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

VICTOR FIGUEROA, ALDEN PEREZ,
CYNTHIA IZQUIERDO, and KENNETH
ZIEG on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

MULTI-COLOR CORPORATION, an Ohio
Corporation; WS PACKAGING GROUP,
INC.; and DOES 1-50, inclusive,

Defendants.

Case No.: 24CV000347

*[Assigned to the Hon. Joseph J. Solga, Dept.
B]*

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

Date: October 20, 2026
Time: 8:30 a.m.
Dept.: B

Action Filed: March 7, 2024
Trial Date: None Set

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PLEASE TAKE NOTICE that, pursuant to Rule 3.769 of the California Rules of Court, on October 20, 2026 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department B of the Napa County Superior Court, located at 825 Brown Street, Napa, California 94559, Plaintiffs Victor Figueroa, Alden Perez, Cynthia Izquierdo, and Kenneth Zieg (“Plaintiffs”), as individuals and on behalf of a class of similarly situated individuals, will and hereby do move this Court for:

1. Preliminary approval of the proposed Class Action and PAGA Settlement Agreement (“Settlement Agreement”) in this lawsuit, entered into between Plaintiffs and Defendants Multi-Color Corporation and W/S Packaging Group, LLC (“Defendants”);
2. Pursuant to Section 382 of the California Code of Civil Procedure, and for settlement purposes only, provisional certification of the Settlement Class, defined as follows:

All individuals who are or were employed by Defendants as non-exempt hourly employees in California between March 7, 2020 through August 5, 2025 (the “Class Period”).
3. Preliminary appointment of Plaintiffs Victor Figueroa, Alden Perez, Cynthia Izquierdo, and Kenneth Zieg as the Class Representatives;
4. Preliminary appointment of Mehrdad Bokhour of Bokhour Law Group, P.C., Joshua S. Falakassa of Falakassa Law, P.C., Brian Mankin and Misty Lauby of Lauby, Mankin & Lauby LLP, and Paul K. Haines, Fletcher W. Schmidt, and Matthew K. Moen of Haines Law Group, APC, as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement Agreement should be finally approved and to award amounts for the Class Representatives Service Payments, settlement administration costs, payment to the Labor and Workforce Development Agency for its share of civil penalties under the Private Attorneys General Act, Labor Code section 2698 *et seq.*, and Class Counsel’s attorneys’ fees and costs;
6. Appointment of ILYM Group, Inc. as the third-party settlement administrator (“Settlement Administrator”); and

1 7. Approval of the proposed Court Approved Notice of Class Action Settlement and
2 Hearing Date for Final Court Approval (“Class Notice”), and entry of the proposed
3 Order instructing the Class Notice be disseminated to the proposed Settlement Class
4 in English only, as provided in the Settlement Agreement.

5 This motion is based on this notice of motion, the attached memorandum of points and
6 authorities, the declarations of Paul K. Haines, Fletcher W. Schmidt, Matthew K. Moen, Mehrdad
7 Bokhour, Joshua S. Falakassa, Misty Lauby, Plaintiff Victor Figueroa, Plaintiff Alden Perez,
8 Plaintiff Cynthia Izquierdo, Plaintiff Kenneth Zieg, and Anthony Rogers of ILYM Group, Inc.,
9 and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any
10 further oral or documentary evidence or argument presented at the time of hearing.

11 Given the multiplicity of issues addressed herein, Plaintiffs’ memorandum of points and
12 authorities necessitates exceeding the 20-page limit set forth in California Rule of Court
13 3.764(c)(2). As this Motion is unopposed, Plaintiffs respectfully request that the Court consider
14 the entire Motion, which is 23 pages in length.

15
16 Dated: September 23, 2026

Respectfully Submitted,
HAINES LAW GROUP, APC

17
18 By:


Matthew K. Moen
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Victor Figueroa, Alden Perez, Cynthia Izquierdo, and Kenneth Zieg
4 (“Plaintiffs”), as individuals and on behalf of the proposed Settlement Class, respectfully request
5 that this Court preliminarily approve the proposed Class Action and PAGA Settlement Agreement
6 (“Settlement Agreement” or “Settlement”),¹ entered into by Plaintiffs and Defendants Multi-
7 Color Corporation and W/S Packaging Group, LLC (“Defendants”) (collectively, the “Parties”).
8 Plaintiffs respectfully request that this Court preliminarily approve this non-reversionary,
9 \$2,490,000.00 class action settlement on behalf of the following Settlement Class:

10 All individuals who are or were employed by Defendants as non-exempt hourly
11 employees in California between March 7, 2020 through August 5, 2025 (the
12 “Class Period”).

13 Based upon the data provided by Defendants, there are approximately 902 potential
14 Settlement Class members. Moen Decl., ¶ 13. After Court-approved deductions for Plaintiffs’
15 Class Representatives Service Payments, settlement administrator costs, the PAGA Payment to
16 the Labor & Workforce Development Agency (“LWDA”), and attorneys’ fees and costs to Class
17 Counsel, the remaining Net Settlement Amount (“NSA”) is estimated to be no less than
18 \$1,450,000.00. *Id.* This results in average Individual Class Payments of approximately \$1,607.53,
19 with the lowest possible estimated Individual Class Payment of \$13.75 (in the event a Settlement
20 Class member worked only one workweek during the Class Period) and the highest possible
21 estimated Individual Class Payment of \$3,877.88 (in the event a Settlement Class member
22 performed work in every workweek during the Class Period). *Id.* Further, an additional
23 \$25,000.00 will be paid to all non-exempt hourly employees who work or worked for Defendants
24 in California at any time between March 7, 2023 through August 5, 2025 (the “PAGA Period”)
25 (collectively, the “PAGA Members”) for the release of claims under PAGA. *See* Settlement, ¶¶
26 1.30, 1.32, 3.6. Settlement Class members do not need to file a claim form in order to receive an

27
28 ¹ The Settlement Agreement is attached as Exhibit 1 to the Declaration of Matthew K. Moen (“Moen Decl.”), filed herewith, and the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”) is attached to the Settlement as Exhibit A. Moen Decl., ¶ 11.

Individual Class Payment, and Settlement Class members who do not opt-out will automatically receive their share of the Settlement. This represents a fair and reasonable result for the Settlement Class members, who will be agreeing to a release of only those claims that were actually asserted, or which could have been asserted based on the facts alleged in the operative complaint.

Further, given the tenet that aggrieved employees do not have the ability to opt-out of a representative PAGA claim, all PAGA Members, regardless of whether they elect to opt out from participating in the class action portion of the Settlement or not, shall receive a portion of the settlement monies designated as the PAGA Penalties payable to the PAGA Members, and shall release all claims for civil penalties under PAGA that arise out of or reasonably relate to the claims alleged in the Action or that could have been alleged based on the factual allegations in the Action. *See Robinson v. Southern Counties Oil Company* (2020) 53 Cal.App.5th 476, 482 (holding that there is no opt-out mechanism for PAGA claims and “nonparty employees as well as the government are bound by the judgment in an action brought under [PAGA].”); *see also* Moen Decl., Exhibit 2 (Plaintiffs’ PAGA Notice Letters).

This proposed Settlement is well within the range of possible approval for the reasons discussed herein, Plaintiffs respectfully request that the Court grant preliminary approval.

II. SUMMARY OF THE LITIGATION

A. Factual And Procedural Background

Defendants manufacture label solutions for branded consumer products. Moen Decl., ¶ 12. Plaintiffs, like all Settlement Class members, were employed by Defendants as non-exempt employees in California during the Class Period and were subject to Defendants’ allegedly unlawful wage and hour policies and practices. Declaration of Victor Figueroa (“Figueroa Decl.”), ¶ 3; Declaration of Alden Perez (“Perez Decl.”), ¶ 3; Declaration of Cynthia Izquierdo (“Izquierdo Decl.”), ¶ 4; Declaration of Kenneth Zieg (“Zieg Decl.”), ¶¶ 2-4.

On March 7, 2024, Plaintiffs Victor Figueroa and Alden Perez initiated the instant action against Defendants, alleging Defendants failed to: (i) pay all minimum wages owed; (ii) pay all overtime wages owed; (iii) pay all sick time wages; (iv) provide all lawful meal periods; (v) authorize and permit all lawful rest periods; (vi) issue accurate itemized wage statements; (vii)

1 timely pay all final wages upon separation; (viii) reimburse necessary business expenses; and (ix)
2 comply with California’s Unfair Competition laws. Moen Decl., ¶ 15. On April 12, 2024,
3 Defendants removed the action to federal court, and on September 15, 2025, the action was
4 remanded back to Napa County Superior Court. *Id.*

5 On March 25, 2024, Plaintiff Cynthia Izquierdo filed a separate class action complaint
6 against Defendants, Orange County Superior Court Case No. 30-2024-01388573-CU-OE-CXC,
7 alleging the same and/or similar causes of action as in the instant action, and later filed a separate
8 complaint under the Private Attorneys General Act, Labor Code section 2698, *et seq.* (“PAGA”),
9 Orange County Superior Court Case No. 30-2024-01403003-CU-OE-CXC, based on the same
10 underlying Labor Code violations (the “*Izquierdo Actions*”). Moen Decl., ¶ 16. On April 18, 2024,
11 Plaintiff Kenneth Zieg filed a separate class action complaint against Defendants, Orange County
12 Superior Court Case No. 30-2024-01394886-CU-OE-CXC (the “*Zieg Action*”), alleging the same
13 and/or similar causes of action against Defendants as in the instant action. *Id.*

14 On July 9, 2026, as a material term of the Settlement, Plaintiffs filed the operative First
15 Amended Complaint in this action, adding Plaintiffs Cynthia Izquierdo and Kenneth Zieg as
16 named plaintiffs, consolidating all causes of action and factual allegations in the *Izquierdo Actions*
17 and *Zieg Action* into this action, and consolidating all claims under the PAGA based on the facts
18 alleged in Plaintiffs’ respective PAGA Notice Letters to the LWDA. Moen Decl., ¶ 17; Settlement
19 Agreement, ¶ 2.2.

20 **B. Plaintiffs’ Claims and Defendants’ Defenses**

21 **1. Unlawful Time Rounding Violations**

22 Plaintiffs assert that Defendants maintained an unlawful rounding practice that recorded
23 Plaintiffs’ and Settlement Class members’ clock in and clock out time punches to the minute, but
24 rounded Plaintiffs’ and Settlement Class members’ timekeeping entries in an uneven manner to
25 the employees’ detriment, resulting in Defendants systematically underpaying Plaintiffs and
26 Settlement Class members all earned wages. Moen Decl., ¶ 18; *see also Camp v. Home Depot*
27 *U.S.A., Inc.* (2022) 84 Cal.App.5th 638 (holding that “[I]f an employer...can capture and has
28 captured the exact amount of time an employee has worked during a shift, the employer must pay
the employee for all the time worked” (Internal quotations omitted)).

1 In response, Defendant contend that their timekeeping practices are lawful and its
2 rounding practice is neutral and operates in an even-handed way, which Defendant asserts is
3 lawful under the court's ruling in *See's Candy Shops, Inc. v. Superior Court* (2012) 210
4 Cal.App.4th 889. Moen Decl., ¶ 19; *see also AHMC Healthcare, Inc. v. Superior Ct.* (2018) 24
5 Cal.App.5th 1014, 1027-29 (finding employer's time-rounding policy lawful where it was neutral
6 "on its face" and "in practice"). Moreover, Defendants contend that Plaintiffs could not certify
7 this claim, as it would require individualized inquiries into each employee on a pay period by pay
8 period basis as to whether the employee actually started working after clocking in, and whether
9 the employee was overpaid or underpaid based on Defendants' rounding practice, resulting in an
10 unmanageable series of mini-trials. Moen Decl., ¶ 19. Finally, because *Camp v. Home Depot*
11 *U.S.A., Inc.* has been granted review by the California Supreme Court, the decision is only
12 persuasive, not binding authority, and Plaintiffs face the risk that the *Camp* holding could be
13 reversed, and Defendants claim that under *See's Candy*, their rounding practice is lawful. *Id.*

14 **2. Off-the-Clock Violations**

15 Plaintiffs assert that Defendants failed to maintain accurate records of the hours actually
16 worked by Settlement Class members, resulting in unpaid minimum and overtime wages. Moen
17 Decl., ¶ 20. Specifically, Defendants required Plaintiffs and other non-exempt employees to don
18 protective gear, such as gloves, hearing protection, boots, and eye protection, prior to clocking in
19 for their shifts, and to doff their protective gear after clocking out at the end of their shift. *Id.*
20 Moreover, for a portion of the relevant time period, Defendants maintained a single timeclock
21 located inside one of two possible entrances to Defendants' facility, which required Plaintiffs and
22 other non-exempt employees to walk approximately two minutes through Defendants' facility to
23 reach the timeclock, without being paid for this time. *Id.*; *see* Wage Order 9, § 2(H) ("Hours
24 Worked' means the time during which an employee is subject to the control of an employer...").

25 In response, Defendants maintain their timekeeping policies/practices comply with
26 California law, and that they properly compensate Settlement Class members for all hours
27 worked. Moen Decl., ¶ 21. Further, Defendants assert that this claim is not suitable for class
28 treatment, as it requires individualized inquiries into whether any employee was subject to

1 Defendants' control while off the clock, and exactly how much time each employee purportedly
2 spent while off-the-clock on any given day, which is increasingly difficult since off-the-clock
3 time is inherently not recorded, resulting in an unmanageable series of mini-trials. *Id.*

4 **3. Regular Rate Miscalculations**

5 Plaintiffs assert that Defendants miscalculated Plaintiffs' and other non-exempt
6 employees' regular rates of pay for overtime purposes, sick pay wages, and meal period premiums
7 by paying Plaintiffs and other non-exempt employees non-discretionary incentive bonus
8 payments, but failing to include the value of this earned incentive pay when calculating the regular
9 rate of pay. Moen Decl., ¶ 22; *see also* Labor Code § 510(a); *Huntington Memorial Hosp. v.*
10 *Superior Court* (2005) 131 Cal.App.4th 893, 902-03 (payments included in the calculation of the
11 regular rate are generally consistent under state and federal law).

12 In response, Defendants argue that most bonus payments made were purely discretionary,
13 and therefore are properly excluded from the regular rate of pay, and those that were non-
14 discretionary had been properly included in the regular rate of pay. *See e.g., Culley v. Lincare,*
15 *Inc.*, 236 F.Supp.3d 1184, 1190 (E.D. Cal. 2017); Moen Decl., ¶ 22. As such, Defendants contend
16 this claim fails on the merits. *Id.* Further, Defendants assert that this claim is unmanageable, as it
17 requires individualized inquiries into whether each bonus payment made by Defendants was
18 discretionary or non-discretionary, resulting in an unmanageable series of mini-trials. *Id.*

19 **4. Meal Period Violations**

20 Plaintiffs further assert that Defendants failed to provide the Settlement Class members
21 with all timely duty-free, uninterrupted 30-minute meal periods to which they were entitled. Moen
22 Decl., ¶ 23; *see* Labor Code § 512(a); *see also Brinker v. Superior Court* (2012) 53 Cal.4th 1004,
23 1041 ("We conclude that, absent waiver, section 512 requires a first meal period no later than the
24 end of an employee's fifth hour of work..."). Specifically, due to work demands imposed by
25 Defendants, Plaintiffs and other non-exempt employees were regularly provided with untimely
26 or interrupted first meal periods. Moen Decl., ¶ 23. Further, Plaintiffs claim Defendants required
27 employees to carry a radio and/or walkie-talkie on their persons at all times, and respond to any
28 incoming radio calls regardless of when the call came in, including during Plaintiffs' and the other

1 non-exempt employees’ purported meal periods. *Id.* Plaintiffs also allege that Defendants failed
2 to provide *any* second meal periods when employees worked shifts in excess of 10.0 hours. *Id.*
3 Further, Plaintiffs assert that Defendants paid meal period premiums at the employees’ respective
4 base rates of pay, rather than at the regular rate of pay. *Id.*; *see also Ferra v. Loews Hollywood*
5 *Hotel, LLC* (2021) 11 Cal.5th 858, 863.

6 In response, Defendants contend it maintained lawful meal period policies/practices
7 throughout the class period. Moen Decl., ¶ 24. Defendants further assert that Settlement Class
8 members signed second meal period waivers at virtually all locations during the class period, and
9 therefore, if Settlement Class members did not take second meal periods it was due to employee
10 choice. *Id.* Defendants also contend that this claim is not suited for class certification as individual
11 inquiries would be required to assess whether an employee waived or was not provided with a
12 meal period on any given day, resulting in an unmanageable series of mini-trials. *Id.*

13 **5. Rest Period Violations**

14 Plaintiffs further allege that Defendants failed to authorize and permit the Settlement Class
15 members to take a “net” rest period of 10-minutes beginning when the employee reaches a rest
16 area away from his or her workstation, instead only providing exactly 10 minute rest periods
17 beginning the moment an employee leaves their workstation and ending the moment the employee
18 returns to their workstation, without accounting for the time required for the employee to walk to
19 and from the designated breakroom from their workstation. Moen Decl., ¶ 25; *see DLSE Manual*
20 *§ 45.3.3; Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, 111-112 (citing DLSE
21 *Manual § 45.3.3 for the proposition that “the rest period begins when the employee reaches an*
22 *area away from the work station that is appropriate for rest”); Augustus v. ABM Security Services,*
23 *Inc.* (2016) 2 Cal.5th 257, 260 (“[D]uring required rest periods, employers must relieve their
24 employees of all duties and relinquish any control over how employees spend their break time.”).
25 Plaintiffs also allege that, due to work demands imposed by Defendants, Plaintiffs and other non-
26 exempt employees were regularly not authorized or permitted to take rest periods, or rest periods
27 were interrupted due to work requirements. Moen Decl., ¶ 25. Further, Plaintiffs claim Defendants
28 required employees to carry a radio and/or walkie-talkie on their persons at all times, and respond

1 to any incoming radio calls regardless of when the call came in, including during Plaintiffs' and
2 the other non-exempt employees' purported rest periods. *Id.*

3 Defendants maintain they authorized and permitted the Settlement Class members to take
4 all lawful rest periods to which they are entitled. Moen Decl., ¶ 26. Defendants assert that
5 employees are not required to go to the breakrooms for rest periods, and are authorized and
6 permitted to take 10-minute rest periods wherever they choose, and therefore Plaintiffs' claim
7 will fail on the merits. *Id.* Defendants also assert that this claim is unmanageable and not suited
8 for class certification, as it requires individualized inquiries into whether each employee was
9 authorized and permitted to take a lawful rest period and on which days, which Defendants argue
10 Plaintiffs will be unable to substantiate with any common, documentary evidence, as rest periods
11 are not required to be recorded, resulting in an unmanageable series of mini-trials. *Id.*

12 **6. Failure to Reimburse Violations**

13 Plaintiffs further allege that, for a portion of the relevant time period, Defendants required
14 Plaintiffs and other non-exempt employees to communicate with coworkers and their supervisors
15 regarding work-related matters through their personal cellular phones and use the "Dayforce"
16 mobile application to record their hours worked, but failed to reimburse the Settlement Class
17 members for these necessary business expenses. Moen Decl., ¶ 27; *see* Labor Code § 2802;
18 *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144.

19 In response, Defendants argue they maintained a policy to reimburse all reasonable and
20 necessary business expenditures and that, to the extent that any expenses were not reimbursed, it
21 was the result of the employees failing to submit expense reimbursement requests. Moen Decl., ¶
22 27. Defendants also maintain that this claim is not suited for class certification, as it would require
23 an unmanageable series of mini-trials to determine which employees incurred expenses, if any,
24 whether those expenses were reasonable and necessary, and why the employee had not previously
25 submitted an expense reimbursement request. *Id.*

26 **7. Wage Statement, Waiting Time, and PAGA Penalties**

27 As a result of Defendants' alleged failure to pay all overtime and minimum wages, sick
28 pay wages, and meal and rest period premiums, Plaintiffs assert that Defendants also failed to

1 maintain accurate payroll records, issue accurate and itemized wage statements, and failed to
2 timely pay all final wages at the time of separation. Moen Decl., ¶ 28; *see also* Labor Code §§
3 203(a), and 226(a). As a result of these alleged Labor Code violations, Plaintiffs also seek PAGA
4 civil penalties on behalf of all aggrieved employees. Moen Decl., ¶ 28; *see also Amaral v. Cintas*
5 *Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1213 (“As we have explained, they [civil penalties
6 under PAGA] are mandatory, not discretionary.”).

7 In response, Defendants argue that Plaintiffs’ underlying claims will fail and, as a result,
8 these derivative claims will also fail. Moen Decl., ¶ 28; *see Price v. Starbucks Corp.* (2011) 192
9 Cal.App.4th 1136, 1147 (“Because the underlying causes of action fail, the derivative UCL and
10 PAGA claims also fail.”). Defendants also maintain that Plaintiffs cannot show that the wage
11 statement violations were “knowing and intentional,” or that the putative class members
12 “suffer[ed] injury” as a result of the alleged violations, as required by Labor Code § 226(e) for
13 the imposition of wage statement penalties. Moen Decl., ¶ 28; *see* Labor Code § 226(e)(1).
14 Moreover, Defendants maintain that their good faith defenses to Plaintiffs’ underlying claims
15 would preclude the recovery of waiting time penalties, which are only available for the “willful”
16 failure to pay wages, and that this Court would exercise its discretion to substantially reduce any
17 PAGA penalties awarded. Moen Decl., ¶ 28; *see also* 8 Cal. Code Regs. § 13520 (“[A] good faith
18 dispute that any wages are due will preclude imposition of waiting time penalties under Section
19 203.”); Labor Code § 2699(e)(2); *Naranjo v. Spectrum Sec. Servs., Inc.* (2023) 88 Cal.App.5th
20 937; *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1135; *Carrington*
21 *v. Starbucks Corporation* (2018) 30 Cal.App.5th 504 (affirming reduction of PAGA penalties).

22 **C. Discovery And Mediation**

23 Prior to mediation, Defendants provided Plaintiffs with timekeeping and payroll records
24 for an approximately 93% sample of Settlement Class members spanning the entire Class Period,
25 as well as key policy documents and data points. Moen Decl., ¶ 29. Plaintiffs then retained an
26 expert to analyze the produced data and conduct a comprehensive analysis to create a class-wide
27 exposure model for the claims at issue. *Id.* On November 26, 2024, the Parties participated in a
28 full-day mediation session with Michael Loeb, Esq., an experienced wage and hour mediator,

during which the Parties exchanged divergent views on Defendants’ liability and exposure valuations, their legal positions, and the likelihood of certification of Plaintiffs’ claims. *Id.* Although the Parties adjourned mediation without reaching a settlement, they agreed to return for a second, full-day mediation with Mr. Loeb on May 28, 2025. *Id.* Following the second mediation session, Mr. Loeb made a mediator’s proposal that the Parties ultimately accepted. *Id.* Over the following months, the Parties finalized the terms of the proposed Settlement now before the Court for preliminary approval. *Id.*

III. THE PROPOSED SETTLEMENT

A. Essential Terms Of The Settlement

If the Court preliminarily approves this settlement, Defendants will pay a Gross Settlement Amount (“GSA”) of \$2,490,000.00. Settlement, ¶¶ 1.21, 3.1. This Settlement is non-reversionary, and Settlement Class members will automatically receive their Individual Settlement Payments unless they affirmatively opt-out. *Id.* The monetary terms of the Settlement are as follows:

Gross Settlement Amount:	\$2,490,000.00
Minus Court-approved attorneys’ fees (1/3):	\$830,000.00
Minus Court-approved attorneys’ costs (up to):	\$50,000.00
Minus Court-approved Service Payments:	\$10,000.00 each
Minus settlement administrator costs (up to):	\$20,000.00
Minus PAGA Penalties:	\$100,000.00
Net Settlement Amount:	\$1,450,000.00

1. The Settlement Provides for Reasonable Monetary Payments

After deducting amounts for Court-approved attorneys’ fees and costs, Plaintiffs’ Class Representatives Service Payments, settlement administration costs, and PAGA Penalties, the Settlement provides for an estimated NSA of no less than \$1,450,000.00. *See* Settlement, ¶ 3. Individual Class Payments will be calculated based on the proportionate number of workweeks worked by each participating Settlement Class member during the Class Period. *Id.*, ¶ 3.2.4. Further, 25% of the PAGA Penalties will be paid to all PAGA Members, regardless of their election to opt-out from participating in the class action portion of the Settlement, based on the proportionate number of pay periods worked by the PAGA Members during the PAGA Period. *Id.*, ¶ 3.2.6.1. For tax purposes, each Individual Class Payment will be allocated as 10% wages

(subject to applicable withholdings), and 90% interest and penalties (not subject to withholdings). *Id.*, ¶ 3.2.4.1. The PAGA Penalties payable to the PAGA Members shall be allocated as 100% penalties. *Id.*, ¶ 3.2.6.2. Further, Defendants will pay the employer's share of payroll taxes separate and apart from, and in addition to, the MSA. *Id.*, ¶ 3.1.

Based on the estimated NSA, average Individual Class Payments are projected to be approximately \$1,607.53, and average additional Individual PAGA Payments are projected to be approximately \$43.85. Moen Decl., ¶ 13. Settlement Class members will have 45 calendar days from the date of the initial mailing of the Class Notice to opt-out or object to the Settlement, thereby providing ample time to review the Class Notice without unduly delaying the Settlement. *See* Settlement, ¶¶ 1.44, 7.5-6. Settlement Class members who do not opt-out of the Settlement will be bound by its terms and will release all claims against Defendants as detailed in the Settlement. *Id.*, ¶ 5.2. Settlement Class members will have 180 days from the date the Individual Class Payments and Individual PAGA Payments are mailed to cash their checks. *Id.*, ¶ 4.4.1. In the event that there are any uncashed checks remaining after 180 days, any remaining funds will be transferred to Legal Aid at Work, the Parties' agreed-upon *cy pres* designee. *Id.*, ¶ 4.4.3. This distribution method ensures that no portion of the GSA will be "unpaid...unclaimed or abandoned," as required for C.C.P. § 384 to apply, and the Court may approve the proposed distribution method without running afoul of C.C.P. § 384.

2. Attorneys' Fees, Costs, and Plaintiffs' Service Payments

At the time of seeking final settlement approval, Plaintiffs will apply for Class Representatives Service Payments in the amount of \$10,000 each for their service to the Settlement Class and general release of all claims. Moen Decl., ¶ 30; *see* Settlement ¶¶ 3.2.1. Plaintiffs' requested class representative Service Payments are intended to recognize the significant time and effort that Plaintiffs expended on behalf of the Settlement Class, including searching for relevant documents for use in the lawsuit, providing factual information and relevant documents to their attorneys, communicating with other class members, holding dozens of phone calls with their attorneys to discuss the claims in the lawsuit and Defendants' practices, discussing the status of the case and general case strategy with their attorneys on multiple occasions,

1 providing valuable input to assist their attorneys to prepare for both mediations, making
2 themselves available during both full-day mediations to assist and answer factual questions posed
3 by the mediator, reviewing and providing input regarding the Settlement, and otherwise assisting
4 their attorneys in moving this case towards resolution, the significant risks Plaintiffs undertook
5 by serving as the named plaintiffs, and the fact that they agreed to a general release of all claims
6 subject to a waiver of Civil Code § 1542. Moen Decl., ¶ 30; Figueroa Decl., ¶¶ 4-13; Perez Decl.,
7 ¶¶ 4-13; Izquierdo Decl., ¶¶ 2-3, 5; Zieg Decl., ¶ 7; Settlement, ¶¶ 5.1, 5.3.

8 Class Counsel will also apply for an attorneys' fee award of up to one third of the GSA
9 (currently \$830,000.00), and up to \$50,000.00 in reimbursement for actual litigation costs. Moen
10 Decl., ¶ 31; *see* Settlement, ¶ 3.2.2. Plaintiffs submit that the requested fee is fair compensation
11 for undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent
12 fee basis. Moen Decl., ¶ 31. Class Counsel has incurred substantial attorneys' fees conducting
13 pre-filing investigation, analyzing Plaintiffs' claims, conducting legal research and analysis,
14 reviewing substantial class documents and data produced by Defendants, extensively evaluating
15 the produced timekeeping and payroll records with the assistance of a retained expert to build a
16 comprehensive damages model, preparing for and attending two full-day mediation sessions,
17 negotiating and drafting the Memorandum of Understanding, long-form Settlement Agreement,
18 and Class Notice documents, preparing this motion for preliminary approval, and otherwise
19 litigating the case. *Id.* Class Counsel will also expend future attorney time attending the hearing
20 on this Motion, overseeing the Notice process, drafting the Final Approval Motion and supporting
21 documents, attending the Final Approval hearing, and completing other tasks, such as fielding
22 questions from Settlement Class members. *Id.* Class Counsel will seek an award of attorneys' fees
23 when seeking final approval. *See Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 506.

24 **IV. ARGUMENT**

25 **A. Preliminary Approval Is Warranted**

26 California Rule of Court 3.769 conditions the settlement of a class action on court
27 approval, which is generally evaluated under the federal standards applicable under Rule 23 of
28 the Federal Rules of Civil Procedure. *See Reed v. United Teachers Los Angeles* (2012) 208
Cal.App.4th 322, 337 (stating that Rule 3.769 requires the trial court to determine "that the

1 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.* (9th Cir.
2 1998) 150 F.3d 1011, 1026 (stating that Rule 23(e) requires the trial court to determine “whether
3 a proposed settlement is fundamentally fair, adequate, and reasonable”). Settlement is the
4 preferred means of dispute resolution, particularly in complex class action litigation. *In re Syncor*
5 *ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court’s role in evaluating a proposed
6 settlement is limited to ensuring that the agreement taken as a whole is fair and is not the product
7 of fraud or collusion between the negotiating parties. *See e.g., Hanlon, supra*, 150 F.3d at 1027.
8 There is an initial presumption of fairness when the settlement agreement was negotiated at arm’s
9 length by class counsel. *See Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.

10 **1. Standard for Preliminary Approval**

11 The Court should consider the following factors when making a fairness determination:
12 “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further
13 litigation, the risk of maintaining class action status through trial, the amount offered in
14 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
15 experience and views of counsel.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.
16 “[T]he court is free to engage in a balancing and weighing of factors depending on the
17 circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.
18 The proposed Settlement is fair, adequate, and reasonable in light of the overall balance of factors.

19 **a. The Strength of Plaintiffs’ Case**

20 Class Counsel carefully vetted the claims at issue, reviewed Settlement Class member
21 timekeeping and payroll data spanning the entire Class Period, reviewed all relevant policy
22 documents, retained an expert to assist in analyzing the data, and created a comprehensive
23 damages model for Defendants’ liability. Moen Decl., ¶ 32. Although Plaintiffs steadfastly
24 maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks
25 and uncertainty in proceeding with class certification and trial. As explained in Section II.B.,
26 *supra*, Defendants presented numerous defenses to Plaintiffs’ claims, both on the merits and as
27 to class certification. Although they were prepared to litigate these claims through class
28 certification and trial, it was far from certain that Plaintiffs would be able to recover a greater
amount should this matter proceed through trial. Thus, this factor supports preliminary approval.

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

2 Although the Parties engaged in substantial informal discovery and information exchange
3 prior to mediation, the Parties had agreed to refrain from engaging in formal written and
4 deposition discovery until after exhausting their settlement efforts at mediation. Moen Decl., ¶
5 32. Absent settlement, the Parties will be required to expend substantial time and resources
6 conducting additional formal written and deposition discovery. *Id.* Moreover, Plaintiffs have not
7 yet filed for class certification, and thus, absent settlement, the Parties would face the prospect of
8 appeals in the wake of a disputed class certification ruling and/or an adverse summary judgment
9 ruling. *Id.* Even if Plaintiffs succeeded in certifying one or more classes, the Parties would incur
10 considerably more attorneys' fees and costs through a possible decertification motion, trial, and
11 possible appeal. *Id.* This Settlement avoids these considerable costs, risks, and the accompanying
12 burden of continued litigation on the Court. Thus, this factor supports preliminary approval.

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

14 At the time of the proposed Settlement, Plaintiffs had not filed their motion for class
15 certification. Moen Decl., ¶ 33. Had the Court certified any claims, Plaintiffs anticipated that
16 Defendants would seek decertification. *Id.* Defendants also contend that a substantial portion of
17 the putative class members had entered into arbitration agreements with class-action waivers, and
18 there was also a risk that Defendants would engage in a *Pick-up-Stix* campaign that could affect
19 Plaintiffs' ability to maintain the numerosity required to proceed as a class action, or significantly
20 reduce the size of the putative class for a fraction of what Settlement Class members are receiving
21 through this Settlement. *Id.*; see *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796.
22 Therefore, absent the Settlement, there was a serious risk that Plaintiffs would be unable to move
23 forward on a class-wide basis. Moen Decl., ¶ 33. Thus, this factor supports preliminary approval.

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

25 This proposed Settlement provides a fair and reasonable recovery for the Settlement Class
26 in the face of disputed claims. After analyzing Defendants' produced data, Class Counsel
27 conducted a class-wide exposure analysis, forecasting the total expected recovery as follows:

28 ///

1 Unlawful Time Rounding Violations: \$83,481

2 Plaintiffs' expert's data analysis revealed that Defendants' rounding practice resulted in
3 the Settlement Class members being underpaid for an aggregate of 6,808 recorded hours of work
4 during the putative class period. Moen Decl., ¶ 34. Therefore, Plaintiffs calculated Defendants'
5 maximum potential exposure on this claim at \$183,475 (6,808 unpaid hours * \$26.95 average rate
6 of pay). *Id.* Defendants argue that its timekeeping practice was neutral, both on its face and in
7 practice, and that such a policy is lawful under *See 's Candy. Id.* Moreover, because *Camp v. Home*
8 *Depot* has been granted review by the California Supreme Court, there is tangible risk that *Camp*
9 will be overturned, rendering Plaintiffs' damages analysis overstated. *Id.* Plaintiffs therefore
10 discounted the maximum potential exposure by 30% for the risk of non-certification and 35% for
11 the risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$83,481. *Id.*

12 Off-The-Clock Wage Violations: \$153,657

13 Plaintiffs' expert's data analysis determined that Settlement Class members worked an
14 aggregate total of 393,210 shifts during the relevant time period. Moen Decl., ¶ 35. Plaintiffs
15 estimate that Settlement Class members were required to spend approximately 5 minutes per shift
16 donning and/or doffing safety equipment and traveling through Defendants' facility before being
17 able to clock in during each scheduled shift. *Id.* Accordingly, Plaintiffs calculated Defendants'
18 maximum potential exposure for this claim at approximately \$465,626 (393,210 shifts * 5 minutes
19 per shift * \$14.21 weighted minimum wage). *Id.*

20 Defendants, however, maintain that they properly compensated Settlement Class members
21 for all time worked and assert that this claim is unmanageable, as it requires individualized
22 inquiries into whether and exactly how much time each employee purportedly spent while off-
23 the-clock on any given day. Moen Decl., ¶ 35. Plaintiffs therefore discounted the maximum
24 exposure by 45% for the risk of non-certification, and by an additional 40% for risk of losing on
25 the merits, to arrive at a reasonable exposure of \$153,657. *Id.*

26 Regular Rate Miscalculations: \$153,375

27 Plaintiffs' expert's data analysis determined that Settlement Class members were
28 underpaid approximately \$337,088 as a result of Defendants' failure to properly include the value

1 of non-discretionary bonus payments when calculating the employees' respective regular rates of
2 pay for overtime purposes. Moen Decl., ¶ 36.

3 Defendants, however, argues that the majority of bonuses in question were discretionary,
4 and therefore did not need to be included in the regular rate of pay. Moen Decl., ¶ 36. Defendants
5 also argue that this claim is unmanageable, as it requires individualized inquiries into whether
6 each bonus payment was discretionary or non-discretionary. *Id.* Plaintiff therefore discounted the
7 maximum exposure by 30% for the risk of non-certification, and by an additionally 35% for the
8 risk of losing on the merits, to arrive at a reasonable exposure of approximately \$153,375. *Id.*

9 **Meal Period Violations: \$1,192,076**

10 Plaintiffs' expert's data analysis determined that Settlement Class members worked an
11 aggregate total of 144,553 shifts in excess of 5.0 hours during the Class Period that contained a
12 facially unlawful first or second meal period, whether late, short or missed, and were not waiver
13 eligible. Moen Decl., ¶ 37. Thus, Plaintiffs calculated Defendants' liability on this claim at
14 \$3,612,351 ((144,553 meal period violations – 10,514 premiums paid) * \$26.95 avg. premium).
15 *Id.* Defendants assert, however, that they maintained lawful meal period policies and practices at
16 all times during the Class Period, including paying meal period premiums to employees when
17 meal periods were not provided. *Id.* Defendants further assert that Plaintiffs' meal period claim is
18 not suited for class certification as individual inquiries would be required to assess whether each
19 facial violation in the records was the result of employee choice and waiver rather than company
20 policy, resulting in an unmanageable series of mini trials. *Id.* Given these defenses, Plaintiffs
21 discounted the maximum exposure by 45% for the risk of non-certification, and by an additional
22 40% for risk of losing on the merits, to arrive at a reasonable exposure of \$1,192,076. *Id.*

23 **Rest Period Violations: \$741,791**

24 Plaintiffs' expert's data analysis determined that non-exempt employees worked an
25 aggregate total of 393,210 shifts in excess of 3.5 hours during the Class Period. Moen Decl., ¶ 38.
26 Plaintiffs attribute a rest period violation for 50% of work shifts in excess of 3.5 hours due to
27 Defendants' unlawful rest period policy/practice that failed to authorize and permit 10-minutes
28 "net rest". *Id.* Accordingly, Plaintiffs calculated Defendants' maximum potential exposure on this

claim at \$5,298,504 (195,605 rest period violations * \$26.95 average premium). *Id.*

However, Defendants argue they have always authorized and permitted rest periods in accordance with California law, and assert that employees' rest periods begin once the employee arrived at the breakroom. Moen Decl., ¶ 38. Further, Defendants assert that this claim is not amenable to class certification given the individual inquiries required to determine whether and why each employee missed a rest period on any given shift, whether the employee chose to take a rest period at an area other than the provided breakroom, and for how long each and every rest period lasted for every employee on any given day throughout the entire Class Period, particularly given that rest periods are not recorded. *Id.* Given these defenses, Plaintiffs discounted the maximum exposure by 60% for the risk of non-certification, and by an additional 65% for risk of losing on the merits, to arrive at an estimated exposure of \$741,791. *Id.*

Failure to Reimburse Violations: \$92,104

Plaintiffs' expert's data analysis determined that the Settlement Class members worked a total of approximately 12,179 aggregate months during the Class Period. Moen Decl., ¶ 39. Using a conservative estimate of \$25 per month for reimbursement of work-related use of personal cellular phones, Plaintiffs calculate Defendants' maximum exposure for this claim at approximately \$304,475 (\$25.00/month * 12,179 work-months). *Id.* Defendants maintain that Settlement Class members were not required to use their personal cellular phones as part of their job and that this claim would require individual inquiries into whether Settlement Class members actually used their personal cellular phones for work purposes. *Id.* Therefore, Plaintiffs discounted the maximum potential exposure by 45% for the risk of non-certification and 45% for the risk of being unsuccessful on the merits, to arrive at an estimated exposure of \$92,104. *Id.*

Wage Statement Penalties: \$275,750

According to Plaintiffs' expert's data analysis, approximately 570 Settlement Class members are eligible for wage statement penalties, and a total of 22,345 wage statements were issued during the relevant period. Moen Decl., ¶ 40. Plaintiffs calculated Defendants' maximum possible wage statement exposure as approximately \$2,206,000 ((570 initial violations * \$50 per pay period) + (21,775 subsequent pay periods * \$100 per pay period)). *Id.* However, Defendants

1 raised numerous defenses, including that the alleged violations, if any, were not “knowing and
2 intentional,” and that Plaintiffs could not show that the Settlement Class members “suffer[ed]
3 injury” as a result. *Id.* Defendants further argued that Plaintiffs’ underlying claims would fail,
4 and, therefore, their derivative wage statement claim would also fail. *Id.* Therefore, Plaintiffs
5 discounted the maximum exposure by 50% for the risk of non-certification of the underlying
6 claims and 75% for a risk of being unsuccessful on the merits, including failing to prove the
7 violations were “knowing and intentional,” that the Settlement Class members “suffer[ed] injury,”
8 or that the Court would find that Defendants had a reasonable, good faith belief that of compliance
9 with wage and hour laws precluding the imposition of wage statement penalties, for an estimated
10 reasonable recovery of \$275,750. *Id.*; see also *Naranjo v. Spectrum Security Services, Inc.* (2024)
11 15 Cal.5th 1056, 1065 (holding that a reasonable, good faith belief that employer was in
12 compliance with wage and hour laws precludes imposition of wage statement penalties).

13 **Waiting Time Penalties: \$374,336**

14 Plaintiffs’ expert’s data analysis determined that 463 Settlement Class members separated
15 their employment during the relevant period applicable to this claim and were entitled to recover
16 waiting time penalties. Moen Decl., ¶ 41. Therefore, Plaintiffs calculated Defendants’ maximum
17 potential exposure on this claim at \$2,994,684 (463 former employees * average waiting time
18 penalty of \$6,468 (\$26.95 average hourly rate * 8 hours * 30 days)). *Id.* Defendants maintain that
19 waiting time penalties are not appropriate because Plaintiffs’ claims fail on the merits, and given
20 their good-faith defenses, Plaintiffs cannot show that any failure by Defendants to pay all final
21 wages was willful. *Id.* Plaintiffs discounted this claim by 50% for the risk of non-certification
22 and by an additional 75% for risk of being unsuccessful on the merits, failing to establish
23 willfulness, or that the Court would find a reasonable, good faith dispute over whether any wages
24 are due precluding the imposition of waiting time penalties, for an estimated recovery of
25 \$374,336. *Id.*; see also *Naranjo, supra*, 15 Cal.5th at 1065 (recognizing that good faith dispute
26 over whether any wages are due will preclude imposition of waiting time penalties).

27 **PAGA Penalties: \$122,898**

28 Plaintiffs allege that PAGA civil penalties would be recoverable for each pay period in

1 which they could prove an underlying Labor Code violation. Moen Decl., ¶ 42. According to
2 Plaintiffs' expert's data analysis, the Settlement Class members worked a combined total of
3 22,345 pay periods during the PAGA liability period in which at least one of Plaintiffs' alleged
4 Labor Code violations occurred. *Id.* Plaintiffs therefore calculate Defendants' maximum PAGA
5 exposure at \$2,234,500 (22,345 pay periods * \$100 per violation). *Id.*; *see also Amaral, supra*,
6 163 Cal.App.4th at 1207 (finding "initial" violation rate applies until employer is notified that it
7 is violating a Labor Code provision). However, these penalties are exclusively derivative of the
8 underlying violations that Defendants vigorously dispute, both as to certification and the merits.
9 Moen Decl., ¶ 42; *see also Green v. Lawrence Service Co.*, 2013 WL 3907506, *5, fn. 5 (C.D.
10 Cal. 2013) (explaining that a PAGA claim's success was determined by the merits of its
11 underlying claims). Plaintiffs also recognize that the Court has discretion to substantially reduce
12 any award of PAGA penalties. Moen Decl., ¶ 42; *see also Labor Code § 2699(e)(2); Fleming v.*
13 *Covidien Inc.*, Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, *4 (C.D. Cal. Aug.
14 12, 2011) (reducing PAGA penalties from \$2.8 million to \$500,000). Therefore, Plaintiffs
15 discounted the maximum figure by 45% for the risk of losing on the merits of all underlying
16 claims and by 90% for the likely possibility that this Court would reduce the PAGA penalties
17 awarded, to arrive at an estimated exposure of \$122,898. Moen Decl., ¶ 42.

18 Using these estimated figures, Plaintiffs estimated that the potential reasonable recovery
19 for the Settlement Class would be approximately \$3,189,466. Moen Decl., ¶ 43. Thus, the
20 proposed recovery to the Settlement Class of \$2,490,000 represents approximately 78.07% of
21 Plaintiffs' reasonably forecasted class-wide recovery, which is well within the range approved by
22 courts as being fair, reasonable and adequate, while also avoiding further expense and risk of
23 proceeding towards class certification and trial. *Id.*; *see, e.g., Altamirano v. Shaw Industries, Inc.*,
24 2015 WL 4512372, *9 (N.D. Cal. 2015) ("Although 15% represents a modest fraction of the
25 hypothetical maximum recovery estimated by Plaintiff, that figure is sufficient for the Court to
26 grant preliminary approval..."); *Dunleavy v. Nadler* (9th Cir. 2000) 213 F.3d 454, 459 (approving
27 settlement of "roughly one-sixth of the potential recovery"); *Linney v. Cellular Alaska*
28 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("The fact that a proposed settlement may only

1 amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed
2 settlement is grossly inadequate and should be disapproved.”) (internal quotations omitted).
3 Preliminary approval is appropriate since the Settlement will provide tangible monetary relief to
4 the Settlement Class without the uncertainty, delay, and additional expense of further litigation.

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

6 “Parties represented by competent counsel are better positioned than courts to produce a
7 settlement that fairly reflects each party’s expected outcome in litigation.” *In re Pacific*
8 *Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378. Here, Plaintiffs are represented
9 by competent and experienced counsel who possesses extensive experience litigating wage and
10 hour class actions from both the plaintiff and defense side, and who have been appointed as class
11 counsel in numerous cases alleging similar claims. Moen Decl., ¶¶ 2-7; Declaration of Paul K.
12 Haines (“Haines Decl.”), ¶¶ 2-14; Declaration of Fletcher W. Schmidt (“Schmidt Decl.”), ¶¶ 2-9;
13 Declaration of Mehrdad Bokhour (“Bokhour Decl.”), ¶¶ 4-7; Declaration of Joshua S. Falakassa
14 (“Falakassa Decl.”), ¶¶ 4-10; Declaration of Misty M. Lauby (“Lauby Decl.”), ¶¶ 3-9, 11, Exhibit
15 A. Class Counsel conducted an extensive review and analysis of Defendants’ produced
16 timekeeping and payroll records and drew on their extensive experience in similar cases to assess
17 the strengths and weaknesses of Plaintiffs’ case. Moen Decl., ¶¶ 29, 32, 34-43. It was only after
18 the completion of this work that the Parties attended two mediation sessions and ultimately
19 accepted a mediator’s proposal for a class-wide settlement of all claims at issue. *Id.* Thus, this
20 factor supports preliminary approval.

21 **2. The Preliminary Approval Standard is Met**

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

27 **a. The Settlement is Within the Range of Possible Approval**

28 The proposed Settlement reflects a fair and reasonable recovery for the Settlement Class
members in light of the significant risks of litigation. The proposed Settlement will provide

1 compensation for contested claims, while only releasing the claims actually at issue in this
2 litigation. Further, the average payment of \$1,607.53 greatly exceeds the average payments
3 achieved in other wage and hour class action settlements that have been approved.² Thus, the
4 proposed Settlement is within the range of possible approval such that notice should be provided
5 to the Settlement Class members. The Court will have the opportunity to assess the reasonableness
6 of the Settlement after Settlement Class members have the opportunity to opt-out or object.

7 **b. Settlement Resulted from Informed and Non-Collusive Negotiations**

8 This proposed Settlement is entitled to an initial presumption of fairness as it is the result
9 of the exchange of pertinent information, including all relevant policies, employee timekeeping
10 and payroll records which were analyzed by Plaintiffs, their counsel and a retained expert; arm's-
11 length negotiations by counsel; two mediations before an experienced wage and hour class action
12 mediator who made a mediator's proposal; and additional negotiations until the terms of the long-
13 form Settlement were agreed upon and finalized. Moen Decl., ¶ 29; *see also Kullar, supra*, 168
14 Cal.App.4th at 130. Thus, this factor supports preliminary approval.

15 **c. The Settlement is Devoid of Obvious Deficiencies**

16 The Settlement will provide tangible monetary relief to the Settlement Class members.
17 Moreover, the amounts proposed for Plaintiffs' class representatives Service Payments,
18 settlement administration costs, attorneys' fees and costs to Class Counsel, and the LWDA's
19 portion of PAGA civil penalties are all reasonable and appropriate. Because the Settlement is
20 devoid of obvious deficiencies, this final factor supports preliminary approval.

21 **B. The Court Should Certify the Settlement Class for Settlement Purposes**

22 The proposed Settlement Class satisfies the criteria for certification of a settlement class
23 under California law because: (1) the individuals in the Settlement Class are so numerous that
24 joinder would be impractical; (2) common questions of law and fact predominate over individual
25

26 ² *See e.g., Bercea v. AE Retail West*, Case No. 34-2012-00123947 (Sacramento County Super. Ct. May 9,
27 2012) (average net recovery of approximately \$105); *Ressler v. Federated Department Stores, Inc.*, Case
28 No. BC335018 (L.A. County Super. Ct. Jan. 2, 2009) (average net recovery of approximately \$90); and
Schiller v. David's Bridal, Inc., Case No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal.
June 11, 2012) ("Class Members will receive an average of approximately \$198.70 ... [T]he Court finds
that the results achieved are good").

1 questions such that class certification is the most efficient and desirable way to maintain this
2 litigation; (3) Plaintiffs' claims are typical of the claims of the absent Settlement Class members;
3 and (4) Plaintiffs and Plaintiffs' counsel will fairly and adequately represent the interests of the
4 absent Settlement Class members. *See* Cal. Code Civ. Proc. § 382.

5 **1. The Proposed Class is Ascertainable and Numerous**

6 A class is "ascertainable" where the members "may be readily identified without
7 unreasonable expense or time by reference to official [or business] records." *See Sevidal v. Target*
8 *Corp.* (2010) 189 Cal.App.4th 905, 919 (alterations in original). Here, the proposed Settlement
9 Class is defined as individuals who are or were employed by Defendants as non-exempt hourly
10 employees in California during the Class Period. *See* Settlement, ¶ 1.4. Settlement Class members
11 can be easily identified using Defendants' employment and payroll records. Moen Decl., ¶ 13.
12 Defendants represent that the Settlement Class consists of approximately 902 individuals,
13 rendering it impracticable to bring all Settlement Class members before the Court. *Id.* Thus, the
14 proposed Settlement Class satisfies numerosity. *See Collins v. Rocha* (1972) 7 Cal.3d 232, 234.

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

16 The focus in a certification dispute is not on the merits of the case, but rather on what
17 types of questions, "common or individual," are likely to arise in the action. *See Sav-On Drug*
18 *Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Here, Plaintiffs' claims are predicated
19 on Defendants' alleged failures to pay all minimum and overtime wages, pay all meal and rest
20 period premiums, reimburse necessary business expenses, furnish accurate and itemized wage
21 statements, and timely pay all final wages owed. These types of claims are commonly held to be
22 proper for class certification. *See, e.g., Brinker, supra*, 53 Cal.4th at 1032-34 ("The theory of
23 liability—that Brinker has a uniform policy, and that that policy...allegedly violates the law—is
24 by its nature a common question eminently suited for class treatment.").

25 **3. The Claims of the Named Plaintiffs are Typical**

26 The typicality requirement is satisfied where class representatives have claims that are
27 typical of those of the rest of the class. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
28 Cal.App.3d 1341, 1347. Here, like other Settlement Class members, Plaintiffs were employed by

1 Defendants as non-exempt employees in California and were subject to Defendants’ allegedly
2 unlawful wage and hour policies/practices during the Class Period. Figueroa Decl., ¶ 3; Perez
3 Decl., ¶ 3; Izquierdo Decl., ¶ 4; Zieg Decl., ¶¶ 2-4. Plaintiffs were therefore impacted by the same
4 challenged policies and were subject to the same defenses forwarded by Defendants as to the
5 Settlement Class, and are therefore typical.

6 **4. Plaintiffs and Class Counsel are Adequate to Represent the Class**

7 The adequacy of representation requirement examines conflicts of interest between named
8 parties and the class(es) they seek to represent. *See Capitol People First v. Department of*
9 *Developmental Services* (2007) 155 Cal.App.4th 676, 697. Here, Plaintiffs and Class Counsel will
10 adequately represent the Settlement Class members as there are no conflicts between the named
11 Plaintiffs and the Settlement Class members they seek to represent, and Plaintiffs possess claims
12 that are in line with those of the Settlement Class members. *See McGhee v. Bank of America*
13 (1976) 60 Cal.App.3d 442, 450 (finding adequacy satisfied where there was no indication that the
14 plaintiff’s counsel were not qualified and the plaintiff had no interests antagonistic to those of the
15 class). Class Counsel also has extensive experience in wage and hour class action litigation. *See*
16 *Moen Decl.*, ¶¶ 2-7; *Haines Decl.*, ¶¶ 2-14; *Schmidt Decl.*, ¶¶ 2-9; *Bokhour Decl.*, ¶¶ 4-7;
17 *Falakassa Decl.*, ¶¶ 4-10; *Lauby Decl.*, ¶¶ 3-9,11, Exhibit A.

18 **C. The Court Should Order Distribution Of The Proposed Class Notice**

19 This Court should order distribution of the proposed Class Notice to the Settlement Class
20 members by first class mail, postage prepaid, using the last known mailing address information
21 provided by Defendants. This manner of giving notice is the “best notice practicable” under the
22 circumstances because it provides “individual notice to all members who can be identified through
23 reasonable effort.” *See Eisen v. Carlisle and Jacquelin* (1974) 417 U.S. 156, 173. The Parties
24 propose that the settlement be administered by ILYM Group, Inc. (“ILYM”), an experienced class
25 action settlement administrator. *See Declaration of Anthony Rogers*. Settlement Class members’
26 addresses will be ascertainable through Defendants’ personnel records, and Defendants will
27 provide all Settlement Class members’ names, last known mailing addresses, social security
28 numbers, and workweek and pay period data to ILYM within seven (7) days after of the Court

signs an order preliminarily approving the Settlement. *See* Settlement, ¶ 4.2. ILYM will run the Settlement Class members' addresses through the National Change of Address database and/or conduct skip traces to obtain current address information. *Id.*, ¶ 1.9.

The content of the proposed Class Notice satisfies California Rule of Court 3.766(d) because it advises the Settlement Class members' of the nature of the claims, basic contentions and denials of the Parties, the key terms of the Settlement, the uniform 45-day deadline to opt-out or object to the Settlement and the procedures by which to do so, explains the recovery formula and expected recovery amount for each Settlement Class members, and advises them that they will be bound by the terms of the Settlement if they do not request exclusion. *See* Settlement, Exhibit A. The proposed Class Notice will also notify the Settlement Class of the Final Approval Hearing date, provide Class Counsel's contact information, and advise Settlement Class members that they may enter an appearance through counsel if they so wish. *Id.* This manner of giving notice satisfies California Rule of Court 3.766(e) as the most reliable and cost-effective method of reaching Settlement Class members. Additionally, because the proposed Settlement includes settlement of Plaintiffs' representative PAGA claim, notice of the Settlement has been submitted to the LWDA. *See* Moen Decl., ¶ 44, Exhibit 3 (LWDA Settlement Submission); Proof of Service.

D. The Court Should Set A Final Approval Hearing

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

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily approve the proposed Settlement, provisionally certify the Settlement Class for settlement purposes, and enter the [Proposed] Order submitted concurrently herewith.

Dated: September 23, 2026

Respectfully submitted,
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