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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN FRANCISCO**

13 DIEGO ORNELAS, an individual, on behalf
of himself and others similarly situated,

14 Plaintiff,

15 vs.

16 NATIONAL STORAGE AFFILIATES
17 TRUST, a Maryland real estate investment
trust; INTANDEM HUMAN RESOURCES,
18 LLC, a Colorado limited liability company;
STORAGE MANAGEMENT AND
19 LEASING CO., LLC, a Florida limited
liability company; ISTOREAGE JV, LLC, a
20 Delaware limited liability company; and
DOES 1 through 50, inclusive,

21 Defendants.
22

Case No.: CGC-18-571421

CLASS ACTION

Assigned for Law and Motion Purposes To:
Hon. Curtis E.A. Karnow
Dept.: 611, Civic Center Courthouse

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
JOINT STIPULATION OF AMENDED
CLASS ACTION SETTLEMENT**

*[Filed concurrently with Notice of Motion and
Motion; Declarations of David Yeremian, Alvin
B. Lindsay and Diego Ornelas; and [Proposed]
Order]*

Date: May 20, 2021
Time: 4:00 p.m.
Department 611

Complaint Filed: November 19, 2018
First Amended Complaint: March 28, 2019
Trial Date: None Set

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

04/22/2021
Clerk of the Court

BY: SANDRA SCHIRO
Deputy Clerk

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff DIEGO ORNELAS (“Plaintiff”), on behalf of himself and all other similarly
3 situated employees of Defendants, NATIONAL STORAGE AFFILIATES TRUST (“NSAT”),
4 INTANDEM HUMAN RESOURCES, LLC (“InTandem”), STORAGE MANAGEMENT AND
5 LEASING CO., LLC (“SMLC”), and ISTOREAGE JV, LLC (“iStorage”) (collectively,
6 “Defendants”) (with Plaintiff, “the parties”), without opposition from Defendants, respectfully
7 requests preliminary approval of the parties’ Amended Joint Stipulation of Class Action
8 Settlement (“Settlement” or “Settlement Agreement”) pursuant to California Code of Civil
9 Procedure § 382 and Rule 3.769 of the California Rule of Court.

10 This is a second motion following entry of the Court’s Order on **September 15, 2020**
11 denying the first one and providing a detailed listing of items to be addressed in the Settlement,
12 Notice, and motion documents. (See Declaration of David Yeremian in support of Preliminary
13 Approval of the Amended Settlement (“Yeremian Decl.”), ¶¶ 2, 78-79). For the Court’s ease of
14 reference, counsel has prepared a summary listing of the Court’s points to be addressed and a
15 corresponding summary of the actions taken in response to every revision to each document the
16 Court required. (Yeremian Decl., Exhibit B). A copy of the Amended Settlement Agreement that
17 further addresses the Court’s required revisions is provided at Exhibit A to the Yeremian
18 Declaration, and the proposed Amended Class Notice with required revisions is attached thereto at
19 Exhibit 1.

20 **1. INTRODUCTION**

21 Defendants operate a network of storage facilities. Plaintiff has alleged he was jointly
22 employed by Defendants as a non-exempt hourly employee at Defendants’ facilities operating
23 under the iStorage brand in Moreno Valley, California, and alleges he and the other similarly
24 situated Class members and aggrieved employees were employed there and at the other iStorage
25 facilities operated by Defendants in California. (See Yeremian Decl., ¶ 10). Plaintiff filed his Class
26 Action Complaint on **November 19, 2018** in San Francisco County Superior Court alleging ten
27 causes of action against Defendants for (1) Failure to Pay Minimum Wages; (2) Failure to Pay
28 Wages and Overtime Under Labor Code § 510; (3) Failure to Pay Wages Under the FLSA, 29

1 U.S.C. §§ 206, 207; (4) Meal Period Liability Under Labor Code § 226.7; (5) Rest Break Liability
2 Under Labor Code § 226.7; (6) Violation of Labor Code § 226(a); (7) Violation of Labor Code §
3 221; (8) Violation of Labor Code § 203; and (9) Failure to Reimburse Necessary Business
4 Expenditures under Labor Code § 2802; and (10) Violation of Business and Professions Code §
5 17200 *et seq.* (Yeremian Decl., ¶ 11).

6 After submitting a Notice Letter to the LWDA on **November 16, 2018** and exhaustion of
7 the notice period under the PAGA, on **March 28, 2019**, Plaintiff filed a First Amended Complaint
8 adding an eleventh cause of action for Penalties Under Private Attorneys General Act, Labor Code
9 § 2698 *et seq.* (“PAGA”), and Defendants have answered. (Yeremian Decl., ¶¶ 11-12).

10 On **December 26, 2018**, Defendant InTandem removed this Action to the Northern
11 District of California Court (ND Cal Case No.: 3:18-cv-07717-MMC) pursuant to 28 U.S.C. §§
12 1331 and 1441(a), alleging federal question jurisdiction. (Yeremian Decl., ¶ 12). In connection
13 with the initial Case Management Conference in federal court, the parties informed the Court they
14 had agreed to conduct a mediation with Jeff Ross, Esq, a well-respected wage and hour class
15 action mediator, on **December 3, 2019**. They then stipulated to their proposed case management
16 dates taking this action through conditional certification of Plaintiff’s FLSA claims by **May 3,**
17 **2020**, and to reflect their agreed upon mediation date. (Yeremian Decl., ¶ 13). Following initial
18 discovery for mediation, Plaintiff agreed to voluntary dismissal of the FLSA claims so the parties
19 could focus their efforts on litigating and resolving the California class claims. The parties entered
20 into a stipulated dismissal of Plaintiff’s Third Cause of Action under the FLSA on **January 29,**
21 **2020**. (Yeremian Decl., ¶ 14).

22 Following dismissal of the FLSA claims, on **January 30, 2020**, the Court also ordered the
23 case remanded back to San Francisco County Superior Court. The case file was transferred from
24 Northern District of California to San Francisco County on **February 3, 2020**. On **March 3, 2020**,
25 the Court issued its Order Setting Case Management Conference assigning the Action to Dept. 610
26 for case management purposes and setting a CMC for **April 15, 2020** in Department 610. The
27 CMC has been continued a number of times, and a further conference is presently scheduled for
28 **April 28, 2021** to allow the parties time to file the present motion. (Yeremian Decl., ¶ 15).

1 On **December 3, 2019**, the Parties participated in a private mediation with well-respected
2 wage and hour class action mediator Jeff Ross, Esq., In advance of mediation, the parties agreed to
3 and conducted comprehensive informal discovery. This included an exchange of documents and
4 records samplings, and detailed Class data for the California class, including class numbers, work
5 weeks and pay periods worked, and average pay rates. (Yeremian Decl., ¶ 16).

6 Without opposition from Defendants, Plaintiff requests that the Court grant preliminary
7 approval of the parties' Amended Settlement Agreement, at **Exhibit A** to the concurrently filed
8 Declaration of David Yeremian ("Yeremian Decl."), and the Amended Class Notice provided at
9 **Exhibit 1** to the Settlement. Defendants' records establish there are approximately **94** Settlement
10 Class members satisfying the following Class definition: all individuals who are or previously were
11 employed by Defendants or predecessor entities as non-exempt, hourly employees at Defendants'
12 storage facilities within the State of California during the time period of **November 19, 2014** and
13 **February 3, 2020** (the "Class Period"). "Class Members" or "Settlement Class Members" or the
14 "Settlement Class" is defined as any person who is a member of the Class who does not opt out of
15 the Settlement by requesting exclusion. (Yeremian Decl., ¶¶ 36-37; Exhibit A, Settlement, ¶¶ A.3,
16 A.5, A.7, A.8, D.2 - D.5).

17 After engaging in substantial investigation and extensive negotiations with the assistance of
18 a respected third-party neutral, Jeffrey Ross, Esq., the parties formulated the general details of their
19 class-wide settlement, which they later memorialized in a Memorandum of Understanding setting
20 forth the material terms for settling all claims alleged on a class-wide, non-reversionary basis. The
21 terms of the Settlement were subsequently memorialized in the original Settlement Agreement and
22 then further in the Amended Settlement Agreement now before the Court for preliminary approval.
23 (Yeremian Decl., ¶¶ 13, 16-17, 24-34).

24 The agreed upon Total Settlement Amount is **\$400,000.00**, inclusive of all fees and costs.
25 All **94** Settlement Class Members will automatically receive a settlement share unless they opt out
26 and will divide, on a *pro-rata* basis, a Net Settlement Amount of approximately **\$219,166.66**, if all
27 allocations are approved. The estimated average gross individual settlement payment to the Class
28 members, using a straight average, is **\$2,331.56**. (Yeremian Decl., ¶¶ 34-37, 71-72). These

1 payments will be allocated 50% to wages and 50% to penalties and interest under the terms of the
2 Settlement, and counsel explains these allocations were based on the percentage of the potential
3 liability exposure allocated to wage and meal and rest claims and those derivative claims for
4 statutory and civil penalties and interest. (Yeremian Decl., ¶¶ 23, 39). The Total Settlement
5 Amount of **\$400,000** is **32.95%** of the total maximum liability exposure Class Counsel estimated
6 (i.e. **\$1,213,981.26**) for Plaintiff’s main claims for damages and penalties. (*Id.* at ¶¶ 71-72).

7 The proposed settlement reflected in the Amended Joint Stipulation of Class Action
8 Settlement (“Settlement” or “Settlement Agreement”) is fair, reasonable, and adequate, and in the
9 best interests of the Class. Plaintiff, with the consent of Defendants, respectfully requests that this
10 Court issue an Order in the form provided herewith: (1) preliminarily approving the proposed
11 class-wide settlement of this action; (2) approving the form and method for providing class-wide
12 notice; (3) directing that notice of the proposed settlement be given to the class; (4) appointing
13 Plaintiff Diego Ornelas as Class Representative for settlement purposes only; (5) appointing David
14 Yeremian and Alvin B. Lindsay of David Yeremian & Associates, Inc. and Emil Davtyan of the
15 Davtyan Law Firm as Class Counsel for settlement purposes only; and (6) scheduling a hearing
16 date for Final Approval of the Settlement and Plaintiff’s Application for attorneys’ fees and costs.

17 **2. FACTUAL BACKGROUND, DISCOVERY, AND MEDIATION**

18 **A. Plaintiff’s Claims and Defendants’ Denials**

19 Plaintiff’s operative First Amended Complaint alleges that he and the Class members were
20 either not paid by Defendants for all hours worked or otherwise were not paid at the appropriate
21 minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff
22 and the Class members all wages owed to them for all hours worked, including by unlawful under-
23 recording of hours worked resulting in off the clock work and by failing to incorporate non-
24 discretionary, performance based bonuses into the overtime rate calculation. (Yeremian Decl., ¶
25 19). Plaintiff further alleged that, in order to count money and prepare the office for opening,
26 Plaintiff and the Class members were required by Defendants to arrive at work at least ten minutes
27 before the opening, while they were not permitted to clock in until no earlier than two minutes
28 before that opening or the start of their shifts. Plaintiff further alleges that the Class members had

1 to boot up the computer to clock in, thus resulting in further uncompensated work time. Plaintiff
2 alleges that he and the Class members were generally asked to work shifts over eight hours in a
3 day and to work over forty hours in a work week, but they were not paid at the appropriate
4 overtime rate for all such hours, including by being required to perform work duties and tasks
5 without pay and while off-the-clock, and Defendants miscalculated and underpaid overtime by
6 failing to account for bonuses in the regular rate used to calculate overtime payments. (*Id.* at ¶ 20).

7 Plaintiff also alleged that Defendants automatically deducted from the hours worked by
8 Plaintiff and the Class an unpaid meal break for one hour on these shifts, despite requiring them to
9 remain on duty and responsive to customer demands and inquiries. Plaintiff has therefore alleged
10 that he and the Class members were not provided with all required meal periods and rest break,
11 and those they did receive were interrupted by customer demands or were otherwise not off-duty
12 and timely. Plaintiff also argued that the Employee Handbook impermissibly required employees
13 to not postpone or delay customer service for the purposes of breaks. (Yeremian Decl., ¶ 21).

14 Plaintiff further alleged Defendants failed to reimburse necessary business expenses and
15 asserted other derivative claims deriving from the above alleged violations, including for failure to
16 provide accurate itemized wage statements and failure to timely pay all wages and pay all wages at
17 termination or separation, and for unfair competition and the above-addressed PAGA claims.
18 (Yeremian Decl., ¶¶ 19, 22-23).

19 Defendants deny all of Plaintiff's Class and PAGA claims, and contend, among other
20 things, they have complied at all times with all applicable laws and asserted that the Settlement
21 Class Members were properly compensated for all time worked, and otherwise treated at all times
22 in compliance with all applicable laws. (Yeremian Decl., ¶ 27, Exhibit 1, Settlement, ¶ B.3).
23 Defendants contended they maintained legally-compliant policies and have properly, timely and
24 fully paid all earned wages, they did not require employees to work without pay, nor did
25 Defendants have knowledge of any purported work performed off-the-clock. Defendants also
26 argued they authorized and permitted timely meal and rest breaks, and that, to the extent an
27 individual employee did not take a provided break, employees waived their right to them and to
28 seek relief herein. Defendants also asserted that they have provided accurate wage statements and

1 neither Plaintiff nor any of the putative class members are entitled to any penalties for alleged
2 inaccurate wage statements. (Yeremian Decl., ¶¶ 46-72; Ex. A, Settlement, ¶ B.3). Plaintiff's
3 counsel provides further details of the parties' arguments and support for the allocations. (*Id.*).

4 After extensive investigation and informal discovery, including analysis of relevant
5 documents and other gathered data and after relying upon assessment by Plaintiff's statistical
6 analysis expert, Class Counsel believed that this case was appropriate for resolution *via* mediation.
7 Given the high level of risk present for both sides, and the substantial uncertainty and expense of
8 protracted litigation, the parties elected to mediate Plaintiff's claims and explore settlement, which
9 they achieved. (Yeremian Decl., ¶¶ 24-33; Exhibit A, Settlement, ¶ B.2).

10 **B. Investigation and Discovery**

11 Before filing, Class Counsel investigated and researched the circumstances and facts
12 underlying the pertinent issues and the law applicable thereto. (Yeremian Decl., ¶¶ 24-33; 46-72;
13 Exhibit A, Settlement, ¶¶ B.1, B.2). This required thorough discussions and interviews between
14 Class Counsel and Plaintiff, in addition to the above described research into the various legal issues
15 involved in the case. (Yeremian Decl., ¶¶ 86-91). After filing the lawsuit, Class Counsel conducted
16 a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting
17 informal and formal discovery, and meeting and conferring with defense counsel about same; (2)
18 reviewing and analyzing time and pay records as well as employment handbooks, Plaintiff's
19 personnel file, relevant policies and other documentation; (3) interviewing class members; (4)
20 researching the applicable law and potential defenses; (5) constructing damage models based on
21 interpretations of California law; and (6) reviewing other relevant information provided by
22 Defendants in advance of the mediation. (*Id.* at ¶ 25; Exhibit A, Settlement, ¶ B.1).

23 Upon agreeing to schedule mediation, and leading up to their agreement, the parties
24 conducted informal discovery and exchanged details regarding the claims and defenses and the
25 items Plaintiff believed were required to file a motion for class certification and complete a
26 constructive and meaningful mediation. (Yeremian Decl., ¶¶ 27-29). Plaintiff provided a
27 comprehensive listing of data and items required to which Defendants responded, including by
28 producing all relevant policy related documents. Plaintiff also used informal discovery to establish

1 that NSA operates its iStorage brand nationally. Plaintiff agreed to limit the Class members to
2 individuals who worked for NSA at iStorage locations in California (*Id.* at ¶ 29). Plaintiff’s counsel
3 and Defendants’ counsel also exchanged Class-wide data and numbers, including the total numbers
4 of Class members, work weeks, pay periods, average wage rates, etc., and Plaintiff’s expert
5 reviewed the documents and data and provided summaries and recommendations to Class Counsel.
6 (*Id.* at a ¶ 29-32). After conducting the initial investigation, Class Counsel determined Plaintiff’s
7 claims were suited for class action adjudication based on what they believed was a common course
8 of conduct affecting a similarly situated group of employees. (*Id.* at ¶¶ 33, 46-72, Exhibit A,
9 Settlement, ¶¶ B.1, B.2).

10 **C. Mediation and Settlement Efforts**

11 On **December 3, 2019**, the parties mediated this case with Jeff Ross, Esq. in Oakland,
12 California. Mr. Ross is a respected and highly experienced mediator in wage and hour class actions
13 under California law. This took place only after the parties exchanged extensive informal
14 information, documents, and data. During the mediation, the parties discussed all aspects of the
15 case, including the risks of litigation and the risks to both parties of proceeding with a motion for
16 class certification as well as the law relating to meal periods and rest breaks and rounding and off
17 the clock work. (Yeremian Decl., ¶¶ 14-15, 32). Upon completion of the mediation and
18 formulating the general details of their class-wide settlement, the parties agreed to a Memorandum
19 of Understanding setting forth the general terms, which were later memorialized in the original
20 Settlement Agreement and further modified in the Amended Settlement Agreement now before the
21 Court for preliminary approval. (*Id.* at ¶¶ 16, 32).

22 From Class Counsel’s review of the facts, strengths, and weaknesses of the case, the risks
23 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Counsel
24 believes that the recovery for each Class Member is fair and reasonable taking into consideration
25 the amounts received in other wage and hour class actions, the risks inherent in litigation of this
26 genre, and the reasonable tailoring of each Class Member’s claim to the settlement award he or she
27 will receive. (Yeremian Decl., ¶ 33). Further, and based on the settlement negotiations, which were
28 extensive and conducted in good faith and at arm’s length between attorneys with substantial

1 experience litigating wage and hour cases, the Settlement was the product of a non-collusive
2 settlement process and compromises in the interest of reaching a full and complete settlement. (*Id.*;
3 Exhibit A, Settlement, ¶¶ B.1, B.2).

4 **3. THE PROPOSED SETTLEMENT, TERMS, AND NOTICE**

5 Defendants have agreed to pay a Total Settlement Amount of **\$400,000.00** on a non-
6 reversionary basis to settle and release all claims asserted by Plaintiff and the Class. (Yeremian
7 Decl., ¶ 34; Exhibit 1, Settlement, ¶ A.33, D.2). The Settlement Agreement defines the Class as all
8 individuals who are or previously were employed by Defendants or predecessor entities as non-
9 exempt, hourly employees at Defendants’ storage facilities within the State of California during
10 the time period of **November 19, 2014** and **February 3, 2020** (the “Class Period”). (Yeremian
11 Decl., ¶ 36; Exhibit A, Settlement, ¶¶ A.3, A.5, A.7, A.8, D.2 - D.5). The “Class Participants” are
12 the Settlement Class members who do not request exclusion. (*Id.*). Defendants’ records established
13 there were **94** Settlement Class Members in the Class Period. (Yeremian Decl., ¶¶ 26, 37, 71, 93).

14 The Net Settlement Amount for the Settlement Class will constitute the total sum from
15 which Settlement Class Members will be paid. The Net Settlement Amount is the Total Settlement
16 Amount less the following: Court-approved Settlement Administration Costs (up to \$7,500.00 to
17 ILYM Group), payment to the LWDA under PAGA (i.e. \$15,000 or 75% of \$20,000), Class
18 Counsel’s Court-approved attorneys’ fees (up to one-third of the Total Settlement Amount,
19 \$133,333.34) and litigation costs and expenses (up to \$15,000.00), and any Court-approved
20 Enhancement Award, or Class Representative Service Payment (up to \$10,000.00) for the Class
21 Representative. (Yeremian Decl., ¶ 35; Exhibit A, Settlement, ¶¶ A.20, A.29, A.31, A.33, D.2 -
22 D.5). The remaining sum after all these deductions will represent the Net Settlement Amount,
23 which will be used to calculate the settlement share that each Settlement Class Member will
24 receive after the Effective Date, which is referred to as the Class Participant’s Individual
25 Settlement Payment. (*Id.* at ¶¶ A.18, D.6).

26 If the Court approves all requested allocations and awards above, the Net Settlement
27 Amount is estimated to be **\$219,166.66**. For the approximately **94** estimated Settlement Class
28 Members, the average gross individual settlement payment, using a straight average, is **\$2,331.56**.

1 (Yeremian Decl., ¶ 37). Any amounts not approved by the Court as a Class Representative Service
2 Payment, or Attorneys' Fees and Costs, or Settlement Administration costs or for the PAGA claim
3 will be added back to the Net Settlement Amount to be distributed to the Settlement Class
4 Members who are Class Participants. (*Id.* at Settlement, ¶ D.5).

5 Each Class Participant's "Individual Settlement Payment" will be based on the ratio of each
6 Class Participant's Individual Workweeks to the Total Workweeks. The Individual Settlement
7 Payment will be calculated by dividing the Class Participant's Individual Workweeks by the Total
8 Workweeks and multiplying by the Net Settlement Amount. A portion of this resulting amount
9 will be subject to tax withholdings. (Yeremian Decl., ¶ 38, Exhibit A, Settlement, ¶¶ A.18, A.19,
10 A.34; D.6). Each Individual Settlement Payment will be allocated 50% for settlement of the unpaid
11 wages claims and 50% for civil and/or statutory penalties and interest. (Yeremian Decl., ¶ 23, 39;
12 Exhibit A, Settlement, ¶ D.8). Class Counsel addresses the parties' allocation of these payments.
13 (Yeremian Decl., ¶ 23, 39). The "Effective Date" of this Agreement will be the first court day after
14 the last date by which a notice of appeal of the Judgment to the California Court of Appeals may
15 be timely filed, if none is filed, and the Settlement provides further details. (Yeremian Decl., ¶ 39;
16 Exhibit A, Settlement, ¶ A.15). The distribution of Settlement Payments to Settlement Class
17 Members will occur no later than the first regular business date that is ten court days after the
18 Effective Date (the "Settlement Proceeds Distribution Deadline"). (*Id.* at Settlement, ¶ E).

19 The checks for individual settlement payments mailed to Settlement Class Members will
20 remain negotiable for 180 days. Any settlement checks that are not claimed or not negotiated
21 within one hundred and eighty (180) calendar days after the distribution of Settlement Payments to
22 Settlement Class Members shall be void and the funds not disbursed as a result, and will instead be
23 paid to the State Controller's Office Unclaimed Property Fund to be held in the name of the Class
24 Member and in accordance with the procedures set forth in CCP §1520. (Yeremian Decl., ¶ 40,
25 Exhibit A, Settlement, ¶ E).

26 Upon final approval and as of the Effective Date, all Class Members will release
27 Defendants and the "Released Parties" from the "Released Claims," which are defined as all
28 claims, causes of action, damages, wages, benefits, expenses, premiums, penalties, debts,

1 liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or
2 remedy...which Plaintiff or any Class Participant has against the Released Parties or any of them
3 for any acts occurring during the Class Period which are based on, arise out of, relate to, or are
4 covered by any of the facts, or any of the factual allegations, in the Action, ..." (Yeremian Decl., ¶
5 41-42; Exhibit A, Settlement, ¶¶ A.27(a)-(b), A.28; D.9). The Settlement and Notice provide
6 further details on the release, and Plaintiff will provide a general release and a Section 1542 waiver
7 specific to all his claims rather than just those articulated in the pleadings. (*Id.* at ¶ D.4, D.4(a)-(c)).

8 The parties have selected ILY Group, Inc. ("ILYM") as the Settlement Claims
9 Administrator. (Yeremian Decl., ¶ 26, 37, 77; Exhibit A, Settlement, ¶¶ A.30, A.31, A.33; C.3,
10 C.4; Exhibit 1 thereto, Class Notice; Exhibit C hereto for ILYM qualifications). Based on a quote
11 from ILYM, the Settlement Agreement budgets up to \$7,500.00 for its services. (*Id.*). Notice of
12 the Settlement will be provided by the Administrator to the Settlement Class in the form of the
13 Amended Class Notice attached to the Amended Settlement Agreement as Exhibit 1. (Yeremian
14 Decl., ¶¶ 43, 78; Exhibit A, ¶¶ A.6, A.21; C.4, C.5; and Settlement Class Notice at Exhibit 1
15 thereto). The Class Notice includes a summary of the case and settlement terms and provides
16 Class Members with instructions on how to exclude themselves, dispute their workweeks, and
17 object to the settlement, and addresses the deadlines and procedures for doing so. (Yeremian
18 Decl., ¶¶ 43-45; Exhibit A, Settlement, Exhibit 1 thereto, Class Notice). Class Counsel has
19 addressed the Court's inquiries to recommend that translation of the Notice from English should
20 not be required and providing notice by mail and web-site are more reliable and effective than
21 providing it by e-mail. (Yeremian Decl. ¶¶ 77-79). ILYM is well-qualified to serve as the
22 Settlement Administrator, as further addressed by counsel. (Yeremian Decl., ¶¶ 23, 37, 45, 77, and
23 Exhibit C thereto).

24 **4. THE THREE-STEP APPROVAL PROCESS**

25 California Rule of Court 3.769 requires court approval of the settlement of class action
26 lawsuits. Preliminary approval is merely the first of three steps that comprise the approval
27 procedure for settlements of class actions. *See* Manual for Complex Litigation, Second §30.44
28 (1993); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is

1 dissemination of notice of the settlement to all Class Members. *Id.* The third step is a final
2 settlement approval hearing, at which evidence and argument concerning the fairness, adequacy,
3 and reasonableness of the settlement may be presented and Class Members may be heard. *Id.*

4 The determinations of whether a settlement should be preliminarily approved requires,
5 “basic information about the nature and magnitude of the claims in question and the basis for
6 concluding that the consideration being paid for the release of those claims represents a reasonable
7 compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 133 (2008). However, the
8 record need not contain an explicit statement of the maximum theoretical amount that the class
9 could recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399,
10 409 (2010) (“*Kullar* does not, ... require any such explicit statement of value; it requires a record
11 which allows “an understanding of the amount that is in controversy and the realistic range of
12 outcomes of the litigation.”). Nonetheless, Class Counsel and Plaintiff’s expert performed a
13 potential liability exposure analysis in advance of mediation, which the parties addressed in detail
14 with the mediator. (Yeremian Decl., ¶¶ 16-17, 24-32, 46-72). “If the proposed settlement appears
15 to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies,
16 does not improperly grant preferential treatment to class representatives or segments of the class,
17 and falls within the range of possible approval, then the court should direct that notice be given to
18 the class members of a formal fairness hearing, at which evidence may be presented in support of
19 and in opposition to the settlement.” *Manual for Complex Litigation*, Second § 30.44, at 229.

20 In deciding whether to approve a proposed class action settlement under California Code
21 of Civil Procedure § 382 and the California Rules of Court, the Court must find that a proposed
22 settlement is “fair, adequate, and reasonable” and falls within the “range of approval.” *Dunk*, 48
23 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as “the strength of
24 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
25 maintaining class action status through trial, the amount offered in settlement, the extent of
26 discovery completed and the stage of the proceedings, the experience and views of counsel, the
27 presence of a governmental participant, and the reaction of the class members to the proposed
28 settlement.” *Id.* The instant settlement satisfies all of these requirements.

1 **5. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR APPROVAL**

2 The Court’s decision to preliminarily approve a settlement is granted great deference, as an
3 exercise within its broad discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-
4 235 (2001). Applying the above factors, the proposed settlement provides a substantial benefit to
5 the Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

6 **A. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations**

7 The proposed settlement was reached as a result of arm’s length negotiations after the
8 completion of substantial discovery and the exchange of necessary class data. (Yeremian Decl., ¶¶
9 16-17, 24-32). The negotiations have been, at all times, adversarial and non-collusive in nature.
10 *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over
11 litigation, “a court will presume that a proposed class action settlement is fair when certain factors
12 are present, particularly evidence that the settlement is the product of arms-length negotiation,
13 untainted by collusion.”). While Plaintiff believes in the merits of his case, he and counsel also
14 recognized the inherent risks of litigation and understood the benefit of the Settlement Class
15 receiving funds immediately, as opposed to risking an unfavorable decision on class certification,
16 or then at trial and appeal, that would take several more years to litigate. (Yeremian Decl., ¶¶ 24,
17 27, 32-33, 43, 46-70, 73-76). Assistance from a well-respected mediator ensured negotiations were
18 non-collusive and well-informed.

19 **B. The Parties Engaged In Extensive Discovery and Investigation**

20 As discussed above, the parties engaged in substantial informal discovery before the
21 Settlement was reached to allow them to fully evaluate the class claims and Defendants’ defenses.
22 (Yeremian Decl., ¶¶ 16-17, 24-32, 76). This litigation has reached the stage where the parties have
23 a clear view of the strengths and weaknesses of their cases sufficient to support the settlement.

24 **C. Class Counsel Are Experienced Class Action and Employment Attorneys**

25 Experienced counsel, operating at arm’s length, have weighed the strengths of the case
26 and examined all the issues and risks of litigation and endorse the proposed settlement. Class
27 Counsel are experienced in class actions, have represented their clients zealously, and have no
28 conflicts of interest. (Yeremian Decl., ¶¶ 3-9, 84, 97; Declaration of Alvin Lindsay (“Lindsay

1 Decl.”) filed concurrently herewith, ¶¶ 3-12). Class counsel submits the Settlement is fair,
2 adequate and reasonable in view of the risks and other considerations addressed, and is well-
3 suited for final approval upon completion of the administration process. (Yeremian Decl., ¶¶ 28,
4 37, 71-74, 78-82; Settlement, ¶¶ B.1, B.2; Lindsay Decl., ¶ 12). Class counsel also requests the
5 Court’s understanding and patience with the timing of this process and its failure to provide
6 Notice of the Court’s original ruling and Order as instructed. (Yeremian Decl., ¶¶ 19, 82-84;
7 Lindsay Decl., ¶¶ 9, 13).

8 **D. The Presence of a Governmental Participant**

9 Class Counsel will be submitting the Settlement Agreement to the LWDA concurrently
10 with the filing of this motion pursuant to Labor Code § 2699(1)(2). (Yeremian Decl., ¶ 18). The
11 Court will be provided with confirmation of the submission at final approval or before the
12 preliminary approval motion hearing if the Court prefers.

13 **E. The Strength of Plaintiff’s Case and the Risks and Cost of Further Litigation.**

14 As with all litigation, there was risk that Plaintiff would not prevail on the merits of his
15 class claims. (Yeremian Decl., ¶¶ 24, 27, 32-33, 43, 46-70, 73-76). Class counsel has addressed
16 the strengths of each of the main class claims, Defendants’ arguments against liability, and the
17 estimated potential liability exposure Defendants faced on each. (Yeremian Decl., ¶¶ 46-72). For
18 example, Plaintiff contends he and the other class members were not properly provided meal and
19 rest periods. (Yeremian Decl., ¶¶ 50-56). Defendants contend that Plaintiff and other class
20 members were provided with the opportunity to take proper meal and rest periods, on-duty breaks
21 were not required, and its policies were lawful, and the lack of records for rest periods created
22 individualized issues. (*Id.* at ¶ 53; *see also, Brinker Restaurant Corp. v. Superior Court* (2012) 53
23 Cal. 4th 1004, 1028-29).

24 Plaintiff also alleged he was not paid for all hours worked, including overtime pay, due to
25 Defendants’ policy and practice of requiring off the clock work and miscalculating overtime.
26 (Yeremian Decl., ¶¶ 48-49). Defendants again argued these claims were not suitable for class
27 treatment, they did not require off the clock work, and they did not miscalculate overtime or the
28 regular rate. (*Id.*). If Defendants prevailed, there would be no recovery.

1 There were also risks in proving liability for failure to provide accurate wage statements
2 under Labor Code § 226 and failure to pay all wages at termination under Labor Code § 203.
3 (Yeremian Decl., ¶¶ 57-63). These derivative claims require that the underlying claims be proven
4 first, and there are conflicting interpretations as to whether alleged meal and rest claims can even
5 provide the predicate violations for inaccurate wage statement and waiting time penalties claims.¹

6 Defendants also disputed liability for the underlying wage and meal and rest claims, and
7 penalties under Labor Code § 203 are available only if “an employer willfully fails to pay...any
8 wages of an employee who is discharged or quits...” With these penalties, there is always the risk
9 that the trier of fact will not find Defendants’ actions willful. There was also risk associated with
10 the PAGA claim given the Court’s discretion to award a lesser amount. *See*, Labor Code §
11 2699(e)(2). Plaintiff’s counsel addresses these risks. (Yeremian Decl., ¶¶ 62-67, 69-72).

12 While Plaintiff believes and continues to believe this is a strong case for certification,
13 there is risk and significant expense associated with class certification proceedings. As set forth
14 above, Defendants disputed liability and the anticipated class certification motion, arguing
15 significant legal uncertainties are associated with wage and hour cases, which can be factually
16 complex and require protracted litigation to resolve. Plaintiff alleges there were company-wide
17 policies that affected the employees uniformly, and which could be established using
18 representative testimony and company documents that would not require separate mini-trials on
19 liability, but Defendants vigorously contested liability and would have presented several
20 significant defenses to the wage claims as well as to class certification. (Yeremian Decl., ¶¶ 24,
21 27, 46-70, 72, 73-76; Exhibit A, Settlement, ¶¶ B.1, B.2, B.3).

22 Finally, in class actions, decertification is always a possibility, and there is always a risk
23 that a trial of this magnitude can become unmanageable. (Yeremian Decl., ¶¶ 22, 75, 100, 103).
24 Cases like *Duran v. U.S. Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) address the complexity of
25 using statistical samples in class actions, and decertification is a real risk that Class Counsel must

26
27 ¹ *See, Stewart v. San Luis Ambulance, Inc.*, 878 F.3d 883, 887-888 (9th Cir. 2017) (recognizing
28 that the *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094 (2007) “Court characterized
the extra hours paid for meal period violations as a ‘premium wage’ rather than a penalty,” but, in
Kirby v. Immoos Fire Protection, Inc., 53 Cal. 4th 1244-1167–68 (2012), “the Court held that a
meal-period violation is not tied to the nonpayment of wages.”).

1 take into account. (Yeremian Decl., ¶ 75). A class trial would have also required expert witnesses,
2 the accrual of extensive litigation costs, and commitment of extensive further time and financial
3 resources. Finally, given the complexity and unsettled nature of the issues, it is likely that any
4 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
5 further delay for the class members who have already waited years for resolution in this matter.
6 (*Id.* at ¶ 76). Risk and legal uncertainty must be dealt with in any litigation, and this Settlement
7 was the product of compromise accounting for those risks and that uncertainty.

8 **F. The Amount Offered in Settlement and Method of Allocation are Fair**

9 In light of the uncertainties and risks of certification and litigation, the parties agreed to a
10 compromise settlement of **\$400,000.00**. Plaintiff estimated the total liability exposure that
11 Defendants could face on the main class claims and related penalties to be **\$1,213,981.26**.
12 (Yeremian Decl., ¶¶ 71-72). Under the Settlement, each of the approximately **94** Class Members
13 will receive on average payment of **\$2,331.56**, and the Maximum Settlement Amount of
14 **\$400,000.00** represents a recovery for the Class members of **32.95%** of the total maximum
15 liability exposure Plaintiff estimated. (*Id.* at ¶¶ 37, 71-72). Any amounts not approved by the
16 Court will be added back to the Net Settlement Amount to be distributed to the Settlement Class
17 Members who do not opt-out. (Yeremian Decl., ¶ 37, Exhibit A, Settlement, ¶ D.5).

18 Plaintiff and Class counsel submit this is an excellent result and the Settlement is fair,
19 reasonable, and certainly advantageous to the Class. (Yeremian Decl., ¶¶ 24, 26, 27, 32, 41, 46,
20 64-66, 70, 74, 95-97). Each Settlement Class Member will be compensated using a formula based
21 on the total number of workweeks he/she held a non-exempt position with Defendants during the
22 Class Period. (Yeremian Decl., ¶ 38, Exhibit A, Settlement, ¶¶ A.18, A.19, A.34; D.6). Basing the
23 size of the award on Settlement Class Members' work weeks during the Class Period ensures that
24 those with more valuable potential claims receive more money. All Settlement Class Members
25 will enjoy benefits under the same formula, and none are singled out for special treatment, save
26 for Plaintiff's requested representative enhancement award and Service Payment. (Yeremian
27 Decl., ¶¶ 86-91).

28

1 **G. A Balance of Risk Factors and Kullar Analysis Support Approval**

2 In deciding whether to approve the settlement, the Court must balance these risk factors
3 against an “understanding of the amount in controversy and the realistic range of outcomes of the
4 litigation.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI*
5 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court “must stop
6 short of the detailed and thorough investigation that it would undertake if it were actually trying
7 the case” *Munoz*, at 408. Plaintiff’s counsel used the comprehensive data and documents
8 provided to perform an analysis of the potential liability exposure Defendants faced on Plaintiff’s
9 main class-wide claims, establishing the realistic upper range of the outcome here. (Yeremian
10 Decl., ¶¶ 14-16, 24-32, 46-72, 74). As noted above, the Gross Settlement Amount represents a
11 recovery of approximately **33%** of the total maximum liability exposure Plaintiff estimated.
12 (Yeremian Decl., ¶¶ 37, 71-72). With an estimated average payment of over \$2,300.00 to the Class
13 members, the Settlement is fair and reasonable and worthy of preliminary approval.

14 The fact remains there was a very real prospect that nothing would be recovered if
15 litigation continued and class certification was ultimately denied. At the same time, further
16 litigation would require the expenditure of significant time and financial resources, and there is
17 always the possibility of adverse developments in the law and the likelihood of extended battles in
18 both the trial court and the courts of appeal. Settlement is a prudent compromise that benefits the
19 Class Members promptly and eliminates such concern.

20 **6. THE NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS**

21 To be deemed proper, a Notice must provide the class members with sufficient information
22 to make an informed decision as to whether to accept or object to the settlement. *Mullane v.*
23 *Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. The notice must apprise the class
24 members of the pendency of the action; reasonably convey information regarding the settlement
25 and the class members’ rights, entitlements, and obligations; and afford class members the
26 opportunity to present their objections. *Id.* The Notice (at Yeremian Decl., Exhibit A, Settlement,
27 Exhibit 1 thereto) provides all the information a reasonable person would need to make a fully
28 informed decision about the settlement. It will notify all Class members of the terms of the

1 settlement, of its effect on their rights, of their options as Class members (i.e., participate, object,
2 opt out, and dispute work weeks), and of procedures for exercising those options. (Yeremian
3 Decl., ¶¶ 43-45, 77-79; Exhibit A, Settlement, ¶¶ A.6, A.21; C.4, C.5; and Settlement Class Notice
4 at Exhibit 1 thereto). The Notice also directs Class members who have questions or concerns to
5 contact the settlement administrator or Class Counsel. (*Id.* at ¶ 37, 78).

6 The standard for determining the adequacy of notice is whether it has “a reasonable chance
7 of reaching a substantial percentage of the class members.” *Cartt v. Superior Court* (1975) 50
8 Cal.App.3d 960, 974. Here, the Notice Packet will be sent via first-class mail to each of the 89
9 Class member to their addresses from Defendants’ records. (Yeremian Decl., ¶ 77; Exhibit A,
10 Settlement, ¶ C.5). If any Notice Packets are returned undeliverable without a forwarding address,
11 the Claims Administrator will use the national change of address database and perform a skip trace
12 to locate the Class member and mail a new Notice to the correct address. (*Id.*). Class Counsel
13 responds to the Court’s inquiries to recommend that a translation of the notice should not be
14 necessary, Notice need not be posted at the storage facilities, and mailing and posting on the case
15 web-site is more practical and efficient than sending to e-mail addresses. (Yeremian Decl., ¶¶ 78-
16 79). The Amended Class Notice (at Settlement, Exhibit 1) should be approved as the best and
17 most practicable way to ensure the greatest possible number of Class members will receive notice.

18 **7. CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE**

19 “At the conclusion of a class action, the class representatives are eligible for a special
20 payment in recognition of their service to the class.” 5 Newberg on Class Actions § 17:1 (5th ed.).
21 Plaintiff requests an award at final approval of a reasonable service award as an enhancement
22 payment for his effort and initiative in bringing and helping to prosecute this class action. Plaintiff
23 has dedicated significant time and effort to these proceedings. (Yeremian Decl., ¶¶ 86-91).
24 Plaintiff’s courage in proceeding with his class-wide claims should not be underestimated. By
25 suing Defendants, Plaintiff contends he increased his risk of retaliation by prospective employers,
26 who must choose between an applicant who has never sued a prior employer and one who has.
27 (Yeremian Decl., ¶ 88). Plaintiff contends this risk is particularly real in the information age,
28 where employers can perform background checks of prospective employees, sometimes with the

1 stroke of a key. (*Id.*; *see also* Declaration of Diego Ornelas (“Ornelas Decl.”), ¶¶ 12-13).

2 Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively
3 develop and prosecute this action at every stage of the litigation. (Yeremian Decl., ¶¶ 86-91;
4 Ornelas Decl., ¶¶ 9-11, 14). Both before and after filing, Plaintiff conferred with Class Counsel to
5 discuss every aspect of this case. He provided Class Counsel with information about Defendants
6 and the industry, reviewed documents, identified witnesses, consulted Class Counsel throughout
7 the litigation, helped complete discovery, has spoken with Class Members, and participated in the
8 mediation process and signed the settlement agreement after several conferences with Class
9 Counsel. (*Id.*)

10 Plaintiff has spent a significant amount of time with Class Counsel detailing his knowledge
11 of Defendants’ practices. He has diligently, adequately, and fairly represented the Class members,
12 and has not placed his interests above any member of the putative Class. (Ornelas Decl., ¶¶ 9-10).
13 This sort of payment to a Class representative is a common feature of settlements negotiated by
14 Class Counsel and has been routinely approved by trial courts. The representative enhancement
15 award in the amount of \$10,000.00 to the Class Representative is fair and reasonable. (Yeremian
16 Decl., ¶¶ 86-91; Exhibit A, Settlement, ¶ D.4). Plaintiff respectfully requests that the Court
17 preliminarily approve him to serve as the Class Representative and award his enhancement and
18 service award at final approval in the amount of \$10,000.00. Plaintiff’s concurrently filed
19 Declaration provides further support for preliminary and final approval. (Ornelas Decl., ¶¶ 2-17).

20 **8. THE REQUESTED ATTORNEYS’ FEES AND COSTS ARE REASONABLE**

21 Class Counsel respectfully requests, without opposition from Defendants, an award of
22 attorneys’ fees incurred in connection with the prosecution of this action not to exceed one-third
23 (1/3) of the Total Settlement Amount (i.e. up to \$133,333.34), and an award of reasonable costs
24 and expenses not to exceed \$15,000.00, subject to approval by the Court. (Yeremian Decl., ¶¶ 81-
25 85; Exhibit A, Settlement, ¶ D.5).

26 Class counsel submits it has the requisite experience, knowledge, and resources to serve as
27 Class counsel and to zealously represent the Class. (Yeremian Decl., ¶¶ 3-9, 84, 97; Lindsay Decl.,
28 ¶¶ 3-12). Plaintiff’s counsel has incurred substantial fees and costs thus far in the litigation, and

1 will provide further details regarding hourly rates, lodestar, and hours, and will document
2 expenses incurred, in support of final approval and its fees and costs motion. (Yeremian Decl., ¶
3 84). Plaintiff therefore respectfully requests that Plaintiff’s counsel be approved to serve as Class
4 counsel for Settlement purposes and that the Court approve the requested fees and costs
5 allocations in full at final approval.

6 **9. PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

7 Certification is appropriate when the moving party has demonstrated the existence of an
8 ascertainable class and a well-defined community of interest among the class. *See, e.g., Brinker*
9 *Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021. Defendants do not dispute, for
10 settlement purposes only, that all of the elements for class certification are met here. Defendants
11 do not concede that certification is appropriate outside of this Settlement and preserve all rights to
12 oppose certification if, for any reason, the settlement does not become effective. (Yeremian Decl.,
13 ¶ 92, Exhibit A, Settlement Agreement, ¶¶ B.3, C.2).

14 **A. There Is A Numerous and Ascertainable Class**

15 Whether a class is ascertainable is determined by examining the class definition, the size of
16 the class and the means available for identifying class members. *See, Vasquez v. Superior Court*
17 (1971) 4 Cal. 3d 800, 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.
18 App. 3d 1263, 1271. Defendants do not dispute, for settlement purposes, that at least 94 Class
19 Members are ascertainable and sufficiently numerous. (Yeremian Decl., ¶¶ 93-94).

20 **B. There Is a Well-Defined Community of Interest**

21 A community of interest is established by predominant common issues of law and fact. *See*
22 *Vasquez*, 4 Cal. 3d at 811. It “does not depend upon an identical recovery,...The mere fact that
23 separate transactions are involved does not of itself preclude a finding of the requisite community
24 of interest so long as every member of the alleged class would not be required to litigate numerous
25 and substantial questions to determine his individual right to recover...” *Id.* at 809.

26 Plaintiff contends, and Defendants do not dispute for settlement purposes, that common
27 issues of fact and law predominate as to each of the claims alleged by Plaintiff. (Yeremian Decl.,
28 ¶¶ 99-100). California courts show “no hesitancy” in inferring class-wide causation, injury, and

1 damages when a common course of action has been shown. *B.W.I. Custom Kitchens v. Owens-*
2 *Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1350. This inference “‘eliminates the need for each
3 class member to prove individually the consequences of the defendants’ actions to him or her.’”
4 *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753).

5 This action involves, *inter alia*, a determination about Defendants’ alleged failure to
6 provide meal and rest periods, failure to pay wages and overtime due to allegedly common and
7 unlawful rounding and off the clock work policies, the resulting failure to pay final wages when
8 required, the failure to provide accurate paystubs, and largely derivative claims under the UCL and
9 PAGA. (Yeremian Decl., ¶¶ 19-23, 46-70). Plaintiff contends these practices affected class
10 members in the same way and present questions that are suitable for common adjudication because
11 all Class members were subject to the same employment policies and practices, which applied
12 uniformly to all Class members. The outcome of litigation on this matter depends upon questions
13 that are common to Class members. (Yeremian Decl., ¶¶ 99-100). While Defendants maintained
14 otherwise, these issues will not be decided on the basis of facts peculiar to each Class member, but
15 rather on facts common to them all, and liability can be determined on a class-wide basis. (*Id.*)

16 **C. The Named Plaintiff’s Claims Are Typical**

17 A class representative’s claims are typical when they arise from the same event, practice,
18 or course of conduct that gives rise to the claims of other putative class members, and if their
19 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
20 necessarily identical to the claims of other class members. It is sufficient that the representative is
21 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
22 *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
23 (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the law in California that the class
24 representative must have identical interests with the class members.”). Thus it is not necessary that
25 the class representative should have personally incurred all of the damages suffered by each of the
26 other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

27 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
28 Plaintiff’s claims are typical of class members’ claims because they arose from the same factual

1 basis and are based on the same legal theories. (Yeremian Decl., ¶¶ 95-96).

2 **D. Adequacy of Class Counsel and Class Representatives**

3 Class Counsel are experienced in class actions, have represented their clients zealously and
4 have no conflicts of interest. (Yeremian Decl., ¶¶ 3-9, 79-82, 95-96; Lindsay Decl., ¶¶ 3-12). The
5 Class Representative's interests are aligned with those of the Class Members, he has suffered the
6 same injuries, and has no conflicts of interest. (Yeremian Decl., ¶¶ 86-91, 97-98). Class Counsel
7 and the Class Representative are adequate.

8 **E. Predominance and Superiority**

9 Individual issues do not predominate over those common to the class, as addressed above.
10 (Yeremian Decl., ¶¶ 99-100). Additionally, class proceedings are superior to individualized
11 actions, as there is little interest or incentive for Class members to individually control the
12 prosecution of separate actions. If Class members are forced to litigate their claims individually, it
13 would result in 89 individual actions against Defendants, and the cost of individually litigating
14 each such case against Defendants would easily exceed the value of any relief that could be
15 obtained. (Yeremian Decl., ¶¶ 101-103). Class proceedings are superior to individual ones.

16 **10. CONCLUSION**

17 For all of the foregoing reasons Plaintiff respectfully requests that this Court grant
18 preliminary approval; provisionally certify the proposed Class for settlement purposes; approve
19 Plaintiff as the Class Representative and his counsel as Class Counsel; approve the proposed form
20 of the Class Notice and plan for administration; approve ILYM Group, Inc. to serve as the
21 Settlement Administrator; and schedule the final settlement approval hearing by entering the
22 concurrently provided [Proposed] Order to that end.

24 DATED: April 21, 2021

DAVID YEREMIAN & ASSOCIATES, INC.

25 By 

26 David Yeremian
27 Alvin B. Lindsay
28 Attorneys for Plaintiff Diego Ornelas
and the Settlement Class