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

13 DANIELA GARIBAY, individually, and on
14 behalf of other members of the general public
similarly situated,

15 Plaintiff,

16 vs.

17 PACIFIC STEEL GROUP, a California
18 corporation; and DOES 1 through 10,
inclusive,

19 Defendants.
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Case No. CIVDS2011129

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

[Assigned to the Honorable Christian Towns in
Dept. S26]

Date: November 18, 2024

Time: 8:30 a.m.

Location: S26

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Attorneys for Plaintiffs Brandon Gay and Israel Berber

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 18, 2024 at 8:30 a.m., or as soon thereafter as the matter may be heard, before the Honorable Christian Towns, judge presiding, in Department S26 of the above referenced Court located at 247 West Third Street, San Bernardino, CA 92415, Plaintiffs Daniela Garibay, Darren Morris, Brandon Gay, and Israel Berber (“Plaintiffs” or “Class Representatives”) will seek an Order: (1) preliminarily approving the Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement” or “Settlement”); (2) conditionally certifying the following Class for settlement purposes only: all current and former non-exempt workers employed by Defendant in the State of California and worked at least one day during the Class Period (April 6, 2016 through July 11, 2024); (3) appointing Plaintiffs as the Class Representatives, and Capstone Law APC; Diversity Law Group, P.C.; the Law Offices of Choi & Associates, P.C.; Polaris Law Group; Hyun Legal, APC; and Lawyers for Justice, PC as Class Counsel; (4) preliminarily approving the Settlement Agreement and the Gross Settlement Amount of Three Million Five Hundred Thousand Dollars (\$3,500,000); (5) finding on a preliminary basis that the Settlement Agreement appears to be within the range of reasonableness of a settlement, including the amount of the Class Representatives’ Enhancement Payments, Class Counsel’s fees and costs, the settlement administration fees, and the allocation of payments to Class Members, that could ultimately be given final approval by this Court; (6) approving the Notice of Class Action Settlement (“Class Notice”) to be sent to Class Members, which is attached as an exhibit to the Settlement Agreement; (7) approving the distribution of the Class Notice to Class Members substantially in the manner and form set forth in the Settlement Agreement; (8) appointing ILYM Group, Inc. Settlement Administrators as the Settlement Administrator; and (9) setting the matter for a Final Fairness and Final Approval hearing.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for court approval of the settlement of a purported class action and allows the Court to preliminarily certify a class for settlement purposes.

The basis for this Motion, filed without any opposition from Defendant Pacific Steel Group (“Defendant”), is that the proposed settlement is fair, adequate, and reasonable and the procedures proposed by the Parties are adequate to ensure the opportunity of class members to

1 participate in, opt-out of, or object to the settlement.

2 This Motion will be based on the attached Memorandum of Points and Authorities, the
3 Settlement Agreement, the proposed Class Notice, and the supporting Declarations of Edward W.
4 Choi, Larry W. Lee, Dennis Hyun, William L. Marder, Arman Marukyan, Raul Perez, Plaintiffs
5 Daniela Garibay, Darren Morris, Brandon Gay, and Israel Berber, and upon the oral arguments of
6 counsel (should there be any) and on the complete records and file herein.

7
8 DATED: October 22, 2024

LAW OFFICES OF CHOI AND ASSOCIATES

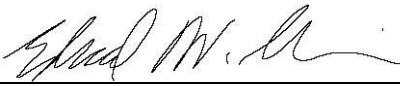
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10 By: 
11 Edward W. Choi
12 Attorneys for Plaintiffs and the CLASS
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Daniela Garibay (“Plaintiff Garibay”), Darren Morris (“Plaintiff Morris”), Brandon
4 Gay (“Plaintiff Gay”), and Israel Berber (“Plaintiff Berber”) (collectively, “Plaintiffs” or “Class
5 Representatives”) move for preliminary approval of a global settlement that resolves four separately
6 filed class and representative Private Attorneys General Act (“PAGA”) lawsuits filed against
7 Defendant Pacific Steel Group (“Defendant”) (collectively with Plaintiffs, the “Parties”).

8 As fully set forth below, after more than four years of litigation and four separate mediations,
9 Plaintiffs have entered into a global settlement on behalf of approximately 6,000 class members
10 which will be distributed on a non-reversionary basis, and without the need to submit claim forms.
11 (Joint Stipulation of Class Action and PAGA Settlement and Release (“Settlement Agreement” or
12 “Settlement”) ¶ 40) Thus, the entire settlement amount will be distributed and no remaining
13 amounts, *i.e.* unclaimed funds, will revert back to Defendant. (*Id.*)

14 The key terms of the Settlement are as follows:

- 15 • Gross Settlement Amount of Three Million Five Hundred Thousand Dollars (\$3,500,000)
16 for a class size of approximately 6,000 which will result in a pure raw average of \$325.41
17 per class member;
- 18 • Class Counsel’s attorneys’ fees of 35% of the Gross Settlement Amount currently
19 estimated at \$1,225,000.00 and costs up to \$100,000.00;
- 20 • Settlement Administration costs of up to \$32,550.00; and
- 21 • PAGA allocation of \$200,000.00 (75% to be paid to the LWDA and 25% to PAGA
22 Members).

23 Plaintiffs respectfully submit that this amount is fair, adequate, and reasonable, especially
24 given the substantial risks and uncertainty of class certification and liability on the merits.
25 Although Plaintiffs and their counsel have always believed that they could prevail on class
26 certification, as well as on the merits, they recognize the inherent risk in further drawn-out
27 litigation and the specific risks that a class might not be certified and/or that Plaintiffs could fail to
28 establish liability. Based on their own independent investigation and evaluation, Plaintiffs and their

1 counsel are of the opinion that settlement, for the consideration and on the terms set forth in the
2 Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of the
3 Settlement Class in light of all known facts and circumstances and the expenses and risks inherent
4 in litigation.

5 Therefore, Plaintiffs respectfully request that the Court grant this Motion for Preliminary
6 Approval of Class Action Settlement.

7 **II. FACTS AND LITIGATION HISTORY**

8 **A. PLAINTIFFS**

9 Plaintiff Garibay is a resident of Bloomington, in San Bernardino County, California.
10 (Declaration of Daniela Garibay (“Garibay Decl.”) ¶ 2.) Plaintiff Garibay was employed as an
11 hourly paid, non-exempt Data Entry Employee from approximately April 2019 to January 2020.
12 (*Id.*) Plaintiff Garibay worked for Defendant at their location in Bloomington, California. (*Id.*)
13 Plaintiff Garibay’s primary job duties included, without limitation, performing administrative
14 computer functions, compiling data, and filing information packets. (*Id.*)

15 Plaintiff Morris was hired by Defendant in or around February 2019, to work as a non-
16 exempt employee. (Declaration of Darren Morris (“Morris Decl.”) ¶2.) On or about May 21,
17 2020, Defendant terminated Morris’s employment. (*Id.*).

18 Plaintiff Gay was employed by Defendant from approximately October 2016 until August
19 2019 as a non-exempt hourly-paid Apprentice/Rodman and Journeyman. (Declaration of
20 Brandon Gay (“Gay Decl.”) ¶2.)

21 Plaintiff Berber was employed by Defendant from approximately November 2019 to
22 approximately May 2020 as a non-exempt hourly-paid Labor/Iron Worker. (Declaration of Israel
23 Berber (“Berber Decl.”) ¶2.)

24 **B. LAWSUITS**

25 **1. Plaintiff Garibay**

26 On April 13, 2020, Plaintiff Garibay submitted her pre-litigation notice letter to the LWDA
27 and Defendant, giving notice of Plaintiff Garibay’s intention to file a representative action to
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1 recover penalties under PAGA. (Declaration of Raul Perez ¶ 2.) On May 26, 2020, Plaintiff
2 Garibay filed her class action complaint against Defendant in San Bernardino Superior Court (Case
3 No. CIVDS2011129). (*Id.*) The claims allege that Defendant failed to pay minimum wages, provide
4 compliant meal periods and rest periods, provide compliant wage statements, provide timely wages
5 upon termination and during employment, unreimbursed business expenses, and unfair and
6 unlawful business practices. (*Id.*) On July 2, 2020, Plaintiff Garibay filed her First Amended
7 Complaint (“FAC”) adding an additional cause of action for violation of the PAGA. (*Id.*)

8 **2. Plaintiff Morris**

9 On June 22, 2020, Plaintiff Morris sent his PAGA letter and on June 23, 2020, Plaintiff
10 Morris filed his class action complaint in San Diego Superior Court (Case No. 37-2020-00021541).
11 (Declaration of Edward W. Choi (“Choi Decl.”) ¶2). Plaintiff Morris’s class action complaint
12 alleges that Defendant failed to pay minimum wages, failed to provide accurate itemized wage
13 statements, and unfair and unlawful business practices. (*Id.* ¶3). Plaintiff Morris served written
14 discovery and received responses and objections thereto. (*Id.* ¶4). Plaintiff Morris engaged in an
15 extensive meet and confer process to obtain further responses. (*Id.* ¶5). Ultimately, Plaintiff Morris
16 and Defendant entered into a Stipulation and Order for Defendant to produce the class list.
17 Defendant also produced responsive documents. (*Id.* ¶6).

18 **3. Plaintiffs Gay & Berber**

19 On September 22, 2020, Plaintiff Gay filed a putative class action complaint in the Superior
20 Court of California, County of Alameda entitled *Brandon Gay v. Pacific Steel Group*, Alameda
21 County Superior Court Case No. RG20075009 (the “Gay Action”). (Declaration of Arman
22 Marukyan (“Marukyan Decl.”), ¶2). Plaintiff Gay alleges the following causes of action: (1)
23 unpaid overtime (violation of California Labor Code §§ 510 and 1198); (2) unpaid meal period
24 premiums (violation of California Labor Code §§ 226.7 and 512(a)); (3) unpaid rest period
25 premiums (violation of California Labor Code § 226.7); (4) unpaid minimum wages (violation of
26 California Labor Code §§ 1194, 1197, and 1197.1); (5) final wages not timely paid (violation of
27 California Labor Code §§ 201 and 202); (6) wages not timely paid during employment (violation of
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1 California Labor Code § 204); (7) non-compliant wage statements (violation of California Labor
2 Code § 226(a)); (8) failure to keep requisite payroll records (violation of California Labor Code
3 §1174(d)); (9) unreimbursed business expenses (violation of California Labor Code §§ 2800 and
4 2802); and (10) violation of California Business & Professions Code §§ 17200 *et seq.* (*Id.* ¶3).

5 On November 25, 2020, Plaintiff Gay filed a First Amended Complaint that added Plaintiff
6 Berber as a named plaintiff and putative class representative. (*Id.* ¶4). On November 30, 2020,
7 Defendant removed the *Gay* Action to federal court. (*Id.* ¶5).

8 On October 28, 2020, Plaintiff Berber submitted his PAGA letter to the LWDA and
9 Defendant, giving notice of Plaintiff Berber’s intention to file a representative action to recover
10 penalties under PAGA. (*Id.* ¶6). On February 2, 2021, Plaintiff Berber filed his Complaint for
11 Enforcement under PAGA in San Francisco County Superior Court, alleging violations of PAGA,
12 entitled *Israel Berber v. Pacific Steel Group*, San Francisco County Superior Court Case No. CGC-
13 21-589556 (the “*Berber* PAGA Action”). (*Id.* ¶7). On May 7, 2021, Defendant removed the *Berber*
14 PAGA Action to federal court. (*Id.* ¶8).

15 On March 12, 2021, Plaintiffs Gay and Berber filed a Motion to Remand in the *Gay* Action.
16 (*Id.* ¶9). On June 15, 2021, the federal court denied Plaintiffs Gay and Berber’s Motion to Remand.
17 (*Id.* ¶10).

18 On May 12, 2021, Defendant filed a motion to relate the *Gay* Action and *Berber* PAGA
19 Action. (*Id.* ¶11). On May 18, 2021, the federal court granted Defendant’s motion to relate the *Gay*
20 Action and *Berber* PAGA Action. (*Id.* ¶12).

21 Plaintiffs Gay and Berber served written discovery on Defendant and received responses
22 and objections. (*Id.* ¶13). After extensive meet and confer efforts, Defendant served multiple
23 supplemental responses to Plaintiff Gay and Berber’s written discovery. (*Id.*).

24 **C. DISCOVERY AND INVESTIGATION**

25 In response to Plaintiffs’ discovery requests, Defendant produced 137 documents such as:
26 Defendant’s employee handbook which includes, meal and rest period policies, a timekeeping
27 policy, a punctuality and attendance policy, a social media policy, an articulation of employee
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1 benefits and leave policy, and Defendant’s insurance benefits policy. (Choi Decl. ¶6). Further, prior
2 to each of the mediations set forth below, Defendants provided class and PAGA figures divided
3 into six categories: (1) ironworker (IRW) class; (2) former ironworker class; (3) ironworker PAGA;
4 (4) non-ironworker, non-exempt employees (“Hourly”) class; (5) former Hourly class; and (6)
5 Hourly PAGA. (*Id.* ¶7). Utilizing the data production, prior to each mediation, Plaintiffs engaged
6 the services of an expert witness to calculate the potential exposure. (*Id.* ¶7).

7 **D. MEDIATIONS**

8 On January 25, 2022, the Parties engaged in a full day of mediation with Robert O'Brien,
9 which did not result in a settlement. (Choi Decl. ¶8). On August 2, 2022, the Parties engaged in a
10 second mediation with Deborah Crandall Saxe, Esq. which also did not result in a settlement. (*Id.*
11 ¶9). After further discovery, on March 26, 2024, the Parties engaged in a third mediation with
12 Deborah Crandall Saxe, Esq., which also did not result in a settlement. (*Id.* ¶10). Finally, on April
13 11, 2024, Plaintiffs engaged in a third mediation with Deborah Crandall Saxe, Esq., which still did
14 not result in a settlement. (*Id.*) Rather, the Parties continued to negotiate through Ms. Saxe, at the
15 conclusion of which she issued a mediator’s proposal which was ultimately accepted by the Parties
16 resulting in the settlement of these actions. (*Id.*).

17 **E. CONSOLIDATED COMPLAINT**

18 On October 17, 2024, the Parties filed a Stipulation for Leave to File a Second Amended
19 Complaint in this action to: (a) add Morris, Gay, and Berber as named plaintiffs; and (b) conform
20 the pleadings to encompass all claims raised in each of the separate actions settled herein (i.e., the
21 *Garibay* Action, the *Gay* Action, the *Berber* PAGA Action, and the *Morris* Action) and conform
22 with the scope of the Released Class Claims and Released PAGA Claims. (Choi Decl. ¶11).

23 **III. DISCUSSION**

24 Any settlement of a class action lawsuit must be reviewed and approved by the Court. This
25 is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after
26 notice has been distributed to the class members for their comment or objections. The Manual for
27 Complex Litigation (Third) § 30.41 states:

28 Approval of class action settlements involves a two-step process. First, counsel

1 submits the proposed terms of settlement and the court makes a preliminary fairness
2 evaluation. If the preliminary evaluation of the proposed settlement does not
3 disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly
4 preferential treatment of class representatives or of segments of the class, or
5 excessive compensation for attorneys, and appears to fall within the range of
possible approval, the court should direct that notice ... be given to the class
members of a formal fairness hearing, at which arguments and evidence may be
presented in support of and in opposition to the settlement.

6 Thus, the preliminary approval by the trial court is simply a conditional finding that the
7 settlement appears to be within the range of acceptable settlements. As Professor Newberg
8 comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference
9 concerning a tentative settlement proposal may vary. The court may find that the settlement
10 proposal contains some merit, is within the range of reasonableness required for a settlement offer,
11 or is presumptively valid subject only to any objections that may be raised at a final hearing.” 4
12 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

13 The procedures for the parties’ submission of a proposed settlement for preliminary
14 approval by the court also are discussed in 4 *Newberg on Class Actions*:

15 When the parties to an action reach a monetary settlement, they will usually prepare
16 and execute a joint stipulation of settlement, which is submitted to the court for
17 preliminary approval. The stipulation should set forth the central terms of the
18 agreement, including but not limited to, the amount of settlement, form of payment,
manner of determining the effective date of settlement and any recapture clause.

19 *Id.* at § 11.24.

20 Here, the Parties have reached such an agreement and Plaintiffs are concurrently filing a
21 copy of the Settlement Agreement with this Motion, fully setting forth the agreement reached
22 among the Parties. The Settlement Agreement sets forth all terms of the agreement reached by the
23 Parties, which include, among other things, the method for calculating the Class Members’
24 Individual Settlement Payments.

25 The parties also may, at the preliminary approval stage, request that the court provisionally
26 approve certification of the class – conditional upon final approval of the settlement. “[P]re-
27 certification settlements are routinely approved if found to be fair and reasonable.” *Wershba v.*
28 *Apple Computer, Inc.*, 91 Cal. App. 4th 224, 240 (2001). *Accord Dunk v. Ford Motor Co.*, 48 Cal.

1 App. 4th 1794, 1803 (1996) (although the settlement was reached before any “adversary
2 certification,” the court was satisfied that it was “fair, adequate and reasonable”); *In re Baldwin-*
3 *United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984) (“many courts have employed this practice in
4 the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals”).

5 As further explained by Professor Newberg:

6 The strength of the findings made by a judge at a preliminary hearing or conference
7 concerning a tentative settlement proposal. . . . may be set out in conditional orders
8 granting tentative approval to the various items submitted to the court. Three basic
9 rulings are often conditionally entered at this preliminary hearing. These conditional
 rulings may approve a temporary settlement class, the proposed settlement, and the
 class counsel’s application for fees and expenses.

10 4 Newberg on Class Actions, at §11.26

11 In addition to such terms as class identification, settlement amount and payment procedures,
12 the Settlement Agreement reached among the Parties contains a provision pursuant to which the
13 Parties stipulate to the Court’s provisional certification of the Class, but do so for the purposes of
14 this settlement only.

15 **A. PROPOSED CLASS DEFINITION**

16 The current settlement is being settled on behalf of the following Class:

17 “all current and former non-exempt workers employed by Defendant in the State of
18 California and worked at least one day during the Class Period (April 6, 2016,
19 through July 11, 2024).”

20 (Settlement Agreement ¶¶6-7).

21 **B. NUMEROSITY**

22 Courts generally find that numerosity is satisfied if the class includes forty or more
23 members. (*See Villalpando v. Excel Direct Inc.* (N.D. Cal. 2014) 303 F.R.D. 588, 605-606; *see also*
24 *Jordan v. L.A. County* (9th Cir. 1982) 669 F.2d 1311, 1320 (noting, in dicta, that the court “would
25 be inclined to find the numerosity requirement...satisfied solely on the basis of [39] ascertained
26 class members”), *vacated on other grounds*, 459 U.S. 810 (1982); *Ark. Educ. Ass’n v. Bd. of Educ.*
27 *of the Portland* (8th Cir. 1971) 446 F.2d 763, 765-66 (approving class of 20 members).)

28 In this case, there are approximately a total of 6,000 class members, therefore, numerosity is

1 satisfied. (Choi Decl. ¶10).

2 **C. ASCERTAINABILITY**

3 Class members are ascertainable where they may be “readily identified without
4 unreasonable expense or time by reference to official records.” (*Lee v. Dynamex, Inc.* (2008) 166
5 Cal. App. 4th 1325, 1334; *see also Faulkinbury v. Boyd & Assocs., Inc.* (2013) 216 Cal. App. 4th
6 220, 240.)

7 Here, for settlement purposes, the identity of class members is clearly ascertainable from
8 Defendant’s employment and payroll records and have already been identified during the discovery
9 and mediation process.

10 **D. TYPICALITY AND ADEQUACY OF REPRESENTATION**

11 **1. Class Representatives’ Claims are Typical of the Class**

12 The commonality requirement is met when there are questions of law and fact common to
13 the class. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (1998) (“The existence of shared
14 legal issues with divergent legal factual predicates is sufficient, as is a common core of salient facts
15 couple with disparate legal remedies within the class”). Commonality requires only that some
16 common legal or factual questions exist; the Plaintiff need not show that all issues in the litigation
17 are identical. *See Richmond v. Dart Industries, Inc.*, 29 Cal. 3d 462, 473 (1981). Defendant’s
18 conduct is central to the commonality inquiry. *See City of San Jose v. Superior Court*, 12 Ca1. 3d
19 447, 460 (1974); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 812-13 (1971). Where the employer’s
20 conduct is uniformly directed at a class of employees, as it is here, the class wide impact of the
21 Defendant’s policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward &*
22 *Co.*, 193 Cal. App. 3d 411, 421 (1987).

23 *First*, Plaintiffs allege that they were not provided with compliant meal periods due to
24 understaffing and a failure to schedule meal periods for employees which resulted in late first
25 meals and missed second meal breaks. (Morris Decl. ¶4; Garibay Decl. ¶2, Gay Decl. ¶2, and
26 Berber ¶2). Additionally, Plaintiffs allege that Defendant failed to pay premiums for these non-
27 compliant meal breaks. (*Id.*).

28 *Second*, Defendant failed to provide compliant rest periods due to Defendant’s on-

1 premises rest break requirement. (Morris Decl. ¶4; Garibay Decl. ¶2, Gay Decl. ¶2, and Berber
2 ¶2) Defendant's policy prohibits employees from leaving the premises during rest periods. (*Id.*).

3 *Third*, Defendant required employees to undergo physical examinations and drug testing,
4 but did not reimburse employees for the travel costs associated with Defendant's drug
5 testing/physical examination requirement. (Morris Decl. ¶5; Garibay Decl. ¶2, Gay Decl. ¶2, and
6 Berber ¶2).

7 *Fourth*, Defendant failed to compensate employees for all time worked off the clock, as
8 Defendant implemented a policy and practice of requiring employees to record their scheduled
9 hours rather than actual hours worked. (Morris Decl. ¶5; Garibay Decl. ¶2, Gay Decl. ¶2, and
10 Berber ¶2) Further, Defendant failed to pay for off the clock work, such as time spent by
11 employees to prepare their tools before they clocked in for work, attending stretching and safe
12 meetings prior to the start of their shifts. (*Id.*).

13 *Fifth*, Plaintiffs allege that Defendant rounded down the time worked by employees (Morris
14 Decl. ¶6; Garibay Decl. ¶2, Gay Decl. ¶2, and Berber ¶2).

15 Plaintiffs do not have any interests adverse to the Class, nor has any such issues been raised
16 or presented. (Morris Decl. ¶7; Garibay Decl. ¶6, Gay Decl. ¶2, and Berber ¶2). Plaintiffs have
17 taken all necessary steps to represent the interests of the Class, by providing information and
18 documents. (Morris Decl. ¶10; Garibay Decl. ¶9, Gay Decl. ¶3, and Berber ¶3). For such reasons,
19 Plaintiffs have adequately represented the Class Members and will continue to do so.

20 21 **2. Class Counsel Have Adequately Represented the Class and Have** 22 **Experience with Wage and Hour Class Actions**

23 From the inception of the cases, Class Counsel have solely represented the interest of the
24 Class. Plaintiffs conducted formal and informal discovery directed to Defendant regarding
25 Plaintiffs, the Class, and towards Class issues. (Choi Decl. ¶4; Perez Decl. ¶¶5-8; Marukyan Decl.
26 ¶13) Class counsel also engaged in numerous meet and confer efforts with Defendant's counsel and
27 obtained the Class data prior to each of the mediations. (Choi Decl. ¶¶5-6; Perez Decl. ¶¶5-8;
28 Marukyan Decl. ¶13) The mediation and settlement were also obtained for the benefit of the Class,

1 not for the individual Plaintiffs. Finally, Class counsel have been approved as class counsel on a
2 number of prior cases and are competent to represent the class. (Choi Decl. at ¶22; Declaration of
3 Larry W. Lee (“Lee Decl.”) at ¶¶4-5; Declaration of Dennis S. Hyun (“Hyun Decl.”) at ¶¶ 3-6;
4 Marder Decl. ¶¶ 8-14; Marukyan Decl. ¶¶25-29; Declaration of Raul Perez ¶¶10-18.)

5 **E. SUPERIORITY**

6 Class treatment is clearly superior to any other method of resolving Plaintiffs’ claims. (*Sav-*
7 *on Drug Stores, Inc., supra*, 34 Cal. 4th 319 at p. 326) In employment actions, class actions are in
8 fact encouraged. (*Jaimez v. DAIOWS USA, Inc.* (2010) 181 Cal. App. 4th 1286, 1308 (“In light of
9 the numerous common issues of fact and law that predominate in this lawsuit, we conclude that
10 proceeding by way of class action is the superior method of adjudication. Doing so would further
11 judicial economy by avoiding repetitious suits, would unify what would otherwise be a series of
12 small claims so as to enhance the class members’ access to redress...”).)

13 Here, Plaintiffs’ claims are based on the alleged Class-wide policies, procedures, and
14 practices that apply to all Class Members and can be most efficiently litigated on a Class-wide
15 basis. The alternative would be the unrealistic filing of numerous individual claims. Since the
16 putative class members are employees with relatively modest individual claims and limited
17 resources, there is a strong likelihood that individual claims would never be brought. (*See Local*
18 *Joint Exec. Bd. of Culinary/Bartender Trust Fund* (9th Cir. 2001) 244 F.3d 1152, 1163 (superiority
19 requirement met where class members would recover, at most, about \$1,330); *see also Gentry v.*
20 *Sup. Ct.* (2007) 42 Cal. 4th 443, 462.)

21 **F. SUMMARY OF THE CASE, INVESTIGATION AND DISCOVERY, AND** 22 **REASONABLE ESTIMATE OF THE NATURE AND AMOUNT OF** 23 **RECOVERY**

24 As set forth above, each of the Plaintiffs have engaged in significant written discovery and
25 obtained all of the necessary documents and data to thoroughly investigate each of their claims.
26 Prior to mediation, Plaintiffs obtained the putative class members’ pay data. (Choi Decl. ¶9).
27 Thereafter, the Parties engaged in four separate full-day mediations over the course of two years,
28 which ultimately resulted in this settlement. (*Id.* ¶8).

1 Based on their own independent investigations and evaluations, the Parties and their
2 respective counsel are of the opinion that settlement for the consideration and on the terms set forth
3 in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of the
4 Class and Defendant in light of all known facts and circumstances and the expenses and risks
5 inherent in litigation, and is designed so that the Parties may buy their peace and avoid continuing
6 litigation and costs. (Choi Decl. ¶20; Lee Decl. ¶2; Hyun Decl. ¶8; Marukyan Decl. ¶22; Perez
7 Decl. ¶9).

8 As explained by the Court of Appeal in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
9 4th 116, 130, 133 (2008), a class action settlement should be approved when the plaintiff has
10 conducted sufficient discovery and the settlement is reasonable in light of the strengths of the
11 plaintiff's claims. As discussed herein, Plaintiffs' counsel has conducted extensive discovery and
12 investigation and, in light of the strength and weaknesses of Plaintiffs' claims, Plaintiffs' attorneys
13 submit that this settlement is fair pursuant to *Kullar*.

14 Prior to the third and fourth mediation sessions, Defendant produced over 120,000 pages of
15 time and corresponding wage records. (Choi Decl. ¶12). Prior to the third mediation, there were
16 5,801 class members which included 4,279 former employees. (*Id.*). The total workweeks for the
17 class members amounted to approximately 410,000 and the average rate of pay was \$32.73. (*Id.*).
18 Utilizing the foregoing, Plaintiffs estimated Defendant's exposure for settlement purposes as
19 follows:

20 *First*, Plaintiffs' analysis of Class Members' time records indicated that approximately 51%
21 of all meal breaks were non-compliant because they were not provided within the first five hours
22 worked or a second meal break was not provided. (*Id.* ¶13). Notwithstanding, pursuant to Labor
23 Code §§ 226.7 and 512(e) & (f), employees who are covered by a CBA and/or who work in a
24 construction occupation are not entitled to the protections of Labor Code § 226.7 for meal periods.
25 (*Id.*). Thus, Defendant arguably had a complete defense to meal period violations, which would
26 have resulted in no exposure. (*Id.*).

27 *Second*, Plaintiffs allege that Defendant failed to provide compliant rest periods due to
28 Defendant's on-premises rest break requirement. (*Id.* ¶14). Thus, each shift worked was deemed to

1 be a violation of the rest break requirements. (*Id.*). However, pursuant to Labor Code §§ 226.7 and
2 512(e) & (f), employees who are covered by a CBA and/or who work in a construction occupation
3 are not entitled to the protections of Labor Code § 226.7 for rest periods. (*Id.*). Thus, Defendant
4 arguably had a complete defense to rest period violations, which would have resulted in no
5 exposure. (*Id.*).

6 *Third*, Plaintiffs allege that Defendant failed to pay minimum wages for employees' time
7 spent undergoing physical examinations and drug testing, as well as its failure to reimburse
8 employees for the travel costs associated with Defendant's drug testing/physical examination
9 requirement. (*Id.* ¶15). Plaintiffs estimated 1 hour of pay for each employee at minimum wage.
10 (*Id.*). Defendant would have argued at trial that activities undertaken by job applicants at the time
11 of hiring—such as employer-mandated drug tests and physical examinations—are not “work”
12 performed by an “employee,” and are therefore not compensable time or reimbursable. *See Johnson*
13 *v. WinCo Foods, LLC*, 37 F.4th 604, 606 (9th Cir. 2022) (under California law, employer's control
14 over drug tests as part of the job application process was not control over the performance of the
15 job and so did not convert applicants into employees).

16 *Fourth*, Plaintiffs allege that Defendant failed to pay for off-the-clock work, such as time
17 spent by employees to prepare their tools before they clocked in for work, attending stretching and
18 safe meetings prior to the start of their shifts. (*Id.* ¶16). Plaintiffs estimate that there were
19 approximately 15 minutes of unpaid off the clock work at minimum wage (due to the CBA
20 preemption). (*Id.*). In its defense, Defendant argued that the issues are individualized and would not
21 support class certification. (*Id.*). Specifically, Defendant contends that it maintained lawful policies
22 which prohibited off-the-clock work. (*Id.*) Moreover, Defendant contended that it had no policies
23 or practices requiring pre-shift activities, such as stretching and/or attending safety meetings. (*Id.*)
24 Based on the foregoing, and utilizing a straightforward 50% risk factor, the realistic damages for
25 off the clock work is \$3,843,750. (*Id.*).

26 *Fifth*, Plaintiffs alleged that Defendant's method of rounding operates to consistently reduce
27 the amount of work time for which putative class members are actually compensated. (*Id.* ¶17).
28 Plaintiffs estimated approximately 3 minutes of rounding per shift worked. (*Id.*). Defendant argued

1 that rounding went both ways and was neutral and therefore, it was not subject to the rounding
2 violations. (*Id.*). Utilizing a straightforward 50% risk factor, the realistic damages for rounding
3 violations is \$1,677,415.50. (*Id.*). Moreover, almost all of the class members were subject to a
4 collective bargaining agreement (“CBA”). Indeed, Defendant already prevailed on summary
5 judgment on its argument that class members’ overtime claim was barred by the overtime
6 exemption set forth in Labor Code § 514, which exempts employees covered by a CBA that meets
7 certain requirements. (*Id.*) Thus, the realistic value for Plaintiffs’ overtime claim is zero dollars.
8 (*Id.*)

9 Sixth, the derivative Labor Code § 226 penalties and waiting time penalties amount to
10 approximately \$20,209,950.00 and \$33,612,400.80 respectively. (*Id.* ¶18). With respect to
11 derivative wage statement liability under Labor Code § 226, the recent decision in *Naranjo v.*
12 *Spectrum Sec. Servs., Inc.*, 15 Cal. 5th 1056 (2024) the court could have found in Defendant’s favor
13 and utilizing a risk factor of 90% would reduce the damages to \$2,020,995. (*Id.*). Finally, for
14 derivative waiting time penalties, Defendant contended that it would not be subject to Section 203
15 penalties, based on a good faith defense since its policy was compliant for payment of all hours
16 worked and utilizing a risk factor of 90% would reduce the damages to \$3,361,240.08. Thus, the
17 total realistic damages awarded could have been \$10,990,412.58. (*Id.*).

18 Plaintiffs calculated derivative PAGA penalties in the amount of \$93,275,200. (*Id.* ¶19).
19 However, Labor Code §2966.6 provide an exemption for employees in the construction industry
20 that are covered by a valid CBA. (*Id.*). Thus, almost all of the class members were covered by a
21 CBA and it is undisputed that Defendant is in the construction industry, the realistic PAGA
22 penalties could have been reduced by 95% to \$4,663,760. (*Id.*). Thus, the total realistic damages
23 and penalties amount to \$15,654,172.58. (*Id.*).

24 Numerous courts have held that gross settlements approximating between only 8 and 25%
25 of the defendant’s potential exposure are fair and reasonable. *See, e.g., In re Mego Fin. Corp. Secs.*
26 *Litig.*, 213 F.3d 454, 459 (9th Cir.2000) (holding that class action settlement recovering 16% of
27 potential exposure was fair and reasonable; “[i]t is well-settled law that a cash settlement
28 amounting to only a fraction of the potential recovery does not per se render the settlement

1 inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed
2 relative to risks of pursuing the litigation to judgment”; noting that whether the settlement is fair
3 and adequate depends on the “the difficulties in proving the case”); *Bellinghausen v. Tractor*
4 *Supply Co.*, No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (N.D. Cal. Mar. 20, 2015) (holding
5 that class action settlement recovering between 8.5% and 25% of the defendant’s potential
6 exposure was fair); *Van Ba Ma v. Covidien Holding Inc.*, U.S. Dist. Ct. Case No. 8:12-cv-02161
7 (C.D. Cal. 2014) (court granted preliminary approval of wage and hour class settlement which
8 obtained **only 9.1%** of projected damages, given the risks of continued litigation) *Villegas v. J.P.*
9 *Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21,
10 2012) (holding that gross class action settlement of approximately 15% of the potential recovery
11 was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*, No. 10–cv–02576 NC, 2013 WL 1789602, at
12 *5 (N.D. Cal. Apr. 26, 2013) (24 percent was reasonable).

13 In the present case, the total amount of the settlement is approximately 22% of the realistic
14 total exposure and well within the range to find that the settlement is fair and reasonable.

15 **G. SETTLEMENT WAS NEGOTIATED AT ARMS-LENGTH AND IS NOT**
16 **COLLUSIVE**

17 Courts presume the absence of fraud or collusion in the negotiation of settlement unless
18 evidence to the contrary is offered. *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989); *Mars*
19 *Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 682 (7th Cir. 1987); *In re*
20 *Chicken Antitrust Litig.*, 560 F. Supp. 957, 962 (N.D. Ga. 1980). Courts do not substitute their
21 judgment for that of the proponents, particularly where, as here, settlement has been reached with
22 the participation of experienced counsel familiar with the litigation. *Nat’l Rural Telecomms. Coop.*
23 *v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004); *Hammon v. Barry*, 752 F. Supp. 1087
24 (D.D.C. 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust*
25 *Litig.*, 472 F. Supp. 1357 (N.D. Ga. 1979); *Sommers v. Abraham Lincoln Federal Sav. & Loan*
26 *Ass’n*, 79 F.R.D. 571 (E.D. Pa. 1978).

27 While the recommendations of counsel proposing the settlement are not conclusive, the
28 Court can properly take them into account, particularly where, as here, they have been involved in

1 formal and informal discovery and negotiations for some period of time, appear to be competent,
2 have experience with this type of litigation, and have exchanged substantial evidence from the
3 opposing party. *See Newberg on Class Actions, supra*, at § 11.47; *Nat’l Rural Telecomms. Coop.*,
4 221 F.R.D. at 528 (quoting *In re Paine Webber Ltd. P’ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y.
5 1997) (“[s]o long as the integrity of the arm’s length negotiation process is preserved, however, a
6 strong initial presumption of fairness attaches to the proposed settlement . . . [citations] and ‘great
7 weight’ is accorded to the recommendations of counsel, who are most closely acquainted with the
8 facts of the underlying litigation”)).

9 Here, both Plaintiffs and Defendant’s counsel have a great deal of experience in wage and
10 hour class action litigation. Plaintiffs’ counsel have been approved as class counsel in a number of
11 wage and hour class actions and have extensive litigation experience. (Choi Decl. ¶22; Lee Decl.
12 ¶¶4-5; Hyun Decl. ¶¶ 3-6; Marder Decl. ¶¶ 8-14; Marukyan Decl. ¶¶25-29; Perez Decl. ¶¶10-18.)
13 Moreover, as discussed above, Plaintiffs’ counsel conducted a very extensive investigation of the
14 allegations involved in this case since the inception. Each side has apprised the other of their
15 respective factual contentions, legal theories and defenses, resulting in extensive arms’ length
16 negotiations taking place among the Parties.

17 The settlement for each participating Class Member is fair, reasonable and adequate, given
18 the inherent risks of litigation, including the substantial risks relative to class certification, and the
19 costs of pursuing such litigation. The settlement is the result of extensive arms’ length negotiations
20 between the Parties and their counsel, which was achieved after a four full days of mediation before
21 highly regarded mediators.

22 Although Plaintiffs believe that a class can be certified, Plaintiffs also believe in the fairness
23 of the settlement that is based on factoring in the uncertainty and risks to Plaintiffs in not prevailing
24 on one or more of the causes of action or theories alleged in the operative Complaint, the
25 possibility of non-certification, adverse disposition, and potential for appeals by one or both sides.
26 (Choi Decl. at ¶20). Despite the asserted fairness of the settlement terms, as set forth in the *Class*
27 *Notice*, should any Class Member wish to pursue his or her own case for the claims being released
28 herein, each Class Member has the right to submit a request for exclusion (*i.e.*, Opt-Out) from the

1 settlement. Moreover, as set forth in the *Class Notice*, Class Members are advised of their right to
2 attend the final approval hearing and object to any of the terms contained in the proposed
3 Settlement Agreement, provided that they give proper notice to the Parties and the Court.

4 **H. SETTLEMENT TERMS AND EVALUATION**

5 **1. Proposed Terms of the Settlement**

6 This is a non-reversionary settlement wherein Class Members will be automatically paid out
7 of the settlement if he/she does not opt-out of the settlement. The key terms of the settlement are as
8 follows.

9 The Settlement Agreement provides for a Gross Settlement Amount of Three Million Five
10 Hundred Thousand Dollars (\$3,500,000.00). (Settlement Agreement ¶13). Attorney's fees of up to
11 35% or \$1,225,000.00 will be paid to Class Counsel, along with costs of up to \$100,000.00.
12 (Settlement Agreement ¶ 2). The Class Representative Enhancement Payments will be up to
13 \$10,000.00 each. (Settlement Agreement ¶ 8). The Settlement Administrator will be paid
14 approximately \$32,550.00 for costs of administering this settlement. (Settlement Agreement ¶ 29).
15 After deduction of the foregoing, the remainder will be distributed to Class Members who do not
16 opt-out of the Settlement Agreement based on the number of weeks worked a Class Member during
17 the Class Period. (Settlement Agreement ¶ 42).

18 **2. Amount and Manner of Distribution of the Compensation to be** 19 **Provided to Class Members Including the Amount, or an Estimate, of** 20 **What Each Class Member Will Receive**

21 The Net Settlement Fund (calculated after deduction of attorneys' fees, costs, class
22 representative service payments, and settlement administration costs) shall be paid to all Class
23 Members who do not opt out of the settlement. The amount allocated to each Class Member will
24 be based on the number of workweeks worked by each Class Member received during the Class
25 Period. (Settlement Agreement ¶ 42). The reason for such allocation is so that the Class Members
26 who suffered higher damages will be allocated greater recovery. Class Members may opt-out of
27 the Settlement if they so choose. (Settlement Agreement ¶ 51). Based on the Net Settlement
28 Amount, on a pure raw average, each class member will receive approximately \$325.41. (Choi

Decl. ¶10). Such amounts for each person could increase or decrease depending on a number of factors, including the amount of weeks worked by each Class Member. The actual amount each person will be entitled to will not be known until the class data is transferred to the Settlement Administrator for processing.

3. Whether, and Under What Circumstances, Amounts May Revert to Defendant, Disposition of Any Un-cashed Checks

This is a non-reversionary settlement as the entirety of the settlement amount will be fully paid out. Funds represented by Individual Settlement Payment checks remaining un-cashed for more than one hundred and eighty (180) calendar days after issuance will be tendered pursuant to Code of Civil Procedure section 384 to The Justice Gap Fund maintained by The State Bar of California. (Settlement Agreement ¶ 60).

4. Scope of the Release of Class Members' Claims

The scope of the release, as listed below, is identified in the Settlement Agreement at paragraph 24, as well as in each of the Notices that will be sent to Class Members.

“all claims, rights, demands, liabilities, and causes of action, reasonably arising from, or reasonably related to, the same set of operative facts as those set forth in the Second Amended Complaint during the Class Period, including: (a) all claims for unpaid overtime; (b) all claims for meal and rest break violations and failure to pay premiums in lieu thereof; (c) all claims for unpaid minimum wages; (d) all claims for the failure to timely pay wages upon termination; (e) all claims for the failure to reimburse necessary business expenses; (f) all claims for the failure to timely pay wages during employment; (g) all claims for wage statement violations; (h) all claims for the failure to timely pay wages during employment, (i) all claims for failure to maintain accurate records; and (j) all claims asserted through California Business & Professions Code §§ 17200, et seq.”

As shown, the scope of the release is narrow and is limited by the claims asserted in the Operative Complaint. Further, the Scope of the Release does not waive Civil Code §1542 for Class Members, it does so only for and with regard to the named Class Representative.

5. Tax Treatment of Settlement Amounts

All Individual Settlement Payments will be allocated as follows: (a) Twenty Percent (20%)

1 of each Individual Settlement Payment will be allocated as wages for which IRS Forms W-2 will
2 be issued; and (b) Eighty Percent (80%) will be allocated as non-wages for which IRS Forms 1099-
3 MISC will be issued. Payments issued to PAGA Members from the PAGA Fund will be treated as
4 non-wages for which IRS Forms 1099-MISC will be issued. (Settlement Agreement ¶ 62)

5 **6. Affirmative Obligations to be Undertaken by Class Members or Class**
6 **Counsel and the Reasons for Any Such Obligations**

7 As stated above, Class Members do not need to do anything should they wish to receive
8 their share of the settlement funds. Thus, this substantially decreases the amount of burden each
9 Class Member must bear in order to receive their settlement share. If a Class Member does not
10 wish to take part in this settlement and be bound by the release, he/she must submit an exclusion
11 request.

12 Such obligations are thoroughly identified in each class member's Class Notices.
13 (Settlement Agreement ¶ 68, Ex. A).

14 **I. SUBMISSION OF CLAIMS/EXCLUSIONS/OBJECTIONS**

15 Class Members will not be required to submit a claim form to receive compensation.
16 Instead, this is a non-reversionary Settlement Agreement. Class Members will be provided 45
17 calendar days to opt out or object to the settlement. (Settlement Agreement ¶ 28). Any Class
18 Member who does not opt-out of the settlement will be automatically issued his/her share of the
19 settlement proceeds. Given that this is a non-reversionary settlement, the parties believe that 45
20 calendar days is sufficient time for class members to object or opt-out of the settlement. Further,
21 Class Members will be notified of the Fairness/Final Approval hearing and will have an
22 opportunity to appear at the Fairness hearing.

23 **J. NOTICE TO CLASS MEMBERS**

24 Within twenty (20) calendar days of preliminary approval of this settlement, Defendant will
25 provide the Class List to the Settlement Administrator. (Settlement Agreement ¶ 45) Within ten
26 (10) calendar days after receiving the Class List, the Settlement Administrator will mail a Class
27 Notice to all Class Members via regular First-Class U.S. Mail, using the most current, known
28

1 mailing addresses identified in the Class List. (*Id.* at ¶ 46). Prior to mailing, the Settlement
2 Administrator will perform a search based on the National Change of Address Database for
3 information to update and correct for any known or identifiable address changes. (*Id.* at ¶ 47).

4 If a Notice is returned as non-deliverable but with a forwarding address, the Settlement
5 Administrator shall resend the Notice to the forwarding address. (*Id.*) If a Notice is returned as
6 non-deliverable with no forwarding address, the Settlement Administrator shall conduct a skip trace
7 to locate the most current address of the person to whom the Notice was addressed and shall resend
8 the Notice to any updated address. (*Id.*)

9 Each Class Notice will provide: (a) information regarding the nature of the Actions; (b) a
10 summary of the Settlement’s principal terms; (c) the Settlement Class and PAGA Member
11 definitions; (d) the total number of Workweeks each respective Class Member and PAGA
12 Member worked for Defendant during the Class Period and PAGA Period; (e) each Class
13 Member’s and PAGA Member’s estimated Individual Settlement Payment and the formula for
14 calculating Individual Settlement Payments; (f) the dates which comprise the Class Period and
15 PAGA Period; (g) instructions on how to submit Requests for Exclusion or Notices of Objection;
16 (h) the deadlines by which the Class Member must postmark or fax Request for Exclusions, or
17 postmark Notices of Objection to the Settlement; and (i) the claims to be released. (*Id.* at ¶ 48,
18 Ex. A)

19 Based on the foregoing, the notice procedures fully comply with California Rules of Court
20 Rule 3.766 (d) & (e).

21 **K. COSTS AND FEES**

22 **1. Attorneys’ Fees and Costs**

23 California state and federal courts have recognized that an appropriate method for
24 determining award of attorneys’ fees is based on a percentage of the total value of benefits to Class
25 Members by the settlement. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001);
26 *Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) (“*Serrano III*”); *Boeing Co. v. Van Gemert*, 444 U.S.
27 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The
28

1 purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to “spread litigation
2 costs proportionally among all the beneficiaries so that the active beneficiary does not bear the
3 entire burden alone.” *Vincent*, 557 F. 2d at 769.

4 Under California law, the award of attorneys’ fees in common fund wage and hour class
5 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int’l*, 1 Cal.
6 5th 480, 503 (Aug. 11, 2016) (“We join the overwhelming majority of federal and state courts in
7 holding that when class action litigation establishes a monetary fund for the benefit of the class
8 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
9 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
10 fund created.”). Under the percentage of the fund method, the Court’s objective remains to “mimic
11 the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (J.
12 Posner) (“When a fee is set by a court rather than by contract, the object is to set it at a level that
13 will approximate what the market will set... The judge, in other words, is trying to mimic the
14 market in legal services.”).

15 Here, the Parties have agreed to a payment of a maximum of 35% of the settlement
16 (\$1,225,000.00) for payment to Class Counsel as attorneys’ fees. (Settlement Agreement ¶ 2). The
17 results delivered by Plaintiff’s Counsel support the requested percentage of the fund. Further, the
18 parties have agreed to reimbursement of class counsel’s reasonable and actual litigation costs
19 incurred of up to \$100,000.00. (*Id.*) Class counsel have, at their own risk, expended costs, for
20 example, to file this instant action, service of process, payment of mediation fees, and other
21 litigation related costs and will be submitting detailed cost sheets for the respective costs incurred
22 prior to the Motion for Final Approval. Based on the foregoing, the court should preliminarily
23 approve the attorney’s fees and costs being requested by the parties.

24 **2. Proposed Payments to the Class Representatives**

25 Plaintiffs request Class Representative Enhancement Payments of \$10,000.00 each.
26 (Settlement Agreement ¶ 8). Plaintiffs conferred with Class Counsel about the case, provided
27 documents and information to Class Counsel, and reviewed and signed the Settlement Agreement.
28 (Morris Decl. ¶10; Garibay Decl. ¶9, Gay Decl. ¶3, and Berber ¶3). Moreover, as part of Plaintiffs’

1 duties as the representative, Plaintiffs provided invaluable information, evidence, and documents
2 that resulted in this settlement. (*Id.*).

3 Given that future employers are much less likely to hire individuals who have filed suit
4 against their prior employer, particularly cases of this nature, Plaintiffs may face prejudice in the
5 future from other potential employers. Plaintiffs assumed these risks from which the whole class
6 benefited. Class members did not have to file individual lawsuits and bear the risks of payment of
7 fees and costs if they did not prevail, nor did they have to face the potential for retaliation and not
8 getting future employment had they filed a public lawsuit.

9 Notably, courts have routinely granted approval of representative enhancements for far
10 greater amounts than the \$10,000.00 sought by Plaintiffs in this case. *See, e.g., Van Vranken v.*
11 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of \$50,000);
12 *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990) (two
13 incentive awards of \$ 55,000, and three incentive awards of \$ 35,000); *Brotherton v. Cleveland*,
14 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award); *Enter. Energy*
15 *Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991) (\$50,000
16 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S. Dist.
17 LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA
18 overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming
19 \$25,000 Incentive award to class representative in ERISA case). Here, Plaintiffs request
20 enhancement of \$10,000.00 each, which is “presumptively reasonable” and consistent with case
21 law.

22 **3. Settlement Administration Fees**

23 The Settlement Administration Costs are currently estimated to Thirty-Two Thousand Five
24 Hundred Fifty Dollars (\$32,550). (Settlement Agreement ¶ 29). The Parties have agreed to ILYM
25 Group, Inc., for administering this Settlement, including, but not limited to, printing, distributing,
26 and tracking documents for this Settlement, tax reporting, distributing the Maximum Settlement
27 Amount, and providing necessary reports and declarations, as requested by the Parties. (Settlement
28 Agreement ¶¶ 30, 37). ILYM Group, Inc. is a well-recognized class action Settlement

1 Administrator. The Parties believe that the administration fee is reasonable and should be
2 approved.

3 **IV. LWDA HAS BEEN PROVIDED WITH NOTICE OF THIS MOTION**

4 Concurrently with the filing of this Motion, the LWDA has been provided with notice of
5 this settlement. (Choi Decl. ¶23).

6 **V. PROPOSED SCHEDULE FOR CLASS NOTICE, OBJECTION, OPT OUT,**
7 **MOTION FOR APPROVAL, ATTORNEY'S FEES, AND FINAL ACCOUNTING**

Description	Date	Details	Settlement Agreement
Preliminary Approval Date	11/18/2024		
Class List to Administrator	12/9/2024	20 calendar days after approval	¶45
Class Notice Distribution	12/19/2024	10 calendar days	¶46
Opt Out/Objection Deadline	2/3/2025	45 days from Notice Mailing	¶28
Final Approval	4/4/2025		

16 **VI. CONCLUSION AND ACTION REQUESTED AS PART OF THE MOTION FOR**
17 **PRELIMINARY APPROVAL**

18 Here, the proposed settlement is fair, adequate, and reasonable. It will result in both
19 substantial monetary benefits to class members; it is non-collusive; and it was achieved as the result
20 of informed, extensive, and arms' length negotiations conducted by counsel for respective parties
21 who are experienced in wage and hour class action litigation. For the foregoing reasons, Plaintiffs
22 respectfully request that the Court grant preliminary approval of the proposed settlement, sign the
23 proposed Order, approve and authorize mailing of the proposed Class Notice, and set a date for a
24 final approval hearing on or after April 4, 2025, or a later date that is convenient for the Court.

25 DATED: October 22, 2024

LAW OFFICES OF CHOI AND ASSOCIATES

27 By: 
28 Edward W. Choi
Attorneys for PLAINTIFFS and the CLASS

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