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7 Attorneys for Plaintiff(s),
JOSE ANGEL FRAUSTO VILLEGAS and JOSE MANUEL BARRAGAN AGUILAR
8 (Additional attorneys for Plaintiff(s) on following page)

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SANTA BARBARA**

11 **(UNLIMITED JURISDICTION)**

12
13 JOSE FRAUSTO VILLEGAS, on behalf of
14 himself, all others similarly situated, and the
general public,

15 *Plaintiff,*

16 vs.

17
18 DLP MANAGEMENT CO., INC., a California
corporation d/b/a DLP MANAGEMENT CO and
19 DLP MANAGEMENT INC.; and DOES 1–50,
inclusive,
20

21 *Defendants.*

Lead Case No.: 21CV04500
Consolidated with: 22CV01392
[Hon. Thomas P. Anderle, Department 3]

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**



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1 JOSE MANUEL BARRAGAN, on behalf of
2 himself, all others similarly situated, and
the general public,

3 Plaintiff,

4 vs.

5 DLP MANAGEMENT CO., INC., a
6 California corporation doing business in
7 California as DLP MANAGEMENT CO and
8 as DLP MANAGEMENT INC. and DLP
MANAGEMENT INC; DARIO L. PINI, an
individual; and DOES 1-50, inclusive,

9 Defendants.
10

Case No.: 22CV01392

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1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**
2 **PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 **I. INTRODUCTION**

4 Plaintiffs Jose Angel Frausto Villegas and Jose Manuel Barragan Aguilar (collectively
5 “Plaintiffs”) submit this memorandum of points and authorities in support of their unopposed
6 motion for preliminary approval of the Class Action Settlement Agreement and Class Notice (the
7 “Settlement”)², which provides for a Gross Settlement Amount (“GSA”) of \$750,000.00 in
8 compromise of all disputed claims on behalf of all persons employed by Defendants DLP
9 Management Co., Inc. and Dario L. Pini (collectively “Defendants”) in California and classified
10 as a non-exempt employees paid on an hourly basis or by salary during the Class Period. The
11 Parties agree that the Class only consists of the 81 employees Defendants disclosed to the
12 Administrator as part of the *Belaire-West* opt out process and the two individuals the Parties
13 identified in the Memorandum of Understanding that the Parties signed after the mediation. The
14 Class Period means the period from November 12, 2017 to the date of preliminary Court approval
15 of the Settlement. Through this Motion, Plaintiffs respectfully request for this Court to (1)
16 provisionally certify the below-defined Class for settlement purposes only under Code of Civil
17 Procedure § 382; (2) preliminarily approve the Settlement; (3) preliminarily appoint Plaintiffs as
18 Class Representatives; (4) appoint David Spivak of The Spivak Law Firm and Louis M. Benowitz
19 of Benowitz Law Corporation as Class Counsel; (5) approve the proposed notice procedures and
20 related forms; and (6) schedule a final approval hearing.

21 This Court should grant Plaintiffs’ motion because: (1) for settlement purposes, the Class
22 meets the requirements for class certification under Code of Civil Procedure § 382; (2) the
23 Settlement warrants preliminary approval based on all indicia for fairness, reasonableness, and
24 adequacy; (3) for settlement purposes, Plaintiffs are adequate to serve as Class Representatives;
25 (4) Plaintiffs’ attorneys are adequate to serve as Class Counsel; (5) the proposed notice
26 procedures, and related forms, fully comport with due process and adequately apprise Class
27 Members of their rights; and (6) a final approval hearing must be scheduled to allow Settlement
28 Class members an opportunity to be heard regarding the Settlement and to give it finality.

² The Settlement is attached as Exhibit (“Ex.”) 1 to the Declaration of David Spivak (“DS”), which is submitted herewith under a separate cover.



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1 Accordingly, for the reasons detailed below, this Court should grant Plaintiffs' Motion in its
2 entirety and preliminarily approve the Settlement.

3 **II. BACKGROUND**

4 Defendants are a property management company. Defendants employed Plaintiff Villegas
5 as a maintenance worker and handyman from about 2005 until January 2020. Defendants
6 employed Plaintiff Barragan as a maintenance worker from about 2008 until April of 2019. DS,
7 ¶ 4.

8 **A. The Claims and Procedural History**

9 On November 12, 2021, Plaintiff Jose Frausto Villegas commenced this Action by filing
10 a Complaint alleging causes of action against Defendant DLP Management Co., Inc. for failure
11 to pay wages, failure to provide meal periods, failure to authorize and permit rest periods, failure
12 to indemnify for business expenses, failure to timely pay wages, and related claims. On April 11,
13 2022, Plaintiff Jose Manuel Barragan filed a class action complaint alleging the same violations
14 against both Defendants. The two cases were consolidated on or about June 8, 2022. Defendants deny
15 the allegations in the complaints, deny any failure to comply with the laws identified in in the
16 complaints and deny any and all liability for the causes of action alleged. DS, ¶ 5, Exhibits 2-3.

17 **B. Mediation**

18 The Parties thereafter engaged in formal as well as informal and voluntary exchange of
19 information in the context of privileged settlement discussions to facilitate an early mediation.
20 Defendants produced Plaintiffs' personnel files and time-keeping and payroll records for
21 Plaintiffs and a sample group of employees. DS, ¶ 6.

22 On September 26, 2023, following much of the foregoing informal discovery and
23 exchange of information, the Parties participated in a mediation session presided over by Mediator
24 Henry J Bongiovi, Esq., an experienced class action mediator. During the mediation, the Parties
25 had a full day of productive negotiations and reached agreement on a class-wide settlement. DS,
26 ¶ 7, Exhibit 4. During the mediation sessions, each side, represented by his/their respective
27 counsel, recognized the risk of an adverse result in the Action and agreed to settle the Action and
28 all other matters covered by this Agreement pursuant to the terms and conditions of this
Agreement. on January 17, 2024, the Parties participated in a second mediation with Henry
Bongiovi, Esq. to address Defendants' concerns as to certain terms of the executed MOU that
relates to the release of claims and Plaintiff Jose Frausto Villegas' pending workers'
compensation claim against Defendants. One of the Parties' concerns was the scope of the release



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1 as to Plaintiff Villegas who has a pending Workers' Compensation claim. The settlement
2 agreement confirms Plaintiff Frausto Villegas' release of all claims known and unknown related
3 to Plaintiff Frausto Villegas' employment with Defendants as a "Plaintiff", Class Representative.

4 **III. OVERVIEW OF THE SETTLEMENT**

5 **A. Settlement Class Definition**

6 The Settlement defines the call as all persons all persons employed by Defendants in
7 California and classified as a non-exempt employees paid on an hourly basis or by salary during
8 the Class Period. The Parties agree that the Class only consists of the 81 employees Defendants
9 disclosed to the Administrator as part of the Belaire-West process and the two individuals the
10 Parties identified in the Memorandum of Understanding that the Parties signed after the
11 mediation. at any time between November 12, 2017 through the date of preliminary Court
12 approval of the Settlement. Settlement, §§ 1.4 and 1.11.

13 **B. Monetary Terms**

14 Defendants promise to pay \$750,000.00 and no more as the Gross Settlement Amount.
15 Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated
16 in the Agreement. The Administrator will disburse the entire Gross Settlement Amount without
17 asking or requiring Participating Class Members to submit any claim as a condition of payment.
18 None of the Gross Settlement Amount will revert to Defendants. The Administrator will make
19 and deduct the following payments from the Gross Settlement Amount, in the amounts specified
20 by the Court in the Final Approval:

21 **To Plaintiffs:** Subject to approval by the Court, Class Representative Service Payments
22 to the Class Representatives of not more than \$15,000.00 each (in addition to any Individual Class
23 Payments the Class Representatives are entitled to receive as Participating Class Members). For
24 the purposes of this Settlement only, the Parties agree to the designation of Plaintiffs as "Class
25 Representatives." In consideration therefor, Plaintiffs give their general release pursuant to
26 California Civil Code section 1542 as discussed in paragraph 6.2 that includes a release of all
27 claims arising out of and relating to their employment with Defendants, as well as Plaintiffs'
28 release of all known and unknown claims pursuant to California Civil Code section 1542 of all
claims arising out of and relating to their employment with Defendants. Defendants will not
oppose Plaintiffs' request for a Class Representative Service Payments that do not exceed this
amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses
Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no



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1 later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class
2 Representative Service Payment less than the amount requested, the Administrator will retain the
3 remainder in the Net Settlement Amount. The enhancement awards are to be part of, and to be
4 deducted from, the Gross Settlement Amount. The Administrator will pay the Class
5 Representative Service Payments using IRS Form 1099. Plaintiffs assume full responsibility and
6 liability for employee taxes owed on the Class Representative Service Payments. Settlement, §
3.2.1

7 **To Class Counsel:** A Class Counsel Fees Payment of not more than 33.33%, which is
8 currently estimated to be \$250,000.00 and a Class Counsel Litigation Expenses Payment of not
9 more than \$20,000.00. Defendants will not oppose requests for these payments provided that do
10 not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel
11 Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the
12 Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class
13 Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will
14 allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to
15 Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class
16 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will
17 pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
18 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
19 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
20 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
division or sharing of any of these Payments. Settlement, § 3.2.2

21 **To the Administrator:** An Administrator Expenses Payment not to exceed \$10,000.00
22 except for a showing of good cause and as approved by the Court. To the extent the
23 Administration Expenses are less or the Court approves payment less than \$10,000.00, the
24 Administrator will retain the remainder in the Net Settlement Amount. Settlement, § 3.2.3

25 **To Each Participating Class Member:** An Individual Class Payment calculated by (a)
26 dividing the Net Settlement Amount by the total number of Paychecks received by all
27 Participating Class Members during the Class Period and (b) multiplying the result by each
28 Participating Class Member's Paychecks. Settlement, § 3.2.4. 33.33% of each Participating Class
Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage



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1 Portion”). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2
2 Form issued by the Administrator. The 66.67% of each Participating Class Member’s Individual
3 Class Payment will be allocated to settlement of claims for interest and penalties (the “Non-Wage
4 Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on
5 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
6 employee taxes owed on their Individual Class Payment. Settlement, § 3.2.4.1

7 Defendants’ share of any employer payroll taxes to be paid in connection with the
8 Settlement (e.g., FICA, FUTA, payroll taxes, and/or any similar tax or charge – collectively
9 “Employer Taxes”) shall be paid by Defendants from the Gross Settlement Amount. Settlement,
10 § 3.2.4.2. Non-Participating Class Members will not receive any Individual Class Payments. The
11 Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement
12 Amount for distribution to Participating Class Members on a pro rata basis. Settlement, § 3.2.4.3

13 **C. Timing of Payments**

14 Defendants will fully fund the Gross Settlement Amount by transmitting the funds to the
15 Administrator no later than 60 days after the Effective Date. Settlement § 4.3. Within 14 days
16 after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all
17 Individual Class Payments, all the Administration Expenses Payment, the Class Counsel Fees
18 Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service
19 Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
20 Expenses Payment and the Class Representative Service Payments shall not precede disbursement
21 of Individual Class Payments. Settlement, § 4.4

22 The Administrator will issue checks for the Individual Class Payments and send them to
23 the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall
24 prominently state the date (not less than 180 days after the date of mailing) when the check will
25 be voided. The Administrator will cancel all checks not cashed by the void date. The
26 Administrator will send checks for Individual Settlement Payments to all Participating Class
27 Members (including those for whom Notice Packet was returned undelivered). Before mailing
28 any checks, the Administrator must update the recipients’ mailing addresses using the National
Change of Address Database. Settlement, § 4.4.1

D. Calculation of Settlement Shares

An Individual Class Payment will be calculated by (a) dividing the Net Settlement
Amount by the total number of Paychecks received by all Participating Class Members during



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1 the Class Period and (b) multiplying the result by each Participating Class Member's Paychecks.
2 Settlement, § 3.2.4.

3 **E. Apportionment of Settlement Shares**

4 33.33% of each Participating Class Member's Individual Class Payment will be allocated
5 to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax
6 withholding and will be reported on an IRS W-2 Form. The 66.67% of each Participating Class
7 Member's Individual Class Payment will be allocated to settlement of claims for interest and
8 penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage
9 withholdings and will be reported on IRS 1099 Forms by the Administrator. Participating Class
10 Members assume full responsibility and liability for any employee taxes owed on their Individual
11 Class Payment. Settlement, § 3.2.4.1.

12 **F. The Releases**

13 "Released Parties" shall mean Defendants and any of their present and former parent
14 companies, subsidiaries, divisions, concepts, related or affiliated companies and its shareholders,
15 officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any
16 individual or entity that Defendant Dario Pini has any ownership interest in that could be liable
17 for any of the Released Claims, and Defendants' counsel of record in the Action. Settlement, §
18 1.32. Effective on the date when Defendants fully fund the entire Gross Settlement Amount,
19 Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as
20 follows:

21 **Release by Participating Class Members.** The claims to be released by the Participating
22 Class Members are limited to any and all claims under state, federal, or local law, whether
23 statutory or common law arising out of the claims expressly pleaded the Actions and all other
24 claims, such as those under California Labor Code sections 201, 202, 203, 226.7, 510, 512, 558.1,
25 1182.12, 1194, 1197, 1198, and 2802, the Wage Orders, regulations, and/or other provisions of
26 law, that could have been pleaded based on the facts pleaded in the Actions for: failure to pay
27 employees all earned wages, including but not limited to overtime at one and one half times
28 regular wages and/ or overtime at two times regular wages if applicable, failure to provide meal
periods, failure to authorize and permit rest periods, failure to indemnify for business expenses,
failure to timely pay final wages, and unfair competition under Business & Professions Code
sections 17200, et seq.



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1 **Plaintiffs’ Waiver of Rights Under California Civil Code Section 1542 against the**
2 **Released Parties.** Plaintiffs’ release includes a release of all claims arising out of and relating to
3 their employment with Defendants, as well as Plaintiffs’ release of all known and unknown claims
4 pursuant to California Civil Code section 1542 of all claims arising out of and relating to their
5 employment with Defendants. Plaintiffs expressly waive and relinquish the provisions, rights, and
6 benefits, if any, of section 1542 of the California Civil Code against the Released Parties. Section
1542 reads:

7 A general release does not extend to claims that the creditor or releasing party does
8 not know or suspect to exist in his or her favor at the time of executing the release,
9 and that if known by him or her would have materially affected his or her
settlement with the debtor or Released Party.

10 Plaintiff Jose Frausto Villegas will not be seeking a double recovery in his pending workers’
11 compensation claim. Settlement, § 6.

12 **G. Notice and Claims Process and Procedures**

13 No later than three (3) business days after receipt of the Class Data, the Administrator
14 shall notify Class Counsel that the list has been received and state the number of Class Members,
15 and Paychecks in the Class Data. Using best efforts to perform as soon as possible, and in no
16 event later than 14 days after receiving the Class Data, the Administrator will send to all Class
17 Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail,
18 the Notice Packet with Spanish translation, if applicable substantially in the forms attached to this
19 Agreement as Exhibits A, B, C, and D. The first page of the Class Notice shall prominently
20 estimate the dollar amounts of any Individual Class Payment payable to the Class Member, and
21 the number of Paychecks used to calculate these amounts. Before mailing Notice Packets, the
22 Administrator shall update Class Member addresses using the National Change of Address
23 database. Not later than 3 business days after the Administrator’s receipt of any Notice Packet
24 returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet using any
25 forwarding address provided by the USPS. If the USPS does not provide a forwarding address,
26 the Administrator shall conduct a Class Member Address Search, and re-mail the Notice Packet
27 to the most current address obtained. The Administrator has no obligation to make further
28 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
the USPS a second time. The deadlines for Class Members’ written objections, Challenges to
Paychecks (disputes), and Requests for Exclusion will be extended an additional 14 days beyond



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1 the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-
2 mailed. The Administrator will inform the Class Member of the extended deadline with the re-
3 mailed Notice Packet. Settlement, § 8.4.

4 **1. Class Member Disputes**

5 Challenges to Calculation of Paychecks. Each Class Member shall have 60 days after the
6 Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose
7 Notice Packet is re-mailed) to challenge the number of Class Paychecks allocated to the Class
8 Member in the Class Notice. This is also known as a dispute. A Paycheck Dispute form, attached
9 as Exhibit C to the Settlement, may be used for this purpose but is not required. The Class Member
10 may challenge the allocation by communicating with the Administrator via fax, email or mail.
11 The Administrator must encourage the challenging Class Member to submit supporting
12 documentation. In the absence of any contrary documentation, the Administrator is entitled to
13 presume that the Paychecks contained in the Class Notice are correct so long as they are consistent
14 with the Class Data. The Administrator's determination of each Class Member's allocation of
15 Paychecks shall be final and not appealable or otherwise susceptible to challenge. The
16 Administrator shall promptly provide copies of all challenges to calculation of Paychecks to
17 Defense Counsel and Class Counsel and the Administrator's determination the challenges.
18 Settlement, § 8.6.

19 **2. Opting Out**

20 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must
21 send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later
22 than 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class
23 Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class
24 Member or his/her representative that reasonably communicates the Class Member's election to
25 be excluded from the Settlement and includes the Class Member's name, address and email
26 address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed,
27 or postmarked by the Response Deadline. An Election Not to Participate in Settlement form,
28 attached as Exhibit B to the Settlement, may be used for this purpose but is not required. The
Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the
information specified in the Class Notice. The Administrator shall accept any Request for
Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a
Class Member and the Class Member's desire to be excluded. The Administrator's determination



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1 shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has
2 reason to question the authenticity of a Request for Exclusion, the Administrator may demand
3 additional proof of the Class Member's identity. The Administrator's determination of
4 authenticity shall be final and not appealable or otherwise susceptible to challenge.

5 Every Class Member who does not submit a timely and valid Request for Exclusion is
6 deemed to be a Participating Class Member under this Agreement, entitled to all benefits and
7 bound by all terms and conditions of the Settlement, including the Participating Class Members'
8 Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless of whether the Participating
9 Class Member actually receives the Class Notice or objects to the Settlement. Every Class
10 Member who submits a valid and timely Request for Exclusion is a Non-Participating Class
11 Member and shall not receive an Individual Class Payment or have the right to object to the class
12 action components of the Settlement. Settlement, § 8.5.

12 **3. Objecting**

13 Only Participating Class Members may object to the class action components of the
14 Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or
15 amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
16 Payment and/or Class Representative Service Payments. Participating Class Members may send
17 written objections to the Administrator, by fax, email, or mail. In the alternative, Participating
18 Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal
19 objections at the Final Approval Hearing. A Participating Class Member who elects to send a
20 written objection to the Administrator must do so not later than 60 days after the Administrator's
21 mailing of the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet
22 was re-mailed). An The Objection form attached as Exhibit D may be used for this purpose but is
23 not required. Non-Participating Class Members have no right to object to any of the class action
24 components of the Settlement. Settlement, § 8.7.

25 **H. Uncashed Checks**

26 For any Class Member whose Individual Class Payment check is uncashed and cancelled
27 after the void date, the Administrator shall transmit the funds represented by such checks to the
28 California Controller's Unclaimed Property Fund in the name of the Class Member thereby
leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure
Section 384, subd. (b). Settlement, §4.4.3.

1 **IV. CERTIFICATION OF THE CLASS IS APPROPRIATE**

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

10 **A. The Settlement Class Is Objectively Ascertainable**

11 A class is ascertainable when it may be readily identified without unreasonable expense
12 or time by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932
13 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiffs maintain that the above-
14 defined Class is ascertainable because its members may be identified by reference to Defendants'
15 records and Defendants have agreed to share the relevant information from their records to
16 facilitate the settlement process. DS, ¶ 8; Settlement, § 1.4. Therefore, the Settlement Class is
ascertainable.

17 **B. The Membership of the Settlement Class Is Sufficiently Numerous**

18 The Settlement Class has sufficiently numerous members to render joinder impractical.
19 No set number is required as a matter of law to maintain a class action. *Hebbard v. Colgrove*
20 (1972) 28 Cal.App.3d 1017, 1030. Defendants estimate that there are approximately 83 Class
21 Members. DS, ¶ 9; Settlement, § 1.4. Plaintiffs maintain that it would be impractical and
22 economically inefficient to require each Class Member to separately maintain an individual action
23 or be joined as a named plaintiff in this action. The California Supreme Court has upheld a class
24 of as few as 10 individuals. *See Bowles v. Superior Court* (1955) 44 Cal.2d 574. In light of these
25 considerations, the Class' membership is sufficiently numerous. DS, ¶ 9. *See Daar v. Yellow Cab*
Co. (1967) 67 Cal.2d 695.

26 **C. Class Members Share a Well-Defined Community of Interest**

27 The community of interest requirement "embodies three factors: (1) predominant common
28 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
(3) class representatives who can adequately represent the class." *Sav-On Drug Stores, Inc. v.*



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1 *Superior Court* (2004) 34 Cal. 4th 319, 326. It “does not mandate that class members have
2 uniform or identical claims.” *Capitol People First v. Dept. of Developmental Servs.* (2007) 155
3 Cal. App. 4th 676, 692. Rather, courts focus on the defendant’s internal policies and “pattern and
4 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
renders class certification appropriate.” *Id.* (citing *Sav-On*, 34 Cal. 4th at 333).

5 To justify certification, the class proponent “must show ... that questions of law or fact
6 common to the class predominate over the questions affecting the individual members” *See*,
7 *Arenas v. El Torito Rests., Inc.*, 183 Cal. App. 4th 723, 732 (2010) (citing *Washington Mut. Bank*,
8 *FA v. Superior Court*, 248 Cal. 4th 906, 913 (2001)). In light of the more lenient standard for
9 certification of a settlement class, the Parties agree that for the purposes of the Settlement only,
10 the claims of the Class Members all stem from the same sources. Settlement, § 13.1.

11 In this case, Plaintiffs assert all class members were subject to the same or similar
12 operations and employment policies, practices, and procedures. The claims arise from
13 Defendants’ alleged policy-driven failure to pay wages, failure to provide meal periods, failure to
14 authorize and permit rest periods, failure to indemnify for business expenses, failure to timely pay
15 wages, and related labor law violations, all of which Plaintiffs claim constitute unfair business
16 practices and give rise to PAGA penalties. Plaintiffs assert that common questions include, but
17 are not limited to: (1) Whether Defendants failed to pay all wages earned to class members for all
18 hours worked at the correct rates of pay; (2) Whether Defendants failed to provide the class with
19 all meal and rest periods in compliance with California law; (3) Whether Defendants failed to pay
20 the class one additional hour of pay on workdays they failed to provide the class with one or more
meal or rest periods in compliance with California law; (4) Whether Defendants failed to
21 indemnify the class for all necessary business expenditures incurred during the discharge of their
22 duties; (5) Whether Defendants willfully failed to provide the class with timely final wages; and
23 (6) Whether Defendants engaged in unfair competition within the meaning of Business and
24 Professions Code section 17200, *et seq.*, with respect to the class. DS, ¶ 10. Therefore, common
25 questions predominate.

26 **D. Each Plaintiff is Typical of the Settlement Class**

27 The class representative must be similarly situated to the rest of the purported class. *See*
28 *Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46 (stating “it has never been the law in California
that the class representative must have identical interests with the class members. The only

1 requirements are ... that the class representative be *similarly* situated”) (emphasis in original); *See*
2 *also* Newberg, § 3:29 (typicality “focuses on whether there exists a relationship between the
3 Plaintiffs’ claims and the claims alleged on behalf of the class”). Plaintiffs contend that their
4 claims are typical for the purposes of certifying the Settlement Class. Plaintiffs asserts that they,
5 like absent Class Members was subject to the same relevant policies and procedures governing
6 their compensation, hours of work and meal and rest periods. Because Plaintiffs contend that they
7 were subject to the same general course of conduct as absent Class Members, resolving the
8 common questions as they apply to Plaintiffs will determine Defendants’ *prima facie* liability to
9 all Class Members. Moreover, Plaintiffs’ claims could potentially be subject to the same primary
10 affirmative defenses as those of absent Class Members. Accordingly, Plaintiffs’ claims are typical
11 of the Class. DS, ¶ 11.

12 **E. Each Plaintiff Will Adequately Represent the Settlement Class**

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

18 First, Class Counsel have supplied the Court with declarations to show that they are
19 adequate to represent the Settlement Class and that they have significant experience in
20 employment litigation generally, and wage and hour and employment-related class action
21 litigation specifically. *See* DS, ¶¶ 13-21; Declaration of Louis M. Benowitz (“Benowitz Decl.”)
22 ¶ 3. Thus, Plaintiffs’ counsel are adequate to serve as Class Counsel.

23 Second, each Plaintiff contends that he is an adequate class representative. Each Plaintiff
24 and the Class Members have strong and co-extensive interests in this litigation because they all
25 worked for Defendants during the relevant time period, allegedly suffered the same alleged
26 injuries from the same alleged course of conduct, and there is no evidence of any conflict of
27 interest between any Plaintiff and the Class Members. DS, ¶ 13. Moreover, each Plaintiff has
28 demonstrated his commitment to the Settlement Class by, among other things, retaining
experienced counsel, providing counsel with documents and extensively speaking with them to
assist in identifying the claims asserted in this case, assisting them in identifying witnesses, as
well as exposing himself to the risk of attorneys’ fees and costs awards against him if this lawsuit



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1 had been unsuccessful. DS, ¶ 13. Thus, each Plaintiff is adequate to serve as settlement class
2 representative. Accordingly, this Court should find that Plaintiffs and their counsel are adequate
3 to represent the Settlement Class as required under Code of Civil Procedure § 382.

4 **A. Class Action Treatment Is the Superior Means For Resolving The Claims Of The**
5 **Class Members**

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

15 **V. THE COURT SHOULD GRANT PRELIMINARY APPROVAL BECAUSE THE**
16 **SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

17 **A. Legal Standard**

18 A class action settlement requires court approval. California Rules of Court (“CRC”),
19 Rule 3.769 provides three steps for approval: (1) Preliminary approval after submission of a
20 written motion for preliminary approval, the proposed class settlement, and the proposed class
21 notice; (2) Issuance of notice of settlement to class members; and (3) A final settlement approval
22 hearing where class members may be heard regarding the settlement, and at which evidence and
23 argument concerning the fairness, adequacy, and reasonableness of the settlement is presented.
24 The decision to approve or reject a class settlement is committed to the Court’s broad discretion.
25 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128. The decision to approve
26 class settlement may be reversed only upon a showing of “clear abuse of discretion.” *Id.*

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

28 In assessing preliminary approval, a court evaluates if the settlement process has certain
indicia of fairness. 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.” *Kullar*, 168 Cal. App. 4th at 128, quoting *Dunk v. Ford Motor Co.*, (1996)
48 Cal.App.4th at 1794.



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1 The class settlement here satisfies all of these factors. DS, ¶ 23. The Settlement resulted
2 from thorough, arms' length, negotiations between experienced counsel with the assistance of a
3 respected mediator after sufficient discovery was exchanged to assess the relative strengths and
4 weaknesses of their respective cases and Defendants' estimated exposure. *Id.*

5 Plaintiffs claim that Defendants failed to pay all wages at the correct rates of pay, failed
6 to provide timely, duty free, 30-minute meal periods, failed to authorize and permit rest periods,
7 failed to indemnify for business expenses, failed to timely pay wages, and related claims. DS, ¶
8 24. Plaintiffs prepared "damages" estimates in advance of the mediation. DS, ¶ 24, Ex. 6. In
9 advance of the mediation, Plaintiffs determined Defendants' maximum exposure for restitution
10 and penalties to be approximately \$4,471,084.01 (consisting of \$1,290,206.33 in unpaid wages,
11 \$882,102.86 in missed meal period premium wages, \$1,764,205.71 in missed rest break premium
12 wages, and \$88,200.00 for waiting time penalties,). Plaintiffs calculated the damages based on
13 the number employees provided by Defendants, Plaintiffs' reports, and the sample data. *Id.*
14 Plaintiffs also considered the possibility that Defendants could launch a *Pick Up Stix* campaign
15 and pursue individual release agreements from the Class Members. Defendants also represented
16 that they had interviewed all of Defendants' current employees regarding Plaintiffs' claims, all of
17 whom would provide declarations, under penalty of perjury, that were favorable to Defendants
18 with respect to the relevant factual issues at issue in Plaintiffs' action. Plaintiffs' Counsel applied
19 discounts to the maximum exposure to account for all other risks discussed below. While it is
20 difficult to assign anything but crudely-determined percentages of risk to any of the claims, it is
21 safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery for such employees
22 is substantial and alone justifies a significant discount because Defendants would likely by trial
23 have gathered releases from the majority of the Class Members. A settlement for approximately
24 16.77% of the potential recovery is a proportion substantially in excess of recovery proportions
25 sanctioned by existing case law.³ *Id.*

26 ³ See, e.g., *In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
27 ("[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
28 be within the targeted range of reasonableness."); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*, 2017 WL 708766 at * 10 (C.D. Cal. Feb 16, 2017) ("a settlement for fourteen percent recovery of Plaintiffs' maximum recovery is reasonable"); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d



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

2 Plaintiffs’ initial estimates do not realistically account for the risks outlined below
3 or the risk that a class will not be certified. DS, ¶ 25. Therefore, Plaintiffs believe a class
4 settlement for \$750,000.00 is fair and reasonable. *Id.* The *Kullar* case sets forth several factors a
5 court should consider in determining whether to approve a class settlement. These factors include:
6 (1) the strength of plaintiff’s case; (2) the risk, expense, complexity and likely duration of further
7 litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in
8 settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience
9 and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the
10 class members to the proposed settlement. 168 Cal.App.4th at 128. As demonstrated herein, the
11 Settlement satisfies each of these factors.

12 **1. Evaluation of Plaintiffs’ Case**

13 **a. Risks Associated with the Unpaid Wages Claim**

14 There is a risk that Plaintiffs’ recovery for unpaid wages would be extremely limited at
15 best, largely because Defendants required the employees to sign each of their time sheets and
16 certify that they had accurately recorded their hours on their time sheets and had the opportunity
17 to take all their rest and meal periods. DS, ¶ 26. Off-the-clock claims are difficult where a
18 defendant requires that all hours worked be reported on time sheets. *See Jong v. Kaiser*
19 *Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer must have notice of off-the-clock
20 work for it to be compensable). *Id.* Moreover, while Defendants dispute that off-the-clock work
21 occurred, they contend that any time spent off the clock was *de minimis*. The California Supreme
22 Court in *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 835 suggested that irregular and
23 minute periods of time may still be subject to a *de minimis* defense even if compensable (stating
24 that “We do not decide whether there are circumstances where compensable time is so minute or
25 irregular that it is unreasonable to expect the time to be recorded.”). Following *Troester*,
26 Defendants contend that the *de minimis* doctrine may apply here because the time spent off the
27 clock were minute and insignificant. Accordingly, a large award of penalties seems unlikely with
28 respect to this claim. *Id.* The difficulty inherent in proving that off-the-clock work occurred poses
a significant hurdle to Plaintiffs. Plaintiffs will rely on declarations and witness statements to
1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum
potential recovery asserted by either party.”).



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1 prove this claim. Generally, a court will not certify a class unless it can determine an appropriate
2 classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.* (2014) 59 Cal. 4th 1. Here,
3 Plaintiffs may rely heavily on anecdotal evidence to prove the off-the-clock work claim,
4 especially given the lack of records indicating when such off-the-clock work may have taken
5 place. Individualized inquiries would need to be conducted person-by-person, day-by-day, to
6 determine if an individual in fact worked “minutes” off-the-clock on a “regular” basis.
7 Accordingly, there is a significant risk that the Court would consider this evidentiary showing
8 insufficient as a classwide methodology. DS, ¶ 26.

9 **b. Risks Associated with the Meal Period Claims**

10 There are risks to Plaintiffs’ meal period claim. DS, ¶ 27. Defendants contend that, to
11 establish a violation for missed meal periods, a plaintiff must do more than show that a meal break
12 was not taken. *Brinker*, 53 Cal. 4th at 1004. So long as an employer provides employees with a
13 “reasonable opportunity” to take a duty-free meal period, it has no further duty to “police meal
14 breaks and ensure no work thereafter is performed.” *Id.* at 1040-41. Instead, a plaintiff must show
15 the employer impeded, discouraged, or prohibited the employee from taking a proper break, or
16 otherwise failed to release the employee of all control. “Thus, the crucial issue with regard to the
17 meal break claim is the reason that a particular employee may have failed to take a meal break.”
18 *Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641.

19 Defendants contend they did not impede or discourage Plaintiffs, or any other employees,
20 from taking their meal or rest periods. Further, as discussed above, Defendants required
21 employees to certify the fact that they received all their meal periods at the end of each pay period.
22 The time records that comprise the random sample Defendants produced to Plaintiffs for purposes
23 of mediation show that meal periods were taken the vast majority of the time. DS, ¶ 28. Of the
24 time records that show a late, short or no lunch, individualized evidence may be necessary to
25 determine whether they occurred due to conduct of the Defendants or each of the employees
26 concerned. Accordingly, there is a significant risk that the value of Plaintiffs’ meal period claim
27 would be substantially reduced at trial. *Id.*

28 **c. Risks Associated with the Rest Break Claims**

There are risks to Plaintiffs’ rest period claim. DS, ¶ 29. Employers are not required to
record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt
employees the opportunity to take rest periods in accordance with California law. Further, as



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discussed above, Defendants required employees to certify the fact that they received all their meal periods at the end of each pay period. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. Managing such claims at trial has become exceedingly difficult. Plaintiffs will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. *Id.*, *See Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining “[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling.”); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

d. Risks Associated with the Failure to Indemnify Claim

There is a risk that the Court may consider Plaintiffs’ claims as to Defendants’ alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. DS, ¶ 30. Plaintiffs allege that Defendants required Plaintiffs and the Class Members to use their personal items including cellular phones, vehicles, and tools, and failed to indemnify them for these business expenses. *Id.* Defendants contend that they have supplied their employees with tools, equipment, and other supplies. As such, there is a risk that the Court may consider Plaintiffs’ claims to be individual in nature and unfit for class wide resolution. *Id.*

e. Risks Associated with The Waiting Time Penalties Claim

Plaintiffs’ claim for untimely wages is predicated on Labor Code section 201 to 203. DS, ¶ 31. Plaintiffs must establish that the late payments were willful. Further, the California Supreme Court recently held that an employer is not subject to statutory penalties if it reasonably and in good faith believed there were no violations:

In short, the Court of Appeal in this case correctly concluded that when an employer shows that it reasonably and in good faith, albeit mistakenly, believed that it complied with section 226, subdivision (a), that employer's failure to comply with wage statement requirements is not “knowing and intentional,” and the employer is therefore not subject to penalties under section 226, subdivision (e)(1).

Naranjo v. Spectrum Sec. Servs., Inc., No. S279397, 2024 WL 1979980, at *18 (Cal. May 6, 2024). The evidence of good faith that Defendants could put forth will defeat this claim. DS, ¶ 31.



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1 **f. Risks Associated With A Pick-Up Stix Campaign**

2 An employer enjoys the right to settle a putative class member's disputed wage claims
3 individually, without the consent or involvement of class counsel. DS, ¶ 32; *See Chindarah v.*
4 *Pick Up Stix, Inc.* (2009) 171 Cal. App. 4th 796. As discussed above, Defendants may launch a
5 "pick off" settlement campaign to pursue individual release agreements from the Class Members,
6 thereby potentially narrowing the size of the Class – 83 members - until it is no longer numerous
7 enough for class certification. *Id.* Plaintiffs, then, may not have sufficient number of employees
8 to represent. This led to a significant reduction of claim value in settlement negotiations. *Id.*

9 While the evidence gathered through Plaintiffs' discovery supports the merits of the
10 claims asserted in this lawsuit, Plaintiffs and their counsel recognize that continued litigation
11 presents significant risks that support a downward departure from Defendants' estimated liability
12 exposure. DS, ¶ 33. In view of the risks, the Settlement reflects Plaintiffs' estimate of the total
13 amount of damages, monetary penalties or other relief that the Class could reasonably expect to
14 be awarded at trial, taking into account the likelihood of prevailing and other attendant risks. *Id.*
15 It also represents a fair, adequate, and reasonable compromise amount for these claims and
16 warrants preliminary approval. *Id.*, *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370,
17 1376 (the financial condition of defendant predominated in assessing the reasonableness of
18 settlement); *Spann v. J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty
19 concerning defendant's financial stability "strongly supports the reasonableness of the
20 settlement"); *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014
21 WL 2465049, * 3.

22 **2. Reaction of Class Members to Proposed Settlement**

23 If the settlement is preliminarily approved, Class Members will be provided with the Court
24 Approved Notice of Class Action Settlement and Hearing Date For Final Court Approval
25 (attached as Exhibit A to the Settlement) and an opportunity to object. The parties' proposed
26 notice fully complies with California Rules of Court 3.766(d) and 3.769(f) and will allow Class
27 Members to make informed responses to the proposed settlement.

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1 **VI. THE SETTLEMENT FAIRLY, ADEQUATELY, AND REASONABLY**
2 **COMPENSATE CLASS MEMBERS BECAUSE IT WILL PAY EACH CLASS**
3 **MEMBER BASED ON THE POTENTIAL EXTENT OF HIS OR HER INJURY**
4 **COMPARED TO OTHER CLASS MEMBERS**

5 The Individual Settlement Payments will be paid to each Class Member based on his or
6 her eligible Paychecks compared to the total Paychecks. DS, ¶ 38, Settlement § 3.2.4. Because
7 this method compensates Class Members based on the extent of their potential injuries, in that
8 Class Members who worked for Defendants longer would have been subject to more alleged
9 violations, it is fair, adequate, and reasonable. *Id.*

10 **VII. ALLOCATION FOR CLASS COUNSEL'S FEE AWARD AND ATTORNEYS'**
11 **FEES AND COSTS AWARD FOR LITIGATION EXPENSES IS APPROPRIATE**

12 The Settlement states Class Counsel may seek attorneys' fees of \$250,000.00 (one-third
13 of the GSA) and up to \$20,000.00 for actual reasonable litigation costs and expenses incurred in
14 prosecuting the Action. Settlement § 3.2.2. These amounts are reasonable, given the facts and
15 circumstances of the case. DS, ¶¶ 34-36.

16 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
17 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
18 *Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41. Indeed, it is long settled that the "experienced
19 trial judge is the best judge of the value of professional services rendered in his court." *Ketchum*
20 *v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee awards should
21 be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk
22 incurred. *Laffitte v. Robert Half Intl, Inc.* (2016) 1 Cal. 5th 480, 503 (citing *Lealao, supra*, 82
23 Cal.App.4th at p. 48-49). The Supreme Court has recently approved fees equal to one-third (1/3)
24 of the common fund. *Laffitte, supra*, 1 Cal. 5th 480. Many courts have similarly approved fee
25 awards equal to or greater than the percentage requested here. *See, e.g., In re Pacific Enterprises*
26 (9th Cir. 1995) 47 F.3d 373, 379 (award of 33% of the common fund); *In re Activision* (N.D.
27 Cal. 1989) 723 F.Supp. 1373, 1375 (32.8% of the common fund); *In re Ampicillin Antitrust*
28 *Litig.* (D.D.C. 1981) 526 F.Supp. 494, 498 (45% of settlement fund).

The amount of fees and costs requested are commensurate with (1) the risk Class Counsel
took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the
skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the
value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned



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1 down to devote time to this matter. DS, ¶ 35. Class Counsel interviewed and obtained information
2 from putative class members, met and conferred with Defendants' counsel on numerous
3 occasions, reviewed and analyzed hundreds of pages of data and documents provided by
4 Defendants and obtained through other sources, researched applicable law, and provided
5 estimates of "damages" for purposes of settlement discussions, among other tasks. *Id.*

6 Class Counsel have borne all the risks and costs of litigation and will receive no
7 compensation until recovery is obtained. DS, ¶ 36. Class Counsel are well-experienced in wage-
8 and-hour class action litigation and used that experience to obtain a fair result for the Class. *Id.*
9 Considering the amount of the attorney fees requested, the work performed, and the risks incurred,
10 the requested fees and costs are reasonable and should be awarded. *Id.*

11 **VIII. THE CLASS REPRESENTATIVE SERVICE PAYMENTS TO EACH**
12 **PLAINTIFF SHOULD BE PRELIMINARILY APPROVED BECAUSE IT IS**
13 **FAIR, ADEQUATE, AND REASONABLE**

14 Courts routinely approve incentive awards to compensate named plaintiffs for the services
15 they provide and the risks they incur during class action litigation, often in much higher amounts
16 than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726
17 (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van*
18 *Vranken v. Atlantic Richfield Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000
19 enhancement award). The Settlement provides that each Plaintiff may seek a Class Representative
20 Service Payments of \$15,000.00. This amount is entirely reasonable given Plaintiffs' efforts in
21 this action and the risks each Plaintiff undertook on behalf of Class Members. DS, ¶ 37. Each
22 Plaintiff has devoted many hours advancing the interests of the Settlement Class. Each Plaintiff
23 has done this by, among other things, retaining experienced counsel, providing them with
24 information about his work history with Defendants and Defendants' policies and practices with
25 respect to the wage and hour claims at issue, participating in mediation, and being actively
26 involved in the settlement process to ensure a fair result for the Settlement Class as a whole. In
27 doing this, each Plaintiff has been exposed to significant risks, including the risk of an order to
28 pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor Code
§§ 218.5-218.6). The efforts and risks that each Plaintiff undertook on behalf of the Settlement
Class shows that the proposed Class Representative Service Payments is fair, adequate, and
reasonable, and thus warrants preliminary approval. DS, ¶ 37.



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1 **IX. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS SHOULD BE**
2 **PRELIMINARILY APPROVED BECAUSE THEY ARE FAIR, ADEQUATE,**
3 **AND REASONABLE**

4 With regard to the settlement administration costs provision, it is reasonable. Before
5 agreeing to ILYM Group, Inc. and its bid of \$5,850.00, the Parties sought and reviewed bids from
6 other reputable third-party administrators which provided higher bids. DS, ¶ 40-41, Exs. 7, 8, and
9. Thus, the settlement administration costs provision should be given preliminary approval.

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

11 This Court should approve the proposed plans for giving notice to the Settlement Class
12 and administering the Settlement. The standard for determining the adequacy of notice is whether
13 the notice has “a reasonable chance of reaching a substantial percentage of the class members.”
14 *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. The notice process includes multiple
15 measures to ensure that as many Class Members as practicable receive actual notice of the
16 Settlement and have enough time to exercise their rights. The Settlement requires distribution of
17 the Notice by First Class U.S. mail only. Settlement, § 4.4.1. Although there are current employee
18 Class Members, it is uncertain whether Defendants’ records of their contact information include
19 email addresses and Class Members, who perform all of their work away from a desk, are not in
20 a position to check their emails. As such, notice by mail alone is fair, adequate, and reasonable.
21 DS, ¶ 39.

22 With respect to its content, “[The] notice given to the class must fairly apprise the class
23 members of the terms of the proposed compromise and of the options open to dissenting class
24 members.” *Trotsky v. Los Angeles Fed. Sav. & Loan Assn.* (1975) 48 Cal.App.3d 134, 151-152.
25 The purpose of the notice in class settlement context is to give class members sufficient
26 information to decide whether they should accept the benefits offered, opt out and pursue their
27 own remedies, or object to the settlement. *Id.* The Notice (Exhibit A to the Settlement) provides
28 Class Members with all pertinent information that they need to fully evaluate their options and
exercise their rights under the Settlement. Specifically, it clearly and concisely explains, among
other things: (1) what the Settlement is about; (2) who is a Settlement Class Member; (3) how
Class Counsel will be paid; (4) how to submit an exclusion request not to be bound by the



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1 Settlement; (5) how to object to the Settlement; (6) how the Settlement will be allocated; (7) how
2 payments to Class Members will be calculated; (8) how the disputes will be resolved; and (9) the
3 individual Settlement Class Member's estimated payment. Additionally, the Class Notice will
4 include the number of Paychecks a Class Member had during the Class Period. Accordingly, the
5 Notice should be approved because it describes the Settlement with sufficient clarity and
6 specificity to explain to Class Members what this action is about, their rights under the Settlement,
and how to exercise those rights. DS, ¶ 39.

7 **XI. CONCLUSION**


8 For the reasons stated above, this Court should grant Plaintiffs' Motion in its entirety and
9 adopt the proposed order submitted concurrently herewith.

10
11 Respectfully submitted,

12 THE SPIVAK LAW FIRM

13
14 Dated: July 17, 2024

15 By:

16 
17 DAVID G. SPIVAK, Attorneys for
18 Plaintiff(s), JOSE ANGEL FRAUSTO
19 VILLEGAS, JOSE MANUEL
20 BARRAGAN AGUILAR, and all
21 others similarly situated



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