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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

ROCHELLE ANTHONY, an individual, on
behalf of herself and others similarly situated,

PLAINTIFF,

v.

CITIZEN WATCH COMPANY OF
AMERICA, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 20STCV00171

[Case Assigned for All Purposes to Hon. Maren
E. Nelson in Dept. SSC-17]

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Ari J. Stiller, Rochelle Anthony, Travenia
Morris, Evelin Reyes, Proposed Order, and
Judgment]*

Date: September 28, 2021

Time: 9:00 a.m.

Dept.: 17

Complaint Filed:	January 3, 2020
FAC Filed:	March 9, 2020
SAC Filed:	January 26, 2021
Trial Date:	None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 28, 2021, at 9:00 a.m. in Department 17 of the above-entitled court, Plaintiffs Rochelle Anthony and Travenia Morris ("Plaintiffs") will, and hereby does, move the Court for an Order of Final Approval of Class Action Settlement in this case. Plaintiffs move the Court for an order:

1. Granting final approval of the settlement in the case pursuant to the Settlement Agreement and Release of Claims ("Settlement Agreement"), a copy of which is attached to the concurrently filed Declaration of Ari J. Stiller as Exhibit "A";

2. Affirming Kingsley & Kingsley, APC as Class Counsel;

3. Affirming Rochelle Anthony and Travenia Morris as Plaintiffs and awarding an enhancement award of \$10,000 (\$5,000 for each Plaintiff);

4. Awarding ILYM Group, Inc. claims administration fees of \$5,234.00 for its services as Settlement Administrator; and,

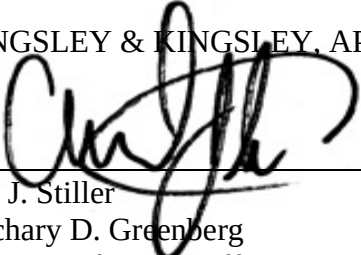
5. Entering judgment.

This Motion will be made pursuant to Code of Civil Procedure section 382 and California Rule of Court, rule 3.769 on the grounds that the proposed Settlement Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members and the parties.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Ari J. Stiller, Rochelle Anthony, Travenia Morris, Evelin Reyes of ILYM Group, Inc., all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: August 31, 2021

KINGSLEY & KINGSLEY, APC

By: 

Ari J. Stiller

Zachary D. Greenberg

Attorneys for Plaintiffs and the Proposed Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Rochelle Anthony and Travenia Morris (“Plaintiffs”) submit this Motion for
4 Final Approval of Class Action Settlement and request that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Settlement
6 Agreement and Release of Claims (“Settlement Agreement”), a copy of which is attached to the
7 concurrently filed Declaration of Ari J. Stiller (“Stiller Dec.”) as Exhibit “A”;

8 2. Award attorneys’ fees and costs as detailed in the concurrently filed Motion for
9 Attorneys’ Fees and Costs;

10 3. Award ILYM Group, Inc. claims administration fees of \$5,234.00 for its services
11 as Settlement Administrator;

12 4. Affirm named Plaintiffs Rochelle Anthony and Travenia Morris as Plaintiffs and
13 award a cumulative Plaintiffs’ Incentive Award of \$10,000 (\$5,000 for each Plaintiff); and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

16 **A. Litigation Overview and Procedural History**

17 Plaintiffs allege that they worked as shipping clerks at Defendant’s warehouse in Torrance,
18 California, where their job duties included packing and processing orders for watches, toys, and
19 other items. (Stiller Decl., ¶ 4) Plaintiffs allege that Defendant paid them and other clerks a shift
20 differential (typically an extra \$1.25 per hour) as an incentive for working undesirable shifts, but
21 that Defendant failed to blend the shift differential into their “regular rate of pay” when they
22 worked overtime or earned meal period premiums in the same pay periods as a shift differential.
23 (Stiller Decl., ¶ 8.)

24 On or about January 3, 2020, Plaintiff Rochelle Anthony (“Plaintiff Anthony”) filed her
25 Class Action Complaint (“CAC”) alleging unpaid wages and overtime, failure to provide meal
26 periods, wage statement violations, and waiting time penalties. (Stiller Decl., ¶ 9.) Plaintiff
27 Anthony added a claim under the Private Attorney’s General Act (“PAGA”), Labor Code § 2699
28 *et seq.* by way of a First Amended Class and Representative Action Complaint (“FAC”) filed on

1 March 9, 2020. (*Id.*) During the course of litigation, Plaintiffs’ counsel was retained by another
2 former employee of Defendant, Travenia Morris (“Plaintiff Morris”), and Plaintiffs’ counsel filed
3 a Second Amended Class and Representative Action Complaint (“SAC”) on January 26, 2021, to
4 add Plaintiff Morris as an additional class representative. (Stiller Decl., ¶ 11.)

5 With the assistance of mediator David Phillips, Esq., the Parties reached an agreement in
6 principle to settle the matter after a full day’s mediation on October 27, 2020. (Stiller Decl., ¶ 12.)
7 The Parties then signed a final long-form Settlement Agreement intended to resolve all claims.
8 (Stiller Decl., ¶ 13.)

9 B. The Discovery Process

10 After the Court lifted the discovery stay for mediation purposes on August 11, 2020, the
11 parties engaged in informal discovery. Defendant produced documents and provided other
12 information necessary to evaluate settlement, including Plaintiff Anthony’s personnel file and time
13 and pay records, relevant policy documents, a statement of the number of California employees
14 who received overtime or meal/rest premiums in the same pay period as shift differential during
15 the class and PAGA periods, and the complete payroll for the liability period for pay periods where
16 the class earned shift differential and overtime or other premium pay. (Stiller Decl., ¶ 14.) Plaintiffs
17 also produced dozens of paystubs and other employment documents to Defendant, including those
18 that they believe form the basis for their claims. (Stiller Decl., ¶ 15.)

19 Careful review and analysis of this discovery confirmed Plaintiffs’ Counsel’s belief that
20 the proposed settlement is adequate, fair, reasonable, and appropriate for Court approval. (Stiller
21 Decl., ¶ 16.) Defendant denies any liability or wrongdoing. However, based on their own
22 independent investigation and evaluation, Plaintiffs’ Counsel believes the Settlement Agreement
23 is fair and reasonable in light of all known facts and circumstances, including the risk of significant
24 delay, defenses asserted by Defendant, uncertainties regarding a class and representative action
25 trial on the merits, and potential appellate issues. (*Id.*)

26 C. Preliminary Approval

27 In response to the Court’s “checklist” order, the Parties executed a revised settlement
28 agreement on or around March 15, 2021, and submitted the revised agreement to the Court along

with supplemental briefing on March 18, 2021. (Stiller Decl., ¶ 18.) On April 16, 2021, the Court issued an Order preliminarily approving the settlement, approving the proposed Notice, ordering that the Settlement Administrator send notice to the Settlement Class, and setting a date for the Final Approval and Fairness Hearing. (Stiller Decl., ¶ 19.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

For purposes of settlement, the Settlement Class is defined as: “any and all nonexempt California employees of Defendant who received overtime pay or a meal or rest break premium in the same pay period in which they received a shift differential during the Class Period [January 3, 2016 to December 27, 2020].” (Stiller Decl., ¶¶ 5-7; Ex. “A” [Settlement Agreement] at § I, ¶¶ D, JJ.) The PAGA Members are separately defined as “any and all nonexempt California employees of Defendant who received overtime pay or a meal or rest break premium in the same pay period in which they received a shift differential during the PAGA Period [January 3, 2019 through December 27, 2020].” (Ex. “A”, § I, ¶¶ S, U.) The final Settlement Class contains 64 individuals and the PAGA Members group consists of 54 individuals. (Declaration of Evelin Reyes (“Reyes Decl.”), ¶¶ 13–14.)

B. Settlement Payments

As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to pay Settlement Proceeds of \$130,000.00, which includes the Settlement Payments to Participating Class Members, Plaintiffs’ service awards, Class Counsel fees and litigation costs, the PAGA Payment, and the Settlement Administration Costs. (Stiller Decl., ¶ 20; Ex. “A” at § III, ¶ A(1).) Plaintiffs now request final approval of the allocation of the Settlement Proceeds to determine the Net Settlement Amount for distribution to the Settlement Class as follows:

Settlement Proceeds:	\$	130,000.00
Plaintiffs’ Incentive Awards:	\$	10,000.00 (\$5,000 for each Plaintiff)
Class Counsel’s Fees:	\$	43,333.33
Class Counsel’s Costs:	\$	9,250.00
PAGA Payment:	\$	7,500.00
<u>Settlement Administrator Costs:</u>	<u>\$</u>	<u>5,234.00</u>
Net Settlement Amount	\$	54,682.67

(Stiller Decl., ¶ 21; Ex. A at § III, ¶ A.)

C. Individual Settlement Payments

The Settlement Payment amount of each Participating Class Member is an individualized amount based on the number of Pay Periods worked by the Participating Class Member during the Class Period where the class member worked overtime and earned shift differential. (Stiller Decl., ¶ 22; Ex. “A” at § III, ¶ C; *see also* Ex. “A” to the Settlement Agreement [Class Notice].) Specifically, Settlement Payments will be paid from the Net Settlement Amount as follows: (1) First, Defendant will use its payroll records to calculate the total number of Pay Periods worked by each Participating Class Member during the Class Period; (2) Second, the total of these Pay Periods for each Participating Class Member will then be divided by the total of these Pay Periods by all Participating Class Members to create a “Final Percentage” for each Participating Class Member; (3) Third, that Final Percentage for each Participating Class Member will then be multiplied by the Net Settlement Amount to determine the Participating Class Member’s pro rata recovery under this Settlement. (Stiller Decl., ¶ 23; Ex. “A” at § III, ¶ C(2)-(4); *see also* Ex. “A” to the Settlement Agreement.) The Settlement Agreement provides for a dispute process regarding Settlement Payments. (Stiller Decl., ¶ 24; *See* Ex. “A” at § III, ¶ F.) Based on these calculations, the average potential recovery is \$854.42 per Settlement Class Member. (Reyes Decl., ¶ 14.) For purposes of this Settlement, the Parties have allocated \$7,500.00 to PAGA in recognition that potential PAGA penalties are relatively small compared to the class damages. They agree that \$5,625.00 (75% of the PAGA Payment) represents the amount to be paid to the Labor and Workforce Development Agency (“LWDA”) and \$1,875.00 (25% of the PAGA Payment) represents the amount distributed among the PAGA Members. (Stiller Decl., ¶ 25; Ex. “A” at § III, ¶ C(2).) There are 54 PAGA Members, each of whom is also a class member. (Reyes Decl., ¶ 14.) There are 265 pay periods in the PAGA Period. (Reyes Decl., ¶ 14.) Each PAGA Member will receive an average PAGA payment of \$34.72 with an estimated highest gross payment of \$63.68, in addition to their class distribution. (Reyes Decl., ¶ 14.)

D. Class Notice

The Court approved the proposed Notice and directed the mailing of the Notice by first-

1 class mail to Settlement Class Members in accordance with the proposed implementation schedule.
2 (Stiller Decl., ¶ 38.) The procedures for giving notice to the Settlement Class Members, as set
3 forth in the Settlement Agreement and Plaintiffs’ Motion for Preliminary Approval and approved
4 by the Court, have been fully and properly carried out. (Reyes Decl., ¶ 7.)

5 To date, ILYM Group, Inc. received zero (0) requests to be excluded (“opt-outs”) from the
6 proposed Settlement Agreement and zero (0) objections. (Reyes Decl., ¶¶ 11-12.)

7 E. Check Mailed Settlement – No Reversion

8 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
9 without the possibility of reversion of settlement funds to Defendant. Under the Settlement
10 Agreement, every Settlement Class Member will receive a settlement check and Settlement Class
11 Members do not need to submit a claim in order to receive a settlement check. Any funds that
12 remain uncashed after 180 days shall be turned over by the Settlement Administrator, with
13 information for each Settlement Class Member who failed to timely cash his/her settlement check,
14 to Bet Tzedek Legal Services. (Ex. “A” at § III, ¶ L(3).)

15 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

16 Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be
17 dismissed or compromised without the approval of the court, and notice of the proposed dismissal
18 or compromise shall be given to all members of the Class in such manner as the court directs”
19 In deciding whether to grant final approval to a proposed class action settlement under Code of
20 Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair,
21 adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

22 A. The Settlement is Entitled to a Presumption of Fairness

23 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
24 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
25 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
26 small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case
27 meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

28 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and

1 arm's-length negotiations overseen by an experienced mediator. All settlement discussions were
2 made by experienced and informed counsel, who believe that this settlement represents a favorable
3 resolution for the Settlement Class Members. (Stiller Decl., ¶ 42.) The settlement negotiations
4 have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-
5 dealing or other type of misconduct by either side has taken place. (Stiller Decl., ¶ 43.)

6 Second, the Parties engaged in extensive informal discovery that permitted Class Counsel
7 to fairly evaluate the strength of the case and the risks associated with ongoing litigation. In
8 addition, Defendant produced additional data and documents informally for purposes of
9 settlement. This included Plaintiff Anthony's personnel file and time and pay records, relevant
10 policy documents, a statement of the number of California employees who received overtime or
11 meal/rest premiums in the same pay period as shift differential during the class and PAGA periods,
12 and the complete payroll for the liability period for pay periods where the class earned shift
13 differential and overtime or other premium pay. (Stiller Decl., ¶ 44.) Plaintiffs also produced
14 dozens of paystubs and other employment documents to Defendant, including those that they
15 believe form the basis for their claims. (Stiller Decl., ¶ 45.) Receipt of appropriate discovery
16 allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged
17 in the lawsuit. (Stiller Decl., ¶ 46.)

18 Third, Class Counsel have significant experience in cases of this type, including several
19 years prosecuting wage, hour, and working condition violations. (Stiller Decl., ¶ 47.) Class
20 Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel
21 believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and
22 that the average recovery for each Settlement Class Member of \$854.42 is substantial, given the
23 risks inherent in litigation and the defenses asserted. (Stiller Decl., ¶ 48.)

24 Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were zero
25 (0) requests to be excluded and zero (0) objectors. (Reyes Decl., ¶¶ 11-12.) As all of the *Dunk*
26 factors are satisfied, this settlement is entitled to a presumption of fairness.

27 B. The Court Should Approve This Class Action Settlement Because it Satisfies Each
28 of the *Kullar* Factors

1 In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth
2 several factors that the Court should analyze in determining whether to approve a class action
3 settlement. These factors include: (1) the strength of Plaintiffs’ case; (2) the risk, expense,
4 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
5 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
6 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
7 participant; and (8) the reaction of the class members to the proposed settlement. In *Munoz v. BCI*
8 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409, the court clarified that
9 a *Kullar* showing does not require the parties to submit the outer reaches of maximum possible
10 recovery without taking into account the risks of certification, decertification, dispositive motions,
11 and trial, so long as there is a record which allows “an understanding of the amount that is in
12 controversy and the realistic range of outcomes of the litigation.” *Munoz*, 186 Cal. App. 4th at 409.

13 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
14 informal discovery before entering into meaningful settlement negotiations in this matter. (Stiller
15 Decl., ¶ 49.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and
16 the risks associated with ongoing litigation. (Stiller Decl., ¶ 51.) Class Counsel is experienced in
17 handling wage and hour class actions and, after weighing all of the following factors, supports this
18 Settlement Agreement. (Stiller Decl., ¶ 52.)

19 1. The Strength of Plaintiffs’ Case

20 a) The Risks Associated with Minimum Wage/Overtime Claim

21 “Under state and federal law, overtime compensation is based on an employee’s ‘regular
22 rate’ of pay.” (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.)
23 “California Labor Code section 510, subdivision (a) provides, as relevant here, [that] an employee
24 is entitled to overtime pay at one and one-half times the ‘regular rate’ for work in excess of eight
25 hours in one day and twice the ‘regular rate’ for work in excess of 12 hours in one day.” (*Ibid.*)
26 For hourly employees, the regular rate is generally the employee’s straight-time hourly rate.
27 (*Huntington, supra*, 131 Cal.App.4th at 905.) However, in any pay period where an hourly
28 employee earns other compensation in addition to hourly wages — such as a non-discretionary

1 bonus, commission, or shift differential — the “regular rate” is computed by dividing the
2 employee’s total compensation by the total hours worked in that period. (*Marin v. Costco*
3 *Wholesale Corp.* (2008) 169 Cal.App.4th 804, 807.)

4 “Regular rate of pay, which can change from pay period to pay period, includes
5 adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-
6 hour value of any non-hourly compensation the employee has earned.” (*Alvarado v. Dart*
7 *Container Corp. of California* (2018) 4 Cal.5th 542, 554.) “The case law is unequivocal that shift-
8 differential pay must be included” in an employee’s regular rate of pay. (*O’Brien v. Town of*
9 *Agawam* (1st Cir. 2003) 350 F.3d 279, 295 [applying federal law analogous to California law].)
10 Even if the shift differential is paid only on certain shifts, it “should also be averaged across the
11 entire pay period.” (*Alvarado, supra*, at p. 570.)

12 Plaintiffs believe that their “regular rate” claim is certifiable and that they have a relatively
13 high likelihood of success on the merits. However, in determining a fair settlement value, they had
14 to consider Defendant’s argument that it, in fact, incorporated the higher shift differential rate to
15 calculate overtime in some circumstances, and any alleged failure to use the higher regular rate
16 was due to inadvertence or mistake. (Stiller Decl., ¶ 54.) Plaintiffs also considered the fact that,
17 even if they succeed on the merits, the amount owed in direct wages amounts to approximately
18 \$7,383.49. (Stiller Decl., ¶ 55.)

19 b) The Risks Associated with the Meal Break Claim

20 Employers must pay one (1) hour at the employee’s “regular rate of compensation” as a
21 penalty when they fail to provide a thirty-minute uninterrupted meal period as required by Labor
22 Code Section 512. (Lab. Code § 226.7(b).) Here, for the same reasons that Defendant’s failure to
23 blend shift differentials into the regular rate caused an overtime violation, it also resulted in
24 underpaid meal and rest period premiums when such premiums were owed.

25 Until recently, employers have argued that the meal period premiums can be paid at the
26 straight hourly rate instead of the blended “regular rate of pay” because the statute requiring meal
27 premiums describes the obligation to pay at the “regular rate of compensation” instead of “regular
28 rate of pay” (as applicable to overtime). However, the California Supreme Court recently decided

that there is no distinction between the “regular rate of pay” and “regular rate of compensation”: “We hold that the terms are synonymous: ‘regular rate of compensation’ under section 226.7(c), like ‘regular rate of pay’ under section 510(a), encompasses all nondiscretionary payments, not just hourly wages.” (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 280 Cal.Rptr.3d 783, 786. Therefore, Defendant violated Labor Code section 226.7 when it did not pay Plaintiff and Proposed Class Members’ one hour of compensation at their regular rate of compensation, including blended shift differentials, for meal period premium wages.

c) The Risks Associated with Plaintiffs’ Waiting Time Penalty Claim

The waiting time penalty claim was the largest in terms of potential damages, but it came with certain risks not present for the direct wage claims. Under Labor Code section 203, if an employer fails to provide wages at the time of an employee’s termination or within seventy-two (72) hours of resignation, then the employee’s wages shall continue as a penalty for up to thirty (30) days. Section 203 reflects a public policy that favors the full and prompt payment of earned wages. (*See, e.g., Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.)

Here, Plaintiffs and all members of the Proposed Class are no longer employed by Defendant. Plaintiffs argue that they are entitled to waiting time penalties because Defendant’s failure to pay overtime at the legal rate resulted in unpaid wages owed upon termination and/or resignation. (*See Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859.)

In evaluating settlement, Plaintiffs considered Defendant’s argument that a good-faith belief exception applies because its actions were not willful, and its payment calculations allegedly resulted in occasions of overpayment. While Plaintiffs dispute that not knowing the law is a sufficient defense, Plaintiffs still had to acknowledge that this argument posed some risk. (Stiller Decl., ¶ 57.) Moreover, the parties dispute how the Court would interpret Defendant’s inclusion of shift differentials in some pay periods. (Stiller Decl., ¶ 58.) Plaintiffs believe this shows that Defendant knew it was obligated to pay the higher rate but failed to do so, while Defendants argue that this shows inadvertence as to the pay periods where Plaintiffs alleged a violation. (*Id.*) Finally, Plaintiffs expected Defendant to argue that the Court has discretion to lower the waiting time

1 penalty amount where it is significantly higher than the wages owed, so imposing waiting time
2 penalties of \$244,288.52 is not justified on an approximately \$7,383.49 wage award. Plaintiffs
3 disagree, but nonetheless had to consider this argument when determining an appropriate
4 settlement. (Stiller Decl., ¶ 59.)

5 d) The Risks Associated with the PAGA Claim

6 Plaintiffs are cognizant of risks associated with their PAGA claim and have therefore
7 agreed to discount this claim for multiple reasons. First, the PAGA claims arise from the same
8 violations as the foregoing class claims and bear the same risks on the merits. Second, the Court
9 has discretion to award less than the maximum penalty, which Defendant argued would be
10 appropriate considering the low amount of direct wage damages. (See Labor Code § 2699(e)(2)
11 [“a court may award a lesser amount than the maximum civil penalty amount specified by this part
12 if, based on the facts and circumstances of the particular case, to do otherwise would result in an
13 award that is unjust, arbitrary and oppressive, or confiscatory”]; *Carrington v. Starbucks*
14 *Corporation* (2018) 30 Cal.App.5th 504, 529 [affirming award of 10% of maximum PAGA
15 penalty].) Finally, the Settlement Class is compensated for these violations in the proposed
16 Settlement Agreement, and thus any PAGA recovery for these same violations would be
17 duplicative. Plaintiff also considered the fact that PAGA assesses penalties on a per-employee per-
18 pay-period basis, and there were only 265 pay periods with violations. (Stiller Decl., ¶ 60.) Thus,
19 PAGA did not make up a significant percentage of the overall potential liability compared to other
20 claims, and the per-pay-period amount is still high. (*Id.*) As such, the Settlement Agreement’s
21 contemplated PAGA payment of \$7,500.00 is appropriate. (Stiller Decl., ¶ 61.)

22 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

23 There is significant expense associated with the class certification process, which the
24 Parties can avoid by entering into the contemplated Settlement Agreement. (Stiller Decl., ¶ 62.) If
25 the Court did eventually certify a class, trial of a case involving approximately sixty-four
26 Settlement Class Members would require the retention of expensive expert witnesses, the accrual
27 of litigation costs, and a significant time investment by the parties. (*Id.*) Moreover, given the
28 complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would

1 have resulted in a lengthy and costly appeal. (Stiller Decl., ¶ 63.) An appeal would result in further
2 delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

3 3. The Risk of Maintaining Class Action Status through Trial

4 This case has not been certified as a class action. (Stiller Decl., ¶ 64.) While Plaintiffs
5 believe there is strong evidence to support certification of several possible classes, certification is
6 always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is
7 always a possibility. (*Id.*) In attempting to certify a class, the Parties would need to conduct
8 multiple depositions, including of Plaintiffs and of several person(s) most knowledgeable. (Stiller
9 Decl., ¶ 65.) There is a risk for both sides as to what these depositions will reveal and whether they
10 will support class certification to the extent expected. (Stiller Decl., ¶ 66.)

11 4. The Amount Offered in Settlement

12 It was very difficult for the Parties to reach this Settlement of \$130,000.00. (Stiller Decl.,
13 ¶ 67.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
14 (Stiller Decl., ¶ 68.) The Parties arrived at it after extensive investigation and discovery, careful
15 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
16 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
17 of an experienced mediator, David Phillips, Esq. (Stiller Decl., ¶ 69.)

18 a) Plaintiffs' Assessment of Defendant's Maximum Exposure

19 Plaintiffs assessed full value of the overtime/double overtime claim, without any discount,
20 at approximately \$7,383.49. (Stiller Decl., ¶ 70.) This was based on Defendant's payroll records
21 for the entire class. (Stiller Decl., ¶ 71.) The full value of the meal premium claim, without any
22 discount, was approximately \$3.04. (Stiller Decl., ¶ 72.) The reason is that meal period premiums
23 were paid infrequently, and the claim requires both a meal premium and shift differential in the
24 same pay period. (Stiller Decl., ¶ 73.) Plaintiffs also calculated interest on the aforementioned
25 wage damages in the amount of \$446.04. (Stiller Decl., ¶ 74.) Plaintiffs valued the Waiting Time
26 Claim, tied to the overtime claim, at \$244,288.52. (Stiller Decl., ¶ 75.) Considering the derivative
27 nature of Labor Code section 203 and the dispute over willfulness, Plaintiffs determined that
28 accepting a discount on this claim was appropriate. (Stiller Decl., ¶ 76.)

1 Finally, Plaintiffs calculated the value of the PAGA claim at \$26,500.00 for Settlement
2 Class Members using one hundred (\$100) dollars per pay period. (Stiller Decl., ¶ 77.) The main
3 risk taken into account with PAGA is the discretionary nature of the penalty award. (Stiller Decl.,
4 ¶ 78.) A judge can award the statutory maximum of one hundred (\$100) dollars for the initial
5 violation and two hundred (\$200) dollars thereafter or – in theory – one cent per wage statement.
6 (Stiller Decl., ¶ 79.) While there is a dearth of available authority, in Plaintiffs’ view, were they to
7 succeed on any of the underlying Labor Code violations, it is not likely that the Court would also
8 award a large amount of PAGA penalties on top of damages. (Stiller Decl., ¶ 80.)

9 Per Plaintiffs’ assessment, the maximum potential value of all of Plaintiffs’ and the
10 Settlement Class Members’ claims was approximately \$278,621.09. (Stiller Decl., ¶ 81.)
11 However, as a result of the forgoing risks on the merits, Class Counsel believes the Settlement
12 Proceeds of \$130,000 is fair and reasonable. (*Id.*)

13 5. The Extent of Discovery Completed and Stage of the Proceedings

14 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
15 claims alleged. (Stiller Decl., ¶ 83.) The agreement to settle did not occur until Class Counsel
16 exchanged and possessed sufficient information to make an informed judgement regarding the
17 likelihood of success on the merits and the results that could be obtained through further litigation.
18 (*Id.*)

19 6. The Experience and Views of Counsel

20 Kingsley & Kingsley, APC is very experienced in prosecuting and defending employment
21 litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition
22 violations. (Stiller Decl., ¶ 85.) The firm is well versed in class action litigation and has diligently
23 and aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class
24 Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California.
25 (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the
26 accompanying Declaration of Ari J. Stiller. (Stiller Decl., ¶¶ 85-86.) After factoring in the risks
27 explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Stiller
28 Decl., ¶ 88.)

1 7. The Presence of a Governmental Participant

2 Aside from the LWDA, there is no governmental participant in this action. (Stiller Decl., ¶
3 89.)

4 8. The Proposed Plan of Allocation Is Fair and Reasonable

5 Plans of allocation are subject to the same standard of review as class action settlements;
6 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
7 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
8 compensates Participating Class Members pro rata based on the number of Pay Periods worked
9 during the Class Period in which they received premium pay and a shift differential. (Ex. “A” at §
10 I, ¶ X, § III, ¶ C(1).) This allocation distributes settlement funds proportionally to each class
11 member’s damages for unpaid wages, and should therefore be approved as fair, adequate, and
12 reasonable. (Ex. “A” at § III, ¶ C(1).) Likewise, the PAGA allocation is fair as it distributes the
13 employees’ share of the PAGA Payment proportionally based on pay periods worked in the PAGA
14 Period. (Ex. “A” at § III, ¶ C(2).)

15 9. The Reaction of the Class Members to the Proposed Settlement

16 To date, there are zero (0) requests to be excluded from the proposed Settlement Agreement
17 and zero (0) objections. (Reyes Decl., ¶¶ 11-12.) Such indicates that the reaction of Settlement
18 Class Members on the whole is positive and weighs in favor of approval.

19 **V. ENHANCEMENT TO PLAINTIFFS**

20 Plaintiffs’ Counsel request an enhancement of \$10,000 (\$5,000 for each Plaintiff) to
21 Plaintiffs Rochelle Anthony and Travenia Morris for their work on behalf of the Settlement Class.
22 (Stiller Decl., ¶ 126.) “Courts routinely approve incentive awards to compensate named Plaintiffs
23 for the services they provide and the risks they incurred during the course of the class action
24 litigation.” *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal
25 quotations and citations omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp.
26 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court approved service awards of \$300,000 to each
27 named Plaintiff in recognition of the services they provided to the class by responding to discovery,
28 participating in the mediation process, and taking the risk of stepping forward on behalf of the

1 class. *Coca-Cola*, 200 F.R.D. at 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving
2 \$50,000 participation award to Plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-
3 4068 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,00 enhancement
4 to each named Plaintiff).

5 Plaintiff Anthony and Plaintiff Morris are adequate class representatives because they have
6 diligently, adequately and fairly represented the Settlement Class and have not placed their
7 interests above any member of the Settlement Class. (See Declaration of Rochelle Anthony
8 (“Anthony Decl.”) ¶¶ 4-12; Declaration of Travenia Morris (“Morris Decl.”) ¶¶ 4-12.)

9 Here, Class Counsel requests an enhancement for Plaintiffs’ valiant effort and time
10 expended in this matter. The time spent by Rochelle Anthony and Travenia Morris is significant
11 and includes the following: researching and retaining competent counsel; providing information
12 to Class Counsel regarding the nature of their work for Defendant; compiling relevant documents,
13 including paystubs and other information relevant to the claims; working closely with Class
14 Counsel to develop the theories of liability; regularly discussing the status of the case with Class
15 Counsel; discussing the case via telephone with other Settlement Class Members to assist with
16 counsel’s investigation; Plaintiff Anthony attending a full-day of mediation and Plaintiff Morris
17 participating by telephone; and responding promptly to Class Counsel’s communications
18 regarding settlement. (Stiller Decl., ¶ 129; Anthony Decl. ¶ 6; Morris Decl. ¶ 6.) As set forth in
19 the Settlement Agreement, Plaintiffs will also be entering into a general release of liability pursuant
20 to Civil Code Section 1542. (Stiller Decl., ¶ 131; Ex. “A” at § V, ¶ C.)

21 Class Counsel considers this to be a fair and reasonable enhancement. (Stiller Decl., ¶ 129.)
22 The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff
23 Anthony and Plaintiff Morris in coming forward to litigate this matter on behalf of all Settlement
24 Class Members. (Stiller Decl., ¶ 132.) Additionally, the Plaintiffs were at risk for paying for
25 Defendant’s legal fees and costs in the event that Defendant prevailed at trial. (Stiller Decl., ¶ 133.)

26 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

27 As indicated on the Proof of Service, Plaintiffs’ accompanying Motion for Final Approval
28 of Class Action Settlement and Motion for Approval of Attorneys’ Fees and Costs (“Motions”)

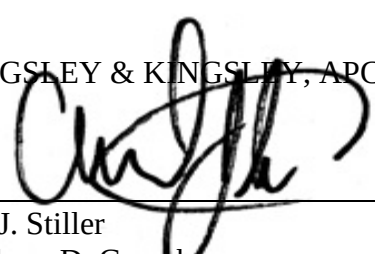
will be concurrently uploaded to the LWDA website on the date these Motions are filed as required by statute. Proof of submission of Plaintiffs' Motions, all related documents, and a copy of the email from the LWDA confirming receipt is attached hereto as Exhibit "F". (Stiller Decl., ¶ 135.)

VII. CONCLUSION

Plaintiffs respectfully submit that the proposed Settlement Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiffs respectfully request that the Court (1) grant Final Approval of the Settlement Agreement and all of its terms; (2) award attorneys' fees and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs; (3) award ILYM Group, Inc. claims administration fees of \$5,234.00; and (4) award the Plaintiffs an enhancement of \$10,000 (\$5,000 for each Plaintiff); and (5) enter judgment.

DATED: August 31, 2021

KINGSLEY & KINGSLEY, APC

By: 

Ari J. Stiller

Zachary D. Greenberg

Attorneys for Plaintiffs and the Proposed Class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On August 31, 2021, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Ashley Farrell Pickett
Ryan C. Bykerk
Bryan W. Patton
Matthew J. Weber
farrellpickett@gtlaw.com
bykerkr@gtlaw.com
pattonbw@gtlaw.com
webermat@gtlaw.com
GREENBERG TRAURIG, LLP
1840 Century Park East, Suite 1900
Los Angeles, CA 90067

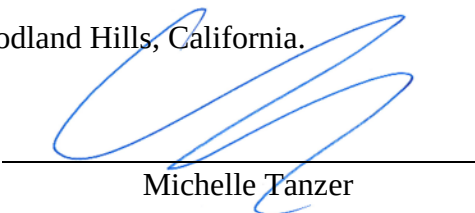
[] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] BY ELECTRONIC MAIL THROUGH CASE ANYWHERE: On interested parties set forth on the attached service list.

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 31, 2021, at Woodland Hills, California.



Michelle Tanzer