SULLIVAN EMPLOYMENT LAW PC
Martin E. Sullivan, CA Bar No 274279
martin@sullivanlawgrp.com
145 S. Spring Street, Ste. 850
Los Angeles, CA 90012
Tel: (323) 645-5470

Attorneys for Plaintiffs and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANDRES QUIJANO, an individual, on behalf himself and all others similarly situated,

Plaintiff,

v.

SOUTH ITALIA HUNTINGTON BEACH, LP, a California Limited Partnership, and DOES 1 TO 50,

Defendants.

CASE NO: 24STCV08676

[*Assigned for all purposes to Dept. 1, Hon. Stuart M. Rice*]

PLAINTIFF'S NOTICE OF MOTION AND MEMORANDUM IN SUPPORT OF MOTION FOR:
(1) PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT;
(2) APPROVAL OF NOTICE TO CLASS MEMBERS AND RELATED MATERIALS;
(3) APPROVAL OF SETTLEMENT ADMINISTRATOR; AND
(4) SETTING HEARING FOR FINAL APPROVAL OF SETTLEMENT

[filed concurrently with Declarations of Andres Quijano and Martin Sullivan; [Proposed] Order]

Hearing Date: June 3, 2025
Time: 10:30 a.m.
Dept.: 1
Judge: Hon. Stuart M. Rice

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on June 3, 2025, at 10:30 a.m. or as soon thereafter as the matter may be heard, in Department 1 of the Los Angeles County Superior Court, 312 N. Spring Street, Los Angeles, California 90012, before the Honorable Stuart M. Rice, Plaintiff Andres Quijano, through his undersigned Class Counsel, will and hereby does move the Court for entry of the Proposed Order filed concurrently herewith:

1) Conditionally certifying the Class for purposes of settlement;
2) Preliminarily appointing Plaintiff Andres Quijano as Class Representative for purposes of settlement only;
3) Appointing Martin Sullivan, Esq. of Sullivan Employment Law, P.C. as Class Counsel for purposes of settlement;
4) Preliminarily approving the class action settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement, including payment by Defendant South Italia Huntington Beach, LP ("South Italia" and "Defendant") of the non-reversionary Settlement Amount of $248,000.00 ("Gross Settlement Amount" or "GSA"), excluding employer-side payroll taxes to be paid in addition by Defendant, to the approximately one hundred forty (140) current and former employees who are members of the Settlement Class/es;
5) Preliminarily approving payment of reasonable attorneys' fees and costs from the gross Settlement Amount in an amount of up to 1/3 of the GSA (i.e., $ 248,000.00) in attorneys' fees, plus actual litigation costs up to $17,000.00;
6) Preliminarily approving Class Representative Service Award Payment up to $7,000 to Plaintiff from the GSA to compensate him for the burdens, responsibilities, time, effort, contributions, and risks involved in coming forward on behalf of the Settlement Class, as well as for the general release he provided as required by Defendants;
7) Preliminarily approving ILYM Group, Inc. as the Settlement Administrator and further approving distribution of up to $12,000 from the GSA to cover the Settlement Administrator's expenses in administering this settlement;

8) Directing distribution to the Settlement Class of the notice of settlement, including notice of the opportunity to exclude oneself from, or object to, the settlement, and information about how to participate in the settlement by doing nothing or challenge his or her portion of the settlement; and

9) Setting a date for a final fairness hearing to determine, following dissemination of notice to the class, whether to grant final approval to the Settlement.

This motion is based upon this Notice of Motion and Motion; the Memorandum of Points and Authorities in Support thereof; the Declaration of Martin Sullivan, Esq. in support thereof; the Declaration of Andres Quijano in Support thereof; the Joint Stipulation of Settlement and Release (the "Settlement Agreement" or "SA"); the Proposed Order Granting Preliminary Approval of the Class Action Settlement; the other records, pleadings, and papers filed in this action; and upon such other evidence or argument as may be presented to the Court at the hearing of this motion.

As this motion is unopposed, Plaintiff respectfully requests the Court for relief from the page limit requirement under California Rule of Court 3.1113(d).

Respectfully submitted,

Dated: May 9, 2025

SULLIVAN EMPLOYMENT LAW P.C.

Martin Sullivan
Attorney for Plaintiff and the Putative Class

Table of Contents

Table Of Authorities

Cases

Statutes

Other Authorities

Treatises

<u>**MEMORANDUM OF POINTS AND AUTHORITIES**</u>

I. INTRODUCTION

This motion seeks preliminary approval of a wage-and-hour class action settlement for the non-reversionary Gross Settlement Amount ("GSA") of $248,000.00, excluding employer-side payroll taxes to be paid in addition by Defendant, between Plaintiff Andres Quijano ("Plaintiff" or "Class Representative") and Defendant South Italia Huntington Beach, LP ("South Italia" and "Defendant") (collectively referred to herein as the "Parties") for approximately one hundred forty (140) current and former employees. The putative class is defined as: "all individuals who are or were employed by Defendant as nonexempt employees in California between April 8, 2020, through date of Preliminary Approval of the Settlement" (herein after referred to as the "Class" and "Class Members").

Subject to court approval, after deductions for attorneys' fees and litigation expenses to Class Counsel, enhancement award payment to the Class Representative, Settlement Administration expenses, and a payment to the Labor Workforce and Development Agency ("LWDA") under PAGA, the remaining amount (the "Net Settlement Amount") will be distributed to Class Members who did not opt out of the Settlement as follows:

Gross Settlement Amount	**$248,000.00**
Attorneys' Fees (1/3 of the GSA)	(up to $82,666.66)
Litigation Costs and Expenses	(up to $17,000.00)
Class Rep. Enhancement Award	(up to $7,000.00)
Settlement Administration Costs	(up to $12,000.00)
PAGA payment to the LWDA	(up to $6,000.00)
PAGA payments to Aggrieved	(up to $2,000)
Net Settlement Amount	**$121,333.34**

If the court grants approval to the Settlement, the average Participating Class Member will receive approximately $866.66.[1]

[1] Calculated $121,333.34/140 total Class Members in the Settlement Class = $866.66 average recovery per class member. MS Decl., ¶ 69.

As for the PAGA claim, the PAGA Aggrieved Employees are defined as all Class Members employed by Defendant at any time between April 8, 2023, through the date of Preliminary Approval of the Settlement (hereinafter, the "PAGA Period").

Through this motion, Plaintiff requests entry of an order: (1) conditionally certifying the Classes under California Code of Civil Procedure section 382 for settlement purposes only and preliminarily approving the settlement pursuant to California Rule of Court; (2) confirming Plaintiff Andres Quijano as Class Representative, and Martin Sullivan of Sullivan Employment Law PC as Class Counsel; (3) approving the parties' proposed Class Notice and Share Form;[2] (4) appointing ILYM Group, Inc., ("ILYM Group") as the Settlement Administrator; and (5) scheduling a hearing for the Court to consider the results of the notice process and whether to grant final approval to the Settlement Agreement.

II. RELEVANT FACTUAL BACKGROUND

a. The Parties and the Putative Class

Defendant is in the food service business in the County of Los Angeles. *See* Declaration of Martin Sullivan (hereafter "MS Decl.") ¶ 7. Defendant employed numerous non-exempt employees in various positions associated with their business, all of whom are or were subject to Defendant's policies and practices. According to Plaintiff's allegations, Defendant's business practices evidenced: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to authorize and permit compliant rest periods and/or pay rest period premiums; (4) failure to provide compliant meal periods and/or pay meal period premiums; (5) failure maintain employment records; (6) failure to timely pay wages during employment; (7) waiting time penalties; (8) failure to indemnify business expenses; (9) failure to provide complete and accurate wage statements; (10) tip conversion requiring an accounting; (11) violations of California's Unfair Competition Law, Business & Professions Code section 17200 et seq. ("UCL"); and (12)

---

[2] The parties' Joint Stipulation of Settlement and Release of Class Action is attached as **Exhibit A** to the Declaration of Martin Sullivan in Support of Motion for Preliminary Approval of Class Action Settlement ("MS Decl."). The Proposed Class Notice to the Settlement Agreement and the proposed Share Form is attached to the Settlement Agreement as **Attachment A** thereto, the Request for Exclusion is attached as **Attachment 2** thereto, and Objection Form is attached as **Attachment 3** thereto (hereinafter "Settlement Agreement" and "SA") MS Decl., ¶ 5.

violation of PAGA. *Id*.

Plaintiff now seek preliminary approval of the Settlement Agreement which seeks to resolve Plaintiff's claims on behalf of themselves and the Settlement Class all non-exempt employees of Defendant in the State of California at any time between April 8, 2020, through date of Preliminary Approval of the Settlement (together, the "Class Members" or "Class"). MS Decl., ¶ 8. According to information supplied by Defendant's counsel during discovery, the Class has approximately one hundred forty (140) members. *See Id*.

b. Procedural History, Discovery, and Mediation

1. *The Complaint*

Plaintiff submitted a letter to the LWDA on April 8, 2024, outlining a variety of wage and hour issues. MS Decl., ¶ 9. Plaintiff filed a class complaint on April 8, 2024, which alleged twelve (12) causes of actions for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to authorize and permit compliant rest periods and/or pay rest period premiums; (4) failure to provide compliant meal periods and/or pay meal period premiums; (5) failure to maintain employment records; (6) failure to timely pay wages during employment; (7) waiting time penalties; (8) failure to indemnify business expenses; (9) failure to provide complete and accurate wage statements; (10) conversion of tips; (11) accounting; (12) violations of California's Unfair Competition Law, Business & Professions Code section 17200 et seq. ("UCL"). Plaintiff, on July 25, 2024, subsequently filed an Amended Complaint, adding a thirteenth cause of action for (13) violation of PAGA. MS Decl., ¶ 10. The Parties participated in a full-day mediation on October 14, 2024, with Chris Barnes a full-time mediator with extensive experience in California wage and hour class action lawsuits. MS Decl., ¶ 11. Mr. Barnes could not bring the Parties to settle on the day of mediation, but through persistence and an additional six months of negotiations, the Parties were successful in resolving the case and entering into a long form agreement on all material terms. *Id*. A long form agreement was finalized and executed in April 2025, for a total sum of $248,000 as the Gross Settlement Amount, excluding employer-side payroll taxes. *Id*.

2. *Discovery Synopsis*

The Parties engaged in significant informal discovery, with Defendant producing thousands of pages of payroll, timekeeping, policies, personnel files, and other pertinent documents. MS Decl., ¶ 12. Should mediation have been unsuccessful, Plaintiff was prepared to depose Defendant's Person Most Knowledgeable on numerous topics, spearhead the Belaire-West notice process, and engage in written and other deposition testimony. *Id.* However, settlement made those further steps unnecessary. *Id.*

Plaintiff's counsel thoroughly analyzed the class records for possible meal period, rest period, rounding, and overtime violations. MS Decl., ¶ 13. Plaintiff also sought information regarding tipping procedures. *Id.* Through analysis of the class data records, class details regarding numbers of class members, work weeks and pay periods at issue, Plaintiff's Counsel had sufficient information to prepare a comprehensive damages model on a class-wide basis. *Id*.

3. *The Mediation*

On October 14, 2024, the Parties attended a full-day mediation with Chris Barnes, who is a full-time mediator with extensive experience in California wage and hour class action lawsuits. MS Decl., ¶ 14. Mr. Barnes successfully mediated the case, with the deal coming together a month after the full day mediation, for $250,000. *Id.* Additional negotiations were had to finalize tax issues. In April 2025, the Parties finally executed a long form agreement with the Gross Settlement Amount ("GSA") of $248,000, with Defendant to pay employer-side payroll taxes in addition to the GSA. *Id.* The settlement that was fair to the class, according to the analysis performed by Class Counsel and weighing the strengths and weaknesses of each claim and defense. *Id.*

4. *The Settlement Agreement*

The Parties, having reached an arms' length settlement agreement, executed a Joint Stipulation of Settlement and Release (the "Settlement Agreement") memorializing a settlement based upon a non-reversionary gross settlement amount of $248,000, in April 2025. MS Decl., ¶ 15. Though professional, the settlement negotiation was adversarial and non-collusive in nature. *Id.*

The Settlement Agreement seeks to fully release and discharge Defendant and Released Parties, as defined therein, from the listed claims brought against them in this matter. MS Decl., ¶ 16. The Settlement Agreement contemplates a non-reversionary gross settlement amount of $248,000.00 ("Gross Settlement Amount") by Defendant to the Settlement Class of approximately one hundred forty (140) current and former non-exempt employees of Defendant, which is inclusive of individual settlement amounts to settlement class members, payment of PAGA penalties, attorneys' fees ("Class Counsel Fees Payment"), litigation costs ("Class Counsel Litigation Expenses Payment"), settlement administrative expenses, and the Class Representative Service Award to the named Plaintiff, to be approved by the Court. *Id*. This Gross Settlement Amount excludes employer-side payroll taxes. *Id.* The Agreement included a provision that 1/3 of the Gross Amount is allocated to Plaintiff's attorney fees due to the outsized amount of work that Plaintiff's counsel was required to expend to achieve the settlement amount offered. *Id.*

The substantive informal discovery, exchange of documents and data, and investigation prior to mediation and the discussions between counsel at and following mediation have been adequate to give Class Counsel a sound understanding of the merits of Plaintiff's position and to evaluate the worth of the claims of the Settlement Classes. MS Decl., ¶ 17. Defendant delivered Plaintiff's time and payroll which Plaintiff's counsel thoroughly analyzed for meal period, rest period, rounding, and overtime violations. *Id*. Plaintiff's counsel also coordinated with Defendant the delivery of thousands of pages of payroll and time records for a roughly 25% sample of the Settlement Class data, which it reviewed and analyzed. *Id*.

In short, the payroll details, payroll records, written policies, and Settlement Class details provided the sufficient information for Plaintiff's Counsel to prepare a comprehensive damages model to assess damages on a class-wide basis. MS Decl., ¶ 18.

III. SUMMARY OF THE PARTIES' CLAIMS AND DEFENSES

In the Operative Complaint, Plaintiff, on behalf of the putative Settlement Classes, alleged thirteen (13) causes of actions for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to authorize and permit compliant rest periods and/or pay rest period premiums; (4) failure to provide compliant meal periods and/or pay meal period premiums; (5) failure to maintain employment records; (6) failure to timely pay wages during employment; (7) waiting time penalties; (8) failure to indemnify business expenses; (9) failure to provide complete and accurate wage statements; (10) conversion of tips; (11) accounting; (12) violations of California's Unfair Competition Law, Business & Professions Code section 17200 et seq. ("UCL"); and (13) violation of PAGA (the "Action"). MS Decl., ¶ 19. Defendant has denied and continues to deny each and all of the allegations, claims, and contentions alleged by Plaintiff. S.A. ¶ 2.6; MS Decl., ¶ 19.

a. Plaintiff's Minimum Wage Claim

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles "any employee receiving less than the legal minimum wage . . . to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 4, section 4, also obligates employers to pay each employee minimum wages for all hours worked. (Cal. Code Regs., tit. 8, § 11050, subd. 4.). MS Decl., ¶ 20.

Plaintiff alleges that Class worked off the clock and were not paid for all time worked, particularly due to systematic write-downs when transferring electronic time entries to payroll. MS Decl., ¶ 21; Quijano Decl. ¶ 4. Extrapolated from the 25% sample to the class, Plaintiff identified approximately 2,000 hours of uncompensated time. MS Decl., ¶ 21. In addition, Plaintiff identified split shifts which result in 1,000 hours of uncompensated split shift premiums when extrapolated to the class. *Id.* Because Defendant failed to provide Plaintiff and Class Members with compensation for all hours worked, the Complaint asserts, each are entitled to recover liquidated damages under Labor Code section 1194.2. *Id.*

b. Plaintiff's Overtime Claim

California law requires that employees are paid one and one-half times the employee's regular rate of pay for all hours worked in excess of eight hours. *See*, Labor Code Sections 510, 1194; Industrial Wage Commission, Wage Order No. 4, Section 3; *Gentry v. Superior Court*, 42 Cal.4th 443, 455 (2007). In the Complaint, Plaintiff allege on behalf of himself and the other

Class Members that Plaintiff and other Class Members worked for Defendant during shifts that consisted of more than eight hours in a work day and/or more than forty hours in a work week and were not paid proper overtime wages for all overtime hours worked as a result of Defendant's failure to properly capture all time worked. MS Decl., ¶ 22. At least half of the shifts in which there were systematic write-downs of hours worked would have resulted in overtime payments, should they have been properly paid. *Id*.

c. Plaintiff's Rest Period Claim

Labor Code section 226.7 requires employers, including Defendants, to provide rest periods to its non-exempt employees as mandated by Order of the Industrial Welfare Commission. (Cal. Code Regs., tit. 8, § 11050 [IWC Wage Order No. 4, the wage order applicable in this case].) The IWC Wage Order states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. (Cal. Code Regs., tit. 8, § 11050, subd. 12(A).) Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages. MS Decl., ¶ 23.

Here, Defendant was fully without a rest period policy between June 2022, when the restaurant opened, and November 22, 2022, when Defendant promulgated its first handbook. MS Decl., ¶ 24. In addition, Plaintiff alleged that Defendant violated Labor Code § 226.7 and the IWC Wage Order nearly every shift every because, due to press of business and understaffing, Plaintiff and the Class Members were not provided with all mandatory rest periods and Defendant failed to pay Plaintiff and the Class Members one additional hour of compensation in lieu thereof. *Id.*; Quijano Decls. ¶¶ 3-4.

d. Plaintiff's Meal Period Claim

Labor Code § 512, subdivision (a), provides, in pertinent part, that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. MS Decl., ¶ 25.

Plaintiff alleges Defendant violated Labor Code section 512. First, opened in June 2022. MS Decl., ¶ 26. However, the restaurant did not promulgate a handbook until November 22, 2022. *Id.* Therefore, employees were without any meal period policy for about six months. *Id.* Despite its November 22, 2022, meal policy, which appears compliant in language, due to understaffing and heavy workloads, employees were prevented from taking required breaks both before and after November 22, 2022. *Id.*

The applicable IWC Wage Order requires that employers record and maintain "Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded." MS Decl., ¶ 27. Here, most of Defendant's time records fail to record the time meal periods began and ended. Some records show a deduction for an "unpaid break," but do not show when the unpaid break started and ended. *Id.* Other time records show no meal periods taken at all. *Id.* Finally, a large group of records show that instead of a meal break, employees actually were subjected to a split shift. Unpaid breaks lasted anywhere from 1.25 hours to 5 hours, generally during the lull between lunch and dinner. *Id.* These are not proper meal breaks. *Id.* Because employees were paid minimum wage, a split shift premium equal to one hour of pay at minimum wage is required each day a split shift occurred (to be discussed below in the section regarding unpaid regular and minimum wages). *Id.*

The California Supreme Court has reiterated that where Defendant's records do not reflect a compliant meal break, the burden shifts to the employer to proof by a preponderance of the evidence that one was timely taken. See *Donohue v. Amn Servs*., 11 Cal.5th 58 (2021); *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012). MS Decl., ¶ 28. The unique violation rate for meal eligible shifts is approximately 95% based upon arguably facial violations. *Id*.

e. Plaintiff's Wage Statement Claim

Section 226(a) of the California Labor Code provides, in pertinent part:

"Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees … an accurate statement in writing showing (1) gross wages earned, (2) total hours worked by the employee … (5) net wages earned … (8) the name and address of the legal entity that is the employer … and (9) all applicable hourly rates in effect during the pay period and the corresponding number of the hours worked at each hourly rate by the employee."

Section 226(e) of the California Labor Code provides that an employee suffering injury as a result of a knowing and intentional failure to comply with § 226(a) is entitled to recover $50 for initial pay period in which a violation of § 226 occurs and $100 for each subsequent pay period, not to exceed $4,000, as well as an award of costs and reasonable attorney's fees. MS Decl., ¶ 29.

The Class's wage statement claim is mostly derivative of the underlying claims for unpaid overtime, unpaid minimum wage, unpaid meal break premiums, and unpaid rest break premiums. *Id*.

f. Plaintiff's Waiting Time Penalty Claims

Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the form of continued compensation up to thirty work days. Case law establishes that the term "willful," as it is used in section 203 of Labor Code does not mean that the refusal to pay must be based on a deliberate evil purpose to defraud employees of wages in order to subject the employer to the penalty. *Davis v. Morris*, 37 Cal.App.2d 269, 274 (1940). The term "willful" merely means that one intentionally fails or refuses to perform an act which is required to be done. *Id.;* MS Decl., ¶ 30. Plaintiff's argument for waiting time penalties was similarly derivative of the underlying claims for minimum wage, unpaid overtime, and meal and rest break premiums. *Id*. As a result, each member of the Settlement Class who are no longer employed by Defendant are owed waiting time penalties amounting to up to thirty days' wages when other violations are established. *Id.*

g. Plaintiff's Pay Period Claim

Labor Code § 204 provides that if an employer fails to pay wages due and owing within a specific period of time following the close of a pay period, penalties apply. MS Decl., ¶ 31. Here, Plaintiff argues that the pay period penalties are derivative of a general failure to timely pay wages due and owing throughout employment, although the pay periods themselves appear compliant. *Id.*

h. Plaintiff's Employment Records Claim

Labor Code § 226(a) requires employers to keep an accurate record of, among other things, all hours worked by employees, with $250 per initial violation for failure to do so. Labor Code § 226.3. MS Decl., ¶ 32. This claim is derivative of the claim that hours worked were underreported. *Id.*

i. Plaintiff's Unreimbursed Business Expense Claim

Labor Code §§ 2802 et seq. requires employers to reimburse employees for necessary business expenses. MS Decl., ¶ 33. Here, Plaintiff alleges that he and other class members used their telephones in service to the business without reimbursement. *Id.*

j. Plaintiff's Unfair Competition Claim

In California, wage and hour claims may be brought under the Unfair Competition Law ("UCL" – Cal. Bus. & Prof. Code §§17200-17210). Unfair competition includes "any unlawful, unfair or fraudulent business act or practice," which courts have held includes Labor Code violations.[3] A remedy under the UCL does not preclude any other available remedies under state law.[4] Plaintiff's Complaint alleged that by failing to pay Class Members for overtime wages, minimum wages, missed meal and rest breaks, and committing the above-described Labor Code violations, Defendant engaged in unlawful, unfair, and/or fraudulent business practices and is liable for restitution to the Class Members. MS Decl., ¶ 34. Moreover, this cause of action lengthens the statute of limitation of the class claims to 4 years. *Id.*

k. Plaintiff's PAGA Claim

Plaintiff further argued that he and the other class members were entitled to penalties under the Private Attorney General Act of 2004 ("PAGA" - Labor Code §§ 2699-2699.5). MS

[3] *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal.4th 163, 178 (2000).

[4] Business and Professions Code § 17205.

Decl., ¶ 35. PAGA allows an aggrieved employee to sue an employer for violations of most Labor Code provisions. Suits brought under PAGA do not affect the employee's right to recover other remedies under state or federal law.[5] The statute of limitations for PAGA suits is one year. An employee who prevails in an action brought under PAGA is entitled to an award of reasonable attorney's fees and costs.[6]

The penalties available under PAGA are those provided in the underlying Labor Code provision that is violated or, if no penalty is listed, those provided by PAGA itself. MS Decl., ¶ 36. Where the Labor Code does not provide for a penalty, PAGA establishes a discretionary civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation.[7] For any civil penalties collected under PAGA, 75% of the penalties are distributed to the LWDA for enforcement and education, and 25 % is distributed to the aggrieved employees. *Id.*

Accordingly, Plaintiff's PAGA claims are derivative of the minimum wage, overtime, meal, rest, wage statement violations, unreimbursed business expenses, pay period violations, and waiting time penalties alleged of in his complaint. *See,* MS Decl., ¶ 37. Plaintiff alleged that by virtue of each of Defendant's foregoing Labor Code violations, Plaintiff and the other Settlement Class Members are, in addition to other remedies, entitled to civil penalties under PAGA. *Id.* This cause of action opens Defendant to additional penalties for its Labor Code violations, in additions to attorneys' fees and costs. *Id.*

l. Defendant's Total Denial of Liability and its Legal and Factual Defenses

Defendant deny and continue to deny each and all of the allegations, claims, and contentions alleged by Plaintiffs. MS Decl., ¶ 38; S.A. ¶ 2.6.

1. *Defenses to Plaintiff's Minimum Wage Claim*

In defense of Plaintiff's claims for minimum wage, Defendant presented a number of

[5] Labor Code § 2699(g); *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365, 375 (2005).

[6] Labor Code§ 2699(g).

[7] Labor Code § 2699(f). Wherever the Labor Code gives the Labor and Workforce Development Agency discretion to asses a civil penalty, a court is authorized to exercise the same discretion. § 2699(e)(1).

compelling defenses. MS Decl., ¶ 39.

First, Defendant contends that Plaintiff and Class Members were not allowed to work off the clock. MS Decl., ¶ 40. To the extent there was time editing, Defendant contends that practice was done to correct inaccurate time records, not to deprive employees of work actually performed. *Id.* Defendant contends there is no certifiable issue because there was no uniform policy or practice for off-the-clock work or other failure to pay all wages that can be determined by common questions of fact or law, leading to serious challenges to certification and manageability as to this claim.. *Id.*

2. *Defenses to Plaintiff's Overtime Claim*

In defense of Plaintiff's claims for overtime wage, Defendant presented a number of compelling defenses. MS Decl., ¶ 41.

First, pay records show that Defendant paid overtime after eight (8) hours in a workday and after forty (40) hours in a workweek. MS Decl., ¶ 42.

Second, Defendant contends that Plaintiff and Class Members were not allowed to work off the clock, which means that all work time, including overtime, was accounted for, and/or they did not nor should not have known of sporadic off-the-clock work. MS Decl., ¶ 43.

Third, the lack of documentary evidence of off the clock work, other than write-downs which Defendant contends were corrective and thus legal, presents serious challenges to certification and manageability as to this related overtime claim. MS Decl., ¶ 44.

3. *Defenses to Plaintiff's Rest Period Claim*

In defense of Plaintiff's claims for rest period violations, Defendant presented a number of compelling defenses. MS Decl., ¶ 45.

First, Defendant contends that the written rest period policy promulgated in November 2022 is compliant with California law. MS Decl., ¶ 46. Prior to that date, Defendant contends that it enforced a compliant rest period practice, and thus there were no violations. *Id.*

Second, Defendant contends that Class Members worked with different supervisors who may have instructed Class Members differently regarding when and how they must take rest breaks, leading to serious challenges to certification and manageability as to this claim. MS Decl.,

¶ 47.

4. *Defenses to Plaintiff's Meal Period Claim*

In defense of Plaintiff's claims for meal period, Defendant presented a number of compelling defenses. MS Decl., ¶ 48.

First, Defendant contends that the written meal period policy after November 2022, is compliant with California law. MS Decl., ¶ 49. Prior to that date, Defendant contends that it enforced a compliant meal period practice, and thus there were no violations. *Id.*

Second, Defendant contends that Class Members worked with different supervisors who may have instructed Class Members differently regarding when and how they must take meal breaks, leading to serious challenges to certification and manageability as to this claim. MS Decl., ¶ 50.

5. *Defenses to Plaintiff's Wage Statement Claim*

In defense of Plaintiff's claim for inaccurate wage statements, Defendant presented a compelling defense. *MS* Decl., ¶ 51.

Plaintiff admits that the claim for inaccurate wage statements is wholly derivative of alleged failures to pay wages, including minimum and overtime wages. MS Decl., ¶ 52. The California Court of Appeal, however, has held that where a wage statement is otherwise complete, even if the information on the statement is inaccurate as to what a Company should have paid its employee, that does not give rises to penalties under Labor Code section 226. *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308 (2018). Therefore, no penalties apply. *Id.*

Defendant also contends that the wage statements are clear on their face, only require "simple arithmetic" to decipher [see *Raines v. Coastal Pac. Food Distributors, Inc.* (2018) 23 Cal.App.5th 667], and therefore are not violative of Labor Code § 226. MS Decl., ¶ 53.

6. *Defenses to Plaintiff's Waiting Time Claim*

In defense of Plaintiff's claim for waiting time penalties, Defendant presented a number of compelling defenses. MS Decl., ¶ 54.

First, Defendant contends that there are no minimum wages or overtime wages outstanding on a class wide basis. MS Decl., ¶ 55. Indeed, no documentary evidence establishes any substantial wage underpayments on a class-wide basis except for write-downs which Defendant contends were corrective in nature and thus perfectly legal. *Id*.

Second, to the extent that Defendant violated any wage and hour laws that could trigger waiting time penalties, Defendant claims that it did not do so willfully or knowingly, which is required for the imposition of waiting time penalties. A "good faith dispute that any wages are due will preclude imposition of waiting time penalties under Section 203." *See* Cal. Code Regs., tit. 8, section 13520. A good faith dispute, based in law or fact, occurs when an employer presents a defense that, if successful, would preclude recovery on the part of the employee, regardless of whether the defense is ultimately successful." *Choate v. Celite Corp.* (2013) 215 Cal.App.4th 1460, 1468; *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1. Therefore, waiting time penalties are not appropriate. MS Decl., ¶ 56.

7. *Defenses to Plaintiff's Failure to Failure to Pay Wages Timely during Employment Claim*

In defense of Plaintiff's claim for failing to timely pay wages during employment, Defendant presented a number of compelling defenses. MS Decl., ¶ 57.

Defendant alleges it paid all wages due and were not required to pay meal and rest premiums because it did not have to police such breaks. MS Decl., ¶ 58. Moreover, as Plaintiff admits, the pay periods themselves were compliant; the conflict is only as to whether all disputed wages were paid on the pay day, which does not violate Labor Code § 204. *Id.*

8. *Defenses to Plaintiff's Business Expense Reimbursement Claim*

In defense of Plaintiff's claim for unreimbursed business expenses, Defendant presented a number of compelling defenses. MS Decl., ¶ 59. Specifically, Defendant alleges employees were not permitted to use their personal cell phones for business during work hours, nor was such usage necessary in a restaurant setting. MS Decl., ¶ 60.

9. *Defenses to Plaintiff's Tip Conversion Claim*

In defense of Plaintiff's claim for tip conversion, Defendant presented a number of compelling defenses. MS Decl., ¶ 61. Defendant alleges its tip pooling procedure accorded with legal requirements as to proper tip recipients, and that no tips were retained by the company or its management. *Id.* Moreover, Defendant alleges that tip payments records show complete disbursement of such tips to proper recipients. *Id.*

10. *Defenses to Plaintiff's Employment Records, PAGA, and UCL Claims*

Defendant argues that Plaintiff's claims for employment record keeping violations, PAGA penalties and for violations of California's Unfair Competition Law are all derivative of the overtime, meal and rest, pay period, and waiting time claims. MS Decl., ¶ 62. If Plaintiff cannot prevail on those claims for the reasons stated above, Plaintiff could not recover damages for any of these derivate claims. *Id.*

Weighing Merits and Defenses

Taking all of the foregoing factors into account, the Parties determined that it is desirable and beneficial to them that this Action be settled. MS Decl., ¶ 63.

11. *Fair Valuation of Plaintiff's Class Claims*

Initially, Plaintiff calculated the maximum possible value of all claims at $1,845,660 including: (a) $16,000 in unpaid regular wages (1,000 hours of time write-downs x $16.00 avg. hourly rate) and $32,000 for liquidated damages for the minimum wage claim (2,000 hours of write-downs x $16.00 minimum wage rate), (b) $24,000 in overtime (1,000 hours of time write-downs x $16.00 avg. hourly rate x 1.5), (c) approximately $316,080 for rest period premiums (3,951 workweeks x 5 days x $16.00/hr.), (d) approximately $316,080 for meal period premiums, which is the same base calculation as for rest periods, (e) approximately $560,000 for the wage statement class (140 x $4,000), (f) approximately $384,000 for waiting time penalties (100 former employees x 8 hrs. x 30 days x $16.00/hr.), (g) negligible amount for pay period violations, unreimbursed business expenses, and employment record-keeping violations, and (h) approximately $197,500 for PAGA penalties (1,975 pay periods x $100), without stacking and $100 initial violation rate. MS Decl., ¶¶ 64, 65 (a-h) (setting forth the damages model for Plaintiff's maximum damages calculations on a claim-by-claim basis).

In coming to a determination that this settlement for a Gross Settlement Amount of

$248,000 is fair and reasonable and in the best interests of the Class, Plaintiff took into consideration: the risk of the Court not certifying the class; the risk of Plaintiff not prevailing on one or more of the underlying claims due to factors such as Defendant's ability to distinguish this case from existing cases; the risk that a court may not award penalties based on a lack of willfulness or difficulties in establishing bad faith; the risk that a court may find that Defendant's wage and hour practices were correct or supported by good faith dispute; the risk that Defendant may not have any assets to pay a judgment; and the transaction costs and time of litigation, and all other risks inherent in litigation, such as the unavoidable reality of fleeting evidence and fading memories. MS Decl., ¶ 66.

The discussions between counsel at mediation and thereafter, and the informal discovery conducted in this matter, have been adequate to give Class Counsel a sound understanding of the merits of their position and to evaluate the worth of the claims of the Classes. MS Decl., ¶ 67. The informal discovery conducted in this action, and the information exchanged through the Parties' negotiations, were sufficient to reliably assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. *Id*. Based on its own independent investigation and evaluation, Class Counsel determined that the settlement terms and conditions set forth below are in the best interests of Plaintiffs and the members of the Settlement Class. *Id*.

Therefore, assessing the strengths and weaknesses of the claims and defenses, and having the benefit of analyzing thousands of pages of pay, time, and tipping records, a settlement amount of $248,000 was determined to be a fair valuation, providing substantial benefit to the Class while eliminating the numerous risks of proceeding through class certification. MS Decl., ¶¶ 67-68.

IV. SUMMARY OF THE PROPOSED SETTLEMENT AND CLAIMS PROCESS

1. Principal Terms of the Settlement Agreement

The Settlement Agreement entered into by the parties is attached as **Attachment 1** to the Declaration of Martin Sullivan and is incorporated herein by reference in its entirety. MS Decl., ¶ 5. The following is a summary of the principal terms of the Settlement Agreement:

a. The Settlement sum, Attorneys' Fees, Costs, and Representative Award

The non-reversionary Gross Settlement Amount ("GSA") of $248,000.00, includes (1) the fees and expenses of the Settlement Administrator, estimated not to exceed $12,000; (2) Plaintiff's Class Representative Service Award of $7,000; (3) attorneys' fees of $82,666.66 (1/3 of the GSA); (4) litigation expenses and costs incurred of Plaintiff's Counsel of no more than $17,000; and (5) deductions for PAGA penalties in the amount of $8,000 ($6,000 of which to be paid to the LWDA). S.A., at ¶¶ 1.20, 1.25-1.30; MS Decl., ¶¶ 5 **(Exhibit A)**, 69.

b. <u>Net Funds Available to Class Claimants</u>

After all Court-approved deductions from the non-reversionary GSA, it is estimated that $121,333.34 (the "Net Settlement Amount" or "NSA") will remain to be distributed to the Settlement Class Members. S.A. ¶ 1.22.

The Individual Settlement Payments payable to each Participating Class Member shall be determined as follows:

The Settlement Administrator will calculate the Compensable Workweeks for the Class. The Class Compensable Pay Periods is the sum of all Workweeks in which Participating Class Members in the Class worked with Defendant as employees during the Class Period. S.A. ¶ 3.12.1.

The Settlement Administrator will calculate the dollars per compensable workweek ("Class Workweek Value") by dividing the Class Net Settlement Amount by the total Class Compensable Workweeks. The Class Workweek Value will be multiplied by each Participating Class Member's number of Class Compensable Workweeks worked as a member of the Settlement Class during the Class Period to determine the distribution, prior to legal deductions, for that Participating Class Member. *Id*.

Individual Settlement Payments for Participating Class Members will be reduced by any required legal deductions for each Settlement Class Member. S.A. ¶¶ 3.12.1-3.12.1.3.

Defendant will provide the Settlement Administrator with any information reasonably necessary to perform any calculations required under this Settlement Agreement. S.A. ¶¶ 3.12.1 (all subparts), 3.35. Although the Settlement Administrator will calculate and pay the standard Employee's Taxes and Required Withholding on the portion of the Individual Settlement

Amounts constituting wages on their behalf, Plaintiff and Class Participants represent and understand that they shall be solely responsible for any and all tax obligation associated with their respective Individual Settlement Amounts and the Service Award. S.A. ¶ 3.3.

c. Class Release

Upon final approval of the settlement, each Participating Class Member release the Released Parties from all disputes, causes of action, and/or claims which are pled or could have been pled in or arising from the factual allegations in the operative complaint, which arose during the Class Period, including, but not limited to, claims for: (1) Failure to Pay All Minimum Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Rest Periods and Pay Missed Rest Period Premiums; (4) Failure to Provide Meal Periods and Pay Missed Meal Period Premiums; (5) Failure to Maintain Accurate Employment Records; (6) Failure to Pay Wages Timely During Employment; (7) Failure to Pay All Wages Earned and Unpaid at Separation; (8) Failure to Reimburse for Necessary Business Expenditures; (9) Failure to Furnish Accurate Itemized Wage Statements; (10) Conversion; (11) Accounting; (12) Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210), and (13) all claims for liquidated damages, penalties, interest, attorneys' fees, and costs based on the foregoing. These Released Class Claims are identified under California Labor Code §§ 201, 202, 203, 203.1, 204, 210, 218, 218.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 351, 353, 510, 512, 558, 558.1, 1102.5, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2084, IWC Wage Orders, and UCL violations pursuant to Cal. Bus. & Prof. Code §17200 et seq. The Released Class Claims also include any and all claims for relief alleged or sought in the Lawsuit, whether based in statute, the California or U.S. constitutions, contract, or common law, including but not limited to, any and all claims for damages, penalties, interest, attorney fees, litigation costs, and equitable relief. (S.A., ¶ 1.37).

d. PAGA Calculations and Release

The PAGA allocation is $8,000 from the Gross Settlement amount. $6,000 is payable to California's Labor Workforce Development Agency, with $2,000 to be divided amongst Aggrieved Employees. (S.A., ¶¶ 1.28, 3.17).

The Individual PAGA Penalty Payments payable to each Aggrieved Employees shall be determined as follows: Compensable Pay Periods will be the sum of all pay periods in which Aggrieved Employees worked at Defendant during the PAGA Period. The dollars per Compensable Pay Period (Pay Period Value) will be calculated by dividing the PAGA Settlement Amount by the total Compensable Pay Periods. The Pay Period Value will be multiplied by the number of Compensable Pay Periods worked by each Aggrieved Employee during the PAGA Period to determine the distribution for that Aggrieved Employee. (S.A., ¶ 3.13).

Aggrieved Employees shall not be entitled to opt out of the PAGA payment or PAGA release, even if they opt out of the Class Settlement. Thus, Aggrieved Employees, by this settlement, shall release the Released Parties for all claims for penalties, fees, and costs Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA") for violations of the California Labor Code set forth in the operative complaint or the initiating PAGA notice letter, comprising Sections 201, 202, 203, 203.1, 204, 210, 218, 218.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 351, 353, 510, 512, 558, 558.1, 1102.5, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2084, that arose during the PAGA Period. (S.A., ¶ 1.36).

2. Class Notice and Administration

Subject to Court approval, the parties agree to engage ILYM Group, Inc. to administer the Settlement and to act as the Settlement Administrator (S.A., ¶ 1.43) including but not limited to providing the Class Notice, locating Settlement Class Members, processing Opt-Out requests and objections, and calculating, administering and distributing Individual Settlement Amounts to the Class Participants and related tax forms, and payments to the LWDA for PAGA penalties. S.A., ¶ 3.5 (all subparts).

The Settlement Administrator will be responsible for mailing the Class Notice to Settlement Class Members, handling inquiries from Settlement Class Members concerning the Class Notice determination of Individual Settlement Amounts, maintaining the settlement funds in an appropriate interest-bearing account, preparing, administrating and distributing Individual Settlement Amounts to Class Participants, issuing a final report and performing such other duties as the Parties may direct. *See* S.A., ¶ 3.5 (all subparts).

Notice shall be provided to Settlement Class Members in the following manner: Within 10 calendar days after entry by the Court of its Order of Preliminary Approval, Defendant shall provide the Settlement Administrator with a list of Class Members containing: (1) the names, last known addresses, and last known telephone numbers of each Class Member; (2) the social security number of each Class Member; (3) the start and ending dates of employment for each Class Member; (4) the number of workweeks worked by each Class Member during the Class Period; and (5) the number of pay periods worked by each Aggrieved Employee during the PAGA Period (the "Database"). S.A., ¶ 1.5; 3.5.2. No more than seven (7) calendar days after receiving the Class Information from Defendant, the Settlement Administrator shall determine the number of workdays for each Settlement Class Member and send each Settlement Class Member the Class Notice via first-class United States mail. S.A., ¶ 3.5.4. The Class Notice shall also contain an easily understood statement alerting the Class Members that, unless they elect to opt-out of the Class Settlement, the Settlement Class Member is releasing and waiving all Released Claims against the Released Parties. S.A., ¶ 3.7.

The Class Notice will inform Settlement Class Members of his/her estimated share of the settlement and the number of compensable pay periods and workweeks during the applicable Class Periods. S.A., ¶¶ 1.23. Class Members may dispute their Estimated Individual Settlement Payment worked if they believe they worked more compensable pay periods and workweeks in the applicable Class Period than Defendant's records show by submitting information to the Settlement Administrator no later than 45 days after being mailed the Class Notice and Explanation Form by the Settlement Administrator, which is the defined Response Deadline. S.A., ¶¶ 3.6. In the absence of any contrary documentation, the Settlement Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. *Id.*

3. Share Form and Disputes

Subject to Court approval, the Notice of Class Action Settlement sent to members of the Class will include an estimated settlement share for each member of the Class or Classes. S.A. at

¶ 1.23, **Attachment 1**. The Notice shall be individualized and shall identify the Settlement Class Member, the workweeks and pay periods worked by that Settlement Class Member, as well as the estimated amount of the Individual Settlement Amount the Settlement Class Member can expect to receive once the Class Settlement becomes Effective, which shall be calculated assuming that all Class Members will be Participating Class Members. *See Id.*

The Notice Packet shall state that in order to receive the Settlement Sum, the Class Member need not do anything, and that if the Class Member disagrees with the information regarding the number of Workweeks or Pay Periods Worked during the Class Period(s), the Class Member must submit to the Settlement Administrator the information that he or she believes is correct and explain the basis for such belief. *See,* S.A. at ¶¶ 1.3, 3.6, **Attachment 3**. The Settlement Administrator will jointly work with Plaintiff and Defendant to resolve any Class Member dispute in good faith, however, if Plaintiff and Defendant cannot agree over the pay periods to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Settlement Class Member and Defendants, noting however that Defendant's records will be presumed determinative. *Id.*

4. Notice Process

Class Members will have forty-five (45) days from the date the Notice Packets (i.e., the Class Notice and Share Form) are mailed by the Settlement Administrator to postmark their requests for exclusion and/or objections. S.A. at ¶ 1.40, **Attachments 1-3**. Any participating Class Member who disagrees with the data used to calculate his or her claim as reflected on the Notice will be allowed to indicate and explain such disagreement. ¶ 3.6, **Attachment 3**. Such written dispute must be postmarked to the Settlement Administrator no later than forty-five (45) days after the date the Notice is first mailed. See*,* S.A. at ¶ 1.40. The Settlement Administrator will resolve the disagreement with the participating Class Member based on the information presented by the Settlement Class Member and the Defendants. See*, Id.* The Settlement Administrator will jointly work with Plaintiff and Defendant to resolve the dispute in good faith. *See, Id.* If Plaintiff and Defendant cannot agree over the workweeks / pay periods to be credited, the Settlement Administrator shall make the final decision based on the information presented by the Settlement Class Member and Defendants. *Id*. However, absent other evidence, Defendant's records will be presumed determinative. *Id.*

No later than ten (10) calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for Defendant with a complete list of all members of the Settlement Class who have timely submitted Requests for Exclusion. *See* S.A. at ¶¶ 1.5, 3.5.2. The Settlement Administrator will provide Class Counsel with proof of mailing of the Class Notice, which the Settlement Administrator will file with the Court at the time Class Counsel files its motion in support of the Court's Final Approval and Fairness Hearing.

No later than 30 days prior to the date Plaintiff must file their motion in advance of Final Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class and Defense Counsel a report with information regarding the final Individual Settlement Amounts and the final number of Opt-Outs and Objections. S.A. at ¶¶ 3.7, 3.18, 3.11.1. By the same deadline, the Settlement Administrator shall provide Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard to the mailing of the Class Notice and its attempts to locate Class Members. *Id.* The declaration shall specify the number of Settlement Class Members to whom Class Notices were sent and the number of Settlement Class Members to whom Class Notices were not delivered, as well as information relating to the number of Opt-Outs and Objectors. Class Counsel shall file this declaration with the Court. *Id.*

Each Class Participant must cash his or her Individual Settlement Amount check within 180 days after it is mailed to him or her. *See,* S.A. at ¶ 3.10. If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Class Participant at his or her correct address. *Id*. If any Class Participant's Individual Settlement Amount check is not cashed within 180 days, the Settlement Administrator will void the check. Such funds shall be distributed to the State of California's Unclaimed Property Fund to be held in the name of each expired check payee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). In such event, release of Released Claims will remain binding upon the affected Settlement Class Member. The Settlement Administrator will cancel all checks not cashed by the void date. All uncashed

Individual PAGA Payments will be distributed to the LWDA. The requirement that any uncashed Class Member checks be distributed to the State of California's Unclaimed Property Fund to be held in the name of each expired check payee pursuant to applicable unclaimed property laws and distribution of uncashed Individual PAGA Payments to the LWDA are not material terms of this Settlement and an order from the Court requiring the Parties to distribute unclaimed funds to a cy pres shall not give rise to a basis on which to abrogate the settlement provided that no "unpaid residue" remains within the meaning of California Code of Civil Procedure section 384. *Id.*

However, if the Court determines that a different cy pres is required, that cy pres shall be Bet Tzedek, located at 3250 Wilshire Blvd., 13th Floor, Los Angeles, CA 90010, as the cy pres. *Id*. Bet Tzedek describes its work on its website: Bet Tzedek lifts individuals and communities out of poverty by providing education, legal guidance, and direct representation for low-wage workers and small businesses from across the city. See https://bettzedek.org/our-services/justice-for-workers/.

5. Tax Treatment

The Parties agree that 20% of each Individual Settlement Amount shall constitute wages (and each Class Participant will be issued an IRS Form W-2 for such payment to him or her) and 80% of each Individual Settlement Amount shall constitute penalties and interest (and each Class Participant will be issued an IRS Form 1099 for such payment to him or her). *See,* S.A. at ¶ 3.12.

6. Notice of Final Judgment

Notice of final judgment shall be given to the Class by way of a posting on the settlement administrator's website. Cal. Rules of Court, Rule 3.771(b). The Class Notice provides the web address for class members to access the final judgment. S.A. at ¶¶ 1.23, 1.24.

V. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS UNDER THE LESSER STANDARD OF SCRUTINY FOR SETTLEMENT-ONLY CERTIFICATION IS APPROPRIATE

California Rule of Court 3.769(d) provides that the Court may make an order approving certification of a provisional settlement class at the preliminary approval stage. It is well-established that trial courts should use a "lesser standard of scrutiny" for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk*, 48 Cal. App. 4th at 1807 n.19. The reasons include that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted; and the trial court's fairness review of the settlement protects the interests of the non-representative class members. *Id.*; *see also Officers for Justice*, 690 F.2d at 633 ("Th[e] relationship between the certification determination and the merits of the case is further attenuated within the context of the settlement evaluation process…[C]ertification issues raised by class action litigation that is resolved short of a decision on the merits must be viewed in a different light."); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1987) ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial."). As discussed below, for the purposes of this settlement only, the parties ask this Court to provisionally certify the class, as defined above, under Cal. Civ. Proc. Code § 382.

1. Numerosity and Ascertainability

Numerosity is met if a proposed class is so large that joinder of all members would be impracticable. *See,* Cal. Code Civ. Proc. § 382. A proposed settlement class is ascertainable if the class members can be objectively identified and given notice of the litigation without unreasonable time or expense. See *Medrazo v. Honda of N. Hollywood*, 166 Cal. App. 4th 89, 101 (2008). Here, Defendant has informed Plaintiff's Counsel that the proposed Class consists of approximately 140 current and former employees who have already been identified through Defendant's records. MS Decl. ¶ 4.

2. Well-Defined Community of Interest

i. <u>*Commonality*</u>

To justify certification, the class proponent must show that questions of law or fact common to the class predominate over the questions affecting the individual members. See *Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank v. Superior Court*, 24 Cal.4th 906, 913 (2001). While the Parties dispute whether a class would be appropriate if the litigation were to continue, they agree, for the purposes of this settlement only, that the Class is subject to common classification, minimum wage, overtime, meal break, rest break, and phone usage and expense reimbursement policies.

ii. Typicality

Typicality "focuses on whether there exists a relationship between the Plaintiff's claims and the claims alleged on behalf of the class." *Newberg,* § 3:13. Again, the Parties dispute whether Plaintiff's claims are typical of the Class for the purposes of any continued litigation of the Action, but agree for the purposes of this settlement only, that Plaintiff asserts claims regarding Defendant's compensation practices that are at the core of the lawsuit. *See,* S.A. at ¶ 2.2*;* the Quijano Decl., ¶¶ 3-5.

iii. Adequacy of Representation

The proposed class representative must establish that he or she will adequately represent the proposed class. *See, Barboza v. West Coast Digital GSM, Inc.*, 179 Cal. App. 4th 540, 546 (2009). Specifically, Plaintiff are adequate to represent the class because they worked as non-exempt employees subject to common policies and practices of Defendants. Plaintiff experienced the same wage and hour practices as the rest of the Class, understood his duties as a class representative, has been willing to undergo the risk of litigation, and has no conflict of interest with the other Class Members. *See* Quijano Decl., ¶¶ 3-5.

Adequacy may be established by the fact that counsel are experienced practitioners. See *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001). Here, Plaintiff alleges, and Defendant does not dispute, for purposes of this settlement, that Plaintiff and the Class are represented by counsel with extensive experience in wage-and-hour litigation, including class actions. MS Decl., ¶ 74.

iv. Superiority

Certification of the Class for settlement purposes is superior here because there will be a global resolution of all claims at once, which fosters judicial economy. Class certification is also vastly superior to litigation of numerous individual claims because virtually all of the claims are individually too small to litigate outside of the class context.

VI. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS FAIR, ADEQUATE, AND REASONABLE

a. *Class Action Settlements Are Subject to Judicial Review and Approval Under the California Rules of Court*.

The law favors settlements. *Bush v. Sup. Court*, 10 Cal. App. 4th 1374, 1382 (1992). This is particularly true in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. However, a class action may not be dismissed, compromised, or settled without the Court's approval. Cal. R. Ct. 3.769(a). The California Rules of Court set forth the procedures for court approval of a class action settlement: (1) the Court preliminarily approves the settlement; (2) class members receive notice as directed by the Court; and (3) the Court conducts a final approval hearing to inquire into the fairness of the proposed settlement. *See* Cal. R. Ct. 3.769(c), (e)-(g).

The decision to approve or reject a proposed settlement lies within the Court's sound discretion. *See, Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001). Nevertheless, in considering a potential settlement for approval, a court is not to turn the approval hearing "into a trial or rehearsal for trial on the merits…[or] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute." *Officers for Justice v. Civil Serv. Comm'n*, 690 F.2d 615, 625 (9th Cir. 1982).

The Court's ultimate duty is to determine whether the settlement is fair, adequate, and reasonable. *See Dunk v. Ford Motor Co.* 9 ("*Dunk*"), 48 Cal. App. 4th 1794, 1801 (1996) (setting forth the "fair, adequate, and reasonable" standard) (citing *Officers for Justice*, 690 F.2d at 625); *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742 43 (2009) (a trial court must approve a class action settlement agreement, but only after determining that it is "'fair, adequate and reasonable,'" considering factors such as the "'risk, expense, [and] complexity'" of continued litigation) (citations omitted). The Court enjoys broad discretion in making its fairness determination, and should consider factors including, but not limited to:

[T]he strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel . . . and the reaction of the class members to the proposed settlement.

Dunk, 48 Cal. App. 4th at 1801 (setting forth a non-exhaustive list of factors for the court's consideration at final approval).

The above factors are not exclusive, ". . . and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case." *Wershba*, 91 Cal. App. 4th at 245. However, in doing so, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Id.* The inquiry must be limited "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties." *Id.* (citation and internal quotation marks omitted).

At the preliminary approval stage, the Court need only determine that the settlement falls within the "range of possible judicial approval," so that notice to the class and the scheduling of the fairness hearing are worthwhile. *See,* Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* ("*Newberg*") § 11:25 (4th ed. 2002). Indeed, the Court should grant preliminary approval if there are no "grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears to fall within the range of possible approval." *Manual For Complex Litigation* (Third) § 30.41 (1995); *see Dunk*, 48 Cal. App. 4th at 1802. A "presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal. App. 4th at 1802 (citing *Newberg* § 11:41). As shown below, the settlement falls well within the range of approval because there are no grounds to doubt its fairness.

b. *The Settlement Is The Result Of Serious, Informed, Non-Collusive Negotiations and Reflects a Fair Compromise of Claims and Risk Factors*.

The settlement was the product of extensive arm's length, intensive, negotiations following a full-day mediation with Chris Barnes, a respected and experienced wage-and-hour class action mediator, as well as nearly six additional months of negotiations with Mr. Barnes's assistance. MS Decl., ¶¶ 3, 11, 14. Though professional, the settlement negotiation was adversarial and non-collusive in nature. MS Decl., ¶¶ 4, 15. The settlement reached is the product of substantial effort by the parties and their counsel. MS Decl., ¶ 69.

Although Plaintiff and his counsel believed that there was a good possibility of certifying the claims, they recognized the potential risk, expense, and complexity posed by: litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or on the damages awarded, and/or on an appeal that can take several more years to litigate; the risk that a court may not award penalties based on a lack of willfulness or difficulties in establishing bad faith; the risk that a court may find that Defendant's meal and period policies and practices were valid; the risk of non-collectability; and the transaction costs and time of litigation. MS Decl., ¶ 66.

The resulting Settlement was based on calculations, risk assessment, and non-collusive negotiation; it takes the risks identified above and others into account in arriving at the non-reversionary settlement amount of $248,000. MS Decl., ¶ 4.

c. *<u>The Extent Of The Informal Discovery, Exchange, And Investigation Was More Than Sufficient To Permit Preliminary Approval Of The Settlement</u>*.

The parties thoroughly investigated and evaluated the factual and legal strengths and weaknesses of this case before reaching the settlement. Decl., ¶¶ 12-13, 17. As described above, the settlement was reached extensive informal exchange of discovery including thousands of pages of data, documents, investigation, research, analysis of time and a significant sample of the Class, thorough calculations and risk evaluation, and an exchange of other information required to evaluate the claims at issue. *Id*. The settlement came only after the case was thoroughly investigated and evaluated by Plaintiff's Counsel. MS Decl., ¶¶ 19-69. Moreover, mediation did not achieve immediate success. MS Decl., ¶ 3. Nearly six additional months of negotiations were required to achieve a meeting of the minds on all terms of such settlement. *Id.*

d. *<u>The Risks Inherent In Continued Litigation Are Great</u>*.

To assess the fairness, adequacy, and reasonableness of a class action settlement, the

Court also should consider "[t]he strength of Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, [and] the risk of maintaining class action status." *See Dunk*, 48 Cal. App. 4th at 1801. As described above, Defendant has strong defenses to Plaintiff's claims, which create a real possibility that the claims might not be certified and/or might fail on the merits. MS Decl., ¶¶ 66-68 Proceeding with litigation would impose a significant risk of no recovery as well as ongoing, substantial additional expenditures of time and resources. *Id*. If settlement were not achieved, continued litigation of the claims would take a substantial amount time and possibly confer no benefit on Class Members. *Id*. By contrast, the settlement will yield a prompt, certain, and substantial recovery for the Class, which also benefits the parties and the Court. *Id*. In considering these risks, the choice was overwhelmingly in favor of settlement. *Id*.

e. *Plaintiff's Counsel Are Experienced In Similar Wage-And-Hour Litigation*.

Plaintiff's Counsel are experienced in wage-and-hour class actions. MS Decl., ¶¶ 72-79. Mr. Sullivan has tried a class action before a jury in federal court and numerous courts have certified Mr. Sullivan as adequate and competent class counsel in wage and hour class actions. *Id*. Mr. Sullivan devotes the majority of his law practice to Plaintiff's class and representative employment law. *Id*.

Class counsel, based upon experience and full investigation, has determined that this settlement is fair, adequate, and reasonable in light of the nature of the claims, realistic risk adjusted value of damages, complexities of the case, the state of the law, and uncertainties of class certification and litigation. MS Decl., ¶ 80. Given the risks inherent in litigation and the defenses asserted, this settlement is fair, adequate, and reasonable and in the best interests of Class Members and should be preliminarily approved. *Id*. The settlement is also consistent with other settlements that received approval of the Courts. *Id*.

Experienced counsel, operating at arm's length, have weighed the strengths and risks of the case, and endorse the proposed settlement. *Id*. The view of the attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve the settlement. *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff'd*, 661 F.2d 939 (9th

Cir. 1981); *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008) (court must take into account "the experience and view of counsel").

f. The Class Notice Plan Conforms To All Applicable Statutes and Rules

The proposed Class Notice—which the parties have already agreed to—should be approved, as it fully informs the Class members of the nature of the lawsuit and each Class Member's rights under the terms of the Settlement Agreement and applicable law. S.A., ¶¶ 1.23, 1.24. The manner in which the Class Notice shall be disseminated, as outlined above, will ensure that all of the Class Members will be properly notified of the proposed settlement.

The Court has wide discretion in approving the means of providing notice, so long as the class representative "provide(s) meaningful notice in a form that should have a reasonable chance of reaching a substantial percentage of class members." *Archibald v. Cinerama Hotels*, 15 Cal. 3d 853, 861 (1976). Here, the Parties' notice plan is that notice of the Settlement will be disseminated directly to the class members by first class mail by the settlement administrator within 17 days after the Preliminary Approval date. *See* S.A., ¶¶ 3.5.2, 3.5.4.

The notice plan and the class Notice satisfy the requirements of Rule of Court 3.766 and afford Settlement Class Members with all due process protections required by the United States Constitution. Moreover, the contents of the Class Notice are in compliance with Cal. Rule of Court 3.766(d), because the Notice includes, without limitation (1) a detailed explanation of the case, including the basic contentions or denials of the parties; (2) a statement that the court will exclude the member from the class if the member so requests by a specified date; (3) a procedure for the member to follow in requesting exclusion from the class; (4) a statement that the judgment, whether favorable or not, will bind all members who do not request exclusion; and (5) a statement that any member who does not request exclusion may, if the member so desires, enter an appearance through counsel. *See* Class Notice at S.A. at ¶ 1.23, 1.24, **Attachment 1**. The 45-day deadline for Class Members to exclude themselves or challenge the number of workweeks worked during the Class Period is reasonable, as it provides Class Members with sufficient time to do so and, if they so choose, to seek independent legal advice in the interim. *See* S.A. at ¶ 1.40.

g. *The Attorneys' Fees Under the Settlement Agreement Are Presumptively Fair; Class Counsel Shall Provide a Lodestar Analysis for Final Approval*

The attorneys' fee award of 1/3 of the gross settlement amount is reasonable considering the experience of Class Counsel in employment law class actions and the legal expertise required to litigate this case and negotiate this Settlement. The attorneys' fees sought here are not atypical of those sought in similar class cases. MS Decl., ¶ 70.

"A trial court may approve only a settlement of a class action that is fair, adequate, and reasonable. [Citations.] The court has broad discretion in considering whether a proposed settlement satisfies these standards, but it should consider factors such as 'the strength of the Plaintiff's case, the risk, expense, complexity and duration of further litigation as a class action, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of class members to the proposed settlement.' " (*Roos v. Honeywell Internat., Inc.* (2015) 241 Cal.App.4th 1472, 1481-1482, overruled on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269.)

"Class action litigation can result in an attorney fee award pursuant to a statutory fee shifting provision or through the common fund doctrine when, as in this case, a class settlement agreement establishes a relief fund from which the attorney fee is to be drawn. Two primary methods of determining a reasonable attorney fee in class action litigation have emerged and been elaborated in recent decades. The percentage method calculates the fee as a percentage share of a recovered common fund or the monetary value of Plaintiff's recovery. The lodestar method, or more accurately the lodestar-multiplier method, calculates the fee 'by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative "multiplier" to take into account a variety of other factors, including the quality of the representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.' [Citation.]" *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 489.

Because of Class Counsel's hard work and great financial risk, the efficient resolution of this litigation, the complexities and challenges therein, and the excellent result for the class members under the circumstances, Plaintiff respectfully request this Court award 1/3 of the gross settlement amount in attorney fees.

h. <u>The Class Representative Service Award Is Fair and Appropriate</u>

The Settlement Agreement provides a service award payment to the Class Representative of $7,000. *See* S.A. at ¶ 3.15. The proposed service award is reasonable compensation given the time and effort that Plaintiff devoted to this case, the potential risks to Plaintiff, the active involvement by the Plaintiff in case analysis, availability and remote participation in the mediation and subsequent lengthy negotiations, and the result obtained on behalf of the Settlement Class. Quijano Decl., ¶¶ 3-7; MS Decl., ¶ 81. Plaintiff deserves $7,000 because without his participation, Plaintiff would not have achieved the settlement he did on behalf of the class members. Plaintiff's Decl., ¶¶ 3-7, 11; MS Decl., ¶ 82.

Plaintiff actively participated in many hours of telephonic conversations with Plaintiff's Counsel and responded to dozens of separate emails and texts from Class Counsel during the course of the case and reviewed the pleadings. Plaintiff's Decl., ¶ 6; MS Decl., ¶ 83. Plaintiff provided Class Counsel with substantive information to assist in analyzing records received from Defendants, and identified and provided numerous pages of his own documents that were exchanged in pre-mediation exchanges. *Id.* Plaintiff also reviewed the factual allegations making up the mediation brief, and made himself available via telephone throughout a full-day mediation. *Id.* Plaintiff was responsive and attentive to the needs of the class, despite the disruption to his life. *Id.*

Lastly, Plaintiff entered into a general release of claims that is broader than the release of the Class. S.A. at ¶¶ 1.8, 3.2.3; MS Decl., ¶ 84; *See* Quijano Decl., ¶¶ 9-10. This is critical because Plaintiff had other valuable claims he could have pursued had he not been required by Defendant to enter into a general release, variously for wrongful termination and retaliation. *Id*. At no time did the Class Representative ever have a guarantee of any personal benefit as a result of this case. *Id.* On the contrary, he assumed significant risk in bringing this litigation — namely, had he lost, he would have been ordered to pay Defendant's costs. *Id.*

The service award also falls within the range of service payments typically awarded to Class Representative in similar class actions. See *e.g. Bond v. Ferguson Ent., Inc*., No. 1:09–cv–1662 OWW MJS, 2011 WL 2648879 (E.D. Cal. June 30, 2011) (approving $11,250 service award to each of the two Class Representative in a meal break class action; *Ross v. US Bank Nat'l Ass'n*, No. C 07-02951 SI, 2010 WL 3833922, at *2 (N.D. Cal. Sept. 29, 2010) (approving $20,000 enhancement award to Class Representative in California wage-and-hour class action settlement); *Vasquez v. Coast Valley Roofing, Inc*., 266 F.R.D. 482, 493 (E.D. Cal. 2010) (approving service awards in the amount of $12,000 each from a $300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc*., NO. CIV. S-04-0438 WBS GGH, 2006 U.S. Dist. LEXIS 76558, at *28 (E.D. Cal. Oct. 19, 2006) ("the court finds Plaintiff's enhancement payments of $15,000 each to be reasonable."); *Glass v. UBS Fin. Servs*., No. C-06-4068 MMC, 2007 U.S. Dist. LEXIS 8476, at *52 (N.D. Cal. Jan. 26, 2007) (finding "requested payment of $ 25,000 to each of the named Plaintiff is appropriate" in wage and hour settlement); *Louie v. Kaiser Found. Health Plan, Inc*., CASE NO. 08cv0795 IEG RBB, 2008 U.S. Dist. LEXIS 78314, at *18 (S.D. Cal. Oct. 6, 2008) (approving "$25,000 [service] award for each Class Representative" in wage an hour settlement); *Garner v. State Farm Mut. Auto. Ins. Co*., No. CV 08 1365 CW (EMC), 2010 WL 1687832, at *17 n.8 (N.D. Cal. Apr. 22, 2010) ("Numerous courts in the Ninth Circuit and elsewhere have approved [service] awards of $20,000 or more where, as here, the class representative has demonstrated a strong commitment to the class").

VII. THE COURT SHOULD APPOINT ILYM AS SETTLEMENT ADMINISTRATOR

The parties propose that the Court appoint ILYM Group, Inc. to serve as the Settlement Administrator. MS Decl., ¶ 85. ILYM Group, Inc. is experienced in administering class action settlements and has administered thousands of class action settlements, including many for cases involving Class Counsel. *Id.* Their estimated fees for this settlement is not to exceed $12,000 *Id.*

VIII. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING

The last step in the approval process is the formal hearing, whereby proponents of the settlement may explain and describe its terms and conditions and offer argument in support of approval, and Class Members or their counsel may be heard in support of or in opposition to the settlement. Plaintiff proposes that the Court schedule a hearing for final approval of the settlement, including Plaintiff's request for attorneys' fees, costs and the service award, on September 8, 2025, or as soon thereafter as possible. There are no other cases known pending in any other jurisdictions that may have an impact on this settlement or that may be impacted by this settlement. MS Decl., ¶ 87.

IX. NOTICE OF PROPOSED PAGA SETTLEMENT PROVIDED TO LWDA

Class Counsel submitted the Settlement Agreement and Proposed Order Granting Preliminary Approval to the Labor Workforce Development Agency on May 9, 2025, via the LWDA's online submission system. MS Decl., ¶ 88 (see **Exhibit B**, A true and correct copy of the LWDA proof of submission).

X. CONCLUSION

For all of the foregoing reasons, the parties respectfully request that the Court grant their motion for preliminary approval of their class action settlement.

Respectfully Submitted,

Dated: May 9, 2025

SULLIVAN EMPLOYMENT LAW P.C.

Martin Sullivan
Attorney for Plaintiff and the Putative Class