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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

DANIEL CRUZ, as an individual and on behalf
of all others similarly situated,

Plaintiff,

vs.

MAGNUS LANDSCAPING CORPORATION
d.b.a. LABAHN'S LANDSCAPING, a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 37-2024-00009720-CU-OE-CTL

*[Assigned for all purposes to the Hon.
Marcella O. McLaughlin, Dept. C-72]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Date: October 2, 2026
Time: 9:30 a.m.
Dept.: C-72

Action Filed: March 1, 2024
Trial Date: Not Set

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

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on October 2, 2026 at 9:30 a.m. in Department C-72 of the above-entitled Court, located at 330 West Broadway, San Diego, California 92101, Plaintiff Daniel Cruz (“Plaintiff”) individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed class settlement of this lawsuit;
2. Pursuant to section 382 of the California Code of Civil Procedure, provisional certification of the following Settlement Class defined as follows:
All current and former non-exempt employees employed by Defendant Magnus Landscaping Corporation d.b.a. Labahn’s Landscaping in California from March 1, 2020 through May 31, 2024 (the “Class Period”).
3. Preliminary appointment of Plaintiff Daniel Cruz as Class Representative for the Settlement Class;
4. Preliminary appointment of Paul K. Haines, Sean M. Blakely, and Liam A. Hall of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved and to permit a Class Representative Service Award to Plaintiff, civil penalties payable to the Labor & Workforce Development Agency (“LWDA”), settlement administration costs, and attorneys’ fees and costs to Class Counsel;
6. Appointment of ILYM Group, Inc. as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Notice Packet (comprised of the Class Notice and Notice of Estimated Individual Settlement Award) and an order that it be disseminated to the proposed Settlement Class as provided in the Settlement Agreement.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Daniel Cruz (“Plaintiff”) brought this class and representative action for various
4 wage and hour violations on behalf of current and former non-exempt employees who worked for
5 Defendant Magnus Landscaping Corporation d.b.a. Labahn’s Landscaping (“Defendant” or
6 “Labahn’s Landscaping”) in California from March 1, 2020 through May 31, 2024 (the “Class
7 Period”). Plaintiff’s primary allegations are that Defendant failed to pay all minimum and
8 overtime wages, failed to provide all legally compliant meal and rest periods, and failed to
9 reimburse employees for all necessary business expenditures. As a result of these alleged
10 violations, Plaintiff also brought derivative claims for Defendant’s alleged failure to issue
11 accurate and compliant wage statements, and for civil penalties under the Private Attorneys
12 General Act (“PAGA”).

13 Plaintiff now respectfully requests that this Court preliminarily approve this non-
14 reversionary, common-fund class action settlement,¹ in which Defendant has agreed to pay
15 Seven Hundred One Thousand Eight Hundred Dollars and Zero Cents (\$701,800.00) to the
16 following Settlement Class:

17 All current and former non-exempt employees employed by Defendant
18 Magnus Landscaping Corporation d.b.a. Labahn’s Landscaping in
19 California from March 1, 2020 through May 31, 2024 (the “Class Period”).

20 If the Settlement is approved, Defendant will pay a non-reversionary Gross Settlement
21 Amount of \$701,800.00. After deducting administration costs, Plaintiff’s requested Class
22 Representative Service Award, the amount set aside as PAGA civil penalties, and requested
23 attorneys’ fees and costs, the Net Settlement Amount (“NSA”) of approximately \$366,170.00 will
24 be distributed to all Settlement Class members who do not opt out of the Settlement based on the
25 proportionate number of workweeks worked by each Settlement Class member during the Class
26 Period.

27 ¹ The Stipulation of Settlement (“Settlement”) is attached to the Declaration of Sean M. Blakely
28 as **Exhibit 1**. The proposed Class Notice and Notice of Estimated Individual Settlement Award
are attached to the Settlement as **Exhibits A** and **B**, respectively, to the Settlement. All defined
terms in this motion have the same definition as that in the Settlement.

1 Significantly, Settlement Class members do not need to file a claim to reap the financial
2 benefits of the Settlement, as all Settlement Class members will automatically receive a payment
3 unless they affirmatively opt-out. There are approximately 613 Settlement Class members, and
4 the average Individual Settlement Award to participating Settlement Class members is projected
5 to be approximately **\$597.34**. This is a fair, reasonable, and substantial recovery result for
6 Settlement Class members, who will be releasing only those claims alleged in the Action.

7 The proposed Settlement is well within the range of possible approval in light of the
8 significant legal and factual obstacles that Plaintiff faced, the risks and costs of further litigation,
9 and the tangible monetary benefits to be received by Plaintiff and the Settlement Class. For the
10 reasons discussed herein, Plaintiff respectfully requests that this Court grant preliminary approval
11 of the Settlement.

12 **II. SUMMARY OF THE LITIGATION**

13 **A. THE PARTIES AND BRIEF PROCEDURAL HISTORY**

14 Defendant specialized in residential and commercial landscape maintenance and served
15 locations throughout Southern California. *See* Declaration of Sean M. Blakely (“Blakely Decl.”),
16 ¶ 8. Defendant represents that it ceased operated at the end of May 2024 and was acquired by
17 another entity. *Id.* Plaintiff was employed by Defendant as a non-exempt employee in the position
18 of “Crew Leader” from approximately September 2023 until approximately 2024. *See*
19 Declaration of Daniel Cruz In Support of Approval of Class Action and PAGA Settlement (“Cruz
20 Decl.”), ¶ 2.

21 On March 1, 2024, Plaintiff filed his Class Action Complaint in San Diego County
22 Superior Court and sent his PAGA notice letter to Defendant and the Labor & Workforce
23 Development Agency (“LWDA”) via certified mail. Blakely Decl., ¶ 9, Exhibit 2 (LWDA Letter).
24 On May 6, 2024, Plaintiff filed a First Amended Class and Representative Action Complaint
25 adding a cause of action for civil penalties under the Private Attorneys General Act (“PAGA”)
26 (Labor Code § 2698 *et seq.*). Blakely Decl., ¶ 9.

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1 **B. PLAINTIFF’S CLAIMS AND DEFENDANT’S DEFENSES**

2 **1. Unpaid Wages due to Timekeeping Policies/Practices**

3 Plaintiff asserts that Defendant failed to compensate its non-exempt employees for all
4 hours actually worked due to its timekeeping policies and practices. Blakely Decl., ¶ 14.
5 Specifically, Plaintiff alleges that Defendant’s supervisors recorded employees’ hours and did so
6 in a manner that understated time worked, resulting in unpaid minimum wages. *Id.* Specifically,
7 Plaintiff alleges that Defendant’s supervisors recorded employee’s scheduled shifts, rather than
8 the actual time employees worked, resulting in a failure to record and compensate for all hours
9 actually worked. *Id.* As a result, Plaintiff alleges that, because not all hours worked were captured
10 or paid, employees were not compensated for all wages owed. *Id.*

11 In response, Defendant contends that its timekeeping policies/practices complied with
12 California law and that it properly compensated employees for all hours throughout the Class
13 Period. Blakely Decl., ¶ 14. Defendant also contends that supervisors accurately recorded all
14 employees’ hours worked, and employees signed daily timesheets confirming their hours worked.
15 *Id.* Defendant further argues that these claims would not be suitable for class treatment because
16 they would require individualized inquiries into whether any employee performed work outside
17 of recorded work hours, the nature and amount of any such work, whether the work was known
18 to or authorized by Defendant, making class certification of this claim unlikely. *Id.*

19 **2. Meal Period Violations**

20 Plaintiff asserts that Defendant failed to provide timely, uninterrupted, and full 30-minute
21 meal periods. Blakely Decl., ¶ 15. Specifically, Plaintiff alleges meal periods frequently began
22 after the fifth hour of work due to work demands imposed by Defendant. *Id.*

23 In response, Defendant argues that it maintained compliant written meal period policies
24 throughout the Class Period and provided compliant meal periods in line with those policies.
25 Blakely Decl., ¶ 15. Defendant further contends that under *Brinker* it always provided employees
26 the opportunity to take meal periods and is not required to ensure they are taken. *Id.*; see *Brinker*
27 *Rest. Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1034 (2012). Finally, Defendant maintains Plaintiff’s
28 meal period claim is not suited for class certification, since individual inquiries would be needed

1 to assess which employees, if any, took non-compliant or missed meal periods, how many meal
2 periods were non-compliant or missed, and the reasons why a particular employee did not take a
3 meal period on a particular shift. Blakely Decl., ¶ 15.

4 **3. Rest Period Violations**

5 Plaintiff asserts that Defendant failed to authorize and permit compliant rest periods for
6 every four hours worked or major fraction thereof. Blakely Decl., ¶ 16. Plaintiff alleges employees
7 were unable to take all required rest periods due to work demands, and that Defendant maintained
8 no mechanism to pay rest-period premiums when compliant rest periods were not authorized and
9 permitted. *Id.*

10 In response, Defendant contends that Plaintiff and Settlement Class members were
11 authorized and permitted the opportunity for rest periods and that it maintained compliant written
12 rest period policies/practices throughout the Class Period. Blakely Decl., ¶ 16. Defendant further
13 argues that Plaintiff's rest period claim is not amenable to class treatment, since individual
14 inquiries would be required to determine which employees failed to take rest periods, how many
15 rest periods they failed to take, and the reasons why each employee failed to take rest period(s)
16 on a particular shift. *Id.* These manageability concerns are especially present with respect to rest
17 period claims, Defendant argues, given that rest periods are not, and need not, be recorded. *Id.*

18 **4. Failure to Reimburse Business Expenditures**

19 Plaintiff alleges that Defendant failed to reimburse him and other Settlement Class
20 members for all reasonable and necessary work expenditures, including personal cellular phone
21 expenses. Blakely Decl., ¶ 17. Specifically, Plaintiff asserts that Defendant required non-exempt
22 employees to use personal cellular phones for work-related communications with coworkers and
23 supervisors, however, Plaintiff contends that Defendant failed to reimburse employees for a
24 reasonable portion of those necessary business expenses. *Id.*

25 In response, Defendant maintains that Settlement Class members were not required to use
26 their personal cellular phones as part of their job. Blakely Decl., ¶ 17. Defendant further argues
27 that any cellular phone expenses incurred by Settlement Class members were minimal, given the
28 wide availability of low-cost cellular phone plans. *Id.* Defendant further argues that this claim

1 would require individual inquiries into whether Settlement Class members actually used their
2 personal cellular phones, how much expense they incurred, whether they submitted a request for
3 reimbursement, and the reasonableness of that expense, thus precluding class certification. *Id.*;
4 *see also, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007).

5 **5. Claims Under Labor Code § 226 and the PAGA**

6 As a result of the unpaid wages and unpaid meal and rest period premium wages described
7 above, Plaintiff alleges that Defendant is liable for wage statement penalties pursuant to Labor
8 Code § 226. Blakely Decl., ¶ 18. In addition, Plaintiff alleges that Defendant is liable for civil
9 penalties under the PAGA. *Id.*, at ¶ 19.

10 Defendant argues any alleged wage statement violations were not “knowing and
11 intentional,” and Plaintiff cannot show that he or other employees “suffer[ed] injury” due to the
12 alleged wage statement violations, as required by Labor Code § 226(e) for the imposition of
13 penalties. Blakely Decl., ¶ 18. Further, Defendant contends its wage statements always accurately
14 reflected hours worked and amounts paid as well as all other required information, precluding
15 liability for wage statement penalties under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th
16 1308, 1336-37 (2018). *Id.*

17 Finally, Defendant contends that since Plaintiff’s PAGA claim is derivative of Plaintiff’s
18 underlying wage claims, Defendant asserts the PAGA claim would fail with those claims. Blakely
19 Decl., ¶ 19; *see Price v. Starbucks Corp.*, 192 Cal.App.4th 1136, 1147 (2011) (“Because the
20 underlying causes of action fail, the derivative UCL and PAGA claims also fail.”). Defendant
21 further maintains that, given its good-faith defenses, this Court would exercise its discretion to
22 substantially reduce any PAGA penalties if it were to find Defendant liable for any of Plaintiff’s
23 claims. Blakely Decl., ¶ 19; *see Lab. Code § 2699(e)(2); Thurman v. Bayshore Transit Mgmt.*,
24 *Inc.*, 203 Cal.App.4th 1112, 1135 (2012) (affirming reduction of PAGA penalties).

25 **C. DISCOVERY AND MEDIATION**

26 Prior to mediation, the Parties engaged in formal and informal discovery. Blakely Decl.,
27 ¶ 10. Plaintiff served formal written discovery requests seeking, among other items, contact
28 information for the putative class, timekeeping and payroll records for the putative class,

1 Defendant's written wage and hour policies/procedures, and other information and documents.
2 *Id.* In connection with mediation, Defendant produced an Employee Handbook in effect during
3 the Class Period and timekeeping and payroll records for all putative class members. *Id.*
4 Defendant also provided a detailed Class List which included each putative class members' date
5 of hire, termination date, and the total number of workweeks worked during the Class Period. *Id.*
6 Plaintiff's counsel conducted a comprehensive analysis of the data produced by Defendant to
7 calculate Defendant's potential exposure for each of Plaintiff's claims at issue. *Id.* This discovery
8 allowed the Parties to assess the merits and value of Plaintiff's claims, the chances of certification
9 of Plaintiff's claims, and Defendant's potential defenses. *Id.*

10 On January 20, 2026, the Parties participated in a full-day mediation before Steve Mehta,
11 Esq., an experienced wage-and-hour class action mediator. Blakely Decl., ¶ 11. During mediation,
12 the Parties vigorously debated their opposing legal positions, the likelihood of certification of
13 Plaintiff's claims, and the legal basis for the claims and defenses. *Id.* At the conclusion of
14 mediation, Mr. Mehta issued a mediator's proposal for a classwide settlement that was ultimately
15 accepted by all Parties. *Id.* Over the following months, the Parties finalized the long-form
16 Settlement Agreement now before the Court. *Id.*

17 **III. THE PROPOSED SETTLEMENT**

18 **A. ESSENTIAL TERMS OF THE SETTLEMENT**

19 If the Court preliminarily approves the Settlement, Defendant will pay a Gross Settlement
20 Amount of \$701,800.00. *See* Settlement, § 3. Significantly, this Settlement is non-reversionary,
21 and no Settlement Class member will have to submit a claim form to receive an Individual
22 Settlement Award. *Id.*, at §§ 3-4. Each Settlement Class member will automatically receive an
23 Individual Settlement Award unless he or she affirmatively opts out of the Settlement. *Id.* The
24 monetary terms of the Settlement are summarized below:

25	• Gross Settlement Amount:	\$701,800.00
26	• Minus Court-approved attorneys' fees (35%):	\$245,630.00
27	• Minus Court-approved litigation costs (up to):	\$30,000.00
28	• Minus Court-approved Service Award:	\$10,000.00
	• Minus amount set aside as PAGA:	\$40,000.00
	• <u>Minus estimated settlement administration costs (up to):</u>	<u>\$10,000.00</u>

Net Settlement Amount:	\$366,170.00
• PLUS 25% “PAGA Amount” to Aggrieved Employees:	\$10,000.00
Total Amount Paid to Settlement Class members:	\$376,170.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for the Court-approved attorneys’ fees and costs, Class Representative Service Award to Plaintiff, the amount set aside as PAGA civil penalties, and settlement administration costs, the Settlement requires Defendant to pay a Net Settlement Amount (“NSA”) of at least \$366,170.00 to all Settlement Class members who do not timely opt-out. *See* Settlement, § 4(A). The Settlement Administrator will calculate payments from the NSA based on each Settlement Class member’s proportionate number of workweeks worked during the Class Period. *Id.*, at § 4(B)(i). In addition to the NSA, Ten Thousand Dollars and Zero Cents (\$10,000.00) of the Gross Settlement Amount has been designated as the “PAGA Amount” and each Aggrieved Employee shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked between March 1, 2023 through May 31, 2024 (the “PAGA Period”). *Id.*, at §§ 2(B), 4(B)(iv).

According to Defendant, there are approximately 613 Settlement Class members. Blakely Decl., ¶ 13. Therefore, the average Individual Settlement Award from the NSA is projected to be approximately \$597.34. *Id.* There are approximately 341 Aggrieved Employees who worked during the PAGA Period. *Id.* Therefore, the average Individual PAGA Payment from the PAGA Amount is estimated to be approximately \$29.33. *Id.*

Settlement Class members will have sixty (60) calendar days from the mailing of the Notice Packets to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, §§ 9(C)-(D). Those Settlement Class members who do not opt out of the Settlement will be bound by its terms and will release all claims against Defendant included within the Settlement. *Id.*, at § 2(A).

2. Attorneys’ Fees and Costs, Class Representative Service Award, and PAGA Payment

Plaintiff will apply for a Class Representative Service Award at the time of seeking final approval of the proposed class action settlement in the amount of \$10,000.00 for his service to

1 the Settlement Class. *See* Settlement, §§ 3(D)(3), 6; Blakely Decl., ¶ 23. “[I]ncentive awards are
2 fairly typical in class action cases . . . and are intended to compensate class representatives for
3 work done on behalf of the class [and] to make up for financial or reputational risk undertaken in
4 bringing the action.” *In re Cellphone Fee Termination Cases*, 186 Cal.App.4th 1380, 1393-94
5 (2010). As will be fully briefed at the time of final approval, Plaintiff’s requested Class
6 Representative Service Award is intended to recognize the time and effort Plaintiff expended on
7 behalf of the Settlement Class, as well as the significant risks Plaintiff undertook by agreeing to
8 serve as the named plaintiff in this case and agreeing to a general release subject to a Civil Code
9 § 1542 waiver. *See* Blakely Decl., ¶ 23; *see also* Cruz Decl., ¶¶ 4-5.

10 Class Counsel will also apply for an attorneys’ fees award of 35% of the Gross Settlement
11 Amount, which is currently estimated to be \$245,630.00, and up to \$30,000.00 in verified
12 litigation costs reimbursement. *See* Settlement, §§ 3(D)4, 5; Blakely Decl., ¶ 22. Plaintiff submits
13 the requested fee is fair compensation for undertaking complex, risky, expensive, and time-
14 consuming litigation on a purely contingent fee basis. Blakely Decl., ¶ 22. Class Counsel has
15 incurred substantial attorneys’ fees conducting pre-filing investigation, analyzing Plaintiff’s
16 claims, conducting legal research, reviewing Defendant’s policies and timekeeping/payroll data,
17 propounding formal written discovery, conducting extensive informal discovery, reviewing
18 extensive timekeeping and payroll data and conducting an in-depth exposure analysis, preparing
19 for and attending mediation, preparing the long-form Settlement Agreement, preparing this
20 Motion, and otherwise litigating the case. *Id.* Class Counsel expects to expend additional attorney
21 time attending the hearing on this Motion, overseeing the Notice process and fielding questions
22 from Settlement Class members, preparing the Final Approval papers, and attending the Final
23 Approval hearing. *Id.*

24 California courts recognize that an appropriate method for awarding attorneys’ fees in
25 class actions is to award a percentage of the “common fund” created as a result of a settlement.
26 *See, e.g., Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016) (holding “the percentage of
27 fund method survives in California class action cases”). Class Counsel’s request for fees of 35%
28 of the Gross Settlement Amount is well within the range of reasonableness and indeed is

1 considered the typical rate for common fund settlements. Historically, courts have awarded
2 percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *See* 4
3 Newberg on Class Actions § 14.6 (4th Ed. 2013).

4 Class Counsel submit that their request for attorneys' fees is reasonable when viewed as
5 an overall percentage of the Settlement and in light of the substantial risks and significant work
6 undertaken, the results obtained, and the efficiency with which the litigation has been conducted.
7 Should the Court grant preliminary approval, Class Counsel will seek an award of attorneys' fees
8 and verified costs upon seeking final approval.

9 Additionally, the parties have agreed to designate \$40,000.00 of the Gross Settlement
10 Amount as PAGA civil penalties, of which \$30,000.00 (75%) will be paid to the LWDA, with
11 the remaining \$10,000.00 (25%) for distribution to the Aggrieved Employees, as the PAGA
12 requires such penalties to be allocated per Labor Code § 2699(i). *See* Settlement, § 3(D)5. Plaintiff
13 submits this allocation to the LWDA for civil PAGA penalties is appropriate. *See, e.g., Chu v.*
14 *Wells Fargo Investments, LLC*, Case No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal.
15 2011) (approving PAGA payment of \$7,500 to LWDA out of \$6.9 million common-fund
16 settlement).

17 **IV. ARGUMENT**

18 **A. PRELIMINARY APPROVAL IS WARRANTED**

19 California Rule of Court 3.769 conditions settlement of a class action on court approval,
20 which is generally evaluated under the federal standards applicable under Rule 23 of the Federal
21 Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337
22 (2012) (Rule 3.769 requires trial court to determine "that the settlement is fair, reasonable and
23 adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule
24 23(e) requires the trial court to determine "whether a proposed settlement is fundamentally fair,
25 adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly
26 in complex class action litigation. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir.
27 2008). The Court's role in evaluating a proposed settlement is limited to ensuring that the
28 agreement taken as a whole is fair. *See e.g., Hanlon*, supra, 150 F.3d at 1027. There is an initial

1 presumption of fairness where, as here, the Settlement was negotiated at arm's-length by class
2 counsel and with the assistance of an experienced wage and hour class action mediator. *See e.g.,*
3 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

4 **1. Standard for Preliminary Approval**

5 To make a fairness determination, the Court should consider several factors, including:
6 "the strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further
7 litigation, the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
9 experience and views of counsel." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
10 "The list of factors is not exclusive, and the court is free to engage in a balancing and weighing
11 of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.*,
12 91 Cal.App.4th at 245 (2001). As discussed below, the proposed Settlement is fair, adequate, and
13 reasonable in light of the overall balance of factors in this case.

14 **a. The Strength of Plaintiff's Case**

15 Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff
16 acknowledges that there were substantial risks and uncertainty in proceeding with litigation. As
17 described above in section II.B., *supra*, Defendant presented multiple defenses to Plaintiff's
18 claims, both on the merits and with respect to class certification. Thus, while Plaintiff was
19 prepared to litigate these claims through class certification and ultimately trial, success was far
20 from certain.

21 **b. Risk, Expense, Complexity, and Duration of Further Litigation**

22 Although the Parties engaged in substantial informal discovery prior to mediation, the
23 Parties still had significant formal discovery to complete had the matter not been settled. Blakely
24 Decl., ¶ 21. This would have required the expenditure of substantial time and resources by both
25 Parties that would have very likely spanned several years. *Id.* Even if Plaintiff was to certify the
26 classes, the Parties would incur considerably more attorneys' fees and costs through a possible
27 decertification motion, trial, and possible appeal. *Id.* This Settlement avoids those risks and the
28 accompanying expense. *Id.*

1 **c. Risk of Maintaining Class Action Status**

2 Plaintiff has not yet filed his motion for class certification, and as such, the extent to which
3 Plaintiff's proposed classes were certifiable is somewhat speculative. Absent settlement, there
4 was a risk that there would not be a certified class at the time of trial, or if there were, it would
5 consist of a significantly smaller group of employees than the proposed Settlement Class (either
6 due to a narrowing of the class definition in a Court order on a contested motion for class
7 certification, or through settlement agreements entered into by Defendant with individual class
8 members by way of *Pick-up-Stix* type settlement agreements), and the expected recovery could
9 be significantly reduced, given the settlement amounts that are typically offered through the *Pick-*
10 *up-Stix* process. Thus, this factor, too, supports preliminary approval of the settlement.

11 **d. Amount Offered in Settlement Given Realistic Value of Claims**

12 The Settlement provides an exceptional recovery for the Settlement Class in the face of
13 disputed claims. Plaintiff conducted a detailed analysis of Defendant's timekeeping and payroll
14 records to calculate the alleged unpaid wages, meal and rest period premium payments owing,
15 unreimbursed business expenses, wage statement penalties, and PAGA penalties. Plaintiff's
16 exposure analysis is detailed in the concurrently filed Blakely Decl., at ¶¶ 14-20.

17 **e. The Experience and Views of Counsel**

18 “Parties represented by competent counsel are better positioned than courts to produce a
19 settlement that fairly reflects each party's expected outcome in litigation.” *In re Pacific*
20 *Enterprises Securities Litigation* 47 F.3d 373, 378 (9th Cir. 1995). Here, Plaintiff is represented
21 by competent, experienced counsel who possess extensive experience prosecuting and defending
22 wage-and-hour class actions and who have been appointed as class counsel in numerous cases
23 alleging similar claims. *See* Blakely Decl., ¶¶ 2-6; *see also* Declaration of Paul K. Haines (“Haines
24 Decl.”), ¶¶ 3-11; Declaration of Liam A. Hall (“Hall Decl.”), ¶¶ 2-6. Class Counsel conducted an
25 in-depth review of Defendant's timekeeping and payroll records, and drew on their extensive
26 experience in similar cases to assess the strengths and weaknesses of Plaintiff's case. *See* Blakely
27 Decl., ¶ 10. The Settlement was also reached with the assistance of an experienced and respected
28 wage-and-hour class action mediator. This factor strongly supports preliminary approval of the

Settlement. *See Kullar, supra*, 168 Cal.App.4th at 130.

2. The Preliminary Approval Standard Is Met

At this stage, the Court can grant preliminary approval of the Settlement and direct that notice be given if the proposed Settlement: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) has no obvious deficiencies. *See* Manual for Complex Litigation § 30.41(3rd Ed. 1995); 4 Newberg on Class Actions § 11:24-25 (4th Ed. 2013).

a. The Settlement Is Within the Range of Possible Approval

The proposed Settlement reflects approximately 89.3% of the estimated recovery the Settlement Class could reasonably expect in light of the significant litigation risks and will provide tangible, substantial monetary compensation for hotly disputed claims. Indeed, the percentage of the liability exposure recovered in this case far exceeds percentages routinely approved by courts. *See, e.g., Glass v. UBS Finan. Servs.*, Case No. C-06-4068 MMC, 2007 WL 221862, *4 (N.D. Cal. 2007) (approving settlement representing 25% to 35% of potential damages); *Dunleavy v. Nadler*, 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement representing about one-sixth of potential recovery). Further, the average Individual Settlement Award of approximately **\$597.34** exceeds average payments achieved in other wage and hour class action settlements. Thus, Plaintiff submits that the proposed settlement is within the range of possible approval.

b. The Settlement Resulted from Serious, Informed Negotiations

The Settlement resulted from substantial informal discovery and an exchange of comprehensive data, including the production of timekeeping and payroll records for the putative class, arm's-length negotiations between counsel, and a full-day mediation before an experienced wage and hour mediator. Thus, the Settlement is entitled to an initial presumption of fairness. *See Kullar, supra*, 168 Cal.App.4th at 130.

c. The Settlement Is Devoid of Obvious Deficiencies

Preliminary approval of the Settlement is also warranted because there are no obvious deficiencies. The Settlement will provide substantial monetary relief to Settlement Class

1 members. The amounts proposed for Class Counsel’s attorneys’ fees and costs, LWDA payment,
2 Plaintiff’s Class Representative Service Award, and settlement administration costs are all
3 reasonable and appropriate based on the facts of this case. Because the Settlement is devoid of
4 obvious deficiencies, this factor supports preliminary approval.

5 **B. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS**

6 The Settlement Class satisfies the criteria for certification of a settlement class under
7 California law because: (1) the Settlement Class is so numerous that joinder would be impractical;
8 (2) common questions of law and fact predominate over individual questions such that class
9 certification is the most efficient and desirable way to maintain this litigation; (3) Plaintiff’s
10 claims are typical of the claims of absent Settlement Class members; and (4) Plaintiff and his
11 counsel will fairly and adequately represent Settlement Class members’ interest. *See* Cal. Civ.
12 Proc. § 382.

13 **1. The Proposed Class Is Ascertainable and Numerous**

14 A class is “ascertainable” where the members “may be readily identified without
15 unreasonable expense or time by reference to official [or business] records.” *See Sevidal v. Target*
16 *Corp.* 189 Cal.App.4th 905, 916 (2010) (alterations in original). Here, the proposed class is
17 defined as all current and former non-exempt employees employed by Defendant in California
18 during the Class Period. *See* Settlement, at § 1. Therefore, Settlement Class members can be
19 identified from Defendant’s personnel and employment records. Defendant represents that the
20 Settlement Class consists of approximately 613 current and former non-exempt employees. *See*
21 Blakely Decl., ¶ 13. It would therefore be impracticable to bring all Settlement Class members
22 before the Court or for each Settlement Class member to bring an individual lawsuit.

23 **2. Common Issues of Law and Fact Predominate**

24 The focus in a certification dispute is not on the merits but rather on what types of
25 questions, “common or individual,” are likely to arise in the Action. *See Sav-On Drug Store, Inc.*
26 *v. Superior Court (Rocher)* 34 Cal.4th 319, 327 (2004). Plaintiff’s claims are predicated on,
27 among other issues, Defendant’s uniform meal and rest period policies/practices. These types of
28 claims are commonly held to be proper for class certification. *See e.g., Benton v. Telecom Network*

1 *Specialists, Inc.*, 220 Cal.App.4th 701, 726 (2013) (certifying meal and rest period claims).

2 **3. The Claims of the Named Plaintiff Are Typical**

3 The typicality requirement is satisfied where class representatives have claims that are
4 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* 191
5 Cal.App.3d 1341, 1347 (1987) (finding typicality satisfied where named Plaintiff purchased the
6 same goods as the putative class in a consumer class action). Here, Plaintiff's claims are typical
7 of those held by the Settlement Class members. First, Plaintiff was employed by Defendant in the
8 State of California during the Class Period, and Plaintiff was subject to Defendant's wage and
9 hour policies at issue in this case. *See generally* Cruz Decl.

10 **4. Plaintiff and Class Counsel Will Fairly and Adequately Represent the**
11 **Class**

12 The adequacy requirement examines conflicts of interest between named parties and the
13 class(es) they seek to represent. *See Capital People First v. State Dept. of Developmental Services*
14 155 Cal.App.4th 676, 697 (2007). Plaintiff and his counsel will adequately represent the
15 Settlement Class, as there are no conflicts between Plaintiff and the proposed Settlement Class,
16 and Plaintiff possesses claims that are in line with those of the Settlement Class. *See McGhee v.*
17 *Bank of America* 60 Cal.App.3d 442, 450-51 (1976) (adequacy satisfied where there was no
18 indication that Class Counsel were not qualified and the named plaintiff had no interests
19 antagonistic to those of the proposed class). Class Counsel also have extensive experience in wage
20 and hour class action litigation. *See* Blakely Decl., ¶¶ 2-6; Haines Decl., ¶¶ 3-11.

21 **C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE**

22 This Court should order distribution to the Settlement Class of the proposed Notice Packet
23 by U.S. Mail, postage prepaid, in English and Spanish, using the last known mailing address
24 information provided by Defendant. *See* Settlement, § 9. This manner of giving notice is the "best
25 notice practicable" under the circumstances because it provides "individual notice to all members
26 who can be identified through reasonable effort." *See Eisen v. Carlisle & Jacquelin* 417 U.S. 156,
27 173 (1974). Here, the Parties have agreed that the Settlement be administered by ILYM Group,
28 Inc. ("ILYM"). *See generally* Declaration of Anthony Rogers ("Rogers Decl.") and attached

1 exhibits. Settlement Class members' addresses will be ascertainable through Defendant's
2 personnel and payroll records, which Defendant will provide to ILYM within ten (10) business
3 days after entry of an order preliminarily approving this Settlement. *See* Settlement, § 9(A).
4 Within ten (10) business days of receipt of the Settlement Class members' addresses, ILYM will
5 run the names of all Settlement Class members through the National Change of Address database
6 to update addresses and mail a Notice Packet to each Settlement Class member. *Id.*, at § 9(B). To
7 the extent that any notices are returned, ILYM will perform a "skip trace" to track any Settlement
8 Class member's current mailing address. *Id.*, at § 9(F).

9 The content of the proposed Class Notice satisfies California Rule of Court 3.766(d)
10 because it advises Settlement Class members of the nature of the claims, basic contentions and
11 denials of the parties, and the key terms of the Settlement, the 60-day deadline to opt-out or object
12 to the Settlement and the procedures by which to do so, explains the recovery formula and
13 expected recovery amount for each Settlement Class member, and advises them that they will be
14 bound by the terms of the Settlement if they do not opt-out. *See* Blakely Decl., Exhs. A & B to
15 Exh. 1. This manner of giving notice satisfies California Rule of Court 3.766(e) as the most
16 reliable and cost-effective method of reaching Settlement Class members.

17 **D. THE COURT SHOULD SET A FINAL APPROVAL HEARING**

18 Finally, this Court should set a hearing for Final Approval of the Settlement on a date
19 appropriately scheduled to follow the deadline by which Settlement Class members must file
20 objections to the Settlement or opt-out. *See* California Rule of Court 3.769.

21 **V. CONCLUSION**

22 For the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
23 approve the proposed Settlement, provisionally certify the Settlement Class, and enter the
24 Proposed Order submitted concurrently herewith.

25 Dated: September 9, 2026

Respectfully submitted,
HAINES LAW GROUP, APC

27 By:



28 Sean M. Blakely
Attorneys for Plaintiff