying the proposed class for settlement purposes only as an
18 opt-out class action under Section 382 of the Code of Civil Procedure, with the Class
19 defined as all current and former hourly-paid or non-exempt employees of Defendant in
20 California employed during the Class Period during the Class Period (June 28, 2019 through
21 June 1, 2024).

22 4. Preliminarily appointing Plaintiff Angel Soliz as the class representative for
23 the Class;

24 4. Preliminarily appointing Edwin Aiwarzian, Joanna Ghosh, Elizabeth Parker-
25 Fawley, Aaron C. Gundzik and Rebecca G. Gundzik as Class Counsel for the Class;

26 5. Approving ILYM Group, Inc. (“ILYM”) as the Settlement Administrator;

27 6. Approving the form of the Notice of Proposed Class Action Settlement
28 (“Class Notice”), attached as “**EXHIBIT A**” to the [Proposed] Order Granting Preliminary

1 Approval of Class Action and Settlement and Hearing Date for Court Approval to be sent to
2 the class and authorizing its dissemination to all class members via U.S Mail;

3 7. Scheduling a subsequent hearing for final approval of the settlement,
4 including approval of PAGA penalties in the amount of one hundred thousand dollars
5 (\$100,000.00), 75% of which will be paid to the California Labor and Workforce
6 Development Agency (“LWDA”), with the remaining 25% paid to PAGA Members,
7 approval of a Service and Release award to the class representative not exceeding five
8 thousand dollars (\$5,000.00), for costs of settlement administration not exceeding ten
9 thousand dollars (\$10,000), for costs and expenses to Class Counsel not exceeding twenty-
10 five thousand dollars (\$25,000.00), for an award of attorneys’ fees to Class Counsel in an
11 amount not exceeding three hundred fifty thousand dollars (\$350,000); and

12 8. Granting such other and further relief as the Court may deem just and proper.

13 Plaintiff’s motion is based on this Notice of Motion and Motion, the concurrently-
14 filed Memorandum of Points and Authorities, the [Proposed] Preliminary Approval Order,
15 the Declarations of the proposed Class Counsel, Elizabeth Parker-Fawley and Aaron C.
16 Gundzik, the Declaration of Plaintiff Angel Soliz, the Declaration of Nicole Bench of ILYM
17 Group, Inc., the pleadings and other papers filed in this action, and such further argument or
18 evidence as may be considered at the hearing on the motion.

19 As this Motion will be unopposed, Plaintiff respectfully requests relief from the page
20 limit requirement set by California Rules of Court, Rule 3.1113(d).

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1 Plaintiff's motion is based on this Notice of Motion and Motion and the following
2 Memorandum of Points and Authorities, the [Proposed] Preliminary Approval Order, the
3 Declarations of the proposed Class Counsel, Elizabeth Parker-Fawley and Aaron C.
4 Gundzik, the Declaration of Plaintiff Angel Soliz, the Declaration of ILYM Group, Inc., the
5 pleadings and other papers filed in this action, and such further argument or evidence as may
6 be considered at the hearing on the motion.

7 DATED: June 9, 2025

GUNDZIK GUNDZIK HEEGER LLP

8
9 By: 

Rebecca G. Gundzik
Attorneys for Plaintiff Angel Soliz,
individually and on behalf of all others
similarly situated

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This is a wage and hour putative class action brought by Plaintiff Angel Soliz
4 (“Plaintiff”) against Defendant Dust Bowl Brewing Co., LLC (“Defendant”) on behalf of
5 Defendant’s current and former non-exempt employees. By way of this Motion, Plaintiff
6 seeks preliminary approval of the non-reversionary Stipulation of Class Action Settlement
7 (“Settlement,” “Settlement Agreement,” or “Agreement”), which will resolve this action in
8 its entirety. The key terms of the Agreement are as follows:

- 9 • Size of the Class: approximately 708 individuals.
- 10 • Gross Settlement Amount: One Million Dollars and Zero Cents (\$1,000,000.00),
11 exclusive of employer payroll taxes.
- 12 • Settlement Administration Costs: Ten Thousand Dollars and Zero Cents (\$10,000).
- 13 • Requested Class Representative Service and Release Award: Five Thousand
14 Dollars and Zero Cents (\$5,000.00).
- 15 • Requested Class Counsel’s Attorneys’ Fees: Three Hundred Fifty Thousand
16 Dollars and Zero Cents (\$350,000.00), which is thirty-five percent (35%) of the Gross
17 Settlement Amount.¹
- 18 • Requested Litigation Costs: Class Counsel’s Costs, not to exceed Twenty-Five
19 Thousand Dollars and Zero Cents (\$25,000.00).
- 20 • Estimated Net Settlement Amount: Five Hundred Ten Thousand Dollars and Zero
21 Cents (\$510,000.00).
- 22 • Average Estimated Individual Class Payment: \$720.34

23 Given the comparative strengths and weaknesses of Plaintiff’s claims and
24 Defendant’s defenses, as well as the inherent uncertainties of litigation, this settlement is
25 within the scope of what is fair, reasonable and adequate for the Class and should be

26 _____
27 ¹ Class Counsel’s Attorney’s Fees will be split between Lawyers for Justice, PC (80%) and
28 Gundzik Gundzik Heeger LLP (20%). This arrangement has been confirmed in a writing
between counsel and confirmed in writing by Plaintiff Soliz. Declaration of Elizabeth
Parker-Fawley (“Parker-Fawley Decl.”), ¶ 28, Ex. 4.

1 approved by the Court. Accordingly, Plaintiff, on behalf of himself and the Class, now seeks
2 an order:

- 3 • Granting preliminary approval of the settlement as being fair, reasonable and
4 adequate;
- 5 • Provisionally certifying the Class on an opt-out basis and for settlement purposes
6 only, and appointing Plaintiff Angel Soliz as the Class Representative and Aaron
7 C. Gundzik, Rebecca G. Gundzik, Edwin Aiwazian, Joanna Ghosh and Elizabeth
8 Parker-Fawley as Class Counsel;
- 9 • Entering the proposed Preliminary Approval Order, which is filed concurrently
10 herewith, and directing that the Notice of Settlement be mailed to the Settlement
11 Class Members;
- 12 • Appointing ILYM Group, Inc. (“ILYM”) as the Settlement Administrator;
- 13 • Finding that the proposed form and method of the Notice of Proposed Class
14 Action Settlement and Hearing Date for Court Approval (“Notice of Settlement”)
15 constitutes the best notice practicable under the circumstances and complies with
16 the requirements of Code of Civil Procedure Section 382 and due process; and
- 17 • Scheduling a final approval hearing approximately 140 days after the preliminary
18 approval hearing to decide, among other things, (i) whether the settlement should
19 be granted final approval; (ii) whether the proposed Order and Final Judgment
20 should be entered; (iii) the amount of Class Counsel’s Attorney’s fees and Class
21 Counsel’s Costs; (iv) the amount of the Class Representative’s Service and
22 Release Award; (v) approving the PAGA payment to the LWDA; and (vi)
23 approving the proposed fee of the Settlement Administrator.

24 **II. RELEVANT AND KEY FACTS**

25 **A. Relevant Facts Showing Settlement is Fair, Adequate and Reasonable**

26 **1. Investigation and Discovery**

27 Class Counsel has litigated the matter for nearly two (2) years and was actively
28 preparing the matters for class certification and trial. Parker-Fawley Decl., ¶ 22. In the

1 course of the litigation and in connection with the mediation and settlement discussions, the
2 parties exchanged extensive information and engaged in discussions regarding their
3 evaluations of the case and various aspects of the case, including but not limited to, the risks
4 and delays of further litigation, the risks to the parties of proceeding with class certification
5 and/or representative adjudication, the law relating to off-the-clock theory, regular rate, meal
6 and rest periods, and state wage-and-hour law and enforcement, as well as the evidence
7 produced and analyzed, and the possibility of appeals, among other things. *Id.* During all
8 settlement discussions, the Parties conducted their negotiations at arm's length in an
9 adversarial position. *Id.*

10 Arriving at a settlement that was acceptable to all Parties was not easy. Parker-
11 Fawley Decl., ¶ 22. Defendant and its counsel felt strongly about their ability to prevail on
12 the merits and at certification, and Plaintiff and Class Counsel believed that they would be
13 able to obtain class certification and prevail at trial. *Id.*

14 Class Counsel investigated the veracity, strength, and scope of the claims, and was
15 preparing the actions for class certification and trial. Parker-Fawley Decl., ¶ 23. Plaintiff
16 conducted significant investigation and informal discovery regarding the facts of the case,
17 including and not limited to, the exchange, review, and analysis of a large volume of
18 documents and data obtained from Defendant, Plaintiff, and other sources. *Id.* Class Counsel
19 reviewed and analyzed a sampling of Class Members' time and payroll data, Plaintiff's
20 personnel records, Defendant's employee handbooks, personnel forms, and earning
21 statements, among other information and documents. *Id.* Class Counsel interviewed Plaintiff
22 and other Class Members to gather facts and to identify potential witnesses. *Id.* Counsel for
23 the Parties also met and conferred on numerous occasions, e.g., to discuss issues relating to
24 the pleadings, and the production of documents and data prior to the mediation. *Id.* Class
25 Counsel also drafted pleadings and the mediation brief and prepared for and attended court
26 proceedings, mediation, and settlement negotiations, among other tasks.. *Id.* Counsel for the
27 parties have also extensively researched and investigated the applicable law, which is
28 constantly evolving as it relates to certification, off-the-clock theory, regular rate, meal and

rest periods, state wage-and-hour law and enforcement, Plaintiff's claims and damages, and Defendant's defenses thereto, as well as facts discovered. Parker-Fawley Decl., ¶ 24.

As set forth in the Declarations of counsel, Plaintiff's counsel all have significant litigation experience, having worked for many decades and have handled many wage and hour and representative actions. Parker-Fawley Decl., ¶¶ 16-20; Declaration of Aaron Gundzik ("Gundzik Decl."), ¶¶ 3-6.

2. Summary of Settlement Negotiations

On March 14, 2024, Plaintiff's counsel, as well as Defendant and its counsel, attended a mediation session with well-respected mediator, Hon. Raul Ramirez, a former state and federal judge and a well-respected mediator experienced in mediating complex labor and employment matters. After a full day of mediation, 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. Parker-Fawley Decl., ¶ 22.

3. Summary of Legal and Factual Bases for Plaintiff's Claims

During the Class Period, Defendant operated four taprooms throughout northern California. Plaintiff Soliz is a former employee of Defendant who worked from approximately June 2019 to January 2021 as an hourly-paid Back of the House Line Cook. First Amended Complaint, ¶ 25.

Plaintiff contended that Defendant failed to pay him and the Class Members overtime and minimum wages and associated premium pay, failed to provide compliant meal and rest periods and to pay associated premium pay, failed to timely pay wages during employment and upon termination of employment, failed to provide compliant wage statements, failed to maintain requisite payroll records, and failed to reimburse necessary business expenses, and thereby engaged in unfair business practices. Parker-Fawley Decl., ¶ 14. Plaintiff also asserted that Class Members were expected to perform similar job duties and were subject to the same or similar operations and employment policies, practices, and procedures. Additionally, Plaintiff asserted that Defendant's recordkeeping practices with

1 respect to Plaintiff and Class Members were substantially the same during the Class Period.
2 *Id.* As a result of said alleged uniform practices, Plaintiff claimed that the Class Members
3 were not paid all of the compensation that was owed to them by Defendant. *Id.*

4 **4. Risks, Expenses, Complexity and Duration if Settlement Not Approved**

5 Plaintiff's counsel were in possession of significant information prior to calculating
6 any damages in this case. Parker-Fawley Decl., ¶¶ 22-24. Accordingly, the settlement now
7 before the Court was reached at a stage where "the parties certainly have a clear view of the
8 strengths and weaknesses of their cases" sufficient to support the settlement. See *Boyd v.*
9 *Bechtel Corp.*, 485 F. Supp. 610, 617 (N.D. Cal. 1979).

10 After taking into account the sharply disputed factual and legal issues involved in the
11 lawsuit, the risks attending further prosecution, and the substantial benefits to be received
12 pursuant to the compromise and settlement of the action, Plaintiff's counsel concluded that
13 the settlement is in the best interests of the Settlement Class and is fair and reasonable.
14 Parker-Fawley Decl., ¶¶ 22-27. They also considered the possibility that the Class would not
15 be certified and factored in the additional delay in recovery for Class Members if the
16 settlement was rejected and the case went to trial. *Id.*

17 If the settlement is not approved, Plaintiff would need to move forward with
18 discovery and then move for class certification. Parker-Fawley Decl., ¶¶ 22-25. Defendant
19 would oppose certification on the grounds that their practices, policies, and procedures
20 complied with the law. Parker-Fawley Decl., ¶ 26. Plaintiff also faced the risk of the Court
21 finding that individualized issues predominate, such that the case would not be suitable for
22 class treatment. Parker-Fawley Decl., ¶ 25. And Plaintiff considered the possibility that
23 Defendant would not be able to pay a larger amount even if the matter proceeded to
24 certification and trial. *Id.*

25 **5. Risks of Maintaining Class Action Status**

26 Even if Plaintiff proceeded and the Class was certified, significant risks would
27 remain. At trial Defendant could interpose a successful defense which could either cause the
28 jury to reject Plaintiff's claims or award the Class only a small amount of the unpaid wages

1 and other damages sought. Parker-Fawley Decl., ¶¶ 22, 25. And, even if the Class ultimately
2 prevailed, Class Members would have to wait years before they received any payment from
3 the lawsuit. *Id.*

4 Plaintiff's counsel concluded that the settlement of \$1,000,000.00 represents a fair
5 and reasonable discount from the realistic recovery. Parker-Fawley Decl., ¶ 27. The
6 settlement provides a significant benefit for the Class which would not otherwise have been
7 available unless a settlement was reached. Plaintiff's counsel, who have significant
8 experience litigating these types of claims, are of the opinion that a gross settlement of
9 \$1,000,000 is within the ballpark of a fair, reasonable and adequate settlement. Parker-
10 Fawley Decl., ¶ 27; Gundzik Decl., ¶ 12.

11 **B. Facts Relevant to Class Certification (Numerosity, Ascertainability and**
12 **Community of Interest)**

13 There are approximately 708 Class Members. Parker-Fawley Decl., ¶ 13. The exact
14 number and identity of Class Members will be provided by Defendant in connection with its
15 duty to provide Class Data to the Settlement Administrator within ten (10) days after the
16 Court preliminarily approves the settlement. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.C. And, a
17 community of interest exists, as in the pleading, Plaintiff is claiming the same injuries based
18 upon the same alleged wage and hour policies as are the Class Members. Parker-Fawley
19 Decl., ¶ 14.

20 **C. Facts Relevant to Other Concerns**

21 Plaintiff's counsel have conferred with Defendant's counsel, and Defendant has
22 indicated that some of the Class Members are not proficient in English but are fluent in
23 Spanish. Gundzik Decl., ¶ 14. For that reason, the Notice of Settlement will be printed in
24 English and Spanish. *Id.*

25 **III. THE SETTLEMENT AGREEMENT**

26 **A. Class Member Definition and Release Periods**

27 The Class includes all current and former hourly-paid or non-exempt employees of
28 Defendant in California employed during the Class Period. Parker-Fawley Decl., ¶ 5; Ex. 3,

¶ II.C. The Class Period and the Class Release Period are the same, and are the period from July 28, 2019, through June 1, 2024. Parker-Fawley Decl., ¶ 5; Ex. 3, ¶ II.I.

B. Release of Claims

Members of the Class will provide releases to Defendant and its related entities. Parker-Fawley Decl., ¶ 5; Ex. 3, ¶¶ II.L, II.GG, VI. The scope of the release will be disclosed to the Class in the proposed Notice of Settlement. Parker-Fawley Decl., ¶ 5, Ex. A to Ex. 3. Any member of the Class who does not like the scope of the release (or the Settlement in general) can preserve his or her individual claims by timely submitting a written request to be excluded from the Settlement and Class. The release to be provided by the named Plaintiff will be broader and encompass all claims that he might have against Defendant. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ VI.C. The Release applies to all of the Released Parties. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶¶ II.GG, VI. The Released Claims are defined as:

all claims arising during the Class Period, under state, federal, and/or local law, arising out of the claims expressly pleaded in the First Amended Complaint and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been asserted based on the facts pleaded in the First Amended Complaint or are related to the facts asserted therein, including, but not limited to, all claims for: (1) failure to pay overtime wages and/or pay overtime wages at the correct rate under Labor Code Sections 510 and 1198; (2) failure to provide meal periods and/or pay meal period premiums under Labor Code Sections 226.7 and 512; (3) failure to provide rest periods and/or pay rest period premiums under Labor Code Section 226.7; (4) failure to pay minimum wages and/or pay minimum wages at the correct rate under Labor Code Sections 1194, 1197 and 1197.1; (5) failure to timely pay wages upon termination under Labor Code Sections 201, 202 and 203; (6) failure to timely pay wages during employment under Labor Code Sections 204 and 210; (7) failure to provide accurate, itemized wage statements (based on both direct and derivative theories of liability)

1 under Labor Code Section 226; (8) failure to maintain requisite employment and/or
2 payroll records under Labor Code Section 1174(d); (9) failure to reimburse business
3 expenses under Labor Code Section 2800, 2802; (10) failure to provide paid sick
4 leave and/or pay paid sick leave at the correct rate; and, (11) violation of California's
5 unfair competition law under Business and Professions Code Sec. 17200, *et seq.*, and
6 any and all related claims and penalties that arose during the Class Period. Class
7 Members shall not waive section 1542 of the California Civil Code.

8 Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ II.GG. The Release will be effective upon the Effective
9 Date (which is the date of the entry of the Final Approval Order and Judgment, if there are
10 no objections) and Defendant's payment of the full Gross Settlement Amount. Parker-
11 Fawley Decl., ¶ 5, Ex. 3, ¶ VI.A.

12 A separate release applies to the LWDA and PAGA Employees. Parker-Fawley
13 Decl., ¶ 5, Ex. 3, ¶ II.BB, VI.B. This release also applies to the Released Parties (*Id.*) and
14 will also be effective upon entry of the Effective Date and Defendant's payment of the Gross
15 Settlement Amount and Employer's Withholding Share. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶
16 VI.B.

17 Within ten (10) days following the Court's order granting preliminary approval of
18 the Settlement, Defendant will provide the Settlement Administrator with the Class Data.
19 Thereafter, the Settlement Administrator will provide anonymized Class Data to Class
20 Counsel so that they can confirm the workweek count and division of the Net Settlement
21 Amount among Class Members. Parker-Fawley Decl., ¶5, Ex. 3, ¶ IV.C. This information
22 will remain confidential and will not be disclosed to anyone, except as required to applicable
23 taxing authorities, pursuant to Defendant's express written authorization, by order of the
24 Court, or as otherwise provided for in this Agreement. *Id.*

25 **C. The Gross Settlement and Monetary Terms**

26 Defendant will pay a Gross Settlement Amount of \$1,000,000.00. After proposed
27 deductions, as approved by the Court, the Net Settlement Amount of approximately
28

1 \$510,000 will be available to distribute to settlement Class Members. Parker-Fawley Decl.,
2 ¶ 5, Ex. 3, ¶ I.F.

3 **D. Allocation and Funding of the Gross Settlement Amount**

4 If the Court grants final approval of the Settlement, no later than sixty (60) calendar
5 days after the Effective Date Defendant shall deliver the Gross Settlement Amount to the
6 Settlement Administrator. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.N. Within ten (10) calendar
7 days of Defendant's deposit of all funds due, the Settlement Administrator will pay
8 settlement payments to participating Settlement Class Members, the penalties awarded to the
9 PAGA Employees, the Court-approved Class Representative Service and Release Award,
10 the Court-approved award for Class Counsel's Attorneys' Fees and Class Counsel's Costs,
11 the LWDA Payment, the fees of the Settlement Administrator and the Employer's
12 Withholding Share. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.O and IV.S.²

13 At the final approval hearing, in addition to requesting that the Court grant final
14 approval to the settlement, the Court will be asked to approve the following deductions from
15 Defendant's settlement payment of \$1,000,000: (a) Class Counsel's attorneys' fees of 35%
16 of the Total Settlement Amount (\$350,000); (b) Class Counsel's actual litigation costs and
17 expenses, not to exceed \$25,000; (c) a Service and Release Award to the Representative
18 Plaintiff Angel Soliz in the amount of \$5,000; (d) a fee not to exceed \$10,000 to the
19 Settlement Administrator for administering the settlement; (e) an allocation of \$100,000 to
20 Plaintiff's PAGA claims (the "PAGA Amount"), seventy-five percent (75%) of which will
21 be paid to the California Labor and Workforce Development Agency (the "LWDA
22 Payment"), and the remaining twenty-five percent (25%) of which will be distributed to the
23 PAGA Employees; and (f) the Employer's Withholding Share. Parker-Fawley Decl., ¶ 5, Ex.
24 3, ¶ I.

25
26 ² The Settlement Agreement provides that the Employer's Withholding Share will be paid
27 from the Gross Settlement Amount. However, the Settlement Agreement also provides that
28 if the Court requires it, Defendant will separately pay the Employer's Withholding Share.
Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ II.O. And such requirement by the Court will not be a
basis to terminate the Settlement.

1 As compensation for his efforts, the Settlement Agreement provides that a Class
2 Representative Service and Release Award in the amount of \$5,000 will be requested for the
3 representative Plaintiff, Angel Soliz. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ I. This award is in
4 recognition of the significant time he expended pursuing this action and assisting efforts
5 with the case, and in recognition of the expanded general release that he is required to
6 provide, as part of the Settlement. Parker-Fawley Decl., ¶ 9. As an additional requirement to
7 receiving the proposed Class Representative Service and Release Award, Plaintiff is
8 required to sign a broad general release which includes a waiver of Section 1542 of the
9 California Civil Code. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ VI.C.

10 The Net Settlement Amount of approximately \$510,000 will be fully distributed to
11 Class Members based on the number of qualifying Workweeks they worked for Defendant.
12 Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.K.1. No amount of the Gross Settlement Amount
13 will revert to Defendant. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ I.

14 The Parties have agreed that the Settlement Administrator will determine each
15 Settlement Class Member's share of the available Net Settlement Amount (i.e., Individual
16 Settlement Share), in accordance with the Settlement Agreement and as follows:

17 The Net Settlement Amount shall be divided among and distributed to individual
18 Settlement Class Members using the following formula:

19 **(Individual Settlement Class Member's Qualifying Workweeks ÷ All**
20 **Settlement Class Members' Qualifying Workweeks) x (Net Settlement**
21 **Amount)**

22 Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.K.1.

23 The formula to be used is specified in detail in both the Settlement Agreement and
24 the Notice of Settlement which will be mailed to all of the Class Members. Parker-Fawley
25 Decl., ¶ 5, Ex. 3, ¶ IV.K.1, and Ex. A to Ex. 3. Based on a Class size of approximately 708
26 (Parker-Fawley Decl., ¶ 13), the Settlement Class Members will get, on average, about
27 \$720.34. Gundzik Decl., ¶ 13. Settlement payments will be paid to the Class Members
28 within 10 days of Defendant's deposit of the final payment of the Gross Settlement Amount

1 with the Settlement Administrator. Payment to each Settlement Class Member will be
2 allocated twenty percent (20%) to wages, to be reported on a W-2 form, and eighty percent
3 (80%) to penalties and interest. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.K.6. The portion
4 allocated to penalties and interest will be reported on an IRS Form 1099. *Id.*

5 **E. Notice Administration**

6 The settlement will be administered by ILYM Group, Inc. (“ILYM” or “Settlement
7 Administrator”). Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ II.NN; Decl. of Nicole Bench, ¶ 9, and
8 Ex. C thereto. Class counsel has no actual or potential conflicts of interest with the
9 Settlement Administrator, ILYM. Gundzik Decl., ¶ 10. ILYM was chosen based on its
10 competitive fee and Class Counsel’s positive experience with them. *Id.*

11 If the Court grants preliminary approval, within ten (10) calendar days Defendant
12 will provide the Settlement Administrator with the Class Data. Parker-Fawley Decl., ¶ 5, Ex.
13 3, ¶ IV.C. Within ten days thereafter, the Settlement Administrator will update the Class list,
14 check all addresses against the National Change of Address, and send each Class Member
15 via First-Class United States mail English and Spanish versions of the Notice of Settlement.
16 *Id.* No submission of a claim form is necessary, and all Class Members are eligible to
17 receive a settlement payment except those who follow the procedure for requesting an
18 exclusion. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.K., and Ex. A to Ex. 3.

19 For any Notice of Settlement that is returned as undeliverable, the Settlement
20 Administrator will perform a utility database search or other skip trace. Parker-Fawley
21 Decl., ¶ 5, Ex. 3, ¶ IV. D. The returned Notices of Settlement will be re-mailed to the new
22 addresses obtained for such Class Members. *Id.* Such searching and re-mailing will be
23 completed within ten (10) business days of the date that Notices of Settlement were
24 originally returned as undeliverable. *Id.*

25 The proposed form of the notice of settlement to the Class (“Notice of Settlement”)
26 discloses the pendency of this litigation, summarizes the allegations against Defendant,
27 defines the Class, describes the consideration that Defendant will provide in settlement
28 along with an estimate of each Settlement Class Member’s estimated recovery. Parker-

1 Fawley Decl., ¶ 5, Ex. A to Ex. 3. The notice also describes the claims that will be released
2 and explains the procedures to be used by members of the Class to be excluded from or
3 object to the settlement. *Id.* Because this is an opt-out settlement and Class Members who do
4 nothing will still receive a settlement payment, the notice provisions agreed to by the parties
5 will adequately serve the interests of the individual Class Members in receiving the relief
6 provided by the settlement and adequately comply with California Rules of Court, Rule
7 3.766(e).

8 Class Member settlement checks will be valid for 180 days from issuance. Parker-
9 Fawley Decl., ¶ 5, Ex. 3, ¶ IV. P. If a Class Member's check is not cashed within 180
10 calendar days, the check will be void and a stop payment order may be placed on the check.
11 The funds represented by all uncashed settlement checks, plus accrued interest, will be
12 transmitted by the Settlement Administrator to the *cy pres* recipient pursuant to Code of
13 Civil Procedure §384. *Id.*

14 The Settlement Administrator will establish a website for this settlement and will
15 post the settlement agreement and other relevant documents. Nicole Bench Decl., ¶ 5.
16 Additionally, in their individual Notices of Settlement, Class Members will be provided with
17 the phone number and email address for the Settlement Administrator, as well as the website
18 specific to the Settlement. Parker-Fawley Decl., ¶ 5, Ex. A to Ex. 3. If there is a change in
19 the date or location of the Final Approval hearing, the Settlement Administrator will post
20 this information on the website. Nicole Bench Decl., ¶ 5. Notice of the Final Judgment and
21 Final Approval Order will also be posted on the Settlement Administrator's website. Nicole
22 Bench Decl., ¶ 5. Such posting will provide notice of the judgment to all class members and
23 thereby satisfy the requirements of Rule of Court 3.771(b).

24 **F. Responses to Notice**

25 Any Class Member may request to be excluded from the Class Settlement by mailing
26 a Request for Exclusion, by mail, postmarked on or before the date that is 60 calendar days
27 from the date of the initial mailing of the Class Notice by the Settlement Administrator
28 ("Response Deadline"). A Request for Exclusion must include the Class Member's name,

1 current address, telephone number, and last four numbers of the Class Member's social
2 security number and be postmarked (if mailed) or received (if faxed or sent electronically)
3 on or before the Response Deadline. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.E.

4 Only Class Members who have not submitted a Request for Exclusion (i.e.,
5 Settlement Class Members) may object to the Class Settlement by submitting a Notice of
6 Objection to the Settlement Administrator prior to the Response Deadline or by presenting
7 their objection orally at the Final Approval Hearing, regardless of whether they submitted a
8 written objection. A Notice of Objection must: (a) include the case name and number of the
9 Action; (b) include the objector's full name, signature, address, and telephone number; (c)
10 include a written statement of all grounds for the objection accompanied by any legal or
11 factual support for such objection; (d) attach copies of any papers, briefs, or other
12 documents upon which the objection is based; and (e) be returned by mail to the Settlement
13 Administrator at the specified address, postmarked on or before the Response Deadline.
14 Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.H.1, Ex. A to Ex. 3, ¶ 9 (d).

15 If a Class Member disagrees with the number of Qualifying Workweeks or PAGA
16 Pay Periods, as stated in their Notice of Settlement, they may dispute that figure by
17 informing the Settlement Administrator of the number of Qualifying Workweeks and/or
18 PAGA Pay Periods that they claim to have worked during the Class Period or PAGA Period
19 and provide any supporting documentation (such as, without limitation, payroll or time
20 keeping records, and paycheck stubs) on or before the Response Deadline. Parker-Fawley
21 Decl., ¶ 5, Ex. 3, ¶ IV.K.5, Ex. A to Ex. 3, ¶ 9 (b). If there is a dispute, the Settlement
22 Administrator will consult with Class Counsel and Defendant's counsel to determine
23 whether an adjustment is warranted. *Id.* The Settlement Administrator shall be obligated to
24 resolve any such disputes within ten (10) calendar days, but by no later than the date of the
25 Final Approval Hearing. *Id.*

26 **G. Pro-Rata Increase in Settlement Fund**

27 If the actual number of workweeks worked by all Settlement Class Members during
28 the Class Period, as reported to the Settlement Administrator after the Court's preliminary

approval of the Settlement is greater than 34,650, then Defendant will have the option to either (a) increase the Gross Settlement Amount in the amount of \$30.30 per workweek for each workweek in excess of 34,650, or (b) shorten the Class Period and PAGA Period, so that the end dates of the Class Period and PAGA Period fall on to a day on which the workweeks are equal to or less than 34,650 workweeks ("Alternate End Date") so that there is no increase in the Gross Settlement Amount. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.I. This provision may not be utilized to extend the end of the Class Period beyond June 1, 2024. *Id.*

H. Proposed Schedule of Events

Pursuant to the Settlement Agreement, the proposed schedule of events is:

Event	Date
Defendant provides the Class Information to the Administrator	10 calendar days after the Court grants Preliminary Approval
Settlement Administrator to mail Notice of Class Action Settlement	10 calendar days after receipt of the Class Information
Settlement Administrator to re-mail Notice of Class Action Settlement	10 calendar days after receipt of notice that the Notice of Class Action Settlement was undeliverable.
Response Deadline to the Notice of Class Action Settlement	60 calendar days after mailing
Class Counsel shall provide Defendant Counsel a draft Motion for Final Approval for Defendant's review and input.	7 calendar days in advance of filing.
Defendant shall fund the Gross Settlement Amount	Within 60 calendar days of the Effective Date.
Settlement Administrator shall mail Individual Settlement Payments	Within 10 calendar days after Defendant fully funds the Gross Settlement Amount.
Settlement Administrator shall mail the Class Representative Service and Release Award	10 calendar days after Defendant fully funds the Gross Settlement Amount.
Settlement Administrator shall mail the Class Counsel Award	Within 10 calendar days after Defendant fully funds the Gross Settlement Amount.
Settlement Administrator shall be paid the Settlement Administrator Costs	Within 10 calendar days after the Defendant fully funds the Gross Settlement Amount

1 Settlement Administrator shall ensure all 2 taxes required to be withheld from the wage 3 portion of each Settlement Class Member's 4 individual settlement payment, along with the Employer's Withholding Share are timely paid to the appropriate taxing authorities.	Within 10 calendar days after the Defendant fully funds the Gross Settlement Amount
5 Checks for all payments shall be void and 6 the Settlement Administrator will deliver the funds to the Cy Pres	180 calendar days after the mailing of the Individual Settlement Payments

7 **IV. ARGUMENT**

8 **A. Legal Standard for Preliminary Approval of Class Action Settlements**

9 The settlement of a class action requires approval by the court. *Dunk v. Ford Motor*
10 *Co.* (1996) 48 Cal.App.4th 1794, 1800; Cal. Code Civ. Proc. § 1781(f). California courts
11 look to federal authority for guidance with class action settlements. *Dunk, supra*, 48
12 Cal.App.4th at 1801, fn.7 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The
13 decision to approve or reject a proposed settlement is within the court's discretion. *Wershba*
14 *v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-35 ("In general, questions whether
15 a settlement was fair and reasonable, whether certification of the class was proper, and
16 whether the attorney fee award was proper are matters addressed to the trial court's broad
17 discretion."). Accordingly, a court's decision to approve a class action settlement may be
18 reversed only upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler*
19 *Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiffs v. City of Seattle* (9th Cir. 1982)
20 955 F.2d 1268, 1276.

21 Preliminary approval of a settlement does not require a court to make a final
22 determination that the settlement is fair, reasonable, and adequate. Rather, that decision is
23 made only at the final approval stage, after notice of the settlement has been given to the
24 class members and they have had an opportunity to voice their views of the settlement or to
25 exclude themselves from the settlement. Cal. R. Ct. 3.769(g).

26 In considering a potential class settlement, a court need not reach any ultimate
27 conclusions on the issues of fact and law which underlie the merits of the dispute and need
28

1 not engage in a trial on the merits. See *City of Detroit v. Grinnell Corporation* (2d Cir.
2 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and*
3 *County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625. Neither formal notice nor a
4 hearing is required for the trial court to grant provisional class certification and preliminary
5 approval; the court may grant such relief upon an informal application by the settling parties
6 and may conduct any necessary hearing in court or in chambers, at the court’s discretion.
7 *Newberg*, § 11.25.

8 **B. The Court Should Preliminarily Approve the Settlement**

9 The trial court has broad powers to determine whether a proposed settlement is fair
10 under the circumstances of the case. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794.
11 To make this fairness determination, courts must consider several relevant factors, including
12 “the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of
13 further litigation, the risk of maintaining class action status through trial, the amount offered
14 in settlement, the extent of discovery completed and the stage of the proceedings, the
15 experience and view of counsel, the presence of a governmental participant, and the reaction
16 of the class members to the proposed settlement.” *Dunk, supra*, 48 Cal.App.4th at 1801.
17 “The list of factors is not exclusive and the court is free to engage in a balancing and
18 weighing of the factors depending on the circumstances of each case.” *Wershba, supra*, 91
19 Cal.App.4th at 245. Furthermore, courts give “proper deference to the private consensual
20 decision of the parties.” *Hanlon, supra*, 150 F.3d at 1027 (citation omitted).

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

1 **1. The Settlement Resulted from Arm’s-Length Negotiations Based**
2 **Upon Extensive Investigation and Discovery**

3 The parties have actively litigated this action since it commenced on July 28, 2023.
4 Both sides used the pre-mediation time period to investigate the veracity, strength, and scope
5 of the claims. Parker-Fawley Decl., ¶¶ 22-25.

6 Prior to engaging in a full-day mediation, Class Counsel conducted significant
7 investigation and informal discovery regarding the facts of the case, including and not
8 limited to, the exchange, review, and analysis of a large volume of documents and data
9 produced by Defendant. Parker-Fawley Decl., ¶ 22-25. The volume of data and documents
10 that Class Counsel reviewed and analyzed included and was not limited to: a sampling of
11 approximately 26% of Class Members’ time and payroll data, Plaintiff’s personnel records,
12 Defendant’s employee handbook, personnel forms, the class list, and earning statements,
13 among other information and documents. Parker-Fawley Decl., ¶ 23. Class Counsel had the
14 opportunity to interview Plaintiff and other Class Members to gather facts and to identify
15 potential witnesses. Counsel for the Parties also met and conferred on numerous occasions,
16 e.g., to discuss issues relating to the pleadings, and the production of documents and data
17 prior to mediation. Class Counsel also drafted pleadings and the mediation brief and
18 prepared for and attended court proceedings, mediation, and settlement negotiations, among
19 other tasks. *Id.*

20 As referenced above, the parties engaged in extensive settlement negotiations and
21 participated in a full-day mediation, conducted by Hon. Raul Ramirez, a retired jurist and
22 well-respected mediator experienced in mediating complex labor and employment matters.
23 Parker-Fawley Decl., ¶ 22. Prior to and during the mediation and settlement discussions, the
24 parties exchanged extensive information and engaged in discussions regarding their
25 evaluations of the case and various aspects of the case, including but not limited to, the risks
26 and delays of further litigation, the risks to the parties of proceeding with class certification
27 and/or representative adjudication, the law relating to off-the-clock theory, regular rate, meal
28 and rest periods, and wage-and-hour enforcement, as well as the evidence produced and

1 analyzed, and the possibility of appeals, among other things. Parker-Fawley Decl., ¶ 24.
2 During all settlement discussions, the parties conducted their negotiations at arm's length in
3 an adversarial position. Parker-Fawley Decl., ¶ 22. Arriving at a settlement that was
4 acceptable to both parties was not easy. Defendant and its counsel felt strongly about their
5 ability to prevail on the merits and at certification, and Plaintiff and Class Counsel believed
6 that they would be able to obtain class certification and prevail at trial. *Id.* After conducting
7 investigations, informal discovery, extensive settlement negotiations, and with the aid of the
8 mediator's evaluation, the parties have agreed that the matter is well-suited for settlement
9 given the legal issues relating to plaintiff's principal claims, as well as the costs and risks to
10 both sides that would attend further litigation. Parker-Fawley Decl., ¶ 23.

11 The Settlement takes into account the strengths and weaknesses of each side's
12 position and the uncertainty of how the case might have concluded at certification, trial,
13 and/or appeals. Parker-Fawley Decl., ¶¶ 22-26. The parties have reached the Settlement
14 based on a large volume of facts, evidence, and investigation. *Id.* In addition, Class Counsel
15 has extensive experience in employment class actions, including significant experience in
16 California wage-and-hour litigation. Parker-Fawley Decl., ¶¶ 15-21; Gundzik Decl., ¶¶ 3-6.

17 **2. The Settlement is Fair, Reasonable, and Adequate**

18 The Settlement, which provides for a Gross Settlement Amount of \$1,000,000.00,
19 represents a fair, adequate, and reasonable resolution of the matter. Parker-Fawley Decl., ¶
20 27. The Settlement was calculated using the information and data uncovered during
21 litigation, case investigation, as well as the informal exchange of information. Parker-Fawley
22 Decl., ¶¶ 22-26. The Settlement takes into account the potential risks and rewards inherent
23 in any case and, in particular, in the matter at issue. Parker-Fawley Decl., ¶¶ 22-26.
24 Moreover, considering all of the facts and circumstances of the case, the Settlement
25 represents a fair, reasonable, and adequate recovery for the Class. Parker-Fawley Decl., ¶¶
26 22-27.

27 Assuming that the Attorneys' Fees and Costs, Enhancement Award and Settlement
28 Administration Costs are approved by the Court and paid in the full amounts provided for by

1 the Settlement, the Settlement provides for a Net Settlement Amount that is currently
2 estimated to be \$510,000. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ I. The entire Net Settlement
3 Amount will be fully paid out to the Settlement Class Members, in accordance with the
4 Settlement Agreement. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ I, IV.K. The amount of each
5 Settlement Class Member's Individual Settlement Payment will be calculated based on his
6 or her Workweeks during the Class Period. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.K.1. There
7 is no reason to doubt the fairness of the proposed plan of allocation of the settlement funds
8 for purposes of preliminary approval. Even at the final approval stage, "[a]n allocation
9 formula need only have a reasonable, rational basis [to warrant approval], particularly if
10 recommended by experienced and competent class counsel." *In re American Bank Note*
11 *Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.

12 In light of the foregoing considerations, Class Counsel believes that the Settlement as
13 a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.
14 Parker-Fawley Decl., ¶ 26; Gundzik Decl., ¶ 12. Although the recommendations of Class
15 Counsel are not conclusive, the Court can properly take the recommendations into account,
16 particularly if Class Counsel appears to be competent, and has experience with this type of
17 litigation, and investigation have been completed, as is the case here. *Newberg*, §11.47.
18 Accordingly, the Court should grant preliminary approval of the Settlement.

19 **3. The Settlement is of Significant Value**

20 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the
21 parties conducted extensive informal discovery and exchanged a large volume of
22 documents, data, and information prior to mediation. Parker-Fawley Decl., ¶¶ 22-26. The
23 information that Class Counsel obtained from Defendant, Plaintiff, and other sources
24 allowed Class Counsel to develop valuation models in order to evaluate the potential value
25 and merit of the claims and perform a complete evaluation of Defendant's defenses thereto.
26 Parker-Fawley Decl., ¶¶ 22-26. As outlined in the Declaration of Elizabeth Parker-Fawley,
27 Class Counsel performed an extensive analysis of each and every claim pursuant to *Kullar*
28 prior to entering into the Settlement. *Id.*

1 **C. Certification of the Class is Appropriate**

2 For settlement purposes, the requisites for establishing class certification are met,
3 and the parties have stipulated to conditional certification of the Class. Parker-Fawley Decl.,
4 ¶ 5, Ex. 3, ¶ IV.A. California Code of Civil Procedure Section 382 “authorizes class actions
5 when the question is one of a common or general interest, of many persons, or when the
6 Parties are numerous, and it is impracticable to bring them all before the court.” *Sav-On*
7 *Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. California courts certify
8 class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-
9 defined community of interest among class members.” *Id.*

10 Here, the Class is ascertainable and numerous as to make it impracticable to join all
11 Class Members, and there are common questions of law and fact that predominate over any
12 questions affecting any individual Class Member. Parker-Fawley Decl., ¶14. Further,
13 Plaintiff’s claims are typical of the claims of the Class Members, and Class Counsel will
14 fairly and adequately protect the interests of the Class. Declaration of Angel Soliz (“Soliz
15 Decl.”), ¶¶ 3-6; Parker-Fawley Decl., ¶ 14; Gundzik Decl., ¶¶ 3-6. Finally, prosecution of
16 separate actions by individual Class Members would create the risk of inconsistent or
17 varying adjudications, and a class action is superior to other available means for the fair and
18 efficient adjudication of the claims. The Class is amenable to class certification for
19 settlement purposes as discussed below.

20 **1. The Class Is Ascertainable and Sufficiently Numerous**

21 “Ascertainability is required in order to give notice to putative class members as to
22 whom the judgment in the action will be *res judicata*.” *Hicks v. Kaufman & Broad Home*
23 *Corp.* (2001) 89 Cal.App.4th 908, 914. “A class is ascertainable if it identifies a group of
24 unnamed Plaintiffs by describing a set of common characteristics sufficient to allow a
25 member of that group to identify himself or herself as having a right to recover based on the
26 description.” *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The
27 proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23
28 Cal.4th 429, 435.

1 The proposed Class is sufficiently numerous *See Rose v. City of Hayward* (1981) 126
2 Cal.App.3d 926, 934-35 (indicating that a class of 30 to 40 individuals satisfies the
3 numerosity requirement as joinder is not practical at that point). The Class is estimated to be
4 approximately 708 individuals, which is sufficiently numerous. Parker-Fawley Decl., ¶ 13.
5 Further, all Class Members can and will be identified by Defendant to the Settlement
6 Administrator through a review of Defendant’s employment records regarding non-exempt
7 employees in California during the Class Period. Parker-Fawley Decl., ¶ 5, Ex. 3, ¶ IV.C. As
8 such, the Class is ascertainable.

9 **2. The Class Members Share a Well-Defined Community of Interest**

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

19 The “common issues” requirement “involves analysis of whether the proponent’s
20 ‘theory of recovery’ is likely to prove compatible with class treatment.” *Capitol People*,
21 *supra*, 155 Cal.App.4th at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327).
22 Furthermore, the commonality inquiry centers on the “reasonableness” of the defendant’s
23 labor policies as applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at 1534.

24 Here, common issues of fact and law predominate as to each of the claims alleged
25 and asserted in the pleadings. Based on the documents and information obtained through
26 informal discovery and exchange of information in the case, Plaintiff contends that Class
27 Members were subject to the same or similar job duties and uniform operations and
28 employment practices, policies, and procedures during the time period at issue. Soliz Decl.,

¶¶ 3-5. Plaintiff's claims arise from Defendant's alleged uniform policy and systematic scheme, with respect to Plaintiff and the Class Members, of, *inter alia*, failing to properly pay overtime and minimum wages for all hours worked, 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 complaint wage statements, failing to keep requisite payroll records, and failing to reimburse necessary business-related expenses. Parker-Fawley Decl., ¶ 14.

Plaintiff also contends that Defendant's payroll and recordkeeping practices with respect to Plaintiff and the Class Members were substantially the same during the time period at issue. Parker-Fawley Decl., ¶ 14. As a result, Plaintiff claims that all of the Class Members were uniformly not paid all compensation due to them from Defendant during the time period at issue. *Id.* Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its non-exempt employees who worked in California during the Class Period. Parker-Fawley Decl., ¶ 14. Accordingly, the proposed Class shares a community of interest, and the Court should certify the Class for settlement purposes only.

D. Appointment of Class Counsel and Allocation the Allocation of Attorneys' Fees and Costs

Class Counsel has litigated the matter for nearly two years and was actively preparing the matter for class certification and trial. Parker-Fawley Decl., ¶¶ 22-26. The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. Class Counsel reviewed a large volume of documents and data and also interviewed and obtained information from Plaintiff and other Class Members, researched applicable law, undertook damages/valuation calculations, and met and conferred with Defendant's counsel regarding the pleadings and the production of documents and data prior to the mediation. Parker-Fawley Decl., ¶¶ 22-24. Counsel for the parties also undertook extensive settlement discussions, which included participating in mediation. Parker-Fawley Decl., ¶ 22. Class Counsel is well-experienced in wage-and-hour class action

1 litigation and used that experience to obtain a great result for the Class. Parker-Fawley
2 Decl., ¶¶ 16-20; Gundzik Decl., ¶¶ 3-6.

3 The Settlement establishes a Gross Settlement Amount of \$1,000,000.00 and
4 provides for Class Counsel to apply to the Court for an award of attorneys’ fees in an
5 amount up to 35% of the Gross Settlement Amount (i.e., \$350,000.00), and reimbursement
6 of actual costs and expenses in an amount up to \$25,000.00. Parker-Fawley Decl., ¶ 5, Ex. 3,
7 ¶ I. The attorneys’ fees provided for by the Settlement are commensurate with: (1) the risk
8 that Class Counsel took in bringing and litigating the case, (2) the extensive time, effort and
9 expense that Class Counsel dedicated to the case, (3) the skill and determination that Class
10 Counsel has shown, (4) the results that Class Counsel has achieved throughout the litigation,
11 (5) the value of the Settlement that Class Counsel has achieved for the Class Members, and
12 (6) the other cases that Class Counsel had to turn down in order to devote its time and efforts
13 to this matter. The proposed Class Notice provides Class Members with information about
14 the amount allocated toward the Attorneys’ Fees and Costs, and that an award of the
15 Attorneys’ Fees and Costs will be sought, as provided for by the Settlement. Parker-Fawley
16 Decl., ¶ 5, Ex. A to Ex. 3.

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

1 that the defendant agrees to paying the attorneys a percentage of the same, use of that
2 percentage method is appropriate. *Id.* at 32.

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

11 Historically, courts have awarded fees as high as fifty percent (50%) of the
12 settlement, depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re*
13 *Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys’ fees in the
14 amount of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century*
15 *Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the
16 settlement as attorneys’ fees). California courts routinely approve class action attorneys’ fee
17 awards “averag[ing] around one-third of the recovery.” *Chavez v. Netflix, Inc.* (2008) 162
18 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in
19 marketplace was appropriate in class actions); *see also Estrada v. Dr. Pepper/Seven-Up*, Los
20 Angeles County Superior Court Case No. BC262247 (May 2005) (wage and hour); *Moore v.*
21 *IKEA*, Los Angeles County Superior Court Case No. BC263646 (Sept. 2006) (wage and
22 hour).

23 Class Counsel has borne all of the risks and costs of litigation and will not receive
24 any compensation until recovery is obtained. Parker-Fawley Decl., ¶ 7. Class Counsel will
25 provide evidence as to the time worked, litigation efforts, and further argument at the time of
26 filing Plaintiff’s motion for final approval of the Settlement and application for the
27 Attorneys’ Fees and Costs at the Final Approval Hearing. *Id.* Considering the work
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1 performed and the risks incurred, the attorneys' fees provided for by the Settlement and to
2 be requested by Class Counsel are well within the range of reasonableness.

3 **E. The Proposed Class Notice is Adequate**

4 California statutory authority and case law vests the Court with broad discretion in
5 fashioning appropriate class notice. See Cal. Code Civ. Proc. § 1781; *Cartt v. Superior*
6 *Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair
7 recital of the subject matter and proposed terms” of the Settlement. *Mendoza v. United*
8 *States* (9th Cir. 1980) 623 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir.
9 1977) 550 F.2d 1173, 1177).

10 The proposed Class Notice describes the Settlement, the deadlines and procedures to
11 submit a Notice of Objection to the Class Settlement, submit a Request for Exclusion from
12 the Class Settlement, and/or dispute regarding Workweeks and the date and time set for the
13 Final Approval Hearing. Parker-Fawley Decl., ¶ 5, Ex. A to Ex 3.

14 The proposed Class Notice fulfills the requirement of neutrality in notice procedure.
15 *Newberg*, at § 8.39. “Sufficient information about the case should be provided to enable
16 class members to make an informed decision about their participation.” *Manual for Complex*
17 *Litigation* § 21.311 at 413 (4th ed. 2004). The proposed Class Notice summarizes the
18 proceedings to date and the terms and conditions of the Settlement in an informative and
19 coherent manner. Parker-Fawley Decl., ¶ 5, Ex. A to Ex 3. The proposed Class Notice
20 recognizes that the Court has not yet granted final approval of the settlement. *Id.* It also
21 apprises the Class Members of how their Individual Settlement Payments will be calculated
22 and the number of Workweeks credited to them. Parker-Fawley Decl., ¶ 5, Ex. A to Ex 3.

23 The proposed Class Notice satisfies all due process requirements and complies with
24 the standards of fairness, completeness, and neutrality. Fed. R. Civ. P. 23(c)(2) and 23(e);
25 *Newberg*, §§ 8.21, 8.39; *Manual*, §§ 21.311, 21.312; see also *Cartt, supra*, 50 Cal.App.3d at
26 960 (“The essentials of due process of law in class suits would appear to be afforded by fair
27 representation in the assertion of claims of class members against the opposing parties in
28 any lawsuit, and notice of the pending suit.”). Accordingly, the Court should approve the

1 proposed Class Notice.

2 **F. Appointment of ILYM as the Settlement Administrator**

3 The parties have selected ILYM Group, Inc. (“ILYM”) to administer the Settlement.
4 Parker-Fawley Decl., ¶ 5, Ex 3, ¶ II.NN. Within ten (10) calendar days of receipt of the
5 Class Data from Defendant, the Settlement Administrator will perform an NCOA check and
6 will mail the notice to the Class Members setting forth the material terms of the proposed
7 Settlement, along with instructions about how to object or request exclusion from the Class
8 Settlement. Parker-Fawley Decl., ¶ 5, Ex 3, ¶ IV.C. The Settlement Administrator will skip-
9 trace returned mail and re-mail the notice to the new addresses within ten calendar days.
10 Parker-Fawley Decl., ¶ 5, Ex 3, ¶ IV.D. The Administrator will receive and process
11 Requests for Exclusion, Notices of Objection, or disputes regarding Workweeks. Parker-
12 Fawley Decl., ¶ 5, Ex 3, ¶¶ IV.H.1; IV.K.5.

13 The Settlement Administrator will be responsible for printing, distributing, and
14 tracking Class Notices and other documents for the Settlement, calculating and distributing
15 payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax
16 reporting, filings, withholdings, and remittances, providing necessary reports and
17 declarations, and other duties and responsibilities set forth to process the Settlement, and as
18 requested by the Parties. Fawley Decl., ¶ 5, Ex 3, ¶ IV.C, IV.K.6. The Settlement
19 Administration Costs are currently estimated to be \$10,000 and will be paid out of the Gross
20 Settlement Amount, subject to approval by the Court. Fawley Decl., ¶ 5, Ex 1, ¶ II.MM.

21 Accordingly, Plaintiff respectfully requests that the Court appoint ILYM as the
22 Settlement Administrator and direct the mailing of the Class Notice to the Class Members in
23 the manner outlined and based on the proposed deadlines as described herein and set forth in
24 the Settlement Agreement.

25 **G. Proposed Deadlines for the Notice Process**

26 At this preliminary approval stage, Plaintiff seeks approval of the proposed deadlines
27 for the notice and settlement administration process. *Newberg*, at § 11.26. The notice
28 process entails mailing of the Class Notice, in the form approved by the Court, to all known

1 and reasonably ascertainable Class Members based on Defendant's records. Fawley Decl., ¶
2 5, Ex 3, ¶ IV.C.

3 Within ten (10) calendar days of Preliminary Approval, Defendant shall provide to
4 the Settlement Administrator with a list of Class Members that Defendant will compile from
5 its records, which will include each Class Member's full name, last-known address, last-
6 known telephone number, Social Security Number, the number of Qualifying Workweeks
7 worked for Defendant during the period from July 28, 2019 through June 1, 2024, and such
8 other information and data as necessary to determine each Class Member's Qualifying
9 Workweeks during the Class Period (collectively, "Class Data"). Fawley Decl., ¶ 5, Ex 1, ¶¶
10 II.G; IV.C.

11 Within ten (10) calendar days of receipt of the Class Data, the Settlement
12 Administrator will perform an NCOA check and will mail the notice to the Class Members
13 setting forth the material terms of the proposed Settlement, along with instructions about
14 how to object or request exclusion from the Class Settlement. Fawley Decl., ¶ 5, Ex 3, ¶
15 IV.C. The Settlement Administrator will skip-trace returned mail and re-mail the notice to
16 the new addresses within ten calendar days. *Id.* Class Members will have until the applicable
17 Response Deadline to submit a Request for Exclusion, disputes regarding Workweeks,
18 and/or Notice of Objection. Fawley Decl., ¶ 5, Ex 3, ¶¶ II.G; IV.C.

19 Defendant will fund the Gross Settlement Amount within sixty (60) calendar days of
20 the Effective Date. Fawley Decl., ¶ 5, Ex 3, ¶ IV.N. Within ten calendar days of the funding
21 of the Gross Settlement Amount, the Settlement Administrator will issue payments due
22 under the Settlement and approved by the Court, as follows: (a) Attorneys' Fees and Costs
23 to Class Counsel; (b) Service and Release Award to Plaintiff; (c) 75% of the PAGA payment
24 to the LWDA (d) Settlement Administration Costs to the Settlement Administrator; (d)
25 Individual Settlement Shares to Settlement Class Members and the PAGA employees; and
26 (e) and the employee and employer's share of the payroll taxes. Fawley Decl., ¶ 5, Ex 3, ¶
27 IV.O and IV.S.

28 Individual Settlement Payment checks shall remain valid and negotiable for one

1 hundred and eighty (180) calendar days from the date of their issuance, and thereafter, shall
2 be cancelled. Fawley Decl., ¶ 5, Ex 3, ¶ IV.P. Funds from un-cashed or abandoned
3 Individual Settlement Payment checks, based on a 180-day void date, shall be transmitted to
4 the Court-appointed *cy pres* recipient. *Id.*

5 **H. Appointment of Class Representative and Allocation for a Service and**
6 **Release Award**

7 Plaintiff Angel Soliz respectfully requests that the Court appoint him as the Class
8 Representative and preliminarily approve the Service and Release Award in an amount up to
9 \$5,000.00. Fawley Decl., ¶ 5, Ex 1, ¶ II.E. It is within the Court’s discretion to award
10 payment to a Class Representative for his efforts and work. *Vranken v. Atlantic Richfield*
11 *Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a
12 single Class Representatives). The factors that courts may consider in determining whether
13 to make an enhancement award include: (1) the risk to the Class Representative in
14 commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties
15 encountered by the Class Representative; (3) the amount of time and effort spent by the
16 Class Representative; (4) the duration of the litigation; and (5) the personal benefit (or lack
17 thereof) enjoyed by the Class Representative as a result of the litigation. *Id.*

18 The enhancement award is fair and appropriate. Plaintiff spent a substantial amount
19 of time and effort in producing relevant documents and past employment records and
20 providing the facts and evidence necessary to attempt to prove the allegations. Declaration
21 of Angel Soliz (“Soliz Decl.”), ¶¶ 15-16. Plaintiff was available whenever Class Counsel
22 needed him and actively tried to obtain and provide information that would facilitate the
23 pursuit of class claims. Parker-Fawley Decl., ¶ 15; Soliz Decl., ¶¶ 15-16. Accordingly, it is
24 appropriate and just for Plaintiff to receive an enhancement award for his services on behalf
25 of the Class in addition to his individual settlement payment.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Plaintiff, on behalf of himself and the Class, respectfully
3 requests that the Court grant preliminary approval of the settlement and set a final approval
4 hearing to take place within approximately 140 days.

5 DATED: June 9, 2025

GUNDZIK GUNDZIK HEEGER LLP

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By: 

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Rebecca G. Gundzik

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Attorneys for Plaintiff Angel Soliz,
individually and on behalf of all others
similarly situated

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