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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MARRIANA ZAPATA, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

SBE ENTERTAINMENT GROUP, LLC, a
limited liability company; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 20STCV28106

CLASS ACTION

[Hon. Elihu M. Berle, Dept. 6]

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

Date: September 20, 2022
Time: 9:00 a.m.
Courtroom: SSC-06
Judge: Hon. Elihu M. Berle

Action Filed: July 23, 2020
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on September 20, 2022, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, in Department SSC-06 of the above-captioned Court, located at 312 North Spring
4 Street, Los Angeles, CA 90012, Plaintiff Marriana Zapata (“Plaintiff”) will and hereby does move this
5 Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Finally approving the JOINT STIPULATION OF CLASS ACTION
9 SETTLEMENT (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiff, Moon & Yang, APC, as Class Counsel;

11 4. Appointing Marriana Zapata as the Class Representative;

12 5. Approving the use of the proposed notice procedure and related notice form;

13 6. Approving ILYM Group, Inc. as the third-party administrator and approving its
14 costs of administration;

15 7. Ruling that Settlement Class Members who did not timely submit requests for
16 exclusion from the settlement as set forth in the Agreement have released their claims against
17 Defendant and the other releasees as set forth in the Agreement;

18 8. Ruling that Settlement Class Members who did not timely object to the settlement
19 pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any
20 appeal of the Court’s Order;

21 9. Awarding the sums requested in the Motion;

22 10. Entering a Final Judgment; and,

23 11. Without affecting the finality of the final judgment, reserving continuing
24 jurisdiction over the parties for the purposes of implementing, enforcing and/or administering
25 the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

26 Good cause exists to grant this Motion because:

27 1. The Class meets all of the requirements for class certification for settlement
28 purposes under Code of Civil Procedure § 382;

2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted by Plaintiff;

3. Plaintiff and Class Counsel are adequate to represent the Class;

4. The completed notice procedures and related forms complied with California Rules of Court 3.766(d) and (e), and adequately apprised Class Members of their rights and fully comport with due process.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

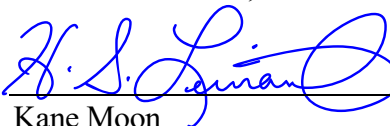
This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of H. Scott Leviant, Plaintiff, and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: July 20, 2022

MOON & YANG, APC

By: _____



Kane Moon
H. Scott Leviant
Mariam Ghazaryan

Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff respectfully requests that
3 this Court finally approve the proposed class action settlement set forth in the JOINT STIPULATION
4 OF CLASS ACTION SETTLEMENT (“Settlement” or “Agreement”) with Defendant MORGANS
5 HOTEL GROUP MANAGEMENT, LLC DBA THE MONDRIAN HOTEL, LLC (“MONDRIAN”
6 or “Defendant”).

7 After the exchange of voluminous documents and data, and an arm’s-length mediation session
8 with experienced third-party mediator Lisa Klerman, Plaintiff and Defendants (collectively referred to
9 herein as the “Parties”) reached a proposed class action settlement with a gross settlement amount
10 (“GSA”) of **\$500,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class
11 consisting of **714** members. Plaintiff believes that this settlement is a fair, adequate, and reasonable
12 compromise of the disputed claims for alleged unpaid wage and hour violations and penalties asserted in
13 this case.

14 Plaintiff now submits this Motion for Final Approval of Class Action Settlement, along with the
15 Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], at Exhibit 1 thereto). For
16 the Court’s convenience, below is a summary of the key provisions of the Settlement.

17
18 **II. THE NOTICE PROCESS IS UNDERWAY AFTER PRELIMINARY APPROVAL**

19 To protect the rights of absent class members, the trial court must provide the best notice
20 practicable to class members. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12(1985); *Eisen v.*
21 *Carlisle & Jacquelin*, 417 U.S. 156, 174-175(1974). There is no requirement that all class members
22 receive actual notice, whether by mail or some other means; rather, “individual notice must be provided
23 to those class members who are identifiable through reasonable effort.” *Eisen*, 417 U.S. at 175.

24 The notice plan, as approved by the Court, is being implemented by the Settlement
25 Administrator. In accordance with the Court’s order granting preliminary approval of this Settlement,
26 Plaintiff will file a declaration of the Settlement Administrator by September 9, 2022, confirming and
27 detailing the implementation and the results of the class notice process.

1 **III. THE MAJOR TERMS OF SETTLEMENT AND SIGNIFICANT SETTLEMENT**
2 **APPROVAL CHECKLIST ITEMS**

3 The provisions of the proposed Settlement include the following:

- 4 • Defendant stipulates to certification of a Settlement Class for purposes of Settlement only
5 (Settlement, ¶ 19);
 - 6 • **Settlement Amount:** Defendant will pay a maximum of \$500,000.00, referred to as the
7 Gross Settlement Amount, resulting in an average **gross** payment per Class Member of
8 approximately **\$700** (Settlement, ¶ 26(c));
 - 9 • **Class Size:** The Class contains **714** individuals as of the date notice issued, who worked
10 41,228.51 workweeks, based on calculations from data used in preparation to send out the
11 class notice (Settlement, ¶¶ 4, 26(d));
 - 12 • **PAGA Group Size:** There are **365** PAGA Employees as of the date notice issued, who
13 worked an estimated 7,620 workweeks, based on calculations from data used in preparation
14 to send out the class notice (Leviant Decl., ¶ 11);
 - 15 • **Escalator Clause:** If, on the date of preliminary approval, the number of actual Covered
16 Workweeks during the Class Period exceeds 10% of the estimated Covered Workweeks
17 (i.e., exceeds 44,310.29 workweeks), the Gross Settlement Amount will be increased by 1%
18 for every percentage point that the Covered Workweeks exceed the 10% threshold.
19 (Settlement, ¶ 26(d).) Based on preliminary calculations, it does not appear that the
20 escalator will be triggered.
 - 21 • **Kullar/Munoz Analysis:** Plaintiff addresses the claims analysis herein, at Part VI.B.3, and
22 in more detail the Declaration of Leviant, at Paragraph 18;
 - 23 • **Certification:** Plaintiff addresses certification requisites herein, at Part VI.A., and in the
24 previously-filed Declaration of H. Scott Leviant in Support of Plaintiff's Motion for
25 Preliminary Approval, at Paragraphs 34-40. Certification was discussed in greater detail in
26 the Motion for Preliminary Approval.
 - 27 • **No Claim Form:** No claim form is required (Settlement, ¶ 26(f));
- 28

- 1 • No Reversion: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 26(e));
- 2 • Class Release: The Settlement will release wage-and-hour claims either pled or that could
- 3 have been pled based upon the allegations for those Settlement Class Members who do not
- 4 opt out of the Settlement (Settlement, ¶ 37);
- 5 • PAGA Release: The Class Members employed during the PAGA Period will release the
- 6 PAGA Claims contained in the LWDA Notice Letter, regardless of whether they opt out of
- 7 the class portion of the Settlement (Settlement, ¶¶ 14, 37(c)(3));
- 8 • Release Effective Date: The Release becomes effective on the later of the Effective Date of
- 9 the Settlement or the payment by Defendant of all money owed under the Settlement
- 10 (Settlement, ¶ 37(b));
- 11 • Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys'
- 12 fees and costs, enhancement payment to Plaintiff, Administration costs, and the payment to
- 13 the LWDA, the remainder will be available for distribution to Class Members who do not
- 14 opt out, with each Participating Class Member receiving a share based on the number of
- 15 workweeks each Participating Class Member worked for Defendant within the Settlement
- 16 Class Period. The Net Settlement Amount is estimated to be at least \$254,233.33, resulting
- 17 in an average **net** payment per Class Member of at least **\$356**, before any tax withholdings
- 18 (Settlement, ¶ 26(g));
- 19 • Tax Allocation: The amounts distributed to Class Members will be characterized as 33
- 20 1/3% alleged unpaid wages and 66 2/3% as alleged unpaid penalties and interest, with the
- 21 PAGA payment allocated as 100% penalties (Settlement, ¶ 26(k));
- 22 • Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes
- 23 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Settlement Class Members
- 24 that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 26(h));
- 25 • Settlement Administrator: The notice portion of the Settlement is administered by a third-
- 26 party Administrator, ILYM Group, Inc., and the bid cost of administration, **\$11,600.00**,
- 27 does not exceed the \$15,000 estimate. (Settlement, ¶ 26(p).)
- 28

- 1 • Class Data for Administration: The Settlement Administrator received the Class List within
2 14 days of Preliminary Approval, used the NCOA database to update the Class List, and
3 then used skip tracing on returned Notices (Settlement, ¶ 32(a));
- 4 • Notice Language: Notice issued in English and Spanish. (Settlement, ¶ 26(t).)
- 5 • Notice Issuance: The Notice issued within 14 days of receipt of the Class List (Settlement,
6 ¶ 32(b)). The Notice described how to dispute workweeks, submit and objection in writing,
7 in person, or through an attorney, or request exclusion (Settlement, Exhibit A).
- 8 • PAGA Allocation: From the GSA, \$60,000 is allocated to settle claims brought pursuant to
9 the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), and
10 seventy-five percent (75%), or **\$45,000.00**, will be paid to the California Labor &
11 Workforce Development Agency. (Settlement, ¶ 9.)
- 12 • Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is
13 attached to the Leviant Declaration.
- 14 • Enhancement/Service Awards to Plaintiff: Defendant will not oppose the application for
15 Class Representative Enhancement of up to **\$7,500** for Plaintiff, to be paid from the GSA
16 (Settlement, ¶ 26(n));
- 17 • Fees and Costs: Defendant will not oppose Class Counsel’s application for fees not to
18 exceed 33 1/3% of the GSA (**\$166,666.67**), and actual costs, in the amount of **\$14,818.54**,
19 to be paid out of the GSA; (Settlement, ¶ 26(m)).
- 20 • Objections: Objections can be submitted in person, through an attorney, or in writing to the
21 Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 26(x));
- 22 • Exclusion Requests: The procure for exclusion requests, mailing a request to the
23 Settlement Administrator, is the same as the procedure for submitting a writing objection
24 (Settlement, ¶¶ 26(w) and 26(x));
- 25 • Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- 26 • Uncashed Checks: Any settlement checks mailed to the Settlement Class Members that
27 remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys
28 will be directed to the State Controller’s Office-Uncollected Funds (Settlement, ¶ 35);

- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry (Settlement, ¶ 30).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Claims

On July 23, 2020, Plaintiff filed a putative Class Action against Defendants SBE Entertainment Group, LLC and Morgans Hotel Group Management, LLC alleging the following labelled causes of action: (1) Failure to Pay Minimum Wage and Regular Rate Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5) Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; and, (6) Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and (7) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.]. (The “Action.”) In the Complaint, Plaintiff sought to represent all persons that worked for Defendant in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint and ending when Notice to the Class is sent. On January 6, 2021, the court issued an order dismissing the class and individual claims against Defendant SBE Entertainment Group, LLC, based on Plaintiff’s application after Plaintiff met and conferred with Defendants and Defendants submitted a declaration attesting that SBE Entertainment Group, LLC was not an employer of Plaintiff. On December 21, 2020, Plaintiff filed a First Amended Complaint adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]. (Leviant Decl., ¶ 4.)

Thereafter, the Parties agreed to mediate the matter. (Leviant Decl., ¶ 5.).

B. Pre-Mediation Data Production and Analysis

The Parties have conducted a thorough investigation of the facts and law. Such discovery and investigation have included, inter alia, the exchange of informal data and discoverable information in preparation for the mediation session. (Leviant Decl., ¶ 6.) The Parties have analyzed payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of each purported subclass within the Class, average

workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendant also provided documents reflecting its wage and hour policies and practices during the Settlement Period and information regarding the total number of current and former employees in the Class. (*Id.*)

After reviewing documents regarding Defendant's wage and hour policies and practices and other information obtained during the informal exchange of discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (Leviant Decl., at ¶ 7.)

C. Settlement

On August 17, 2021, the Parties mediated before Lisa Klerman, Esq., who is a highly experienced and well-regarded mediator for wage and hour class action litigation. (Leviant Decl., ¶ 8.) At the mediation, the Parties discussed at length the burdens and risks of continuing with the litigation as well as the merits of the claims and defenses. (*Id.*) The Parties agreed to the basic terms of a proposed settlement and ultimately signed a long form settlement agreement (the Agreement). (*Id.*)

Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto. (Leviant Decl., ¶ 9.) Plaintiff and Class Counsel have also taken into account Defendant's agreement to enter into a Settlement that confers substantial relief upon the Class.

Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the Parties stipulate to class certification. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendant reserves its rights to contest class certification. (*Id.*) This Settlement, if approved by the Court, will result in the termination with prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

1 **V. CLASS DEFINITION**

2 The Class is defined as follows:

3 All non-exempt employees of Defendant who worked in California during the Class
4 Period at the Mondrian Los Angeles for any period of time (the “Class Period” is July
 23, 2016 through May 17, 2022). (Settlement, ¶¶ 3-4.)

5 (Leviant Decl., ¶ 34 and Exhibit 1.)

6 **VI. DISCUSSION**

7 **A. The Court Should Conditionally Certify the Class Because It Meets All the**
8 **Requirements for Certification for Settlement Purposes Under CCP § 382**

9 Under Code of Civil Procedure § 382,¹ class certification is warranted so long as there is a
10 numerous and ascertainable class with a well-defined community of interest among its members and that
11 a “class action proceeding is superior to other means for a fair and efficient adjudication of the
12 litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any
13 doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to
14 later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this
15 Settlement only, Defendant stipulated to conditional certification of the proposed class. (Settlement ¶ 52.)

16 “The certification question is ‘essentially a procedural one that does not ask whether an action is
17 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
18 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the
19 plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal.
20 App. 4th 1286, 1298 (2010). In ruling on certification, a trial court’s task is to determine “whether ... the
21 issues which may be jointly tried, when compared with those requiring separate adjudication, are so
22 numerous or substantial that the maintenance of a class action would be advantageous to the judicial
23 process and to the litigants.” *Id.* Thus, “[t]he relevant comparison lies between the costs and benefits of
24 adjudicating plaintiffs’ claims in a class action and the costs and benefits of proceeding by numerous

25
26 ¹ Code Civ. Proc. § 382, which is the statutory basis for the maintenance of class actions under
27 California law, states in relevant part, “[W]hen the question is one of a common or general interest, of
28 many persons, or when the parties are numerous, and it is impracticable to bring them all before the
 court, one or more may sue or defend for the benefit of all.”

1 separate actions”*See, e.g., id.*

2 “[I]t is also well established that trial courts should use different standards to determine the
3 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
4 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.
5 App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As
6 the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the
7 non-representative class members,” that concern is “protected by the trial court’s fairness review of the
8 settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

9 Indeed, numerous courts have certified settlement classes. For example, the court in *In re Drexel*
10 *Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 122 L. Ed.
11 497, 113 S. Ct 1070 (1993), addressed settlement before a class was certified. After a hearing, the
12 “district court issued an order certifying the class and approving the settlement agreement.” *Id.* at 289;
13 *see also Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D. Cal. 1976) (“the use of the
14 tentative settlement class procedure was appropriate in this case”), *aff’d*, 572 F.2d 657 (9th Cir.), cert.
15 denied, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action
16 litigation and an approved procedure which ought to be followed in this case. *See Newberg on Class*
17 *Actions* (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; *Manual for Complex Litigation*, 2d (1993) § 30.45.

18 In view of these standards, *as discussed more thoroughly as part of the preliminary approval*
19 *motion already granted by the Court*, the Settlement Class should be certified for purposes of settlement.
20 Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

21 **B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and**
22 **Reasonable Compromise of Disputed Wage Claims in View of Defendant’s**
23 **Potential Liability Exposure and the Risks of Continued Litigation**

24 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
25 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
26 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
27 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
28 settlement approval, notice being given to class members, and a final fairness and approval hearing being

held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed below, this Court should finally approve the Settlement and enter Judgment.

1. Class Action Settlements Are Subject to Review and Approval.

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial court and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks *final approval* and the entry of a Judgment.

To evaluate a settlement, the trial court must receive “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum theoretical amount that the class could recover:

Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims—a number which appears nowhere in the record of this case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.”

Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, 186 Cal. App. 4th 399, 409 (2010).

2. The Parties Reached the Settlement Through Arms’ Length Negotiations Between Experienced Counsel with the Assistance of a Highly-Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.

A settlement is presumptively fair where it is reached through arms’ length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small.² *Dunk*, 48 Cal.App.4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*

² Because the fourth prerequisite for the presumption to arise cannot be addressed until the final approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement approval process.

1 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a
2 trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.*,
3 *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding
4 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,
5 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

6 Relevant factors in making this determination, include, but are not limited to:

7 [T]he complexity and likely duration of further litigation, the risk of maintaining class
8 action status through trial, the amount offered in settlement, the extent of discovery
9 completed and the state of the proceedings, the experience and views of counsel, the
presence of a governmental participant, and the reaction of the class members to the
proposed settlement.

10 *Id.* These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors
11 considered to each case and give due regard to “what is otherwise a private consensual agreement
12 between the parties.” *Id.*

13 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
14 counsel with the assistance of highly-regarded mediator. (Leviant Decl., ¶¶ 8-10.) With respect to the
15 claims at issue in this case, Plaintiff obtained data from Defendant and then carefully reviewed that
16 information. Counsel for Plaintiff also examined relevant policies and interviewed witnesses in detail
17 about their work experiences and Defendant’s practices.

18 Based on the totality of that review, Plaintiff estimated the potential exposure and then estimated
19 risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiff’s
20 counsel conducted were sufficient to provide them with enough information to intelligently evaluate the
21 estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed
22 below and are also sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer,*
23 *Inc.*, 91 Cal. App. 4th 224, 245 (2001).

24 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
25 **of Class Members’ Claims Based on Defendant’s Estimated Liability**
26 **Exposure Given the Risks Continued Litigation Would Entail.**

27 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
28 trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a

1 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
2 complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91
3 Cal.App.4th at 250. Accordingly, because settlements involve compromise, even one that provides for
4 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
5 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each
6 side gives ground in the interest of avoiding litigation.” *Id.*, quoting *Air Line Stewards & Stewardesses*
7 *Ass’n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

8 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
9 support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that
10 Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
11 *US Bank Nat’l Ass’n*, 59 Cal. 4th 1, 39 & n. 33 (2014) (“*Duran*”), citing *Dilts v. Penske Logistics, LLC*
12 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii)
13 the risk that Defendant’s meal and rest period policies might not ultimately support class certification or
14 a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions
15 favorable on class certification issue without expressing opinion as to ultimate viability of proposition);
16 (iii) the risk that uncertainties pertaining to the ultimate legality of Defendant’s policies and practices
17 could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the
18 risk that individual differences between Class Members could be construed as pertaining to liability and
19 not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk that any civil penalties award under the
20 PAGA could be reduced by the Court in its discretion, *see Labor Code § 2699(e)(1)*; (vi) the risk that
21 class treatment could be deemed improper as to one or more claims, except for settlement purposes; (vii)
22 the risk that lengthy appellate litigation could ensue; and (viii) the risk that violation rate estimates would
23 prove much lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

24 In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and
25 reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of
26 course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to
27 liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be
28 given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are

greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the approximately 714 members of the Class, the average **gross** recovery is approximately **\$700** per class member, and the estimated average **net** recovery for each Class Member is approximately **\$356**. (*Id.*) Given that Defendant could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendant will receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time during the class period. (*Id.*)

After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement is fair, adequate, and reasonable. (Leviant Decl., ¶ 18.) The Class Settlement Amount of **\$500,000** is 98% of the **\$510,379.60** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)

The maximum calculated plausible exposure is **\$3,545,992.20**, *including* PAGA penalties and **no discount applied to any class claim**. (*Id.*)

- The reasonably estimated exposure for unpaid off-the-clock work over the class period was estimated to be **\$944,621.00**, but with chances of certification and proof of liability (30% and 40% respectively) for a risk-adjusted exposure of **\$113,354.52**.
- The reasonably estimated exposure for unpaid wages due to rounding over the class period was calculated to be **\$2,476.60**, with chances of certification and proof of liability (10% and 10% respectively) for a risk-adjusted exposure of **\$24.77**. This claim has negligible value under current law, given that rounding favored a majority employees.
- The reasonably estimated exposure for rest break violations over the class period was calculated at **\$409,500.60**, but with low chances of certification and proof of liability (25% and 20% respectively) for a risk-adjusted exposure of **\$20,475.03** (based on a missed break every week period for 100% of the class).
- The reasonably estimated exposure for meal break violations over the class period was calculated at **\$215,999.50**, with chances of certification and liability risks (30% and 40%

respectively) resulting in a risk-adjusted exposure of **\$25,919.94** (based on actual non-compliant meal periods in data and assuming employees chose to take non-compliant meal periods).

- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$30,180.00** and **\$35,930.34**, respectively, on maximum exposures of **\$251,500** and **\$299,419.50**, respectively. The certification and liability risk factors are contingent upon the underlying unpaid wage claims and are assumed to be the same for that reason.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$225,884.60**, excluding PAGA. (*Id.*)
- PAGA penalties were calculated as having a maximum realistic exposure of **\$1,422,475.00**, but a risk adjusted value of **\$284,495.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently-filed Declaration of H. Scott Leviant sets forth claim valuation in additional detail. (*See*, Leviant Decl., ¶ 18.)

This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Leviant Decl., ¶ 19.) Third, the certification rates in California are lower than conventional wisdom holds. *See*, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at <http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html>; *see also*, *Findings of the Study of California Class Action Litigation, 2000-2006*, available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement *or* as part of a contested certification motion).

Here, the estimated certification probabilities are *above* the average rate at which cases were

certified in California over the study years, based upon data available through the California Courts websites. (Leviant Decl., ¶ 19.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) The recovery is almost **15%** of the maximum plausible recovery (estimated to be approximately **\$3,545,992.20**, including PAGA), which falls within the expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately \$1,572,597.70, with no risk reduction), excluding penalties and interest; the settlement is about 32% of the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.³ This Settlement achieves the goals of the litigation.

4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable.

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively during the class period. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of weeks for Defendant will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Leviant Decl., ¶¶ 11, 17.)

³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part...")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

1 **5. The Proposed Enhancement Payment to Plaintiff Is Fair, Adequate, and**
2 **Reasonable and Warrants Approval.**

3 The proposed enhancement payment to Plaintiff is intended to recognize the substantial initiative
4 and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate
5 named plaintiffs for the services they provide and the risks they incur during class action litigation, often
6 in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App.
7 4th 715, 726 (2004) (upholding “service payments” to named plaintiffs for their efforts in bringing the
8 case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D.Cal. 1995) (approving a \$50,000
9 enhancement award). Plaintiff contributed time to the prosecution of this matter, including assistance
10 prior to the mediation with information and substantial time conferring with counsel over the course of
11 this litigation and before it was filed. (Leviant Decl., ¶ 32; Zapata Decl., ¶¶ 14-20.) The enhancement
12 also recognizes the considerable risks Plaintiff undertook on behalf of the Class to be personally liable
13 for all costs incurred regardless of the success of the litigation or class certification, as well as the
14 personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued
15 a former employer, making future employment prospects uncertain. The accompanying Declaration of
16 Plaintiff confirms her involvement and supports her appointment as the Settlement Class Representative.

17 **6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,**
18 **and Reasonable and Merits Approval.**

19 *a) Plaintiff’s Counsel Should be Awarded Fees Based on a Percentage of*
20 *the Fund Recovered, Consistent with the Common Fund Method*

21 The request for attorneys’ fees as a percentage of the settlement fund is supported by the
22 “common fund theory,” where “one who expends attorneys’ fees in winning a suit which creates a fund
23 from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
24 litigation costs.” *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The lodestar may be cross-checked against
25 the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

26 The purpose of the common fund approach is to “spread litigation costs proportionally among all
27 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent v. Hughes*
28 *Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund doctrine has been applied

1 “consistently in California when an action brought by one party creates a fund in which other persons are
2 entitled to share.” *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995); *see Quinn v.*
3 *State of California*, 15 Cal. 3d 162, 167 (1975) (“[O]ne who expends attorneys’ fees in winning a suit
4 which creates a fund from which others derive benefits may require those passive beneficiaries to bear a
5 fair share of the litigation costs.”).

6 The California Supreme Court removed any lingering doubt about the use of the percentage of
7 the fund method to award attorney’s fees in California Courts:

8 We join the overwhelming majority of federal and state courts in holding that when
9 class action litigation establishes a monetary fund for the benefit of the class members,
10 and the trial court in its equitable powers awards class counsel a fee out of that fund, the
11 court may determine the amount of a reasonable fee by choosing an appropriate
12 percentage of the fund created. The recognized advantages of the percentage method—
13 including relative ease of calculation, alignment of incentives between counsel and the
14 class, a better approximation of market conditions in a contingency case, and the
15 encouragement it provides counsel to seek an early settlement and avoid unnecessarily
16 prolonging the litigation (See pt. I, *ante*; *Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97
17 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p.
18 516)—convince us the percentage method is a valuable tool that should not be denied
19 our trial courts.

20 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).⁴ Thus, this Court may and, as strongly
21 encouraged by the California Supreme Court, *should* award attorney’s fees to Plaintiff’s counsel based
22 upon the percentage of the fund methodology.

23 “Empirical studies show that, regardless whether the percentage method or the lodestar method is
24 used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162
25 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent with Plaintiff’s counsels’ experience in these
26 types of cases. Here, Plaintiff’s attorneys request attorneys’ fees of **\$166,666.67** (one-third of the
27 adjusted GSA), and costs of **\$14,818.54** (below the capped amount of \$15,000), which includes payment
28 for mediation, filing fees, legal research fees, and other standard expenses, including upcoming Case
Anywhere charges and the Motion filing fee. (Leviant Decl., ¶ 32.) Given the efforts and risks in this

4 The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

case, as well as the results achieved, these amounts are within the range of reasonableness and warrant final approval.

b) *Class Counsel Is Entitled to Attorneys' Fees and Costs under the California Labor Code and California's Private Attorney General Statute*

Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

[A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Lab. Code § 1194. As this litigation culminated in a Settlement that provides for a recovery of unpaid wages, including unpaid minimum and overtimes wages, Plaintiff is entitled to recover reasonable attorneys' fees and costs under the Labor Code.

Class Counsel is also entitled to a fee under California's private attorney general statute, Code of Civil Procedure § 1021.5. "The award of attorney's fees is proper under section 1021.5 if '(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to make the award appropriate.'" *Press v. Lucky Stores*, 34 Cal. 3d 311, 317-318 (1983). The objective of the statute is "to encourage suits enforcing public policies by providing substantial attorneys' fees to successful litigants in such cases." *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 565 (2004).

The Action resulted in the enforcement of an important right affecting the public interest, as Plaintiff sought to enforce Class Members' rights to recover statutory wages arising from Defendants' failure to pay all wages and failure to provide meal and rest breaks. *See Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1113 (2007) (noting that "health and safety concerns" are what motivated the Industrial Wage Commission to adopt mandatory meal and rest periods).

The Action also conferred a significant benefit on a class of persons who worked for Defendants during the Class Period and were, according to allegations, not properly compensated for all hours worked and were not provided meal and rest periods or compensation therefor.

Finally, the necessity and financial burden of private enforcement render an award appropriate.

Without the incentive of an attorneys' fee award, Plaintiff could not have afforded to hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff's potential recovery. *See Ryan v. California Interscholastic Federation*, 94 Cal. App. 4th 1033, 1044 (2001) ("As to the necessity and financial burden of private enforcement, an award is appropriate where the cost of the legal victory transcends the claimants' personal interest; in other words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual stake in the matter.").

c) *A Lodestar Cross Check Confirms that Class Counsel's Requested Attorneys' Fees Are Reasonable*

Plaintiff's fee application is also reasonable based on Class Counsel's lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden in this regard by submitting "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" as "California case law permits fee awards in the absence of detailed time sheets." *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are computed to arrive at a "lodestar" figure which may then be augmented or diminished by the court taking into account various "multiplier" factors. *See Ramos*, 82 Cal. App. 4th at 622 (citing *Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsel's billed lodestar exceeds \$108,560.50 which is based on approximately **180.1 billed** hours (not including final estimated hours) at the attorneys' customary hourly rates (and omitting about 10 hours of time that were not billed by Mr. Leviant). (Leviant Decl., ¶ 32; Perez Decl., ¶ 17.) The actual lodestar is estimated to exceed **\$116,510.50**. (Leviant Decl., ¶ 32.) Application of a positive multiplier is appropriate, based on the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the benefit conferred on the class as a result of the Settlement, and the skill displayed by Class Counsel. Thus, the request for **\$166,666.67** in attorneys' fees, which is **1.53** times the final *billed* lodestar and **1.43** times the estimated final lodestar, is reasonable under the lodestar method.

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Here, Class Counsel expended a prudent amount of time litigating the case to achieve the excellent result on behalf of the class. (Leviant Decl. ¶ 32.)

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys’ skill as reflected in the quality of work, as well as the attorneys’ reputation and status.” *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial court may also “find hourly rates reasonable based on evidence of other courts approving similar rates.” *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

(3) Application of a Positive Multiplier Would Be Appropriate

The lodestar may be adjusted by applying a multiplier. *See Serrano*, 20 Cal. 3d at 49. In California, “[m]ultipliers can range from ***two to four or even higher***” and are routinely applied in the range requested by Class Counsel. *Wershba*, 91 Cal. App. 4th at 254; *see also Chavez*, 162 Cal. App. 4th at 66 (upholding ***2.5 multiplier***); *Glendora Community Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465 (1984) (affirming a fee award that included a ***12.0 multiplier***); Some factors a trial court

1 considers when determining whether to apply a multiplier are: “(1) the novelty and difficulty of the
2 questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the
3 litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.” *See*
4 *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (citations omitted). The ultimate goal is “to entice
5 competent counsel to undertake difficult public interest cases.” *San Bernardino Valley Audubon Soc. v.*
6 *County of San Bernardino*, 155 Cal. App. 3d 738, 755 (1985). Fee awards that are too small “chill the
7 private enforcement essential to the vindication of many rights....” *Lealao v. Beneficial California, Inc.*,
8 82 Cal. App. 4th 19, 53 (2000).

9 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is
10 necessary to (1) fully compensate counsel for the “loan” of legal services in light of the inherent high risk
11 of “default” posed by losing the case, and (2) encourage competent counsel to take on fee award cases.
12 *Ketchum*, 24 Cal. 4th at 1132-1133. As the court noted, “A lawyer who both bears the risk of not being
13 paid and provides legal services is not receiving the fair market value of his work if he is paid only for
14 the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee
15 award cases.” *Id.* at 1133 (citations omitted). Application of a positive multiplier is appropriate, based
16 on the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the benefit
17 conferred on the class as a result of settlement, and the skill displayed by Class Counsel. Here, a modest
18 multiplier of **1.43** is required to align the final estimated lodestar with the requested fee. Class Counsel
19 will have been litigating this case for over two years before receiving any reimbursement, expending
20 resources which could have been directed elsewhere. Class Counsel agreed to litigate on a contingent
21 basis, and in the process assumed considerable risk. (Leviant Decl. ¶ 28.)

22 Class Counsel’s efficiency and skill in bringing the case to an early resolution should not be used
23 to justify refusal to award the requested fees. As the court explained in *Lealao*:

24 [T]he promptness of settlement cannot be used to justify the refusal to apply a multiplier
25 to reflect the size of the class recovery without exacerbating the disincentive to settle
26 promptly inherent in the lodestar methodology. Considering that our Supreme Court
has placed an extraordinarily high value on settlement ... it would seem counsel should
be rewarded, not punished, for helping to achieve that goal....

27 *Lealao*, 82 Cal. App. 4th at 52 (citations omitted).

28 Given the contingent risk incurred by Class Counsel, the issues involved, the substantial benefit

1 conferred on the class and State as a result of the Settlement, and the skill displayed by Class Counsel,
2 application of a modest positive multiplier would be appropriate. Thus, Plaintiff respectfully requests
3 that the Court award Class Counsel the requested fees of \$166,666.67 under the common fund theory
4 with a lodestar cross-check or, alternatively, based on Class Counsel's lodestar with application of a
5 modest multiplier based upon the agreed-upon cap on fees.

6 *d) Class Counsel's Costs Are Reasonable*

7 The Settlement Agreement provides for reimbursement of costs not to exceed \$15,000.00. To
8 date, Moon & Yang, APC has already incurred actual costs in the amount of at least \$14,501.28.
9 (Leviant Decl., ¶ 32.) These costs *do not* include future motion filing charges not entered at the time the
10 report was prepared, Case Anywhere fees, attorney service charges, and LA Court Connect fees to
11 appear for the hearing of this Motion. (Leviant Decl. ¶ 32.) These costs were reasonably incurred in
12 prosecuting the Action on behalf of the Class Members and should be approved by the Court.
13 Accordingly, Class Counsel respectfully requests the Court approve costs in the amount of \$14,815.54.
14 (Leviant Decl., ¶ 32.)

15 **7. The Proposed Payment to the Administrator Is Fair and Reasonable**

16 In deciding whether to approve a proposed settlement, a trial court must determine if the
17 proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In
18 exercising this power, the overriding concern is to ensure that a proposed settlement is "fair, adequate,
19 and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). ILYM Group, Inc., which
20 was selected due to its competitive bid, estimates that administration can be performed for **\$11,600**. In
21 counsel's experience, based on similar wage-and-hour actions, an estimated cost of **\$11,600** is a fair and
22 reasonable amount for administration fees and should be preliminarily approved. (Leviant Decl., ¶ 34.)

23 **8. The PAGA Allocation is Reasonable**

24 The PAGA allocation is reasonable because the settlement of the underlying wage and hour
25 claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies,*
26 *Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members
27 as employees and substantial monetary relief, a settlement not only vindicates the rights of class
28 members as employees, but may have a deterrent effect upon the defendant employer and other

1 employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D.
2 Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be
3 substantially reduced below its standalone settlement value without sacrificing its statutory purposes
4 because the non PAGA settlement is relatively substantial.”)

5 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
6 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
7 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) (“Under California law, courts have
8 held that employers are not subject to heightened penalties for subsequent violations until and unless a
9 court or commissioner notified the employer that it is in violation of the Labor Code.”)

10 Finally, the PAGA allocation is fair. The LWDA is receiving \$45,000. The Class is receiving,
11 net, an estimated \$254,233.33 for the releases for six other theories of recovery (inclusive of the \$15,000
12 as the aggrieved employees’ share of the PAGA Allocation). The proportion is tipped slightly in favor of
13 the Class Members, but not markedly so. An allocation to the LWDA equal to 18% of the Net
14 Settlement Amount is not unfair and satisfies the policies underlying California’s wage and hour laws.

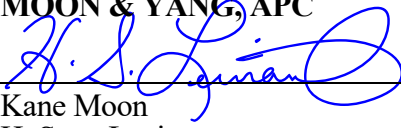
15 **VII. CONCLUSION**

16 For all the foregoing reasons, because the Class meets the requirements for certification, because
17 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
18 notice procedure and forms complied with due process, this Court should grant this Motion for Final
19 Approval and enter Judgment accordingly.

20 Respectfully submitted,

21 Dated: July 20, 2022

MOON & YANG, APC

22 By:  _____

Kane Moon

H. Scott Leviant

Mariam Ghazaryan

23 Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the 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 by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

JACKSON LEWIS P.C.
Mia Farber
Michael Thomas
725 South Figueroa Street
Suite 2500
Los Angeles, CA 90017
Telephone: (213) 689-0404
Facsimile: (213) 689-0430
Email: mia.farber@jacksonlewis.com
michael.thomas@jacksonlewis.com

Attorneys for Defendant

☒ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via third-party cloud service CASEANYWHERE. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **July 20, 2022** at Los Angeles, California.

H. Scott Leviant
Type or Print Name


Signature