

MARALLE MESSRELIAN (SBN 316974)

maralle@mmlawapc.com

MM LAW, APC

500 N. Brand Blvd., Ste 2000

Glendale, CA 91203

Telephone (818) 810-7747

Facsimile (818) 230-9018

Attorneys for Plaintiff,

JOSE I. SORIANO RODRIGUEZ, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

(UNLIMITED JURISDICTION)

JOSE I. SORIANO RODRIGUEZ, on
behalf of himself and all others similarly
situated, and the general public, and as an
“Aggrieved Employee” on behalf of other
“Aggrieved Employees” under the Private
Attorneys General Act of 2004,

Plaintiff(s),

vs.

EVENTS MANAGEMENT, INC. DBA
MCCALLS CATERING & EVENTS, a
California corporation; and DOES 1 to 25,
inclusive,

Defendant(s).

Case No.: CGC-24-615022

**NOTICE OF MOTION AND PLAINTIFF’S
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF JOINT
STIPULATION OF CLASS ACTION AND
PAGA SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES**

Action filed: 5/28/2024

Hearing Date: 08/22/2025

Hearing Time: 10:00 a.m.

Hearing Dept: 304, Hon. Ethan P.
Schulman

Submitted Herewith Under Separate Cover

1. Memorandum of Points and Authorities;
2. Declaration of Maralle Messrelian;
3. Declaration of Jose I. Soriano Rodriguez;
4. Declaration of Lisa Mullins; and
5. [Proposed] Order Granting Preliminary Approval of Class Action and PAGA Settlement

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on August 22, 2025 at 10:00 a.m., or as soon thereafter as
3 the matter may be heard, in Department 304 of the above-entitled court, located at 400
4 McAllister St., San Francisco, CA 94102, Plaintiff Jose I. Soriano Rodriguez (“Plaintiff”) will
5 and hereby does move this Court for an order: (1) granting class certification of the Class solely
6 for settlement purposes pursuant to Code of Civil Procedure § 382; (2) preliminarily approving
7 the Joint Stipulation of Class Action and PAGA Settlement and Release (the “Settlement”)¹, (3)
8 appointing Maralle Messrelian of MM Law, APC as Class Counsel; (5) appointing Plaintiff as
9 Class Representative; (6) approving the use of the proposed notice procedures and related forms;
10 (7) directing that notice be mailed to the proposed Class; and (8) scheduling a hearing date for
11 motion for final approval of class action settlement and awards of attorneys’ fees and costs.

12 The “Settlement Class” or “Class Member(s)” means all current and former non-exempt,
13 hourly paid employees who worked for Defendant Events Management, Inc. dba McCalls
14 Catering & Events in California at any time during the Class Period. “Class Period” means the
15 time from May 28, 2020 to June 10, 2025.

16 This Motion, unopposed by Defendant, is made on the following grounds: (1) the Class
17 meets all the requirements for class certification for settlement purposes only under Code of
18 Civil Procedure § 382; (2) Plaintiff and his counsel are adequate to represent the Class; (3) the
19 Settlement reflects a fair, adequate, and reasonable compromise of all disputed claims in view of
20 Defendant’s potential liability exposure as compared against the risks of continued litigation; (4)
21 the proposed notice procedures and related forms adequately apprise Class Members of their
22 rights under the Settlement and fully comport with due process; and (5) in view of the foregoing,
23 notice should be disseminated to Class Members and a hearing date for a motion for final
24 approval of class action settlement and awards of attorneys’ fees and costs should be set.

25 The Motion is based on this Notice of Motion and Motion, the attached Memorandum of
26 Points and Authorities, the Declarations of Maralle Messrelian, Jose I. Soriano Rodriguez, and
27 Lisa Mullins, the exhibits, all papers and pleadings on file with the Court in this action, all
28 matters judicially noticeable, and on such oral and documentary evidence as may be presented in
connection with the hearing on the Motion.

¹ The Settlement is attached as Exhibit 1 to the Declaration of Maralle Messrelian (“MM”), which is submitted herewith under a separate cover.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

MM LAW, APC

Dated: July 29, 2025

By: Maralle Messrelian
MARALLE MESSRELIAN
Attorneys for Plaintiff and the Class

TABLE OF CONTENTS

1		
2	TABLE OF AUTHORITIES.....	iv
3	I. INTRODUCTION.....	1
4	II. FACTUAL AND PROCEDURAL BACKGROUND.....	2
5	A. Plaintiff's Claims and Procedural History.....	2
6	B. Mediation with Professional Neutral Jason Marsili.	2
7	III. OVERVIEW OF SETTLEMENT.....	3
8	A. Settlement Class Definition.....	3
9	B. Monetary Terms.....	3
10	C. Release of Claims.....	5
11	D. Class Notice and Settlement Administration.....	7
12	1. Procedures for Class Member Disputes.....	8
13	2. Procedures for Opting Out of the Class.....	8
14	3. Procedures for Objecting to the Settlement.....	8
15	E. Uncashed Checks.....	9
16	IV. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE.....	9
17	1. The Settlement Class Is Objectively Ascertainable.....	9
18	2. The Membership of the Settlement Class Is Sufficiently Numerous.	10
19	3. Class Members Share a Well-Defined Community of Interest.	10
20	4. Plaintiff Is Typical of the Settlement Class.....	11
21	5. Plaintiff Will Adequately Represent the Settlement Class.....	12
22	6. Class Action Treatment Is the Superior Means For Resolving The Claims Of The	
23	Class Members.	13
24	V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE, AND THE COURT	
25	SHOULD GRANT PRELIMINARY APPROVAL.....	13
26	A. Legal Standard.....	13
27		
28		

1	B. The Settlement Is Presumptively Fair	14
2	C. The Settlement Satisfies the <i>Kullar</i> Factors for Approval.	14
3	1. Evaluation of Plaintiff’s Case.....	14
4	2. Allocation of the PAGA Payment	19
5	3. Presence of Governmental Participant	20
6	4. Reaction of Class Members to Proposed Settlement.....	20
7	VI. THE SETTLEMENT FAIRLY, REASONABLY, AND ADEQUATELY COMPENSATES	
8	CLASS MEMBERS BECAUSE EACH CLASS MEMBER WILL BE PAID BASED ON	
9	THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS	
10	MEMBERS.....	20
11	VII. ALLOCATION FOR CLASS COUNSEL’S ATTORNEYS’ FEES AND COSTS IS	
12	APPROPRIATE AND SHOULD BE PRELIMINARILY APPROVED..	21
13	VIII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT TO PLAINTIFF IS	
14	FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE PRELIMINARILY	
15	APPROVED.	22
16	IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR AND	
17	REASONABLE AND SHOULD BE PRELIMINARILY APPROVED.	23
18	X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN SHOULD	
19	BE APPROVED BECAUSE IT IS REASONABLY CALCULATED TO GIVE ACTUAL	
20	NOTICE TO CLASS MEMBERS AND SUFFICIENT TIME TO EXERCISE THEIR	
21	RIGHTS.....	23
22	XI. CONCLUSION	24

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Arenas v. El Torito Restaurants, Inc.</i> (2010) 183 Cal.App.4th 723	10
<i>Barnhill v. Robert Saunders & Co.</i> (1981) 125 Cal.App.3d 1	18
<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	22
<i>Bowles v. Superior Court</i> (1955) 44 Cal.2d 574	10
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal.4th 1004	17
<i>Capitol People First v. State Dept. of Developmental Services</i> (2007) 155 Cal.App.4th 676	10
<i>Carrington v. Starbucks Corp.</i> (2018) 30 Cal.App.5th 504	20
<i>Cartt v. Superior Court</i> (1975) 50 Cal.App.3d 960	23
<i>Chu v. Wells Fargo Investments, LLC</i> (N.D.Cal. Feb. 16, 2011) 2011 WL 67245	20
<i>Classen v. Weller</i> (1983) 145 Cal.App.3d 27	11
<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal.2d 695	10
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	9, 14
<i>Hebbard v. Colgrove</i> (1972) 28 Cal.App.3d 1017	10
<i>Hopson v. Hanesbrands Inc.</i> (N.D.Cal. Apr. 3, 2009) 2009 WL 928133	19-20
<i>Hopson v. Hanesbrands, Inc.</i>	

1	(N.D.Cal. Aug. 8, 2008) 2008 WL 3385452	20
2		
3	<i>Hypolite v. Carleson</i>	
4	(1975) 52 Cal.App.3d 566	9
5	<i>In re Activision Sec. Litigation</i>	
6	(N.D.Cal. 1989) 723 F.Supp. 1373	21
7	<i>In re Ampicillin Antitrust Litigation</i>	
8	(D.D.C. 1981) 526 F.Supp. 494	21
9	<i>Ketchum v. Moses</i>	
10	(2001) 24 Cal.4th 1122	21
11	<i>Kullar v. Foot Locker Retail, Inc.</i>	
12	(2008) 168 Cal.App.4th 116	13, 14
13	<i>Laffitte v. Robert Half Intl, Inc.</i>	
14	(2016) 1 Cal. 5th 480.....	21
15	<i>Laguna v. Coverall N. Am., Inc.</i>	
16	(9th Cir. June 3, 2014) 2014 WL 2465049	19
17	<i>Lazarin v. Pro Unlimited, Inc.</i>	
18	(N.D.Cal. July 11, 2013) 2013 WL 3541217	20
19	<i>Lealao v. Beneficial California, Inc.</i>	
20	(2000) 82 Cal.App.4th 19	21
21	<i>McGhee v. Bank of America</i>	
22	(1976) 60 Cal.App.3d 442	12
23	<i>Naranjo v. Spectrum Security Services, Inc.</i>	
24	(2022) 13 Cal. 5th 93	18
25	<i>Nordstrom Com. Cases</i>	
26	(2010) 186 Cal.App.4th 576	20
27	<i>Principe v. Ukropina (In re Pacific Enterprises)</i>	
28	(9th Cir. 1995) 47 F.3d 373	21
	<i>Richmond v. Dart Industries, Inc.</i>	
	(1981) 29 Cal.3d 462	9
	<i>Rose v. City of Hayward</i>	
	(1981) 126 Cal.App.3d 926	9

1	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
2	(2004) 34 Cal.4th 319	10
3	<i>Thurman v. Bayshore Transit Management, Inc.</i>	
4	(2012) 203 Cal.App.4th 1112	16
5	<i>Trotsky v. Los Angeles Fed. Sav. & Loan Assn.</i>	
6	(1975) 48 Cal.App.3d 134	23
7	<i>Van Vranken v. Atl. Richfield Co.</i>	
8	(N.D.Cal. 1995) 901 F.Supp. 294	22
9	<i>Washington Mut. Bank, FA v. Superior Court</i>	
10	(2001) 248 Cal.4th 906	10
11	<i>Washington v. Joe's Crab Shack</i>	
12	(N.D.Cal. 2010) 271 F.R.D. 629	17
13	Statutes	
14	Bus. & Prof. Code, section 17200 et seq.	2, 6, 11
15	Civ. Code, section 1542	7
16	Code Civ. Proc., section 382	1, 9, 13
17	Lab. Code, section 201	2, 6
18	Lab. Code, section 202	2, 6
19	Lab. Code, section 203	2, 6
20	Lab. Code, section 204	2, 6
21	Lab. Code, section 218.5	22
22	Lab. Code, section 218.6	22
23	Lab. Code, section 226	2, 6, 18
24	Lab. Code, section 226.7	2, 6
25	Lab. Code, section 353	6
26	Lab. Code, section 510	2, 6

1	Lab. Code, section 512	2,6
2	Lab. Code, section 558	6
3	Lab. Code, section 558.1	6
4	Lab. Code, section 1174	6
5	Lab. Code, section 1194	2, 6
6	Lab. Code, section 1197	2, 6
7	Lab. Code, section 1197.1	6
8	Lab. Code, section 1198	2, 6
9	Lab. Code, section 2698 et seq.	2,6
10	Lab. Code, section 2699	3, 6, 16, 20
11	Lab. Code, section 2802	2, 6
12	Rules	
13	California Rules of Court, rule 3.766	20
14	California Rules of Court, rule 3.769	13,20
15	Other	
16	Alba Conte & Herbert B. Newberg, <i>Newberg on Class Actions</i> (4th ed. 2002)	11
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jose I. Soriano Rodriguez (“Plaintiff”) submits this memorandum of points and
4 authorities in support of his unopposed motion for preliminary approval of the Joint Stipulation
5 of Class Action and PAGA Settlement and Release (the “Settlement”)¹, which provides for a
6 Gross Settlement Amount(“GSA”) of \$850,000 in compromise of all disputed claims on behalf
7 of all current and former non-exempt, hourly paid employees who worked for Defendant
8 Events Management, Inc. dba McCalls Catering & Events (“Defendant” or “McCalls”) in
9 California at any time during the Class Period of May 28, 2020 to June 10, 2025. Through this
10 Motion, Plaintiff respectfully requests for this Court to (1) provisionally certify the below-
11 defined Class for settlement purposes only under Code of Civil Procedure § 382; (2)
12 preliminarily approve the Settlement; (3) preliminarily appoint Plaintiff as Class
13 Representative; (4) appoint Maralle Messrelian of MM Law, APC as Class Counsel; (5)
14 approve the proposed notice procedures and related forms; and (6) schedule a final approval
15 hearing.

16 This Court should grant Plaintiff’s motion because: (1) for settlement purposes, the
17 Settlement Class meets the requirements for class certification under Code of Civil Procedure §
18 382; (2) the Settlement warrants preliminary approval based on all indicia for fairness,
19 reasonableness, and adequacy; (3) for settlement purposes, Plaintiff is adequate to serve as
20 Class Representative; (4) Plaintiff’s attorneys are adequate to serve as Class Counsel; (5) the
21 proposed notice procedures, and related forms, fully comport with due process and adequately
22 apprise Class Members of their rights; and (6) a final approval hearing must be scheduled to
23 allow Settlement Class members an opportunity to be heard regarding the Settlement and to
24 give it finality. Accordingly, for the reasons detailed below, this Court should grant Plaintiff’s
25 Motion in its entirety and preliminarily approve the Settlement.

26 ///

27 _____
28 ¹ The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of Maralle Messrelian (“MM”),
which is submitted herewith under a separate cover.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 Defendant first began to employ Plaintiff as a cook and kitchen prep in or around
3 March 2023. During his employment tenure, Plaintiff worked at the McCalls’ facility located at
4 1798 Bryant Street, San Francisco, CA 94110, as well as one of McCalls’ restaurants, Café 5,
5 located inside the SF MOMA Museum located at 151 Third St. in San Francisco, CA 94103.
6 Plaintiff’s employment ended on or around March 1, 2024. MM, ¶ 4.

7 **A. Plaintiff’s Claims and Procedural History**

8 On March 14, 2024, Plaintiff notified Defendant and the California Labor and
9 Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys
10 General Act of 2004, California Labor Code sections 2698, et seq. (“PAGA”), of alleged Labor
11 Code violations committed by Defendant. MM, ¶ 5, Ex. 2.

12 On May 28, 2024, Plaintiff filed a Class Action Complaint in the San Francisco County
13 Superior Court, Case No, CGC-24-615022 against Defendant on behalf of himself and others
14 similarly situated, alleging causes of action on a class-wide basis for (1) Failure to Pay All
15 Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 221, 510, 1194,
16 1197, and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198); (3) Failure
17 to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198); (4) Failure to Indemnify (Lab.
18 Code § 2802); (5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
19 (6) Failure To Pay Wages Owed Every Pay Period (Lab. Code § 204); (7) Failure To Pay
20 Wages When Employment Ends (Lab. Code §§ 201–203); (8) Civil Penalties (Lab. Code §§
21 2698, et seq.); and (9) Unfair Competition (Bus. & Prof. Code, § 17200 et seq.). MM, ¶ 6, Ex. 3.
22 On July 23, 2024, Defendant filed its Answer to Plaintiff’s Complaint. MM, ¶ 6., Ex. 4.

23 The Parties met and conferred and agreed that it may be in their mutual interests to
24 discuss Plaintiff’s allegations informally, rather than through litigation, and scheduled private
25 mediation. MM, ¶ 7.

26 **B. Mediation with Professional Neutral Jason Marsili, Esq.**

27 On June 10, 2025, the Parties attended and participated in good faith, arms’ length
28 settlement discussions at a mediation session with Jason Marsili, Esq., an experienced

1 professional mediator. At the conclusion of the mediation, the Parties agreed to the material
2 terms of the Settlement. MM, ¶ 8. Defendant denies any liability or wrongdoing of any kind
3 whatsoever associated with the lawsuit. MM, ¶ 10.

4 In advance of the mediation, and before agreeing to the terms of the Settlement, the
5 Parties engaged in informal discovery. Through informal discovery, Defendant produced its
6 employee handbook, copies of Defendant’s relevant company written policies, time-keeping
7 records, and time and payroll data for a random sample of putative class members specifically
8 selected by Plaintiff’s counsel. Now that the Parties have finalized the long-form Settlement,
9 Plaintiff submits it to this Court for preliminary approval. MM, ¶ 9. It is the desire of the Parties
10 to fully, finally, and forever compromise, and discharge all claims known or unknown related
11 to those alleged in Plaintiff’s lawsuit. MM, ¶ 10.

12 **III. OVERVIEW OF SETTLEMENT**

13 **A. Settlement Class Definition**

14 The “Settlement Class” or “Class Member(s)” means all current and former non-
15 exempt, hourly paid employees who worked for Defendant Events Management, Inc. dba
16 McCalls Catering & Events in California at any time during the Class Period. “Class Period”
17 means the time from May 28, 2020 to June 10, 2025. Settlement, ¶¶ 5, 7.

18 **B. Monetary Terms**

19 In consideration for settlement of the Class Action, Defendant agree to pay a total of
20 Eight Hundred Fifty Thousand dollars (\$850,000.00) (the “Gross Settlement Amount” or
21 “GSA”). The GSA will be all-inclusive and includes: (1) all Individual Settlement Payments to
22 Class Members; (2) a Class Representative Enhancement Payment to Plaintiff, as class
23 representative and private attorney general, for up to \$10,000; (3) Class Counsel’s Attorneys’
24 Fees of not more than one third of the GSA (\$283,333.33) and for litigation costs not to exceed
25 \$12,500; (4) Settlement Administration Costs of not more than \$9,950; and (5) \$50,000 for the
26 PAGA Penalties under California Labor Code §§ 2699 et seq. (75% or \$37,500 will go to the
27 California Labor & Workforce Development Agency (“LWDA Payment”) and 25% or \$12,500
28 (“PAGA Fund”) will be disbursed to PAGA Members, regardless of whether they request to be

1 excluded from the Settlement Class. The GSA is non-reversionary. The Settlement is not a
2 claims-made settlement. The GSA shall be exclusive of Defendant's employer-side payroll
3 taxes, which Defendant shall pay in addition to the GSA. Settlement, ¶¶ 2, 8, 15, 23, 35. The
4 "Net Settlement Fund" ("NSF") will equal the net amount available for payment of claims to
5 Class Members after deducting the above-referenced costs from the Gross Settlement Amount.
6 Settlement, ¶ 18.

7 Individual Settlement Payment Calculations: Individual Settlement Payments will be
8 calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the
9 number of Workweeks a Class Member worked during the Class Period and the number of
10 PAGA Pay Periods a PAGA Member worked during the PAGA Period, respectively. Specific
11 calculations of Individual Settlement Payments will be made as follows:

12 Payments from the Net Settlement Fund:

- 13 • Defendant will calculate the total number of Workweeks worked by each Class
14 Member during the Class Period and the aggregate total number of Workweeks
15 worked by all Class Members during the Class Period. To determine each Class
16 Member's estimated "Individual Settlement Payment" from the Net Settlement
17 Fund, the Settlement Administrator will use the following formula: The Net
18 Settlement Fund will be divided by the aggregate total number of Workweeks
19 during the Class Period, resulting in the "Workweek Value." The Net Settlement
20 Fund portion of each Class Member's "Individual Settlement Payment" will be
21 calculated by multiplying each individual Class Member's total number of
22 Workweeks by the Workweek Value.

23 Payments from the PAGA Fund:

- 24 • Defendant will calculate the total number of PAGA Pay Periods worked by each
25 PAGA Member during the PAGA Period and the aggregate total number of
26 PAGA Pay Periods worked by all PAGA Members during the PAGA Period. To
27 determine each PAGA Member's estimated "Individual Settlement Payment"
28 from the PAGA Fund the Settlement Administrator will use the following
formula: The PAGA Fund will be divided by the aggregate total number of
PAGA Pay Periods during the PAGA Period, resulting in the "PAGA Pay
Period Value." The PAGA Fund portion of each PAGA Member's "Individual
Settlement Payment" will be calculated by multiplying each individual PAGA
Member's total number of PAGA Pay Periods by the PAGA Pay Period Value.
The entire PAGA Fund will be disbursed to all PAGA Members.

Settlement, ¶ 46.

1 All Individual Settlement Payments will be allocated as follows: (a) Twenty Percent
2 (20%) of the Net Settlement Fund portion of each Individual Settlement Payment will be
3 allocated as wages for which IRS Forms W-2 will be issued; and (b) Eighty Percent (80%) of
4 the Net Settlement Fund portion of each Individual Settlement Payment will be allocated as
5 penalties and interest for which IRS Forms 1099-MISC will be issued. One Hundred Percent
6 (100%) of payments issued to PAGA Members from the PAGA Fund will be treated as non-
7 wages for which IRS Forms 1099-MISC will be issued. Settlement, ¶ 66.

8 Defendant shall be required to fund the GSA thirty (30) days after the Effective Date of
9 the Settlement.² Settlement, ¶ 38. The date on which Defendant fully funds the Gross
10 Settlement Amount is referred to herein as the “Funding Date.” *Id.* Within ten (10) calendar
11 days of the Funding Date, the Settlement Administrator will issue payments to: (a) Participating
12 Class Members and PAGA Members; (b) the Labor and Workforce Development Agency; (c)
13 Plaintiff; (d) Class Counsel, and (e) itself, as approved by the Court. Settlement, ¶ 63.

14 **C. Release of Claims**

15 Releases by Participating Class Members: Upon the Funding Date, and except as to
16 such rights or claims as may be created by this Settlement Agreement, each Participating Class
17 Member, together and individually, on their behalf and on behalf of their respective
18 representatives, heirs, executors, successors, assignees, administrators, agents, and attorneys,
19 shall fully and forever release and discharge Defendant, and each of its former and present
20 directors, officers, principals, trustees, shareholders, owners, managers, managing agents,
21 attorneys, insurers, predecessors, successors, assigns, DBAs, parents, subsidiaries, and
22 affiliates)(the “Released Parties”) or any of them, from each of the Released Class Claims
23 arising during the Class Period. Settlement, ¶¶ 30, 58.

24 ///

25
26 ² “Effective Date” means the later of: (a) if no timely objections are filed, or are withdrawn prior to Final
27 Approval, then the date of Final Approval; or (b) if a Class Member files an objection to the Settlement, the
28 Effective Date shall be the sixty-first (61st) calendar day after the date of Final Approval, provided no appeal is
initiated by an objector; or (c) if a timely appeal is initiated by an objector, then the Effective Date will be the date
of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in
final judicial approval of the Settlement. Settlement, ¶ 12.

1 The Released Class Claims include:

2 Any and all claims all the claims, charges, complaints, liens, demands, causes of action,
3 obligations, damages and liabilities, known or suspected, that each Participating Class
4 Member had, now has, or may hereafter claim to have against the Released Parties that
5 were asserted in the Complaint based on claimed conduct during the Class Period, or
6 that could have been asserted based on any of the facts, events, acts, omissions, or
7 failures to act alleged in the Operative Complaint that occurred during the Class Period
8 (the “Released Class Claims”). The Released Class Claims specifically include claims
9 for: (1) Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of
10 Pay; (2) Failure to Provide Required Rest Breaks; (3) Failure to Provide Meal Periods;
11 (4) Failure to Indemnify; (5) Failure to Provide Accurate Itemized Wage Statements; (6)
12 Failure to Pay Wages Owed Every Pay Period; (7) Failure to Pay Wages When
13 Employment Ends;; and (8) Unfair Competition. The specific statutes released include
14 the following (though this list does not narrow the scope of the release described above
15 and below): Labor Code §§ 201, 202, 203, 204, 226, 226.7, 353, 510, 512, 558, 558.1,
1174, 1194, 1197, 1198, 2802, 2698 et seq, 2699, 2699.3, and 2699.5; the applicable
IWC Wage Orders, including No. 5-2001; California Code of Regulations, Title 8,
section 11050; and Business & Professions Code § 17200, et. seq. The Released Claims
exclude claims for workers’ compensation benefits, unemployment insurance benefits,
pension or retirement benefits, wrongful termination, violation of the Fair Employment
and Housing Act, unemployment insurance, disability, social security, Class Claims
outside the Class Period and any other claim or right that as a matter of law cannot be
waived or released.

16 Settlement, ¶ 30.

17 Releases by PAGA Members. Upon the Funding Date, and except as to such rights or
18 claims as may be created by this Settlement Agreement, each PAGA Member, together and
19 individually, on their behalf and on behalf of their respective representatives, heirs, executors,
20 successors, assignees, administrators, agents, and attorneys, shall fully and forever release and
21 discharge all of the Released Parties, or any of them, from each of the Released PAGA Claims
22 during the PAGA Period. The Released PAGA Claims will forever be binding on, and shall
23 have res judicata and preclusive effect in, all past, pending, and future lawsuits maintained by
24 either the LWDA or PAGA Members for any and all of the Released PAGA Claims.

25 Settlement, ¶¶ 31, 59.

26 “Released PAGA Claims” include:

27 Any and all claims, demands, rights, liabilities and causes of action under the Private
28 Attorneys General Act, California Labor Code §§ 2698, et seq., that were alleged or
could reasonably have been alleged based on the same facts alleged in the operative
Complaint, or were asserted in the Plaintiff’s March 14, 2024 Notice Letter to the

1 LWDA (the “PAGA Notice”), and ascertained in the course of the Action, arising
2 during or with respect to the PAGA Period. The Released PAGA Claims will forever be
3 binding on, and shall have res judicata and preclusive effect in, all past, pending, and
4 future lawsuits maintained by either the LWDA or PAGA Members for any and all of
5 the Released PAGA Claims.

6 Settlement, ¶ 31.

7 Plaintiff also provided Defendant with a general release of all claims, whether known or
8 unknown, including unknown claims covered by Civil Code Section 1542. Settlement, ¶ 60.

9 **D. Class Notice and Settlement Administration**

10 Within thirty (30) business days following the Court’s entry of its Order Granting
11 Preliminary Approval of Settlement, Defendant shall provide ILYM Group, Inc., the appointed
12 Settlement Administrator, the Class List with the following information about each Class
13 Member: (1) full name; (2) most recent mailing address and telephone number; (3) Social
14 Security Number; (4) dates of employment; (5) the respective number of Workweeks that each
15 Class Member worked during the Class Period and the number of PAGA Pay Periods worked
16 during the PAGA Period. Settlement, ¶¶ 4, 49.

17 Within ten (10) calendar days after the receipt of the Class List, the Settlement
18 Administrator shall be responsible for calculating the estimated payouts to the Class Members
19 assuming all Class Members participate in the Settlement and shall mail the Class Notice, in
20 both English and Spanish, to all Class Members pursuant to the terms of the Settlement, by
21 First Class regular U.S. mail using the most current, known mailing addresses identified in the
22 Class List. Settlement, ¶ 50. Prior to mailing, the Settlement Administrator will perform a
23 search based on the National Change of Address Database for information to update and correct
24 any known or identifiable address changes. Settlement, ¶ 51. Any Class Notices returned to the
25 Settlement Administrator as non-deliverable on or before the Response Deadline will be sent
26 promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the
27 Settlement Administrator will indicate the date of such re-mailing on the Class Notice. If no
28 forwarding address is provided, the Settlement Administrator will promptly attempt to
determine the correct address using a skip-trace, or other search using the name, address and/or
Social Security Number of the Class Member involved and will then perform a single re-

1 mailing. Those Class Members who receive a re-mailed Class Notice will have either (a) fifteen
2 (15) calendar days from the date of re-mailing or (b) until the Response Deadline, whichever is
3 later, to submit a Request for Exclusion, disputes concerning the calculation of the Class
4 Member's Individual Settlement Payment, or an objection to the Settlement. *Id.*

5 The Response Deadline by which Class Members must postmark or email to the
6 Settlement Administrator Requests for Exclusion, postmark or email disputes concerning the
7 calculation of Individual Settlement Payments, or postmark Notices of Objection to the
8 Settlement Administrator will be sixty (60) calendar days from the initial mailing of the Class
9 Notice by the Settlement Administrator. Settlement, ¶ 34.

10 **1. Procedures for Class Member Disputes**

11 To the extent Class Members dispute their employment dates or the number of
12 Workweeks or PAGA Pay Periods on record, Class Members may produce evidence to the
13 Settlement Administrator showing that such information is inaccurate. Defendant's records will
14 be presumed correct, but the Settlement Administrator shall contact the Parties regarding the
15 dispute and the Parties will work in good faith to resolve it. All disputes must be submitted by
16 the Response Deadline and will be decided within ten (10) business days after the Response
17 Deadline. Settlement, ¶ 53.

18 **2. Procedures for Opting Out of the Class**

19 Any Class Member wishing to opt-out of the Settlement must sign and email or
20 postmark a written Request for Exclusion to the Settlement Administrator within the Response
21 Deadline. In the case of Requests for Exclusion that are mailed to the Settlement Administrator,
22 the postmark date will be the exclusive means to determine whether a Request for Exclusion
23 has been timely submitted. Those Class Members who receive a re-mailed Class Notice will
24 have either (a) fifteen (15) calendar days from the date of re-mailing or (b) until the Response
25 Deadline, whichever is later, to submit a Request for Exclusion. Settlement, ¶ 55.

26 **3. Procedures for Objecting to the Settlement**

27 To object to the Settlement Agreement, a Class Member may either postmark a valid
28 Notice of Objection to the Settlement Administrator on or before the Response Deadline or

1 appear in person at the Final Approval Hearing. Settlement, ¶ 61. For the Notice of Objection to
2 be valid, it must include: (a) the objector’s full name, signature, address, and telephone number,
3 (b) a written statement of all grounds for the objection accompanied by any legal support for
4 such objection; (c) copies of any papers, briefs, or other documents upon which the objection is
5 based; and (d) a statement whether the objector intends to appear at the final fairness hearing.
6 Settlement, ¶ 19.

7 **E. Uncashed Checks**

8 Proceeds represented by Individual Settlement Payment checks returned as
9 undeliverable and Individual Settlement Payment checks remaining un-cashed for more than
10 one hundred and eighty (180) calendar days after issuance will be transmitted to the State
11 Controller Unclaimed Property Fund in the name of the Class Member thereby leaving no
12 “unpaid residue” subject to the requirements of California Code of Civil Procedure Section
13 384, subd. (b). Settlement, ¶ 64.

14 **IV. CERTIFICATION OF THE PROPOSED CLASS IS APPROPRIATE.**

15 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
16 and its members are too numerous for joinder to be practical; (2) the representative and absent
17 class members share a community of interest and questions of law and fact common to the class
18 predominate over questions unique to individual class members; (3) the representative’s claims
19 are typical of the class’ claims; and (4) the representative will fairly and adequately represent
20 the class’ interests. *See, e.g., Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.
21 Moreover, in the settlement context, the Court can use a lesser standard to determine the
22 appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford*
23 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1807. As explained below, all of these requirements
24 are met in this case.

25 **1. The Settlement Class Is Objectively Ascertainable.**

26 A class is ascertainable when it may be readily identified without unreasonable expense
27 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926,
28 932 (citing *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566, 579). Plaintiff maintains that the

1 above-defined Class is ascertainable because its members may be identified by reference to
2 Defendant's records and Defendant has agreed to share the relevant information from its
3 records to facilitate the settlement process. MM, ¶ 11; Settlement, ¶¶ 4, 49. Therefore, the
4 Settlement Class is ascertainable.

5 **2. The Membership of the Settlement Class Is Sufficiently Numerous.**

6 The Settlement Class has sufficiently numerous members to render joinder impractical.
7 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
8 (1972) 28 Cal.App.3d 1017, 1030. Defendant estimates that there are approximately 672 Class
9 Members. MM, ¶ 12. Plaintiff maintains that it would be impractical and economically
10 inefficient to require each Class Member to separately maintain an individual action or be
11 joined as a named plaintiff in this action. The California Supreme Court has upheld a class of
12 as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these
13 considerations, the Settlement Class' membership is sufficiently numerous. MM, ¶ 12. *See*
14 *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695.

15 **3. Class Members Share a Well-Defined Community of Interest.**

16 The community of interest requirement "embodies three factors: (1) predominant
17 common questions of law or fact; (2) class representatives with claims or defenses typical of
18 the class; and (3) class representatives who can adequately represent the class." *Sav-On Drug*
19 *Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326. It "does not mandate that class
20 members have uniform or identical claims." *Capitol People First v. Dept. of Developmental*
21 *Servs.* (2007) 155 Cal. App. 4th 676, 692. Rather, courts focus on the defendant's internal
22 policies and "pattern and practice . . . in order to assess whether that common behavior toward
23 similarly situated plaintiffs renders class certification appropriate." *Id.* (citing *Sav-On*, 34 Cal.
24 4th at 333).

25 To justify certification, the class proponent "must show ... that questions of law or fact
26 common to the class predominate over the questions affecting the individual members"
27 *See, Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington*
28 *Mut. Bank, FA v. Superior Court*, 248 Cal. 4th 906, 913 (2001)). In light of the more lenient

1 standard for certification of a settlement class, the Parties agree that for the purposes of the
2 Settlement only, the claims of the Class Members all stem from the same sources. MM, ¶ 13.

3 In this case, Plaintiff asserts all class members were subject to the same or similar
4 operations and employment policies, practices, and procedures. The claims arise from
5 Defendant's alleged uniform policy of failing to properly account for all time worked and
6 failing to, among other things, properly pay minimum and overtime wages, provide off-duty
7 meal and rest periods, indemnify Class Members for business expenses, timely pay wages upon
8 termination, and provide compliant wage statements, all of which Plaintiff claims constitute
9 unfair business practices and give rise to PAGA penalties. Plaintiff asserts that common
10 questions include, but are not limited to: (1) Whether Defendant failed to pay all wages earned
11 to Class Members for all hours worked at the correct rates of pay; (2) Whether Defendant failed
12 to provide the Class with all meal and rest periods in compliance with California law; (3)
13 Whether Defendant failed to pay the Class one additional hour of pay on workdays they failed
14 to provide the class with one or more meal or rest periods in compliance with California law;
15 (4) Whether Defendant failed to indemnify the Class for all necessary business expenditures
16 incurred during the discharge of their duties including, but not limited to, kitchen tools and
17 personal mobile phones; (5) Whether Defendant knowingly and intentionally failed to provide
18 the Class with accurate and complete itemized wage statements; (6) Whether Defendant
19 willfully failed to provide the Class with timely final wages; and (7) Whether Defendant
20 engaged in unfair competition within the meaning of Business and Professions Code section
21 17200, et seq., with respect to the class. MM, ¶ 13. Therefore, common questions predominate.

22 **4. Plaintiff Is Typical of the Settlement Class.**

23 The class representative must be similarly situated to the rest of the purported class. *See*
24 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating "it has never been the law in
25 California that the class representative must have identical interests with the class members.
26 The only requirements are ... that the class representative be *similarly* situated") (emphasis in
27 original); *See also* Newberg, § 3:29 (typicality "focuses on whether there exists a relationship
28 between the Plaintiffs claims and the claims alleged on behalf of the class"). Plaintiff contends

1 that his claims are typical for the purposes of certifying the Settlement Class. Plaintiff asserts
2 that he, like absent Class Members was subject to the same relevant policies and procedures
3 governing his compensation, hours of work and meal and rest periods. Because Plaintiff
4 contends that he was subject to the same general course of conduct as absent Class Members,
5 resolving the common questions as they apply to Plaintiff will determine Defendant's *prima*
6 *facie* liability to all Class Members. Moreover, Plaintiff's claims could potentially be subject to
7 the same primary affirmative defenses as those of absent Class Members. Accordingly,
8 Plaintiff's claims are typical of the Class. MM, ¶ 14.

9 **5. Plaintiff Will Adequately Represent the Settlement Class.**

10 The adequacy requirement is met where the plaintiff is represented by counsel qualified
11 to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to the
12 class' interests. *McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 451. In other words,
13 where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any
14 disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. MM,
15 ¶ 15.

16 First, Plaintiff's counsel has supplied the Court with declarations to show that they are
17 adequate to represent the Settlement Class and that they have significant experience in
18 employment litigation generally, and wage and hour and employment-related class action
19 litigation specifically. *See* MM, ¶¶ 17-21. Thus, Plaintiff's counsel is adequate to serve as Class
20 Counsel.

21 Second, Plaintiff contends that he is an adequate class representative. Plaintiff and the
22 Class Members have strong and co-extensive interests in this litigation because they all worked
23 for Defendant during the relevant time period, allegedly suffered the same alleged injuries from
24 the same alleged course of conduct, and there is no evidence of any conflict of interest between
25 Plaintiff and the Class Members. MM, ¶ 16. Moreover, Plaintiff has demonstrated his
26 commitment to the Settlement Class by, among other things, retaining experienced counsel,
27 providing counsel with documents and extensively speaking with them to assist in identifying
28 the claims asserted in this case, and exposing himself to the risk of attorneys' fees and costs

1 awards against him if this lawsuit had been unsuccessful. MM, ¶15; *See generally* Declaration
2 of Jose I. Soriano Rodriguez submitted herewith under separate cover. Thus, Plaintiff is
3 adequate to serve as Class Representative. Accordingly, this Court should find that Plaintiff and
4 his counsel are adequate to represent the Settlement Class as required under Code of Civil
5 Procedure § 382.

6 **6. Class Action Treatment Is the Superior Means for Resolving the Claims**
7 **of the Class Members.**

8 Plaintiff further contends that a class action is also superior to other means adjudicating
9 the issues in this action. The predominance of common legal and factual questions shows that
10 this Court could fairly adjudicate the claims of Class Members through a single class action. In
11 view of the *theoretical* alternatives that proposed class members could potentially utilize—
12 representative PAGA action (where there is less relief available), individual civil lawsuits or
13 wage claims through the Division of Labor Standards Enforcement (where there would be
14 relatively little money at stake, but the claims would be time-consuming to litigate)—a class
15 action is plainly superior to all of them. Thus, this consideration supports conditional class
16 action treatment for purposes of this Settlement only. MM, ¶ 22.

17 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE, AND THE**
18 **COURT SHOULD GRANT PRELIMINARY APPROVAL.**

19 **A. Legal Standard**

20 A class action settlement requires court approval. California Rules of Court (“CRC”),
21 Rule 3.769 provides three steps for approval:

- 22 1) Preliminary approval after submission of a written motion for preliminary
23 approval, the proposed class settlement, and the proposed class notice;
- 24 2) Issuance of notice of settlement to class members; and
- 25 3) A final settlement approval hearing where class members may be heard
26 regarding the settlement, and at which evidence and argument concerning the
27 fairness, adequacy, and reasonableness of the settlement is presented.

28 The decision to approve or reject a class settlement is committed to the Court’s broad
discretion. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision
to approve class settlement may be reversed only upon a showing of “clear abuse of discretion.”
Id.

1 **B. The Settlement Is Presumptively Fair**

2 In assessing preliminary approval, a court evaluates if the settlement process has certain
3 indicia of fairness. A “presumption of fairness exists where (1) the settlement is reached
4 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel
5 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
6 percentage of objectors is small.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford*
7 *Motor Co.*, (1996) 48 Cal.App.4th at 1794.

8 The class settlement here satisfies all of these factors. MM, ¶ 23. The Settlement
9 resulted from thorough, arms’ length negotiations between experienced counsel with the
10 assistance of a respected mediator after sufficient discovery was exchanged to assess the
11 relative strengths and weaknesses of their respective cases and Defendant’s estimated exposure.
12 *Id.* Both defense counsel and Plaintiff’s counsel are particularly experienced in employment
13 law and wage and hour class actions and are experienced and qualified to evaluate the class
14 claims, the viability of the defenses, and the risks and benefits of settlement versus trial on a
15 fully informed basis. Counsel on both sides share the view that the Settlement is a fair and
16 reasonable settlement in light of the complexities of the case and uncertainties of class
17 certification and litigation, and a fair result for the Class Members. *Id.*

18 **C. The Settlement Satisfies the *Kullar* Factors for Approval.**

19 The *Kullar* case sets forth several factors a court should consider in determining
20 whether to approve a class settlement. These factors include: (1) the strength of plaintiff’s
21 case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of
22 maintaining class action status through trial; (4) the amount offered in settlement; (5) the
23 extent of discovery completed and stage of the proceedings; (6) the experience and views of
24 counsel; (7) the presence of a governmental participant; and (8) the reaction of the class
25 members to the proposed settlement. 168 Cal.App.4th at 128. As demonstrated herein, the
26 Settlement satisfies each of these factors.

27 **1. Evaluation of Plaintiff’s Case**

28 The Parties reached the Settlement through arm’s-length bargaining with the aid of a

1 respected mediator. The Parties conducted sufficient investigation and discovery to allow
2 Counsel and the Court to act intelligently. Plaintiff considered various sources of information in
3 the lead-up to and during the mediation of June 10, 2025 that enabled Plaintiff to achieve the
4 Settlement at issue.

- 5 • Defendant produced and Plaintiff's counsel reviewed Plaintiff's timekeeping and
6 payroll records.
- 7 • Plaintiff's counsel requested that Defendant produce any and all policies regarding
8 overtime and double-time wages, off the clock work, expense reimbursement, meal
9 periods, rest breaks, meal period waivers and agreements, compensation plans, and
10 complaints about working conditions in effect during the relevant time period
11 beginning in May of 2020. Defendant produced its pertinent wage and hour policies,
12 including those contained within its employee handbook.
- 13 • Plaintiff's counsel requested that Defendant provide the total number of employees,
14 paychecks, and the pay cycles during the relevant period. Defendant provided the
15 answers to each of these questions.
- 16 • Plaintiff's counsel requested sample time and payroll records for the relevant time
17 period. Defendant produced time and pay records for 135 employees throughout the
18 Class Period that Plaintiff's counsel randomly selected from a list provided by the
19 defense.
- 20 • Plaintiff's counsel then retained a professional data analyst, James Toney, to examine
21 the records and determine if there was any pay discrepancy in timesheet hours versus
22 paid hours, meal violations, and if there was any rounding/time shaving issues. Plaintiff
23 is prepared to provide the Court with the data analysis for *in camera* inspection upon its
24 request.
- 25 • Plaintiff's counsel analyzed the state of caselaw on meal and rest break claims, claims
26 for off-the-clock work, and claims for unreimbursed expenses.

27 MM, ¶ 24.

28 Defendant disclosed that there were approximately 40,824 workweeks at the time of
mediation on June 10, 2025. Based on this information and with the aid of the data analyst,
Plaintiff's counsel prepared "damages" estimates to determine Defendant's maximum exposure
in connection with the settlement negotiations. Plaintiff's counsel calculated the maximum
potential damages for meal period violations to be \$3,489,170.78, rest period violations to be
\$3,708,180.01, unreimbursed expenses violations to be \$102,060, and minimum wage
violations to be \$1,157,091.26 (exclusive of penalties and interest); maximum damages for

1 derivative claims of \$555,650 for wage statement penalties and \$1,671,528 for waiting time
2 penalties. The estimates are in essence “home run” projections that do not factor in any of the
3 risks involved in litigating this Action and are not in line with reality, especially when
4 considering Defendant’s policies and its position on the issues. MM, ¶ 25.

5 Plaintiff also estimated approximately \$6,927,600 in potential civil penalties under the
6 PAGA. MM, ¶ 25. This estimate does not reflect the realities of this case and did not take into
7 account any of the risks discussed above and assumed a violation for every single pay period.
8 As such, the Parties discounted potential civil penalties for multiple reasons. For one, Plaintiff’s
9 PAGA claims are predicated on the wage underpayment, meal, rest, business expense
10 reimbursement, and wage statement violations described above, and thus subject to the same
11 disputes and defenses. Plaintiff’s counsel also assessed multiple penalties for the same pay
12 period for the same alleged violations of different Labor Code provisions and derivative
13 violations. Plaintiff’s counsel is not aware of any California state courts awarding plaintiffs
14 multiple PAGA penalties for the same violation for the same pay period under different Labor
15 Code provisions. This may be because the PAGA does not provide for what many employers
16 characterize as claim splitting and not merely stacking. Additionally, PAGA states a court has
17 discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2);
18 *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 (reducing
19 PAGA award).

20 The Settlement obviates the significant risk that this Court may deny certification of
21 some or all of Plaintiff’s claims. Even if Plaintiff obtained certification of some or all of the
22 claims, continued litigation would be expensive, involving a trial and possible appeals, and
23 would substantially delay and reduce any recovery by the Class Members. While Plaintiff is
24 confident in the merits of his case, a legitimate controversy exists as to each cause of action.
25 MM, ¶ 26. To illustrate this consideration, below is brief summary of some of Defendant’s
26 arguments, all of which Plaintiff disputes, but nevertheless acknowledges as potential threats to
27 the Settlement Class’ claims.

- Defendant contends that, to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. So long as an employer provides employees with a “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. Defendant contends that individualized proof will be needed to establish liability on Plaintiff’s meal period claims. Defendant argues that Settlement Class Members will testify that they were plainly advised by their supervisors, and fully understood, that they were authorized to take meal periods within each five-hour period worked and, in fact, took such breaks. Moreover, Defendant’s timekeeping data cannot show why a meal break does not appear in the time records. For example, a meal period may have been authorized and taken, but simply not punched in and out. Moreover, McCall’s timekeeping data shows daily meal period start and end times. Furthermore, McCall’s started paying automatic meal period premiums.
- Defendant contends that there is no common proof for Plaintiff’s claim that he was required to work off-the-clock (“OTC”) and that some of that OTC work, if properly accounted for, would have resulted in work to be compensated at overtime rates. In fact, Defendant argues, time records do not provide common proof because, by definition, they do not show such time. Defendant argues that one would have to examine, and cross-examine for credibility, each individual’s separate claims of supposed OTC work. Further, Defendant argues, each Class Member would need to overcome this credibility hurdle in the face of his/her own time records, which show no OTC work and further would have to prove that his/her individual manager knowingly

1 suffered or permitted the work.

- 2 • Defendant did not engage in any “willful” conduct as would be required for Plaintiffs
3 to recover waiting time penalties. Under the Labor Code, if an employer willfully fails
4 to pay an employee all wages due and owing at the time of separation, the employee is
5 owed up to 30 days’ wages as a penalty. Labor Code. §§ 201-203. A violation is
6 deemed willful if the employer intentionally fails to pay wages when they are due.
7 Notably, the failure to pay, by itself, cannot constitute willfulness where there is good
8 faith belief of compliance with the law at the time. *Barnhill v. Robert Saunders & Co.*,
9 125 Cal.App.3d 1, 8-9.
- 10 • Defendant contends that it is not liable for wage statement penalties based on the “good
11 faith” defense as set forth by the California Supreme Court in *Naranjo v. Spectrum*
12 *Sec. Servs., Inc.* (2022) 13 Cal. 5th 93 (holding that an employer's objectively
13 reasonable, good faith belief that it was providing compliant wage statements can
14 preclude the imposition of penalties under Labor Code section 226(e) for inaccurate
15 wage statements).
- 16 • There is a risk that the Court may consider Plaintiff’s claims as to Defendant’s alleged
17 failure to indemnify for business expenses to be individual in nature and unfit for class
18 wide resolution.

19 MM, ¶ 26.

20 As noted above, Defendant contests liability, as well as the propriety of certification, and is
21 prepared to vigorously oppose certification and to defend against Plaintiff’s claims if the
22 Action is not settled. Given the potential damages, as well as the substantial risks to recovery
23 discussed herein, including the uncertainties in achieving class certification, Plaintiff’s counsel
24 had to dramatically discount the value of the claims during settlement negotiations. Plaintiff’s
25 counsel estimates a 50 percent likelihood of obtaining and maintaining certification of all of
26 Plaintiff’s claims, which reduces the value of these claims from approximately \$17,611,280.05
27 to approximately \$8,805,640.03. Defendant, however, asserts that there are significantly lower
28 prospects of certification. Plaintiff’s counsel further estimates that there is a 50 percent chance

1 that Plaintiff will prevail at trial on his claims, further reducing the value of the claims to
2 approximately \$4,402,820.01. Defendant contends that Plaintiff's prospects of success at trial
3 are much lower. If this case advanced to trial and Class Counsel succeeded on all of Plaintiff's
4 claims, attorney's fees and costs may have significantly reduced the recovery awarded to the
5 Class. Furthermore, there is always a risk that a trial of this magnitude can become
6 unmanageable. A settlement of \$850,000(approximately 5% of the maximum exposure and
7 19% of the potential recovery) is a great result and a proportion sanctioned by existing case
8 law. *See In re Cendant Corp., Derivative Action Litig.*, 232 F. Supp. 2d 327 (D. N.J. 2002)
9 (approving settlement that only provided a 2% recovery based on the estimated liability
10 exposure). MM, ¶ 27.

11 While Plaintiff believes the evidence gathered through Plaintiff's discovery supports the
12 merits of the claims asserted in this lawsuit, Plaintiff recognizes that continued litigation
13 presents significant risks that support a downward departure from Defendant's estimated
14 liability exposure. In view of the risks, the Settlement reflects Class Counsel's estimate of the
15 total amount of damages, monetary penalties or other relief that the class could reasonably
16 expect to be awarded at trial, taking into account the likelihood of prevailing and other
17 attendant risks. It also represents a fair, adequate, and reasonable compromise amount for these
18 claims and warrants preliminary approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-
19 55479 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. MM, ¶ 28.

20 **2. Allocation of the PAGA Payment**

21 The settlement of PAGA penalties in the sum of \$50,000, of which 75% (\$37,500) will
22 be paid to the LWDA and 25% (\$12,500) will be distributed to the Class, is reasonable and
23 appropriate under the circumstances. MM, ¶ 29. The Parties negotiated a good faith amount for
24 PAGA penalties to be paid to the LWDA and to the Settlement Class. *Id.* The portion to be paid
25 to the LWDA was not the result of self-interest at the expense of other Class Members. *Id.*
26 Where settlements "negotiate[] a good faith amount" for PAGA penalties and "there is no
27 indication that this amount was the result of self-interest at the expense of other Class
28 Members," such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*

(N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9. Likewise, where the employer did not act willfully, and made good faith attempts to comply with wage and hour laws, a reduction or lesser penalty is warranted because imposing maximum PAGA penalty for each violation would have been unjust, arbitrary, and oppressive. *Id. Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 (affirming trial court's award of only 10% of maximum PAGA penalty for meal break violations). *Id.* The amount to be paid to the LWDA comports with PAGA settlement amounts approved by other courts. See, e.g., *Chu v. Wells Fargo Investments, LLC* (N.D. Cal., Feb. 16, 2011) 2011 WL 67245, 81 (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common fund); *Lazarin v. Pro Unlimited, Inc.* (N.D. Cal., July 11, 2013) 2013 WL 3541217 (approving PAGA payment of \$7,500 to LWDA out of \$1.25 million common fund settlement); *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Aug. 8, 2008) 2008 WL 3385452, at *1 (approving PAGA settlement of 0.3% or \$1,500); see *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated \$0 to PAGA claim).

3. Presence of Governmental Participant

As required under Labor Code section 2699(1)(2), Plaintiff will provide notice of this settlement to the LWDA. MM, ¶ 39, Ex. 8.

4. Reaction of Class Members to Proposed Settlement

If the settlement is preliminarily approved, Class Members will be provided with the Class Notice (attached as Exhibit 1 to the Settlement) and an opportunity to object. MM, ¶ 35. The Parties' proposed notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make informed responses to the proposed settlement. *Id.*

VI. THE SETTLEMENT FAIRLY, REASONABLY, AND ADEQUATELY COMPENSATES CLASS MEMBERS BECAUSE EACH CLASS MEMBER WILL BE PAID BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY COMPARED TO OTHER CLASS MEMBERS.

Individual Settlement Payments will be calculated and apportioned from the Net Settlement Fund and PAGA Fund based on the number of Workweeks a Class Member worked during the Class Period and the number of PAGA Pay Periods a PAGA Member worked

1 during the PAGA Period, respectively. MM, ¶ 34; Settlement ¶ 46. Because this method
2 compensates Class Members based on the extent of their potential injuries, in that Class
3 Members who worked for Defendant longer would have been subject to more alleged
4 violations, it is fair, adequate, and reasonable. *Id.*

5 **VII. ALLOCATION FOR CLASS COUNSEL’S ATTORNEYS’ FEES AND COSTS**
6 **IS APPROPRIATE AND SHOULD BE PRELIMINARILY APPROVED.**

7 The settlement states Class Counsel may seek attorneys’ fees of \$283,333.33 (one-third
8 of the GSA) and up to \$12,500.00 for actual reasonable litigation costs and expenses incurred
9 in prosecuting the Action. Settlement ¶¶ 2,39. These amounts are reasonable, given the facts
10 and circumstances of the case. MM, ¶¶ 30-32.

11 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
12 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
13 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the
14 “experienced trial judge is the best judge of the value of professional services rendered in his
15 court.” *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney
16 fee awards should be equivalent to fees paid in the legal marketplace to compensate for the
17 result achieved and risk incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503
18 (citing *Lealao, supra*, 82 Cal.App.4th at p. 48-49). The Supreme Court has recently approved
19 fees equal to one-third (1/3) of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many
20 courts have similarly approved fee awards equal to or greater than the percentage requested
21 here. *See, e.g., In re Pacific Enterprises* (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of
22 the common fund); *In re Activision* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the
23 common fund); *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of
24 settlement fund).

25 The amount of fees and costs requested are commensurate with (1) the risk Class
26 Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the
27 case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel
28 achieved, (5) the value of the Settlement Class Counsel achieved for the class, and (6) the other
cases Class Counsel turned down to devote time to this matter. MM, ¶ 31. Class Counsel met

1 and conferred with Defendant's counsel on numerous occasions, reviewed and analyzed
2 hundreds of pages of data and documents provided by Defendant, researched applicable law,
3 provided estimates of "damages" for purposes of settlement discussions, and engaged in a full
4 day of mediation, among other tasks. *Id.*

5 Class Counsel have borne all the risks and costs of litigation and will receive no
6 compensation until recovery is obtained. MM, ¶ 32. Class Counsel is well-experienced in
7 wage-and-hour class action litigation and used that experience to obtain a fair result for the
8 Class. *Id.* Considering the amount of the attorney fees requested, the work performed, and the
9 risks incurred, the requested fees and costs are reasonable and should be awarded. *Id.*

10 **VIII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT TO**
11 **PLAINTIFF IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD BE**
12 **PRELIMINARILY APPROVED.**

13 Courts routinely approve enhancement awards to compensate named plaintiffs for the
14 services they provide and the risks they incur during class action litigation, often in much
15 higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115
16 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in
17 bringing the case); *Van Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294
18 (approving \$50,000 enhancement award). The Settlement provides that Plaintiff may seek a
19 Class Representative Enhancement Payment of \$10,000.00. This amount is entirely reasonable
20 given Plaintiff's efforts in this action and the risks he undertook on behalf of Class Members.
21 MM, ¶ 33. Plaintiff has devoted many hours advancing the interests of the Settlement Class.
22 Plaintiff has done this by, among other things, retaining experienced counsel, providing them
23 with information about his work history with Defendant and Defendant's policies and practices
24 with respect to the wage and hour claims at issue, and being actively involved in the settlement
25 process to ensure a fair result for the Settlement Class as a whole. In doing this, Plaintiff has
26 been exposed to significant risks, including the risk of an order to pay Defendant's attorneys'
27 fees and costs if this action had been unsuccessful (*See* Labor Code §§ 218.5-218.6). The
28 efforts and risks that Plaintiff undertook on behalf of the Settlement Class shows that the

1 proposed Class Representative Enhancement Payment is fair, adequate, and reasonable, and
2 thus warrants preliminary approval. MM, ¶ 33; *See generally* Declaration of Jose I. Soriano
3 Rodriguez.

4 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE FAIR**
5 **AND REASONABLE AND SHOULD BE PRELIMINARILY APPROVED.**

6 With regard to the settlement administration costs provision, it is reasonable. Before
7 agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from other reputable third-
8 party administrators which provided higher bids. MM, ¶ 37, Exs. 5-7. Thus, the settlement
9 administration costs provision should be given preliminary approval.

10 **X. THE PROPOSED NOTICE AND SETTLEMENT ADMINISTRATION PLAN**
11 **SHOULD BE APPROVED BECAUSE IT IS REASONABLY CALCULATED**
12 **TO GIVE ACTUAL NOTICE TO CLASS MEMBERS AND SUFFICIENT**
13 **TIME TO EXERCISE THEIR RIGHTS**

14 This Court should approve the proposed plans for giving notice to the Settlement Class
15 and administering the Settlement. The standard for determining the adequacy of notice is
16 whether the notice has “a reasonable chance of reaching a substantial percentage of the class
17 members.” *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes
18 multiple measures to ensure that as many Class Members as practicable receive actual notice of
19 the Settlement and have enough time to exercise their rights. The Settlement requires
20 distribution of the Notice by First Class U.S. mail only. Settlement, ¶ 50. Although there are
21 current employee Class Members, it is uncertain whether Defendant’s records of their contact
22 information include email addresses and Class Members, who perform all of their work away
23 from a desk, are not in a position to check their emails. As such, notice by mail alone is fair,
24 adequate, and reasonable. MM, ¶ 35.

25 With respect to its content, “[The] notice given to the class must fairly apprise the class
26 members of the terms of the proposed compromise and of the options open to dissenting class
27 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
28 The purpose of the notice in class settlement context is to give class members sufficient
information to decide whether they should accept the benefits offered, opt out and pursue their
own remedies, or object to the settlement. *Id.* The Class Notice (Exhibit 1 to the Settlement)

1 provides Class Members with all pertinent information that they need to fully evaluate their
2 options and exercise their rights under the Settlement. Each Class Notice will provide: (a)
3 information regarding the nature of the Action; (b) a summary of the Settlement's principal
4 terms; (c) the Settlement Class and PAGA Member definitions; (d) the total number of
5 Workweeks and PAGA Pay Periods each respective Class Member and PAGA Member
6 worked for Defendant during the Class Period and PAGA Period; (e) each Class Member's and
7 PAGA Member's estimated Individual Settlement Payment and the formula for calculating
8 Individual Settlement Payments; (f) the dates which comprise the Class Period and PAGA
9 Period; (g) instructions on how to submit Requests for Exclusion or Notices of Objection; (h)
10 the deadlines by which the Class Member must postmark or email Request for Exclusions, or
11 postmark Notices of Objection to the Settlement; and (i) the claims to be released. Settlement, ¶
12 52. Accordingly, the Notice should be approved because it describes the Settlement with
13 sufficient clarity and specificity to explain to Class Members what this action is about, their
14 rights under the Settlement, and how to exercise those rights. MM, ¶ 35.

15 **XI. CONCLUSION**

16 For the reasons stated above, this Court should grant Plaintiff's Motion in its entirety
17 and adopt the proposed order submitted concurrently herewith.

18 Respectfully submitted,

19 MM LAW, APC

20 Dated: July 29, 2025

21 By: Maralle Messrelian

22 MARALLE MESSRELIAN

23 Attorney for Plaintiff,

24 JOSE I. SORIANO RODRIGUEZ