Kane Moon (SBN 249834)
kmoon@moonlawgroup.com
H. Scott Leviant (SBN 200834)
hsleviant@moonlawgroup.com
Jaeyoung Lee (SBN 344198)
jlee@moonlawgroup.com
MOON LAW GROUP, PC
725 S. Figueroa St., 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Nechelle Latrice Collins-Wright

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

NECHELLE LATRICE COLLINS-WRIGHT, individually, and on behalf of all others similarly situated, Plaintiff, vs. HUMAN SERVICES ASSOCIATION, a California corporation; and DOES 1 through 10, inclusive, Defendants	Case No.: 24STCV27767 [Assigned for all purposes to the Hon. Carolyn B. Kuhl, Dept. 12] <u>CLASS ACTION</u> **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** Date: May 5, 2026 Time: 10:30 a.m. Courtroom: Dept. 12 Judge: Hon. Carolyn B. Kuhl Action Filed: October 23, 2024 Trial Date: Not Set

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

PLEASE TAKE NOTICE that on May 5, 2026, at 10:30 a.m., or as soon thereafter as the matter may be heard, in Department 12 of the above-captioned Court, located at 312 North Spring Street, Los Angeles, Plaintiff NECHELLE LATRICE COLLINS-WRIGHT ("Plaintiff") will and hereby does move this Court for an order:

1. Granting class certification of the Class, solely for settlement purposes pursuant to Code of Civil Procedure § 382;
2. Preliminarily approving the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE ("Agreement");
3. Appointing counsel for Plaintiff, Moon Law Group, PC, as Class Counsel;
4. Appointing Plaintiff as the Class Representative;
5. Approving the use of the proposed notice procedure and related notice form;
6. Approving ILYM Group, Inc. as the third-party administrator;
7. Directing that notice be mailed to the Class; and,
8. Scheduling a hearing date for motions for final approval of class action settlement and awards of attorneys' fees and costs.

Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted by Plaintiff; (3) Plaintiff and Class Counsel are adequate to represent the Class; (4) the proposed notice procedures and related forms comply with California Rules of Court 3.766(d) and (e), adequately apprise Class Members of their rights, and fully comport with due process; and, (5) based on the foregoing, notice should be directed to the Class Members and a final fairness hearing should be scheduled (Plaintiff suggests about 160 days after preliminary approval is granted).

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of H. Scott Leviant, Plaintiff, and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: February 20, 2026

MOON LAW GROUP, PC

By: ______________________________

Kane Moon
H. Scott Leviant
Jaeyoung Lee

Attorneys for Plaintiff Nechelle Latrice Collins-Wright

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CALIFORNIA DECISIONAL AUTHORITY

FEDERAL DECISIONAL AUTHORITY

STATUTES

RULES

OTHER AUTHORITIES

I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769, Plaintiff requests that this Court preliminarily approve the class action settlement set forth in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE ("Agreement"; the implementation of the Agreement through an Order and Judgment is the "Settlement") with Human Services Association ("Defendant").

After the exchange of documents and data, and an arm's-length mediation session with mediator Lynn Frank, Plaintiff and Defendant (collectively referred to herein as the "Parties") reached a proposed class action settlement with a gross settlement amount ("GSA") of **$990,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting of approximately **571** members. Plaintiff believes this settlement is a fair, adequate, and reasonable compromise of disputed claims for alleged wage and hour violations and penalties asserted in this case.

Plaintiff now submits this Motion for Preliminary Approval of Class Action Settlement, along with the Settlement (attached to the Declaration of H. Scott Leviant ["Leviant Decl."], Exhibit 1 thereto). For the Court's convenience, below is a summary of the key provisions of the Settlement.

II. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendants agree not to oppose certification for purposes of Settlement. (Agreement, ¶ 12.1.)
- Class: Class means all current and former hourly employees employed by Defendant in California who were classified as non-exempt during the Class Period. Class Period means the period from October 23, 2020 to November 9, 2025. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Agreement, ¶¶ 1.5, 1.9, 1.12, 1.34.)
- Settlement Amount: Defendant will pay a maximum of **$990,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** benefit per Class Member of about **$1,733.80**. (Agreement, ¶¶ 1.21, 3.1; Leviant Decl., ¶ 17.)
- Funding of Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount and also fund the amounts necessary to fully pay Defendant's share of payroll

taxes by transmitting the funds to the Administrator no later than thirty calendar days after the Effective Date. (Agreement, ¶ 4.1.)

- Class Size: About **571** individuals who worked about 49,623 workweeks. (Agreement, ¶ 8.)
- PAGA Group Size: An estimated **327** aggrieved employees who worked about 10,490 pay periods during the PAGA Period. (Agreement, ¶ 8.)
- PAGA Period: Means the period from October 23, 2023 to November 9, 2025. (Agreement, ¶ 1.30.)
- *Kullar/Munoz* Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in the Declaration of Leviant, at Paragraph 18.
- No Reversion: The Settlement is a ***non-reversionary*** settlement. (Agreement, ¶ 3.1.)
- Certification: Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Leviant, at Paragraphs 34-40.
- No Claim Form: No claim form is required. (Agreement., ¶ 3.1.)
- Class Release: All Participating Class Members release Released Parties from all claims that were alleged or reasonably could have been alleged based on the facts stated in the Operative Complaint which arose during the Class Period. (Agreement, ¶ 5.2.)
- PAGA Release: All Aggrieved Employees as well as Plaintiff, on behalf of the State of California, are deemed to release Released Parties from all claims for PAGA penalties that were alleged or reasonably could have been alleged based on the facts stated in the Operative Complaint and the PAGA Notice which arose during the PAGA Period. (Agreement, ¶ 5.3.)
- Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys' fees and costs, service payment to Plaintiff, administration costs, and the PAGA penalty, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of Workweeks each Class Member worked for Defendant within the Class Period. The Net Settlement Amount is estimated to be at least **$532,500.00**, resulting in an average **net** payment per Class Member of approximately **$932.57**, before any tax withholdings. (Agreement, ¶ 1.27.)

- Tax Allocation: The amounts distributed to Class Members will be characterized as 20% alleged unpaid wages, 80% to interest and penalties, and PAGA Settlement payments to Aggrieved Employees will be allocated as 100% penalties. (Agreement, ¶¶ 3.2.4.1, 3.2.5.)
- Employer's Portion of Payroll Taxes Paid Separately: Defendants' portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSA. (Agreement, ¶ 3.1.)
- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, ILYM Group, Inc., with the costs of administration at a flat rate of up to $10,000.00. ILYM's estimate for settlement administration services in the amount of **$8,950.00** was selected as the lowest bid from a competitive bidding process and is below the Parties' estimated cost of $10,000.00. (Agreement, ¶ 3.2.3; Mullins Decl., ¶ 10.)
- Class Data for Administration: The Settlement Administrator will receive the Class Data within 30 calendar days of Preliminary Approval, use the National Change of Address ("NCOA") database to update the Class Data, and then use skip tracing on returned Notices. (Agreement, ¶¶ 7.4, 1.10.)
- Notice: The Notice will issue within 14 days of receipt of the Class Data (Settlement, ¶ 7.5.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion. (Agreement, ¶¶ 7.6 – 7.8.)
- Notice Language: Notice will issue in English and Spanish. (Agreement, ¶ 1.11; 7.5.2.)
- Objections: Objections can be submitted in person, by attorney, or in writing to the Administrator, with no pre-requisite to being heard. (Agreement, ¶¶ 7.8.1 – 7.8.3.)
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Agreement, ¶¶ 7.6.1 – 7.6.4.)
- PAGA Allocation: From the GSA, **$90,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq*. ("PAGA"), and sixty-five percent (65%), or **$58,500.00**, will be paid to the California Labor & Workforce Development Agency. (Agreement, ¶ 1.33; 3.2.5.)

- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration.
- Enhancement/Service Award to Plaintiff: Defendants will not oppose the application for Class Representative Service Payment of up to **$7,500.00** for Plaintiff, to be paid from the GSA. (Agreement, ¶ 3.2.1.)
- Fees and Costs: Defendant will not oppose Class Counsel's application for fees not to exceed 33 1/3% of the GSA **($330,000.00**), and actual costs, in an amount not to exceed **$20,000.00**, to be paid out of the GSA. (Agreement, ¶ 3.2.2.)
- Check Void Period: Settlement checks will be valid for 180 days. (Agreement, ¶ 4.2.1.)
- Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the State Controller's Office, Unclaimed Property Division in the name of the Class Member. (Agreement, ¶ 4.2.3.)
- Judgment Notice: Judgment will be posted on the Settlement Administrator's website after entry. (Agreement, ¶ 7.9.1.)
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members. (Agreement ¶ 12.2.)

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Claims

On October 23, 2024, Nechelle Latrice Collins-Wright commenced this Action by filing a Complaint alleging causes of action against Defendant Human Services Association. ("Defendant") for: failure to pay minimum wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and provide rest breaks, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements, failure to indemnify for necessary business expenses, and Unfair Business Practices (Leviant Decl., ¶ 4.) Defendant is a private non-profit agency that provides comprehensive social services.

Plaintiff sent a letter to the Labor and Workforce Development Agency ("LWDA"), pursuant to

California Labor Code § 2699.3, providing notice of his intent to seek civil penalties under the Private Attorneys General Act, California Labor Code § 2698, *et seq*. ("PAGA Letter"). (Leviant Decl., ¶ 5.) The LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter, and the 65-day time period permitted for the LWDA to provide such a notification expired. On December 27, 2024, Plaintiff filed a First Amended Complaint alleging an additional cause of action for violation of the Private Attorneys General Act ("PAGA"). The First Amended Class and Representative Action Complaint is the operative complaint in the Action (the "Operative Complaint.") (*Id.*)

B. <u>Pre-Mediation Data Production and Analysis</u>

The Parties conducted informal discovery and investigation of the facts and law. Such investigation included, *inter alia*, the exchange of extensive data and discoverable information in preparation for the mediation session. (Leviant Decl., ¶ 6.) The Parties have analyzed time clock, pay and other data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of the Class, average workweeks and pay periods, and average rate of hourly pay. Time and pay data for 109 members of the Class was used for Plaintiff's pre-mediation analysis. In addition, Defendants also provided other data pertaining to Plaintiff and the Class during the relevant Class Period, including but not limited to documents reflecting wage and hour policies and practices during the Class. (*Id.*)

After reviewing documents regarding Defendants' wage and hour policies and practices and other information obtained during the exchange of discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (Leviant Decl., ¶ 7.)

C. <u>Settlement</u>

On October 9, 2025, the Parties participated in mediation with Lynn Frank, which ultimately led to a proposed settlement. (Leviant Decl., ¶ 8.) The Parties discussed at length the burdens and risks of continuing with the litigation as well as the merits of claims and defenses. (*Id.*) After the mediation, and the eventual settlement, the Parties then signed a long form settlement agreement (the Agreement). (*Id.*)

Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendants' defenses thereto. (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendants' agreement to enter into a Settlement that confers substantial relief upon the Class. *(Id.)*

Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendants reserves the right to contest class certification. (*Id.*) This Settlement, if approved, will result in the termination of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

IV. CLASS DEFINITION

The Class is defined as follows:

> Class means all current and former hourly employees employed by Defendant in California who were classified as non-exempt during the Class Period. Class Period means the period from October 23, 2020 to November 9, 2025. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Agreement, ¶¶ 1.5, 1.9, 1.12, 1.34.)

(Leviant Decl., ¶ 34 and Exhibit 1.)

V. DISCUSSION

A. The Court Should Conditionally Certify the Class for Settlement Purposes

The Class should be provisionally certified for settlement because: (1) the Class is ascertainable and numerous; (2) there exists a well-defined community of interest; and (3) a class action is the superior method of adjudication for this settlement. Code of Civ. Proc. § 382; *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1021 (2012); *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 435 (2000); *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement *only*, Defendants stipulates to conditional certification. (Settlement ¶ 12.1.)

"The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.'" *Id.*, at 326, quoting *Linder*. Indeed, the certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g.*, *Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). "[I]t is also well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996).

In view of these standards, the Class should be certified for purposes of settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

1. The Members of the Class Are Both Ascertainable and Numerous.

Whether an ascertainable class exists turns on three factors: (1) the class definition, (2) the size of the class, and (3) the means of identifying the class members. *See Miller v. Woods*, 148 Cal. App. 3d 862, 873 (1983). A class is ascertainable when "it is defined 'in terms of objective characteristics and common transactional facts' that make 'the ultimate identification of class members possible when that identification becomes necessary.'" *Noel v. Thrifty Payless, Inc.*, 7 Cal. 5th 955, 980 (2019). The class definition is sufficiently specific to enable the Parties, Class Members, and the Court to determine the parameters of the class. *See Clothesrigger, Inc. v. GTE Corp.*, 191 Cal. App. 3d 605, 617 (1987). Here, there were about 571 Class Members, all of whom may be identified by reference to Defendants' records. The Class is not only ascertainable, but also numerous. (Leviant Decl., ¶ 35.)

2. There Are Common Questions That Predominate Over Any Questions That May Be Unique to Individual Class Members.

The community of interest requirement embodies three factors: (1) predominant questions of law and fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. *Dunk,* 48 Cal. App. 4th at 1806; *Richmond,* 29 Cal. 3d at 473-75. A question of law or fact is common to the members of a class if it may be resolved through common proof. *See*, *Jaimez,* 181 Cal.App.4th at 1305. As for predominance, it "is a comparative concept, and 'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'" *Sav-on*, 34 Cal. 4th at 334.

In this case, common questions include, but are not limited to: i. Whether or not Defendants paid proper wages to the Class; ii. Whether or not Defendants provided meal periods to the Class; iii. Whether or not Defendants provided rest periods to the Class; iv. Whether or not Defendants paid compensation timely upon separation of employment to former Class Members; v. whether or not Defendants paid compensation timely throughout Class Members' employment; vi. Whether or not Defendants provided accurate itemized wage statements to the Class; and, vii. Whether or not Defendants engaged in unlawful or unfair business practices affecting the Class in violation of the UCL. (Leviant Decl., ¶¶ 37-38.)

In the Action, Plaintiff's claims present sufficient common issues of law and fact that predominate over individual issues and warrant class certification. From their review of the documentation provided, Class Counsel determined that for purposes of these claims, Defendants' policies and practices are either identical, or sufficiently similar, to raise the same questions of liability, and applied to all Class Members. Because Class Members would have to prove the same issues of law and fact to prevail, and because their potential legal remedies are identical, it would be preferable to resolve all Class Members' claims by means of the Settlement than to require each Class Member to litigate his or her individual claims. Therefore, common questions predominate over questions that may be unique to individual Class Members, and class-wide settlement is superior to any other resolution.

3. Plaintiff's Claims Are Typical of Those of the Class.

Typicality "requires a showing that the class representative has claims or defenses typical of the class." *See, e.g.*, *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524, 1534 (2008), approved by *Brinker Rest. Corp. v. Super. Ct*., 53 Cal. 4th 1004 (2012). California law does not require that plaintiffs have claims identical to the other class members. Rather, the test of typicality for a class representative is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct. *Seastrom v. Neways, Inc*., 149 Cal. App. 4th 1496, 1502 (2007).

In light of these standards, Plaintiff is typical of class members. Like other Class Members, Defendant employed Plaintiff as an hourly employee during the Class Period, and Plaintiff claims that she was subject to the same policies alleged to have impacted the entire class. (Leviant Decl., ¶ 36.) Plaintiff alleges that she and other Class Members share the same claims stemming from Defendant's alleged violations of the Labor Code and relevant wage order. In addition, Defendant's main defenses, including that the wage and hour policies and practices fully comply with California law, apply equally to the claims of all Class Members. Thus, Plaintiff is typical of the Class.

4. Plaintiff and Plaintiff's Counsel Will Adequately Represent the Class.

Adequacy is shown where the plaintiff is represented by counsel qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to class members. *McGhee v. Bank of America*, 60 Cal. App. 3d 442, 451 (1976). In other words, where the plaintiff has adequate counsel, the plaintiff may represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's ability to represent the class. *Id.* In the Action, Plaintiff has no conflicts of interest with other Class Members and has agreed to place Class interests above Plaintiff's own. (Collins-Wright Decl., ¶¶ 5-19; Leviant Decl., ¶ 39.) Moreover, Plaintiff's counsel is experienced in wage and hour class litigation and have no conflicts of interest with absent Class Members. (Leviant Decl., ¶¶ 21-26, 39.) Thus, this Court should appoint Plaintiff as Class Representative and appoint Plaintiff's Counsel as Class Counsel.

5. Proceeding as a Class Action is Superior to Individual Actions

Plaintiff contends that proceeding as a class action is a superior means of resolving this dispute, as the Class Members and the Court will derive substantial benefits. Class certification would serve as the only means to deter and redress the alleged Labor Code violations. *See Linder v. Thrifty Oil Co*. 23 Cal. 4th at 434. Furthermore, individual actions arising out of the same operative facts would unduly burden the courts and could result in inconsistent results, which may be avoided by class certification.

6. The Proposed Class Notice Complies with Rule 3.766(d) and (e)

Notice requirements are set forth in Rules of Court, Rule 3.766. In determining the manner of notice, the court must consider interests of the class, relief requested, stakes of individual class members, costs of notifying class members, resources of the parties, possible prejudice to class members who do not receive notice, and the *res judicata* effect on class members. Rules of Court, Rule 3.766(e).

a) The Notice Procedure Satisfies Due Process

The proposed procedure for distributing the Proposed Notice is robust and meets the requirement that it have "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Sup. Ct.*, 50 Cal.App.3d 960, 974 (1975). There is no statutory or due process requirement that all class members receive actual notice, but in this matter, the Class Members will receive direct notice. Here, the proposed procedure includes safeguards, including, but not limited to, mailing notice to Class Members' last known addresses; skip tracing; searches for address changes; and the re-mailing of returned notices to any forwarding addresses. This manner of giving notice complies with Rule of Court 3.766(c) because it provides a reasonable chance that Class Notice will reach most if not all Class Members.

b) The Notice is Accurate and Informative

The proposed Notice of Class Action Settlement should be approved for dissemination to the Class Members because its content complies with Rule of Court 3.766(d) in that it contains a brief explanation of the case, including the basic contentions or denials of the Parties, detailed information about Class Members' rights to be excluded from the Settlement and object to the Settlement; a statement that the Settlement will bind all members who do not timely opt-out. Thus, the Notice also satisfies Rule of Court 3.769(f) regarding the contents of settlement notices.

The Notice also fulfills the requirement of neutrality in class notices. 3 NEWBERG § 8.39. It summarizes the proceedings and the terms and conditions of the proposed Settlement, in an informative and coherent manner, in compliance with the Manual for Complex Litigation ("MANUAL"), (2d Ed. 1993), which states that "the notice should be accurate, objective, and understandable to Class Members . . .." MANUAL, § 30.211. It makes clear that the Settlement does not constitute an admission of liability by Defendants and recognizes that this Court has not ruled on the merits. It also states that the final settlement approval decision has yet to be made. Accordingly, the Notice complies with the standards of fairness, completeness, and neutrality required of a combined settlement-certification class notice.

B. <u>The Court Should Preliminarily Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims</u>

California courts favor settlement. *See, e.g.*, *Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). For the reasons discussed below, this Court should preliminarily approve the Settlement, allow the Parties to give notice to the Class as proposed, and schedule a final fairness and final approval hearing.

1. Class Action Settlements Are Subject to Review and Approval.

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks *preliminary approval* and the setting of a Final Approval Hearing.

To evaluate a settlement, the trial court must receive "***basic*** information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc*., 168 Cal. App. 4th 116, 133 (2008). However, the record need ***not*** contain an explicit statement of the maximum theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

2. The Parties Reached the Settlement Through Arms' Length Negotiations Between Experienced Counsel with the Assistance of a Highly Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.

A settlement is presumptively fair where it is reached through arms' length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small.[1] *Dunk*, 48 Cal.App.4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp*., 85 Cal. App. 4th 1135, 1146 (2000). In exercising the power to approve a settlement, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable," *Dunk*, at 1801, considering "the 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 state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement. *Id*. These

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[1] Because the fourth prerequisite for the presumption to arise cannot be addressed until the final approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement approval process.

factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors considered to each case and give due regard to "what is otherwise a private consensual agreement between the parties." *Id.*

Here, the Settlement resulted from thorough, arms' length negotiations between experienced counsel with the assistance of a skilled mediator, Lynn Frank. (Leviant Decl., ¶¶ 8-10.) Plaintiff obtained data from Defendant and then carefully reviewed that information. Counsel for Plaintiff also examined relevant policies and interviewed witnesses in detail about their work experiences and Defendant's practices.

Based on the review of data, Plaintiff estimated potential exposure and then estimated risk factors to adjust the reasonable expected outcome. The investigation that Plaintiff's counsel conducted was sufficient to provide them with enough information to intelligently evaluate the estimated exposure for purposes of negotiating the Settlement in view of the risks discussed below and was sufficient to allow this Court to do the same. *See, e.g*., *Wershba v. Apple Computer*, *Inc.,* 91 Cal. App. 4th 224, 245 (2001).

3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members' Claims Based on Defendants' Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.

a) The Class Action Settlement is Reasonable

A settlement is not judged against what might have been recovered had a plaintiff prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for substantially narrower relief than would likely be obtained if the suit were successfully litigated can be reasonable given that "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id.*

With respect to the claims asserted on behalf of the Class, there are serious risks that support this compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff would be unable to establish liability for unpaid wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33

(2014) ("*Duran*"); (ii) the risk that Defendants' meal and rest period policies might not support class certification or a class-wide liability finding; (iii) the risk that uncertainties about the legality of Defendants' policies and practices could preclude class-wide awards of statutory penalties; (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not just damages; (v) the risk that any penalty award under PAGA could be reduced by the Court in its discretion; (vi) the risk that lengthy trial or appellate litigation could ensue; and, (vi) the risk that violation rates could prove lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the approximately **571** members of the Class, the average ***gross*** benefit is **$1,733.80** per class member, and the estimated average ***net*** recovery for each Class Member would be approximately **$932.57**. (*Id.*) Given that Defendant could challenge certification and liability, this is the best result that could have been achieved in settlement. Moreover, <u>a Class Member who worked a greater number of workweeks will receive a larger Settlement share</u> than a Class Member who worked for a shorter time during the class period. (*Id.*)

After analyzing the claims in this matter, Plaintiff has concluded that the Gross Settlement Amount of <u>**$990,000.00**</u> is about 85% of the **$1,158,873.90** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (Leviant Decl., ¶ 18.) This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)

- A reasonably estimated exposure for unpaid off-the-clock wages was calculated, with the assistance of an expert, to be approximately **$1,321,606.00**. However, with the high risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$237,889.08**, assuming certification probability of 40% and merits success at 45%. The off-the-clock time resulted from Defendant's policies of paying overtime hours only if approved, and rounding of employees' time entries . Here, a $237,889.08 exposure has a value of about 18% of its maximum, given a likelihood of success on both certification and the merits, which is an approximation of the chain probability of certification multiplied by merits chances: $0.4 \times 0.45 = 0.18$. This theory of recovery has a high degree of risk because it depends on Class Member estimates of the frequency and magnitude of unpaid hours, is dependent on testimony, and Defendant may show that its policies did not lead to unpaid off-the-clock work to the magnitude estimated by Plaintiff.

- A reasonably estimated exposure for rest break violations over the class period was calculated at **$5,778,215.00** but with chances of certification and proof of liability (25% and 20% respectively) for a risk-adjusted exposure of **$288,910.75**. This claim is based entirely on class member testimonials that rest breaks were sometimes missed due to work demands, Plaintiff asserted value for settlement purposes, while understanding that this theory carries the potential for high risk given that employees were often allowed to determine when to take rest breaks. The exposure further assumes 100% of rest breaks were non-compliant, an extremely optimistic assumption.

- A reasonably calculated exposure for meal break violations over the class period was calculated at **$1,036,232.00**, with chances of certification and liability risks (30% and 35% respectively) resulting in a risk-adjusted exposure of **$108,804.36**. This exposure is based upon assumed violations from class member testimony, given that the records overwhelmingly show identical, 30-minute meal periods for all class members. Employee choice is a serious issue in the context of a meal period claim. So long as an employee has the opportunity to take a lawful meal period, an employee can choose to take it late, cut it short, or skip it.

- A reasonably calculated exposure for unreimbursed business expenses over the class period was calculated at **$427,886.00**, with chances of certification and liability risks (40% and 40%, respectively) resulting in a risk-adjusted exposure of $**68,461.76**. This exposure is based on class member testimonials that personal cell phones were used for business purposes. This theory faces the risk that it is testimony dependent and class members may have differing experiences.

- The risk-adjusted penalty recovery for Labor Code § 203 penalties was estimated to be approximately **$199,805.83**, on a maximum exposure of **$1,631,068.00** (with certification and merits success chances of 35% and 35% respectively, based on all theories of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). The need to show a knowing and intentional violation constitutes an additional risk factor.

- The risk-adjusted penalty recovery for wage statement penalties were estimated to be approximately **$126,499.63**, on a maximum exposure of **$1,032,650.00** (with certification and merits success chances of 35% and 35% respectively, based on all theories of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). The value of this claim was just dealt a severe blow by the recent California Supreme Court decision of *Naranjo v. Spectrum Security Services, Inc*. (May 6, 2024), which significantly strengthened the good faith defense to Section 226 penalties.

- Performing risk-adjusted valuations for all claims yields a total value in the range of **$1,030,371.41**, excluding PAGA.[2]

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[2] It is difficult to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is

- PAGA penalties exposure was calculated to be **$1,049,000.00**. But, assuming issues with proof and cooperation of aggrieved employees, along with the Court's power to reduce penalties, the realistic exposure was calculated to be **$128,502.50**.

(*See*, Leviant Decl., ¶ 18.)

This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Leviant Decl., ¶ 19.) The Judicial Council's Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 ("Second Interim Report"), at page 5, states that "less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification ***or*** as part of a classwide settlement agreement." *See*, Second Interim Report, at 5 (emphasis added).[3] That "***or***" is significant. The certification rates identified in the study of less that 25% includes ***both*** contested certifications and settlement certifications, which are the majority of certifications. In other words, one must assume in any wage and hour class action prior to certification that a contested certification motion will have a success rate of well under 25%, and probably closer to 10% as a starting point for risk evaluation. The facts of each case have significant bearing on these percentages. But it cannot be disputed that certification is an exceptionally difficult procedural hurdle to successfully overcome. Thus, it is not unreasonable to start from the proposition that a pre-certification settlement that is 10% to 15% of the maximum plausible exposure is a valid starting point for valuation. If roughly 10% of class actions are certified on a contested basis, then, on average, 90% of the time a class will not be certified and the result for the class is *zero* dollars.

Here, the estimated certification probabilities are ***above*** the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Leviant Decl., ¶ 19.) Given that well *under* 20% of all cases filed as proposed class actions

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either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel. The numbers explain with math what can also be described conceptually in words.

[3] The report is available at https://www.courts.ca.gov/documents/classaction-certification.pdf (last viewed March 12, 2024).

are ultimately certified by way of a *contested* motion, the recovery falls within the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately $8,563,939.00, *with no risk reduction*), excluding penalties and interest.[4] This Settlement achieves the goals of the litigation.

b) The PAGA Allocation is Reasonable

The ultimate decision as to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the wage and hour claims is robust and serves the deterrent purpose of PAGA. *O'Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA."). *Moniz* provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that have considered how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along with a consideration of whether the settlement furthers "PAGA's purposes to remediate present

[4] The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part…")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.,* 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

labor law violations, deter future ones, and to maximize enforcement of state labor laws."

As to the first set of elements (the class-type analysis), it is embodied in Plaintiff's discussion of the adequacy of the settlement generally. Here, the expense, complexity and likely duration of future litigation was to some extent an unknown. However, what is certain is that to adequately establish the violations that would support a substantial penalty, tremendous time and expense would be invested.

The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*, PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major portion of settlement funds to class members still advances the goal of labor law violation remediation. The allocation of a major portion of settlement funds to class members also deters future violations. This is a $990,000.00 settlement, a good result. Deterrence is fulfilled. Finally, allocation of a major portion of settlement funds to class members still advances the goal of enforcement of state labor law. This settlement is, by definition, a response to alleged violations of labor laws, balanced against risks.

In addition, there is no evidence that a court or a commissioner had informed Defendants that their conduct violated the Labor Code. *Amaral v. Cintas Corp*., 163 Cal. App. 4th 1157, 1209 (2008); *Willis v. Xerox Bus. Servs., LLC,* 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And in *Cotter*, the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a case where a company has deliberately sought to evade the law." *Cotter*, 176 F. Supp. 3d at 941.

Finally, the PAGA allocation is fair. The LWDA is receiving $58,500.00. The Class is receiving, net, an estimated $532,500.00 for the releases of *all* other claims. While the proportion is tipped slightly in favor of the employees, the allocation is not unfair because it satisfies California's wage and hour policies.

4. The Proposed Method for Allocating Settlement Funds Is Fair.

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. The Settlement Fund is to be allocated between all Class Members, based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she worked (e.g., Lab. Code §

226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of work weeks will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time. (Leviant Decl., ¶¶ 13, 17.)

5. The Proposed Enhancement Award to Plaintiff Warrants Approval.

The proposed enhancement of $7,500.00 to Plaintiff is intended to recognize substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. Factors considered when awarding an incentive include the actions the plaintiff has taken to protect the class, the degree to which the class has benefitted, the amount of time and effort the plaintiff expended in the litigation, the risk to the class representative in commencing suit (financial and otherwise), the notoriety and personal difficulties encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). Here, Plaintiff contributed time to the prosecution of this matter, including assistance prior to the mediation with information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Collins-Wright Decl,. ¶¶ 5-19; Leviant Decl., ¶ 32.) The enhancement also recognizes risks Plaintiff took to be personally liable for costs regardless of the success of the litigation, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued an employer, making future employment less certain.

6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Preliminary Approval.

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts. *Laffitte v. Robert Half Intern. Inc*., 1 Cal. 5th 480, 503 (2016).[5] Thus, this Court may and, pursuant to *Laffitte*, *should* award fees to Plaintiff's

[5] The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method

counsel based upon the percentage of the fund methodology.

Setting *Laffitte* aside, whether the once-again-confirmed percentage of the fund method or the lodestar method is used, the outcome is roughly the same: "'[F]ee awards in class actions average around one-third of the recovery' regardless of 'whether the percentage method or the lodestar method is used.'" *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021). This is also consistent with counsels' experience in class cases. Here, Plaintiff's attorneys intend to request attorneys' fees of up to $330,000.00 (33 and 1/3% of the GSA), and costs capped at $20,000.00 (which includes payment for mediation, filing fees, service of process fees, and other standard expenses). (Leviant Decl., ¶ 31.) Given the efforts and risks involved in this case, as well as the results achieved, these amounts are within the range of reasonableness and warrant *preliminary approval*.

7. The Proposed Payment to the Administrator Is Fair and Reasonable

ILYM, which has been selected due to its competitive bid, states that administration can be performed for a flat rate of **$8,950.00**. In counsel's experience, based on similar wage-and-hour actions, an estimated cost of **$10,000.00** is a fair and reasonable amount for administration fees and should be preliminarily approved, and it is below the Parties' original estimated cost of $10,000.00 to administer the Settlement. (Leviant Decl., ¶ 33.) ILYM has also confirmed it capabilities and security protocols in the accompanying declaration.

VI. THE COURT SHOULD SCHEDULE A FINAL FAIRNESS HEARING

The last step in the settlement approval process is the fairness hearing, where the Court makes a final determination about the propriety of settlement. Plaintiff requests that the fairness hearing in this case be scheduled for about 145 days after issuance of the Court's Order granting preliminary approval of the Settlement. Under the Settlement, the Defendants will have 30 days to provide the data to the Settlement Administrator, which will then have 14 calendar days to mail out class notice. Class Members have 60 days after mailing of the notice to submit exclusions or objections (with a 14-day extension available for re-mailed notices). Therefore, Plaintiff proposes a final approval hearing

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inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

scheduled for the first available hearing date that is about 145 days after preliminary approval is granted.

VII. CONCLUSION

For all the foregoing reasons, because the Class meets the requirements for certification, because the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant this Motion for Preliminary Approval, adopt the [Proposed] Order Granting Preliminary Approval of Class Action Settlement submitted herewith, and schedule a Final Fairness Hearing.

Respectfully submitted,

Dated: February 20, 2026

MOON LAW GROUP, PC

By: H. S. Leviant

Kane Moon
H. Scott Leviant
Jaeyoung Lee

Attorneys for Plaintiff Nechelle Latrice Collins-Wright