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and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

WILLIAM HALL, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

CULPEPPER & ASSOCIATES SECURITY
SERVICES, INC. a Georgia corporation;
DOES 1 through 25,

Defendants.

Case No.: 20STCV15317

*Assigned to Hon. Daniel J. Buckley
Dept. SSC-1*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

**[Filed concurrently with Declarations of
Aaron Gundzik, Daniel Holzman,
William Hall, Nathalie Hernandez and
[Proposed] Order and [Proposed]
Judgment]**

Date: August 25, 2021

Time: 10:30 a.m.

Dept.: 1

Complaint Filed: April 21, 2020

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on August 25, 2021, at 10:30 a.m., in Department 1
3 of the above-entitled Court, located at 312 N Spring St, Los Angeles, CA 90012, Plaintiff
4 William Hall will, and by this Notice of Motion and Motion hereby does, move for an Order
5 as follows:

6 1. Granting final approval of a class action settlement in the gross amount of
7 three hundred twenty five thousand five hundred sixty eight dollars (\$325,568);

8 2. Approving a service and release payment in the amount of \$10,000 to the
9 named plaintiff, William Hall;

10 3. Approving of the payment of settlement administration costs of \$5,514.26 to
11 the third-party settlement administrator, ILYM Group, Inc. (“ILYM” or “Settlement
12 Administrator”);

13 4. Approving a payment to the California Labor Workforce and Development
14 Agency (“LWDA”) in the amount of \$7,500;

15 5. Approving the payment of attorneys’ fees of \$108,522.66, which is one-third
16 of the gross settlement amount, and costs and expenses of \$11,199.74 to Class Counsel; and

17 6. Entering final judgment implementing the release of participating Class
18 Members’ claims.

19 Plaintiff’s motion is made pursuant to California Rule of Court 3.769 and is based on
20 this Notice of Motion and Motion and Memorandum of Points and Authorities submitted
21 herewith, the [Proposed] Final Approval order and [Proposed] Judgment, the Declaration of
22 Class Counsel Aaron C. Gundzik, the Declaration of Class Counsel Daniel Holzman, the
23 Declaration of named Plaintiff William Hall, the Declaration of Nathalie Hernandez, on
24 behalf of the Settlement Administrator, ILYM, the pleadings and other papers filed in this
25 action, and such further argument or evidence as may be considered at the hearing on the
26 motion.

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As this Motion will be unopposed, Plaintiff respectfully requests relief from the page
limit requirement set by California Rules of Court, Rule 3.1113(d).

DATED: July 30, 2021

GUNDZIK GUNDZIK HEEGER LLP


By: _____
Rebecca G. Gundzik
Attorneys for Plaintiff William Hall,
individually and on behalf of all others
similarly situate

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On April 21, 2021, this Court granted preliminary approval to the wage and hour
4 class action settlement of \$320,000 (now \$325,568) that is the subject of this Motion.¹ In
5 doing so, the Court preliminarily concluded that the proposed settlement is fair and
6 reasonable, preliminarily appointed the named Plaintiff, William Hall, as Class
7 Representative, and preliminarily appointed Aaron C. Gundzik of Gundzik Gundzik Heeger
8 LLP and Daniel Holzman of Caskey and Holzman as Class Counsel. As ordered, notice of
9 the proposed settlement has been distributed to all 70 Class members. Declaration of
10 Nathalie Hernandez (“Hernandez Decl.”), ¶¶ 7, 9. No class members have opted out of the
11 settlement and no objections have been filed. Hernandez Decl., ¶¶ 12-13.

12 As the Court is aware, this is a wage and hour class action filed by Plaintiff William
13 Hall against Defendant Culpepper & Associates Security Services, Inc. (“Defendant” or
14 “CASS”) on behalf of 70 non-exempt security guards who worked for Defendant in
15 California at any time from April 21, 2016 through December 7, 2020 (the “Class”).
16 Generally, the terms of the parties’ settlement require Defendant to pay the sum of
17 \$325,568. By this Motion, Plaintiff seeks approval for the distribution of these funds to the
18 Class, less a service and release payment to the named Plaintiff, attorneys’ fees and costs, a
19 payment to the LWDA in settlement of Plaintiff’s PAGA claims, and settlement
20 administration expenses. If this Motion is granted in full, 70 Class members will receive a
21 settlement payment resulting in individual gross payments to Class members ranging from a
22 low of \$34.70 to a high of \$7,565.12, and the average class settlement payment will be in the
23 amount of approximately \$2,521.87. The PAGA settlement payments to aggrieved
24 employees will range from a low of \$2.86 to a high of \$61.57, and the average PAGA

25
26 ¹ Pursuant to Paragraph IV.J of the parties’ Settlement Agreement, because the Class Data
27 delivered to the Settlement Administrator showed that total number of Class Member
28 Qualifying Workweeks exceeded 5,000, and was actually 5,087, the Gross Settlement
Amount increased by \$5,568. Likewise, the amount of attorneys’ fees increased from
\$106,666.66 to \$108,522.66 as a result of the increase in the Gross Settlement Amount.

1 settlement payment will be in the amount of approximately \$36.23. Hernandez Decl., ¶ 18;
2 Declaration of Aaron C. Gundzik (“Gundzik Decl.”), ¶ 57.

3 Nothing material concerning the proposed settlement has changed since the Court's
4 preliminary approval order. The Court should grant final approval.

5 **II. FACTUAL BACKGROUND**

6 **A. Plaintiff’s Factual Allegations**

7 As discussed in Plaintiff’s Motion for Preliminary Approval, based upon his
8 investigation, Plaintiff has made the following allegations:

9 CASS employs security guards at approximately 9 locations in California. During
10 the putative class period, there were 70 putative class members (pursuant to the data
11 provided by CASS to the settlement administrator). Gundzik Decl., ¶ 9. Plaintiff worked as a
12 security guard at two CASS locations in California and had worked there since CASS took
13 over the security contract for those locations in December of 2019. Gundzik Decl., ¶ 10:
14 Declaration of William Hall (“Hall Decl.”), ¶ 2.

15 Plaintiff contended that during the putative class period, CASS’s security guards
16 were required to carry radios or mobile phones during their shifts. Gundzik Decl., ¶ 10.
17 CASS’s Standard Operating Procedures also specified that guards are required to “respond
18 to all reports of incidents,” “respond to all emergency calls,” and remain “on duty during
19 business hours.” *Id.* Plaintiff contended that the language in CASS’s Security Officer
20 Manual reinforces the requirement that guards remain on call at all times while on their
21 shifts. *Id.* In addition, Plaintiff could find no evidence that any employee had taken a second
22 meal break when they worked more than ten hours in a shift. *Id.*

23 Plaintiff contended that CASS’s written policies violated California’s meal and rest
24 break requirements in that they required employees to take on-call, therefore on duty, rest
25 breaks. Gundzik Decl., ¶ 11. Plaintiff further contended that employees could not leave an
26 assigned site for any reason unless directed by authority and that employees could not leave
27 their post until another officer was present because the property/site had to be covered at all
28

1 times. *Id.* Plaintiff also contended that when CASS acquired its contract with the VA, CASS
2 knew that the VA required guards to be on call at all times, even when on breaks. *Id.*

3 Until June of 2020, CASS did not have any written policy whereby employees were
4 informed of their rights to meal and rest breaks or the circumstances under which such
5 breaks would be compliant with California law. Gundzik Decl., ¶ 12. At the end of June
6 2020, CASS created a new meal and rest break policy whereby guards were instructed to
7 turn in their radios/mobile phones to the VA Police when going on a rest break or meal
8 break. *Id.*

9 Pursuant to the Federal Service Contract Act of 1965, private employees who are
10 working under a contract between their employer and the federal government must be paid a
11 specified “fringe benefit” for each hour that they work. 41 U.S.C. § 6703(2). This payment
12 is made in lieu of providing health care and retirement benefits to employees. Plaintiff
13 contended that because CASS did not provide health and welfare benefits to class members,
14 it was required under the Service Contract Act to pay them a set amount for each hour.
15 Gundzik Decl., ¶ 13. In 2019, the payment in lieu amount was set at \$4.22 per hour. *Id.*
16 However, Plaintiff contended that CASS did not include this payment in the regular rate
17 paid to class members for the purpose of calculating their overtime rates of pay. *Id.*

18 **B. Procedural History and Investigation and Discovery Prior to Settlement**

19 Plaintiff filed his initial complaint against CASS on April 21, 2020, filed a First
20 Amended Complaint on July 14, 2020 and pursuant to a stipulation of the parties filed a
21 Second Amended Complaint on November 9, 2020, which asserted causes of action for: (1)
22 failure to pay overtime; (2) inaccurate wage statements, (3) failure to provide meal and rest
23 breaks; (4) violation of the Unfair Practices Act; (5) recovery of civil penalties under the
24 California Labor Code Private Attorneys’ General Act (“PAGA”), California Labor Code
25 sections 2698-2699.5; (6) violation of the Fair Labor Standards Act (FLSA); and (7)
26 violation of Federal and State sick pay requirements. Gundzik Decl., ¶ 5.
27
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1 On October 7, 2020, Class counsel and their client, Mr. Hall, as well as Defendant
2 and Defendant's counsel, attended a mediation session with Lisa Klerman. Gundzik Decl., ¶
3 15. Class Counsel engaged in extensive negotiations with defense counsel concerning the
4 scope of such informal discovery. Gundzik Decl., ¶ 6. They obtained and reviewed and
5 analyzed numerous pay documents, including records and information produced by
6 Defendant, and worked to develop information on potential damages. *Id.* They also obtained
7 and analyzed all relevant handbooks and other policy documents which impacted the
8 working conditions and pay of the class members. *Id.*

9 Defendant also produced anonymized time and pay records for a sample of
10 approximately 15% of the proposed class members, including Plaintiff. Gundzik Decl., ¶ 6.
11 They reviewed and analyzed these records as well. *Id.* They investigated and compiled
12 publicly-available information about Defendant and its businesses and negotiated
13 extensively with Defendant regarding the mediation, its scope, and the information to be
14 exchanged in connection with the mediation. *Id.*

15 Prior to the mediation, Defendant also provided information on the number of class
16 members, total class member work weeks, the number of employees at each job site and
17 their shifts, the number of separated employees, number of wage statements issued and
18 average hourly pay rate. Gundzik Decl., ¶ 7. They also obtained documents from third
19 parties regarding Defendant's contracts with the Veterans' Administration and the
20 requirements to which it was obligated as a result of those contracts. *Id.* And, they were able
21 to interview class members concerning their experiences working for Defendant. *Id.*

22 Class Counsel reviewed and analyzed the records and information produced by
23 Defendant, together with the information provided by their client and information obtained
24 from class member interviews, to prepare a damages model which included an estimate of
25 the damages incurred by the Class. Gundzik Decl., ¶ 8.
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1 **C. Plaintiff’s Counsel’s Estimate of Potential Recovery**

2 The First Cause of Action is for failure to pay overtime. This claim is based on
3 CASS’s alleged failure to include the payment in lieu of the fringe benefit due under the
4 Federal Service Contract Act of 1965 in the regular rate of pay used for calculating the rate
5 of pay due for overtime work. Gundzik Decl., ¶ 20. Based on the documents they reviewed,
6 Class Counsel estimates that this claim has a limited value of between \$0 and \$4,000. *Id.*

7 The Second Cause of Action is for failure to provide compliant wage statements. The
8 statute of limitations on such a claim is one year. This claim is based on the allegation that
9 the paychecks issued to class members did not include the correct hourly rates, did not
10 include meal and rest break premiums and did not state all of the hours worked by class
11 members. Gundzik Decl., ¶ 21. However, Defendant would have argued, perhaps
12 successfully, that these hours did not result in any injury because employees could
13 determine the correct rates from other information included on their wage statements and
14 because of the uncertainty regarding derivative wage statement claims. *Id.* Based upon the
15 number of wage statements issued and the possibility that the Court could find that none of
16 them violated the statute, Class Counsel concluded that the maximum value of this claim, if
17 the Class prevailed on the claim and was awarded full statutory penalties, is about \$127,600.
18 *Id.* This estimate is based on a one-year limitations period and that damages are \$50 for the
19 first violation per employee and \$100 for each subsequent violation up to a maximum of
20 \$4,000 per employee. *Id.* At the same time, Class Counsel estimates that this claim has a
21 minimum value of \$0. *Id.*

22 The Third Cause of Action is for failure to provide meal and rest breaks. This claim
23 was based on Plaintiff’s contentions that Defendant should not have been requiring
24 employees to take on-call meal breaks and that it was improper for Defendant to require that
25 rest breaks be taken on-site. Gundzik Decl., ¶ 22. It was also based on Plaintiff’s contention
26 that Defendant did not provide guards with second meal breaks. *Id.* Defendant did not keep
27 records regarding class members’ rest breaks, but Plaintiff contended that all rest breaks
28 were non-compliant because guards were required to remain on-site. *Id.* Based upon the

1 records reviewed, the information obtained from class members, and the defenses to Class
2 certification, Class Counsel estimates that the meal break claim has a maximum value of
3 about \$505,000 for non-compliant meal breaks and approximately \$25,000 for missed
4 second meal breaks, using an average hourly rate of \$27.17 (including an hourly fringe
5 benefit rate of \$4.22). *Id.* Because it was unclear to what extent all locations engaged in the
6 same practices and those which Plaintiff contended were non-compliant, and in light of the
7 other issues discussed above, Class Counsel estimates that the meal break claim has a
8 minimum value of \$0. *Id.* Class Counsel estimates the maximum value of the rest break
9 claim to be about \$530,000, using an average hourly rate of \$27.17 (including an hourly
10 fringe benefit rate of \$4.22). At the same time, based on the issues discussed above, Class
11 Counsel estimates that the rest break claim has a minimum value of \$0. *Id.*

12 The Fourth Cause of Action is for violation of Business & Professions Code section
13 17200, *et. seq.* The forgoing analysis assumes the longer four-year statute of limitations that
14 is available under the UCL for the meal period violations. This cause of action is derivative
15 of the other claims that have already been analyzed. Gundzik Decl., ¶ 23. Accordingly, the
16 damages available under this cause of action have already been analyzed or are duplicative
17 of damages discussed above. *Id.*

18 The Fifth Cause of Action is for violations of the Private Attorneys General Act
19 (PAGA). The PAGA claim is limited in time to one year. The strength of the PAGA claim
20 would be impacted by the factors discussed above for the non-PAGA claims. Gundzik Decl.,
21 ¶ 24. Based on recent PAGA decisions, Class Counsel concluded that even if Plaintiff was
22 successful on this claim through trial, the Court may well have exercised its discretion under
23 PAGA and significantly reduced the penalties. Cal. Labor Code §2699(e)(2). *Id.* In addition,
24 the settlement was primarily directed at recovering wages and unpaid premiums owed to
25 class members and the bulk of the settlement funds were intended to compensate for these
26 wages. *Id.* Based on these factors, Class Counsel opines that the maximum reasonable value
27 of the PAGA claim is approximately \$430,000 and the minimum value is nothing. *Id.* Class
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1 Counsel therefore concluded that the \$10,000 that the parties allocated to PAGA, \$7,500 of
2 which will be paid to the LWDA, is a reasonable settlement of that claim. *Id.*

3 The Sixth Cause of Action is for violations of the Fair Labor Standards Act (FLSA).
4 This claim is based upon Plaintiff's contention that Defendant did not pay Class members at
5 the applicable overtime rate for all hours worked. Gundzik Decl., ¶ 25. However, the
6 damages incurred for this violation are duplicative of those analyzed with respect to the First
7 Cause of Action. *Id.* Therefore, Class Counsel did not attribute any additional damages to
8 this claim. *Id.*

9 The Seventh Cause of Action is for violation of Federal, State and local sick pay
10 requirements. Gundzik Decl., ¶ 26. This claim was based on Plaintiff's contention that
11 Defendant did not provide all sick leave required to be provided to Federal contractors. *Id.*
12 However, given the lack of precedent which permits a private cause of action for this
13 violation, Class Counsel did not attribute any damages to this claim. *Id.*

14 Based upon the forgoing, Class Counsel determined that this case had a minimum
15 value of \$0 and a maximum estimated value of about \$1,191,000, not including the PAGA
16 penalties. Gundzik Decl., ¶ 27. Based on a Class size of approximately 70, the reasonable
17 estimate of the average amount that Class members could have obtained if Plaintiff
18 prevailed at trial on behalf of the entire Class, if the Class was certified, would be a
19 minimum of \$0 and a maximum of about \$17,014. *Id.* However, the maximum amount is
20 almost never recovered at trial and never in a settlement. Settlements, by their nature, must
21 account for the weaknesses in a plaintiff's case, which are discussed above. *Id.* Indeed,
22 because Defendant raised a colorable legal or factual defense to each of the claims Plaintiff
23 alleged, it is possible that, after trial, the Class would recover nothing. *Id.*

24 **D. The Settlement Negotiations**

25 On October 7, 2020, the parties attended a mediation session with mediator, lisa
26 Klerman, who has substantial experience mediating wage and hour class actions like this
27 one. Gundzik Decl., ¶15. The case settled at the end of the day pursuant to a mediator's
28 proposal. *Id.*

1 The terms of the Settlement were subsequently memorialized in the Stipulation of
2 Class Action Settlement and, pursuant to the Court's March 22, 2021 Tentative Ruling and
3 March 23, 2021 Minute Order, were amended in part in the parties' First Amended
4 Stipulation of Class Action Settlement (Settlement Agreement"), which is attached to the
5 Declaration of Aaron C. Gundzik as Exhibit A. Gundzik Decl., ¶ 17, and Ex. A thereto.
6 Among other things, the settlement requires Defendant to pay \$325,568, plus the employer's
7 share of withholding taxes, in full settlement of the action. Gundzik Decl., ¶ 18, and Ex. A
8 thereto. The settlement was negotiated at arms' length and was in no sense collusive.
9 Gundzik Decl., ¶ 17.

10 Plaintiff and Plaintiff's counsel have concluded, after taking into account the sharply
11 disputed factual and legal issues involved in the lawsuit, the risks attending further
12 prosecution, and the substantial benefits to be received pursuant to the compromise and
13 settlement of the action, that the settlement is in the best interests of Plaintiff and the Class
14 and is fair and reasonable. Gundzik Decl., ¶¶ 16, 20-30. Plaintiff and Plaintiff's counsel also
15 considered the possibility that the Class would not be certified, that even if certified Plaintiff
16 might not prevail at trial, as well as the additional delay in recovery for Class Members if
17 the settlement were rejected and the case went to trial. Gundzik Decl., ¶¶ 28-30.

18 **E. The Representative Plaintiff's Involvement and Release**

19 Both before and after deciding to become class representatives and take on the
20 lawsuit, Plaintiff William Hall engaged in lengthy conversations with Class Counsel about
21 all aspects of the case, his employment, and CASS's policies and their application. Hall
22 Decl., ¶ 9. He was prompt and responsive, asked many questions about the case, the
23 mediation and the settlement. Hall Decl. ¶¶ 9-10. He identified relevant witnesses to Class
24 Counsel and provided Class Counsel with many relevant documents. Hall Decl. ¶ 9. He
25 spoke with some of the Class Members about how they were treated when they worked for
26 CASS and provided this information to Class Counsel. Hall Decl. ¶ 9. He was proactive and
27 requested regular updates from Class Counsel and inquired repeatedly as to how class
28 actions worked so he could understand the process. Hall Decl. ¶¶ 9-10.

1 Mr. Hall had several lengthy meetings about the mediation with Plaintiff's counsel
2 prior to the mediation, and participated in the full-day mediation. Hall Decl., ¶¶ 9-10. After
3 the mediation, he had several additional meetings with Plaintiff's counsel to discuss the
4 proposed settlement and the settlement agreement. Hall Decl. ¶ 10.

5 To assist Class Counsel, Mr. Hall reviewed and collected all of his documents in
6 connection with his employment for CASS. Hall Decl. ¶¶ 9-10. He spent a great deal of time
7 assisting Class Counsel identifying witnesses, consulting with Class Counsel in advance of
8 the mediation, and he missed a full day of work to attend and participate in the mediation.
9 *Id.* In all, he each spent in excess of 80 hours on the lawsuit. *Id.*

10 Filing the lawsuit posed risks for Mr. Hall, especially since he was still employed by
11 CASS when he filed the lawsuit and remained employed during most of the time that the
12 lawsuit has been pending. Hall Decl., ¶ 7. He understood that if the class action was
13 unsuccessful, he could be responsible for CASS's litigation costs, which could have been
14 substantial. *Id.* He was concerned by the attention a publicly-filed lawsuit, and especially a
15 class action, would attract, as his name would be associated with a lawsuit that he had filed
16 against a former employer. *Id.* He was aware that it is possible and relatively easy to
17 perform background checks of publicly-filed documents on the internet, and was concerned
18 that future prospective employers might find out that he had sued his employer, which could
19 hurt his future job prospects. *Id.*

20 In addition, the settlement agreement required Mr. Hall to sign a broad general
21 release which is broader than the release that will bind other Class Members and requires
22 him to waive Section 1542 of the California Civil Code. Gundzik Decl., ¶ 17, Ex. A, ¶ VII.

23 **F. The Preliminarily-Approved Settlement**

24 On April 21, 2021, the Court granted preliminary approval to the settlement of this
25 matter. In so doing, the Court preliminarily determined that "the proposed settlement is fair
26 and reasonable to Class members." See Gundzik Decl., ¶ 34, Ex. B. The terms of the
27 settlement are more specifically set forth in the parties' Settlement Agreement. Gundzik
28 Decl., ¶¶ 17-19, Ex. A; Ex. B.

1 The provisionally-certified settlement class is defined as all non-exempt employees of
2 Defendant who worked as security officers in California during the applicable Class Period
3 (April 21, 2016 through December 7, 2020). Gundzik Decl., ¶ 17, and Ex. A, ¶¶ I, II.D: II.I;
4 Ex. B. There are 70 Class members. Hernandez Decl., ¶¶ 7, 12.

5 The Settlement Agreement provides that Defendant will pay a gross settlement amount
6 of \$325,568 (“Gross Settlement Amount”), plus the Employer’s Withholding Share.
7 Gundzik Decl., ¶¶ 17-19, Ex. A, ¶ I. Defendant is required to deliver the Gross Settlement
8 Amount to ILYM within 20 calendar days after the Effective Date (which is the date of
9 entry of the order of the Final Approval Order if no objection is filed), except in the event of
10 a federal government shutdown, in which case the payment deadline is extended to 120 days
11 after the federal government opens back up and resumes funding Defendant’s invoices.
12 Gundzik Decl., ¶ 17, Ex. A, ¶¶ II.N, IV.N.

13 **G. Notice of Preliminary Settlement Provided to the Settlement Class and**
14 **the Claims Process**

15 Pursuant to the time-table established in the Settlement Agreement and previously
16 approved by this Court, ILYM mailed the Notice of Proposed Class Action Settlement
17 (“Notice of Settlement”) to 70 Class Members on May 15, 2021. Hernandez Decl., ¶ 9. As a
18 result of this mailing, ILYM has provided all of the Class Members and aggrieved
19 employees with a notice of the settlement which calculates the approximate value of their
20 class settlement payment and information on how to opt out of and object to the proposed
21 class settlement and information about the amount of their PAGA settlement payment.
22 Hernandez Decl., ¶¶ 7, 14-16.

23 ➤ On or about May 5, 2021, ILYM received from Defendant complete information
24 including the names, addresses, applicable employment information, Social
25 Security number and dates of employment for 70 class members.
26 Hernandez Decl., ¶ 7.

27 ➤ Before sending the Class Notice, ILYM completed a National Change of Address
28 (NCOA) search for new addresses.

1 Hernandez Decl., ¶ 8.

- 2 ➤ On May 15, 2021, the Notices of Settlement were mailed to the 70 Class
3 Members at the most recent addresses available to ILYM. The notices provided
4 information about the action, the proposed settlement and instructions on how to
5 opt out, object, or obtain further information. The notices advised Class Members
6 that any objections or opt outs to the proposed class settlement had to be
7 postmarked within 45 days of the notice date.

8 Hernandez Decl., ¶ 9, and Ex. A thereto.

- 9 ➤ Subsequent to these mailings, 4 of the notices were returned after the initial
10 mailing, all of those were traced, 2 of those were re-mailed, and 2 were
11 determined to be undeliverable.

12 Hernandez Decl., ¶¶ 10-11, and Ex. B thereto.

- 13 ➤ ILYM has received no opt-out requests and no objections. Class Counsel has not
14 received any opt-out requests or objections to the proposed settlement.

15 Hernandez Decl., ¶¶ 12-13; Gundzik Decl., ¶ 37.

- 16 ➤ There are no outstanding disputes regarding the settlement.

17 Hernandez Decl., ¶ 14.

18 **H. Proposed Distributions from Gross Settlement Amount**

19 Based upon the Settlement Agreement and this Court's preliminary approval order,
20 Plaintiff proposes that within ten (10) days of the receipt of the Gross Settlement Amount
21 from Defendant, the Gross Settlement Amount be disbursed as follows:

- 22 • Settlement administration costs, in the amount of \$5,514.26, to ILYM;
23 • A service and release payment in the amount of \$10,000 Plaintiff William
24 Hall;
25 • Class Counsel's attorneys' fees, in the amount of \$108,522.66, which is one-
26 third of the gross settlement amount;
27 • Class counsel's costs of \$11,199.74;

- 1 • A payment in the amount of \$7,500 to the LWDA as penalties on Plaintiff’s
- 2 PAGA claims and \$2,500 to the PAGA Employees (based on the number of
- 3 their Qualifying Workweeks during the PAGA period);
- 4 • The remainder of the gross settlement amount (the “Net Settlement
- 5 Amount”), in the amount of approximately \$176,531.08, will be distributed
- 6 to Class members based on the formula contained in the Settlement
- 7 Agreement (which is based on the number of Qualifying Weeks worked by
- 8 each Class Member during the Class Period).

9 Gundzik Decl., ¶ 18, and Ex. A, ¶ IV.L.1.

10 **I. Determination of Settlement Payments to Individual Class Members and**

11 **PAGA Employees**

12 The Settlement Agreement provides that all payments to Class Members shall be

13 made by the Settlement Administrator, based on the number of Qualifying Workweeks that

14 each Class Member worked during the Class Period. Hernandez Decl., ¶ 16, and Ex. A.

15 ➤ ILYM determined each Settlement Class Member’s “Individual Workweek

16 Number” by adding the total number of Qualifying Workweeks.

17 Hernandez Decl., ¶ 16

18 ➤ ILYM then determined the total of all of the Individual Workweek Numbers of all

19 the Settlement Class Members (the “Aggregate Workweek Number.”) Each Class

20 Member’s “Payout Ratio” was determined by dividing his or her Individual

21 Workweek Number by the Aggregate Workweek Number. The “Total Potential

22 Settlement Award” for each Class Member was then calculated by multiplying the

23 Payout Ratio by the Net Settlement Amount, which was indicated on the Notice of

24 Settlement. The amount of the individual settlement payment was then indicated

25 on each Class Member’s Notice. Ten percent of each Class Member’s settlement

26 payment will be considered consideration for their release of FLSA claims.

27 Hernandez Decl., ¶ 16

28

1 ➤ Based on these calculations, ILYM determined the estimated amount of the class
2 settlement payment due to each Class Member. The approximate range of class
3 settlement pay-outs is expected to be between \$34.70 and \$7,565.12 (prior to any
4 tax withholdings), with an average payment of \$2,521.87.

5 Hernandez Decl., ¶ 18.

6 The Settlement Agreement also provides that provides that all payments to PAGA
7 Employees shall be made by the Settlement Administrator, based on the number of
8 Qualifying Workweeks that each PAGA Employee worked during the PAGA Period. Those
9 payments were calculated as follows:

10 (Individual PAGA Employee's Qualifying Workweeks during PAGA Period ÷ All
11 PAGA Employees' Qualifying Workweeks during PAGA Period) x \$2,500

12 Hernandez Decl., ¶ 17, and Ex. A.

13 ➤ Based on these calculations, ILYM determined the estimated amount of the
14 PAGA settlement payment due to each PAGA Employee. The approximate range
15 of PAGA settlement pay-outs is expected to be between \$2.86 and \$61.57.

16 Hernandez Decl., ¶ 18.

17 ➤ The non-FLSA payments to Settlement Class Members will be characterized as
18 seventy percent (70%) 1099 income and thirty percent (30%) W-2 income. The
19 FLSA payments will be characterized as fifty percent (50%) 1099 income, to be
20 reported on an IRS Form 1099, and fifty percent (50%) as W-2 income, to be
21 reported on a W-2 form. Shares of the PAGA Employee Portion shall be
22 exclusively 1099 income.

23 Hernandez Decl., ¶ 18.

24 **J. Proposed Release of Defendant by Class Members**

25 If the Court gives final approval to the proposed settlement, the Settlement
26 Agreement provides that the Court shall enter a final approval Order ("Final Approval
27 Order") and a judgment implementing the release of the released claims as described in the
28 Settlement Agreement. Gundzik Decl., ¶ 17, Ex. A, ¶ IV.I. As part of the Final Approval

Order and judgment, Class Members who do not opt out will be deemed to have released the specific Released Claims. Gundzik Decl., ¶ 17, Ex. A, ¶ VI. The release applicable to the Class members provides:

Gundzik Decl., ¶ 17, Ex. A, ¶ VI.

The Settlement Agreement defines “Released Claims” as:

any and all claims, rights, demands, charges, complaints, causes of action, punitive or statutory damages, penalties, liquidated damages, expenses, attorneys’ fees and costs, interest, obligations or liability of any and every kind that were asserted in the Second Amended Complaint or are based on, or arise out of, the facts alleged in the Second Amended Complaint, including without limitation any claims for failure to pay overtime or other wages, failure to issue accurate wage statements, failure to provide compliant meal and rest periods, unfair, unlawful or fraudulent business practices under California Business and Professions Code Section 17200 and any claims based on paid sick leave under state federal, or local law, and all related penalties.

Gundzik Decl., ¶ 17, Ex. A, ¶ II.BB. This release does not include any claims that are outside of the scope of the facts alleged in the operative pleadings and does not include the PAGA Released Claims. *Id.*

The Settlement defines the “PAGA Released Claims” as:

means any and all claims for civil penalties recoverable by a private attorney general for violations that were alleged in, or arise out of the facts alleged in, the Second Amended Complaint and/or the letter submitted by Plaintiff to California’s Labor and Workforce and Development Agency arising during the PAGA Period.

Gundzik Decl., ¶ 17, Ex. A, ¶ II.PP.

The Settlement Agreement defines “Released Parties” as:

Defendant and all of its current or former subsidiaries, affiliates, parent corporations, predecessors, insurers, agents, employees, successors, assigns, officers, owners, third-party consultants, staffing agencies (and those staffing agencies’ workers), officials, directors, attorneys, personal representatives, executors, and shareholders, including Defendant’s pension, profit sharing, savings, health, and other employee benefit plans of any nature, the successors of such plans, and those plans’ respective current or former trustees and administrators, agents, employees, and fiduciaries.

Gundzik Decl., ¶ 17, Ex. A, ¶ II.CC.

The Settlement Agreement does not constitute an admission of the merits of any claim by Plaintiff or the Class or address any defense of Defendant. Gundzik Decl., ¶ 17, Ex. A, ¶ V.A.

1 **III. THE COURT SHOULD GIVE FINAL APPROVAL TO THE SETTLEMENT.**

2 The law favors settlement, particularly in class actions and other complex cases in
3 which substantial resources can be conserved by avoiding the time, cost and rigors of formal
4 litigation. *Potter v Pacific Coast Lumber Company*, 37 Cal.2d. 592, 602-603 (1951); *Class*
5 *Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1991). When faced with a motion for
6 final approval of a class action settlement under Code of Civil Procedure § 382, the
7 appropriate inquiry is whether the settlement is “fair, adequate, and reasonable.” See
8 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 244-245 (2001); *Dunk v. Ford Motor*
9 *Co.*, 48 Cal.App.4th 1794, 1801 (1996). If so, the settlement should be approved. *Id.* And, “a
10 presumption of fairness exists where: (1) the settlement is reached through arm's-length
11 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
12 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
13 objectors is small.” *Dunk v Ford Motor Co.*, 48 Cal.App.4th 1794, 1802 (1996).

14 **A. Nothing Has Occurred in the Interim That Should Affect This Court's**
15 **Preliminary Findings.**

16 Before granting preliminary approval of a class action settlement, this Court was
17 required to find—and did find—that there is sufficient evidence that the proposed settlement
18 would be fair, reasonable, and adequate, and not a product of fraud, overreaching, or
19 collusion. See Gundzik Decl., ¶ 34, Ex. B; Cal. Rules of Court, Rule 3.769 (g); Cal. Civ.
20 Proc. § 382; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1801. In order to preliminarily
21 determine that the proposed settlement was fair, reasonable, and adequate, and thus
22 appropriate for preliminary approval, the Court was required to find that the following three
23 factors were satisfied: (1) the parties reached settlement after arms-length negotiations;
24 (2) counsel conducted sufficient investigation and discovery to allow themselves and the
25 court to act intelligently; and (3) counsel is experienced in similar litigation. *Id.* at 1802. See
26 also *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146
27 (2000). In applying this determination for the purpose of granting final approval, as
28

1 discussed below, although not determinative, the Court may also consider the percentage of
2 objectors in determining whether a presumption of fairness exists. *Id.*

3 All of these considerations are satisfied here. The parties conducted significant
4 informal discovery and investigation and participated in a full-day mediation, and thereafter
5 continued to negotiate in arriving at the Stipulation of Class Action Settlement which is the
6 subject of this motion. Gundzik Decl., ¶¶ 6-14, 45. Moreover, not one Class Members has
7 opted out and none have objected to the settlement. Hernandez Decl., ¶¶ 12-13.

8 **B. The Settlement Resulted from Non-Collusive, Arms-Length Negotiations.**

9 There was no collusion between the parties in this case. After extensive informal
10 discovery and exchange of information and voluminous pages of documents, the parties
11 engaged in mediation with a well-respected and highly knowledgeable wage and hour
12 mediator, Lisa Klerman. Gundzik Decl., ¶¶ 6-8, 15-17. The involvement of a neutral third-
13 party mediator is a factor that favors approval and evidences the presumptive fairness of the
14 arms-length negotiations. Indeed, the California Court of Appeal in *Kullar v. Foot Locker*
15 *Retail, Inc.* expressed that courts should give considerable weight to the competency and
16 integrity of counsel and the involvement of a neutral mediator in assuring themselves that a
17 settlement agreement represents an arms-length transaction entered without self-dealing or
18 other potential misconduct. *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 129
19 (2008).

20 **C. The Settlement is Supported by Substantial Investigative and Discovery**
21 **Efforts.**

22 As set forth in the Declaration of Aaron Gundzik, Class Counsel engaged in
23 substantial investigation and discovery. This investigation included (1) researching for and
24 preparing the complaint and amended pleadings, (2) engaging in extensive negotiations with
25 defense counsel concerning the scope of informal discovery, the scope of the mediation, and
26 the information to be exchanged in connection with the mediation, (3) obtaining, reviewing
27 and analyzing numerous pay documents, including records and information produced by
28 Defendant, (4) obtaining and analyzing all relevant handbooks and other policy documents

1 which impacted the working conditions and pay of the class members, (5) reviewing and
2 analyzing anonymized time and pay records for a sample of approximately 15% of the
3 proposed class members, (6) investigating and compiling publicly-available information
4 about Defendant and its business, (7) negotiating with Defendant and obtaining information
5 on the number of class members in each job position, the number of class members, total
6 class member work weeks, the number of employees at each job site and their shifts, the
7 number of separated employees, number of wage statements issued and average hourly pay
8 rate, (8) obtaining documents from third parties regarding Defendant's contracts with the
9 Veterans' Administration and the requirements to which it was obligated as a result of those
10 contracts, (9) interviewing class members concerning their experiences working for
11 Defendant, and (10) developing a detailed damages analysis. Gundzik Decl., ¶¶ 6-8, 44-47.

12 Class Counsel's analysis enabled them to pinpoint the relevant issues and claims and
13 to assess potential liability and damages. These efforts resulted in the parties having a clear
14 view of the strengths and weaknesses of their respective cases and achieving a resolution on
15 favorable terms. Gundzik Decl., ¶¶ 20-27.

16 **D. As Previously Found by this Court, Class Counsel is Experienced in**
17 **Similar Litigation.**

18 The endorsement of qualified and well-informed counsel of the settlement as fair is
19 entitled to significant weight. See *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th at 1802; *Ellis v.*
20 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980). As discussed in the motion
21 for preliminary approval papers and the declarations supporting both that motion and the
22 instant motion, Class Counsel has represented, litigated, mediated and settled many other
23 employee class actions in wage and hour litigation and has knowledge of the strengths and
24 weaknesses of the claims against Defendant and the benefits of the proposed settlement
25 under the circumstances of the case. Gundzik Decl., ¶¶ 20-30. Class Counsel helped develop
26 the law regarding an employee's right to be separately paid for their nonproductive time,
27 which is one of the bases for Labor Code section 226.2. Gundzik Decl., ¶ 40. Class Counsel
28

believes that the settlement is fair, adequate, reasonable and in the best interests of the Class as a whole. Gundzik Decl., ¶ 30.

E. The Class Members’ Positive Reaction to the Settlement Favors Final Approval.

The reaction of the Class to proposed settlement to date has been extremely positive. Not one of the Class Members has objected to the proposed settlement or opted out of it, which is a 100% participation rate. Hernandez Decl., ¶¶ 12-13.

Although a court may appropriately infer that a class action settlement is fair, adequate, and reasonable even when a significant percentage of class members object to it (*See Boyd v Betchel Corp.*, 485 F. Supp. 610, 624 (C. D. Cal 1976); *see also Reed v. General Motors*, 703 F.2d 170, 174 (5th Cir. 1983)), the fact that none have objected provides much stronger grounds for granting final approval. In this action, the Court should construe the lack of objections as a further indication of Class Members’ support for the settlement as being fair, adequate, and reasonable.

F. The Proposed Service and Release Payment to the Named Plaintiff is Reasonable and Should be Approved.

The Settlement Agreement provides for service and release payments in the amount of \$10,000 to Named Plaintiff William Hall. The purpose of this payment is to provide additional compensation to Plaintiff for the time and effort that he put into the litigation and the settlement of this matter, as well as the risks he undertook by agreeing to sue his former employer.

“In determining whether to make an incentive award, the court may consider (1) the risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit received by the class representative as a result of the litigation.” *Golba v. Dick’s Sporting Goods, Inc.*, 238 Cal. App. 4th 1251, 1272 (2015). Additional factors to be considered include “the actions the plaintiff has taken to protect the interests of the class, the

1 degree to which the class has benefitted from those actions, and the amount of time and
2 effort the plaintiff expended in pursuing the litigation.” *Clark v. American Residential*
3 *Services LLC*, 175 Cal. App. 4th 785, 804 (2009).

4 The factors enunciated in both *Golba* and *Clark* favor the approval of the requested
5 service and release payment to Plaintiff. He undertook significant risks in getting involved
6 in the lawsuit against his employer, knowing that it could impact his future employment
7 prospects. Hall Decl., ¶ 7. He understood that if the class action was unsuccessful, he could
8 be responsible for Defendant’s litigation costs, which could have been substantial. *Id.* He
9 was concerned by the attention a publicly-filed lawsuit would attract, as his name would be
10 associated with a lawsuit that he had brought against his employer. *Id.* He was reasonably
11 concerned about the notoriety that would attend his involvement, as he knew that it is
12 possible and relatively easy to perform background checks of publicly-filed documents on
13 the internet and was concerned that future prospective employers might find out that he had
14 sued CASS. *Id.*

15 Plaintiff engaged in many lengthy conversations with Class Counsel about all aspects
16 of the case, his employment, and CASS’s policies and their application. Hall Decl., ¶¶ 9-10.
17 He identified relevant witnesses to Class Counsel and provided Class Counsel with many
18 relevant documents. *Id.* He spoke with Class Members about how they were treated when
19 they worked for CASS and provided this information to Class Counsel. Hall Decl. ¶ 9. He
20 was proactive and requested regular updates from Class Counsel and inquired repeatedly as
21 to how class actions worked so he could understand the process. Hall Decl. ¶ 9.

22 Mr. Hall had several lengthy meetings about the mediation with Plaintiff’s counsel
23 prior to the mediation, and participated in the full-day mediation. Hall Decl., ¶¶ 9-10. He
24 spent a great deal of time assisting Class Counsel identifying witnesses, consulting with
25 Class Counsel in advance of the mediation, and he missed a full day of work to attend and
26 participate in the mediation. *Id.* In all, he each spent in excess of 80 hours on the lawsuit. *Id.*

27 Had he been unwilling to step up, none of the class members would have received
28 any amounts whatsoever. By agreeing to serve as a class representative, Mr. Hall has taken

1 significant actions to protect the interests of the Class, and the Class has significantly
2 benefitted from those actions. *Clark v. American Residential Services LLC*, 175 Cal. App.
3 4th at 804. Although he could have filed a claim with the Department of Labor and possibly
4 received more money, instead of acting in his own self-interest he got involved in this
5 lawsuit to protect the interests of the Class.

6 The additional payment proposed for the named Plaintiff is also intended to
7 compensate him for the broader release that Defendant has demanded of him. While all
8 other Class Members will only be releasing the Released Claims, Mr. Hall will also be
9 releasing any and all known or unknown claims that he might have against Defendant.
10 Gundzik Decl., ¶ 17, Ex. A, ¶ VII.

11 Awarding larger amounts to class representatives is permissible and is often
12 approved by the courts. See, e.g., *Bell v Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726
13 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing class
14 case). As explained by the court in the *Cellphone Termination Fee Cases*, incentive awards
15 are “intended to compensate class representatives for work done on behalf of the class, to
16 make up for financial or reputational risk undertaken in bringing the action, and, sometimes,
17 to recognize their willingness to act as a private attorney general.” *Cellphone Termination*
18 *Fee Cases*, 186 Cal.App.4th 1380, 1393-1394 (2010).

19 “Incentive awards are fairly typical in class action cases.” *Rodriguez v. West*
20 *Publication Corp.*, 563 F.3d 948, 958 (9th Cir. 2009) (citing 4 Newberg on Class Actions
21 (4th ed. 2002) § 11:38, p. 81); Eisenberg & Miller, Incentive Awards to Class Action
22 Plaintiff: An Empirical Study (2006) 53 UCLA L.Rev. 1303. “Since without a named
23 plaintiff there can be no class action, such compensation as may be necessary to induce him
24 to participate in the suit could be thought the equivalent of the lawyers' nonlegal but
25 essential case-specific expenses, such as long-distance phone calls, which are reimbursable.”
26 *Clark v. American Residential Services LLC*, 175 Cal.App.4th at 804 (fn. omitted), citing
27 *Matter of Continental Illinois Securities Litigation*, 962 F.2d 566, 571 (7th Cir. 1992).
28 Compared to the Net Settlement Amount of \$176,531.08 (after deducting the proposed

1 \$10,000 service and release payment), the requested amount of \$10,000 will not appreciably
2 diminish the amount available for distribution to the Settlement Class Members.

3 The additional payment to the named Plaintiff also takes into account the additional
4 risk that he incurred in acting on behalf of the Class. These risks included the potential of a
5 judgment against him if this case had been unsuccessful, as class representatives are deemed
6 the losing party that is liable for the prevailing party's costs. *Earley v. Superior Court*, 79
7 Cal.App.4th 1420, 1433-1434 (2000). Taking that risk here resulted in substantial benefit to
8 the Class.

9 If Plaintiff had not come forward, or had not agreed to take on the risks of stepping
10 up and taking on the class action, Plaintiff may have recovered compensation for himself,
11 but no compensation would have been received by 70 current and former employees who
12 will be receiving an average of \$928.27 as a result of the settlement. Because Plaintiff has
13 advanced California's public policy goal of enforcing wage and hour laws (*See Sav-On*
14 *Drug Stores, Inc. v. Super.Ct.*, 34 Cal.4th 319, 340 (2004)), the Court should approve of the
15 proposed service and release payment to the Representative Plaintiff, William Hall.

16 **G. The Court Should Approve the Request for Class Counsel's Fees.**

17 Subject to Court approval, the settlement amount of \$325,568 includes Class
18 Counsel's attorneys' fees of \$108,522.66. Gundzik Decl., ¶ 17, Ex. A, ¶¶ I.B, II.E, IV.Q;
19 Declaration of Daniel Holzman ("Holzman Decl."), ¶¶ 2-9. It is well-settled that
20 representative plaintiffs and class members are entitled to recover their attorneys' fees and
21 costs in wage and hour class action disputes. California Labor Code § 218.5; Cal. Code Civ.
22 Proc. § 1021.5(a); *Earley v. Super. Ct.*, 79 Cal. App. 4th at 1420.

23 A fee award is justified when benefits are obtained for the class irrespective of
24 whether there is a final judgment in its favor, such as when those benefits are the result of a
25 settlement. *See Westside Cmty. for Indep. Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-353
26 (1983). "Courts recognize two methods for calculating attorney fees in civil class actions:
27 the lodestar/multiplier method and the percentage of recovery method." *Wershba v. Apple*
28 *Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001); *See Lealao v. Beneficial California, Inc.*,

82 Cal.App.4th 19, 27 (2000). In California, both methods are proper, although courts often use a lodestar-multiplier method as a check against the reasonableness of a percentage fee award. (See, e.g., *Serrano v. Priest (Serrano III)*, 20 Cal.3d 25, 48-49, at fn. 23 (1977); *People ex rel. Dept. of Transportation v. Yuki*, 31 Cal.App.4th 1754, 1769-1772 (1995); *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, 172 Cal.App.3d 914, 954 (1985).

1. Class Counsel’s Requested Fee Award is well Within California’s Benchmark Awards and Thus Reasonable Under the Percentage of The Benefit or Common Fund Method.

In *Laffitte v. Robert Half Internat., Inc.*, 1 Cal. 5th 480, 503 (2016), the California Supreme Court approved the use of “percentage of the benefit” attorney fee awards in class actions. “[W]hen class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.” The *Laffitte* court explained that “[t]he percentage method ‘is easy to calculate; it establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.” 1 Cal. 5th at 490 (quoting *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993)). Pursuant to the “percentage of the benefit” doctrine, “a litigant or lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). “The ultimate goal ... is the award of a reasonable fee to compensate counsel for their efforts, irrespective of the method of calculation. It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures that accurately reflect the marketplace.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557-558 (2009).

Class Counsel’s request for one third of the monetary fund recovered is California’s standard benchmark and well within the range customarily approved by the California courts in comparable class actions and other class actions, as well as the standard

1 contingency contracts negotiated by plaintiffs and their counsel. “Empirical studies also
2 show that regardless whether the percentage method or the lodestar method is used, fee
3 awards in class actions average around one-third of the recovery.” *See e.g., Chavez v.*
4 *Netflix, Inc.*, 162 Cal.App.4th 43, 66, at fn. 11 (2008); *In re California Indirect Purchases*
5 (October 22, 1998) WL 1031494 at * 9; *Romero v. Producers Dairy Food, Inc.*, WL
6 3492841 at * 4 (E.D. Cal. Nov. 14, 2007), quoting Newberg on Class Actions § 14.6 (4th
7 ed.2007) (“fee awards in class actions average around one-third of the recovery.”); *see also*
8 T. Cohelan, *On California Class Actions* (2016), § 10.5 at 481 (“nearly all common fund
9 awards fall into the neighborhood of 30%.”)

10 Class Counsel seek \$108,522.66, which is one third of the \$325,568 Gross
11 Settlement Amount. This request is reasonable and justified considering the superb
12 settlement secured for the Class Members. It is also consistent with both the Settlement
13 Agreement (See Gundzik Decl., ¶ 17, Ex. A, ¶¶ I, IV.Q) and the engagement agreements the
14 named Plaintiff entered into with Class Counsel. In those agreements, Plaintiff agreed that
15 Class Counsel would be paid the greater of 1) one-third of all amounts obtained or received
16 in the lawsuit, or 2) the hours worked multiplied by the hourly rates of the attorneys working
17 on the case, plus any additional multiplier awarded by the Court. Gundzik Decl., ¶ 56.

18 Thus, as per the Settlement Agreement, Plaintiff respectfully requests that this Court
19 award Class Counsel’s requested attorneys’ fees.

20 **2. Class Counsel’s Requested Fees Are Reasonable Under the**
21 **Lodestar/Multiplier Method.**

22 Under the lodestar/multiplier method of determining an attorneys’ fee award, “the
23 lodestar is calculated by multiplying the reasonable hours expended by a reasonable hourly
24 rate. The court may then enhance the lodestar with a multiplier, if appropriate.” *Wershba v.*
25 *Apple Computer, Inc.*, 91 Cal.App.4th at 254; *Rebney v. Wells Fargo Bank*, 232 Cal.App.3d
26 1344, 1347 (1991). “California case law permits fee awards in the absence of detailed time
27 sheets.” *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, *citing Sommers v. Erb*, 2
28 Cal.App.4th 1644, 1651 (1992). And “[m]ultipliers can range from 2 to 4 or even higher.”

1 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th at 254, citing *Coalition for L.A. County*
2 *Planning etc. Interest v. Board of Supervisors*, 76 Cal.App.3d 241, 251 (1977); accord, *In re*
3 *Lugo* 164 Cal.App.4th 1522, 1546 (2008).

4 California courts often increase the base lodestar with a multiplier after considering:
5 (1) the continuing obligation of plaintiff's counsel to devote time and effort to the litigation;
6 (2) the extent to which the litigation precluded other employment by the attorneys; (3) the
7 contingent nature of the fee agreement, both from the point of view of eventual success on
8 the merits and securing an award; (4) the experience, reputation, and ability of the attorneys
9 who performed the services, and the skill they displayed in litigation, (5) the amount
10 involved and the results obtained on behalf of the class by plaintiffs' counsel, and (6) the
11 reaction of the class members. *Serrano v. Priest*, 20 Cal.3d at 49; *Dunk v. Ford Motor Co.*,
12 48 Cal.App.4th at 1810, at n.21. However, no rigid formula applies and each factor should
13 be considered "where appropriate." See *Dept. of Transp. v. Yuki*, 31 Cal.App.4th at 1771;
14 see also, *Serrano v. Priest*, 20 Cal.3d at 49.

15 Here, Class Counsel has expended more time on this matter than the \$108,522.66 fee
16 award being requested. Gundzik Decl., ¶¶ 46-47, and Ex. C thereto. Class Counsel's total
17 lodestar is \$176,972.50. Gundzik Decl., ¶¶ 46-47, Ex. C; Holzman Decl., ¶ 9. Class Counsel
18 has attached detailed timesheets and well as a chart specifying the tasks performed on behalf
19 of the Class. *Id.* Because the lodestar exceeds the \$108,522.66 that Class Counsel is
20 requesting, the Court need not consider any multiplier. Instead, the Court need only
21 determine if the \$108,522.66 award is reasonable compensation for Class Counsel's efforts.

22 Class Counsel's hourly rates of \$725 (Aaron Gundzik) and \$675 (Rebecca Gundzik
23 and Daniel Holzman) for this matter are reasonable based upon their qualifications and
24 experience. Gundzik Decl., ¶¶ 39-43; Holzman Decl., ¶¶ 2-5. Indeed, Class Counsel has
25 been awarded their hourly rates in many cases in courts in California. Gundzik Decl., ¶ 43.
26 Both Aaron Gundzik and Rebecca Gundzik have been practicing law in Southern California
27 for over 30 years, and Mr. Holzman has been practicing for 25 years. Gundzik Decl., ¶¶ 39-
28 41; Holzman Decl., ¶ 2. Aaron Gundzik worked for many years at and was an equity partner

1 of the international law firm formerly known as LeBoeuf, Lamb, Greene & MacRae, and
2 has been involved in the litigation of complex cases throughout his career. Gundzik Decl., ¶
3 39. Rebecca Gundzik also worked at well-respected law firms and handled complex
4 litigation matters for many years. Gundzik Decl., ¶ 41. Aaron Gundzik has served as Class
5 Counsel on many wage and hour class action matters, and he and Rebecca Gundzik tried
6 and prevailed on appeal in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal. App. 4th 36
7 (2013), which helped establish the law regarding an employee's right to be paid for all time
8 under an employer's control. Gundzik Decl., ¶¶ 40-41. Mr. Holzman also has significant
9 experience with wage and hour class actions. Holzman Decl., ¶¶ 2-3.

10 Class Counsel's rates for this case are within the range of prevailing market rates.
11 Gundzik Decl., ¶¶ 53-55, and Ex. D, *National Association of Legal Fee Analysis, 2020*
12 *Class Action Hourly Rate Survey* (hourly rates for attorneys in 16 largest U.S. legal markets
13 for attorneys with 20 or more years in practice range from \$801-\$900 per hour); Holzman
14 Decl., ¶ 4.

15 **a. Time and Effort**

16 Class Counsel, who are experienced wage and hour class action attorneys, have put a
17 significant number of hours into prosecuting this case. Class Counsel had to conduct
18 substantial investigation, research numerous issues and review and analyze policies,
19 interview Class Members, independently analyze time records, as well as dedicate
20 substantial time to analyze data and other documents related to Defendant's compensation
21 policies. Gundzik Decl., ¶¶ 6-8, 45-47, and Ex. C thereto. Those efforts, along with
22 negotiating the settlement and obtaining preliminary and final approval, required a
23 significant amount of time and labor. The total amount of attorney time expended through
24 July 31, 2021 is 216.3 hours. Class Counsel's base lodestar for these hours equates to
25 attorneys' fees of \$176,972.50. Gundzik Decl., ¶¶ 45-47, and Ex. C thereto; Holzman Decl.,
26 ¶ 9.

b. Extent Litigation Precluded Other Employment

Inherent to class action litigation is the large amount of time and labor required to properly adjudicate the case. From start to settlement, judgment or verdict, class action litigation commands commitment, an extensive amount of time, labor and resources. Although this litigation did not conclusively preclude other employment, it did impact Plaintiff's counsel's ability to take on other class action cases. Plaintiff's counsel are small law firms with few attorneys and staff. Gundzik Decl., ¶ 49.

c. Continent Nature of the Agreement

Class counsel agreed to work on this case on a contingency basis. If they had not successfully resolved the case, they would not have earned any fees. Moreover, they would not have recouped the substantial litigation expenses that they incurred. Gundzik Decl., ¶¶ 48-50. The courts have recognized that higher attorneys' fees are justified in contingency matters because of the contingent nature of their recovery. See *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001). Class action contingency cases are inherently risky. Upon retention, class counsel makes a commitment to litigate the case through trial. These types of cases can take years, hundreds of hours of work and cost an enormous amount of money—risks which are known upon retention. Class Counsel has had to front significant litigation expenses, as well as office overhead expenses. Gundzik Decl., ¶¶ 47-48, and Ex. C thereto; Holzman Decl., ¶ 10. The risks involved coupled with the contingency basis of this case further support Class Counsel's request for attorneys' fees and costs.

In *Ketchum v. Moses*, *supra*, 24 Cal.4th at 1132, the court explained the economic rationale for awarding higher fees in contingency cases as follows:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but also for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans. (Citation omitted.) A lawyer who

1 both bears the risk of not being paid and provides legal services is not
2 receiving the fair market value of his work if he is paid only for the second of
3 these functions. If he is paid no more, competent counsel will be reluctant to
4 accept fee award cases.

5 Class Counsel represented the Class Members in this matter and have borne the
6 entire risk and costs of litigation on a pure contingency basis. To date, Class Counsel have
7 not received any compensation and have expended significant litigation costs on behalf of
8 the Class.

9 **d. Experience, Reputation, and Ability of Plaintiff's**
10 **Counsel**

11 As set forth in the Declarations of Aaron Gundzik and Dan Holzman, Class
12 Counsel's skill and experience in litigating wage and hour class actions, in state and federal
13 forums, contributed to the results obtained on behalf of the Class Members. All three
14 attorneys who were primarily responsible for the case have significant experience litigating
15 wage and hour class actions, and each have been practicing law for over 25 years. Gundzik
16 Decl., ¶¶ 39-41; Holzman Decl., ¶¶ 2-3.

17 **e. Results Obtained On Behalf of the Class by Plaintiff's**
18 **Counsel**

19 An award of attorneys' fees should reflect the successful outcome of the case.
20 *Hensley v Eckerhart*, 461 U.S. 424, 440 (1983), abrogated in part as stated in *McKee v.*
21 *Comm'r of Soc. Sec.*, 2008 U.S. Dist. LEXIS 86793 (M.D. Fla. 2008), superseded by statute
22 as stated in *Laube v. Allen*, 506 F. Supp. 2d 969, 2007 U.S. Dist. LEXIS 64916 (M.D. Ala.
23 2007). As already discussed herein and in the Motion for Preliminary Approval, this case
24 involves numerous and difficult issues requiring a highly technical analysis and largely
25 precluding a clear-cut outcome as to liability. There also were significant issues regarding
26 Defendant's ultimate liability, as Defendant consistently denied that it had violated
27 California's wage and hour laws. In fact, Defendant raised a colorable legal or factual
28 defense to each claim Plaintiff alleged. Gundzik Decl., ¶ 27.

Nevertheless, despite these obstacles, Class Counsel obtained significant financial compensation for the Class Members. Defendant will pay a gross settlement amount of \$325,568 to the 70 Settlement Class Members, as well as the employer's portion of all payroll taxes. After payment of attorneys' fees and costs, service and release payments and class administration costs, the remainder of the Net Settlement Amount will be approximately \$176,531.08. Despite the complexity of the case, Class Counsel have, through the investment of substantial effort, and the resources of their law firm, been able to secure an outstanding settlement on behalf of the Class Members.

f. Reaction of Putative Class Members

As already discussed herein, the reaction of the Class Members has been very positive. Not one of the Class Members objected to Class Counsel's request for attorneys' fees, which also provide compelling evidence that the request is fair, adequate and reasonable. Hernandez Decl., ¶ 13.

In sum, based on the six factors discussed above, Class Counsel's requested fees should be awarded.

H. Class Counsel's Requested Costs are Reasonable.

The settlement provides for repayment of Class Counsel's actual and reasonable costs of litigation in an amount not to exceed \$15,000. Gundzik Decl., ¶ 17, Ex. A, ¶¶ II.F, IV.Q. Class Counsel incurred reasonable litigation costs in bringing this matter to a resolution before trial. The total of out-of-pocket costs incurred and to be incurred by Class Counsel in this litigation is \$11,199.74. Gundzik Decl., ¶ 48, Ex. C; Holzman Decl., ¶ 10, Ex. A. Class Counsel is therefore seeking an award of its costs in the amount of \$11,199.74.

I. The Settlement Administrator's Requested Expenses are Reasonable.

Plaintiff retained a neutral third-party administrator, ILYM, to administer the notice and claims process. ILYM's duties included and include, among other things: (a) translating, printing and mailing the Notice of Settlement to all Class Members; (b) locating updated addresses for class members; (c) receiving other communications about the settlement; (d) preparing weekly reports notifying the parties of the number of class members who filed

1 objections or requests for exclusion; and (e) notifying the parties of the number of class
2 members who filed untimely or deficient requests for exclusion, and taking steps to cure the
3 deficiencies. Hernandez Decl., ¶ 4. If final approval is granted, ILYM will receive and
4 assume stewardship of the settlement funds, make final calculations of individual settlement
5 payments, mail checks to class members, prepare and distribute tax documents and arrange
6 for transfer of funds from any un-negotiated settlement checks to the state as unclaimed
7 property. ILYM will be charging \$5,514.26 to perform this work, which is the amount it
8 estimated in connection with the Motion for Preliminary Approval. Hernandez Decl., ¶ 19.
9 Because this amount is reasonable in light of the administrator's significant duties, it should
10 be approved.

11 **IV. CONCLUSION**

12 For the foregoing reasons, Plaintiff, on behalf of himself and the Class, respectfully
13 requests that the Court grant final approval of the settlement and approve the distribution of
14 the Net Settlement Amount to Settlement Class Members, award a service and release
15 payment to the named Plaintiff in the amount of \$10,000, award Class Counsel's attorneys'
16 fees in the amount of \$108,522.66, award Class Counsel's costs in the amount of
17 \$11,199.74, approve the payment of \$7,500 to the LWDA and \$2,500 to the PAGA
18 Employees in settlement of Plaintiff's PAGA claim, and award the Settlement Administrator
19 its fees in the amount of \$5,514.26, all of which will be paid from the Gross Settlement
20 Amount.

21
22 DATED: July 30, 2021

GUNDZIK GUNDZIK HEEGER LLP

23 
24 By: _____
25 Rebecca G. Gundzik
26 Attorneys for Plaintiff William Hall,
27 individually and on behalf of all others
28 similarly situated

PROOF OF SERVICE

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 eighteen (18) and not a party to the within action. My business address is 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423.

On July 30, 2021, I served the following document described as

- **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**

on the interested parties in this action:

(X) by serving () the original (X) true copies thereof as follows:

Please see attached service list

() BY MAIL I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.	() BY FACSIMILE TRANSMISSION I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (818) 918-2316. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.
() BY OVERNIGHT DELIVERY Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.	(XX) BY ELECTRONIC TRANSMISSION I caused the above-described document to be electronically served to the names and email addresses listed on the Service List attached hereto.

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

() FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on July 30, 2021, at Sherman Oaks, California.



Nicole Salazar

SERVICE LIST

Bethany Pelliconi, Esq. Elisabeth Watson, Esq. SEYFARTH SHAW LLP 2029 Century Park East, Suite 3500 Los Angeles, CA 90067 Telephone: (310) 201-9233 Facsimile: (310) 551-8328 Email: bpelliconi@seyfarth.com ewatson@seyfarth.com <i>Attorneys for Defendant Culpepper & Associates Security Services, Inc.</i>	Marshall A. Caskey, Esq. Daniel M. Holzman, Esq. N. Cory Barari, Esq. CASKEY & HOLZMAN 24025 Park Sorrento, Ste. 400 Calabasas, CA 91302 Telephone: (818) 657-1070 Facsimile: (818) 297-1775 Email: mcaskey@caskeyholzman.com dholzman@caskeyholzman.com nbarari@caskeyholzman.com <i>Attorneys for William Hall, individually and on behalf of all others similarly situated</i>
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