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Individually and on behalf of all others similarly situated

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

KAYLA MILLIGAN, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

CWI, Inc., d/b/a Camping World, a
Kentucky corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVDS2020159

Assigned to the Hon. David Cohn

**PLAINTIFF'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

Date: September 7, 2022

Time: 10:00 a.m.

Dept.: S-26

Complaint Filed: September 21, 2020

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff KAYLA MILLIGAN (“Plaintiff”) respectfully requests this Court grant final
4 approval of the proposed class action and Private Attorney General Act (“PAGA”) settlement with
5 Defendant CWI, Inc., doing business as Camping World (“Defendant” or “CWI”) (Plaintiff and
6 Defendants are collectively hereinafter referred to as “the Parties”). This Court preliminarily
7 approved a \$1,500,000 class action settlement for Class Members employed by Defendant in the
8 State of California at any time between July 8, 2016, and May 2, 2022 (Hawkins Decl., Ex. 1,
9 Settlement Agreement (“Agreement” or “Settlement”), § 2.47).

10 On June 13, 2022, the Settlement Administrator, ILYM Group, Inc. (“ILYM”), mailed 662
11 Class Members the Class Notice, Request for Exclusion Form, and Objection Form (the “Notice
12 Packet”). (Declaration of Makenna Snow on Behalf of Settlement Administrator ILYM Group, Inc.
13 (“Snow Decl.”), ¶ 7, Ex. A) The deadline to request exclusion or opt out of the Settlement was
14 July 13, 2022. (Snow Decl., ¶¶ 11, 13, Ex. A.) To date, the Settlement Administrator received zero
15 objections and zero requests for exclusion. (Snow Decl., ¶¶ 11, 13.) Similarly, none of the class
16 members disputed their respective workweek or pay period calculations. (Snow Decl., ¶ 12.) Thus,
17 the Class has overwhelmingly accepted the Settlement.

18 Given the nature of the claims, the Individual Settlement Payments will be calculated and
19 apportioned from the Net Settlement Amount (“NSA”) based on the percentage of Workweeks at
20 Issue between the Settlement Period and PAGA Settlement Period, broken down as follows: 75%
21 to the Class Net Settlement Amount and 25% to the PAGA Net Settlement Amount. The allocations
22 to the Class Net Settlement Amount and the PAGA Net Settlement Amount is based on Workweeks
23 at Issue within each allocation group and the applicable statute of limitations periods. (Agreement,
24 § 4.5.) Putative Class Members who do not opt out of the Class Settlement will receive a prorate
25 share of the Class Net Settlement. (Id., § 4.5.1.) Any funds not distributed after the expiration of
26 the Individual Settlement Payment checks shall escheat to the State of California Controller’s
27 Office to be held in the name of the Settlement Class Member who is the payee of the check.

1 (Agreement, § 4.5.1(b).)

2 The Settlement Administrator estimates the Participating Settlement Class Members’
3 average settlement payment from the Settlement to be \$1,261.90 and the highest settlement
4 payment to be \$4,648.26 (Snow Decl., ¶ 15.)

5 Plaintiff submits that the Settlement should be approved because it is fair, adequate, and
6 reasonable, and has been overwhelmingly accepted by the Class. It will result in fair and significant
7 payments to participating Settlement Class Members. The Settlement is non-collusive and was
8 achieved as a result of informed litigation and arm’s-length negotiations conducted by counsel
9 experienced in class action litigation after mediation with neutral mediator, Jeff Ross, and the case
10 was only resolved as the product of a Memorandum of Understanding (“MOU”) that was submitted
11 through a mediator’s proposal. Therefore, the Settlement warrants final approval.

12 **II. SUMMARY OF LITIGATION**

13 **A. The Complaints and Allegations**

14 As detailed in the Motion for Preliminary Approval, on July 8, 2020, Plaintiff Milligan filed her
15 class action complaint in the Superior Court of the State of California, for the County of San Bernardino
16 (Case No. CIVDS2013999) alleging claims for (1) failure to pay wages; (2) failure to provide meal breaks
17 as required; (3) failure to authorize/permit rest breaks; (4) failure to timely pay wages; (5) failure to provide
18 accurate itemized wages statements; (6) failure to provide suitable seating; and (7) violation of California
19 Business & Professions Code §§ 17200, *et seq.* (“Class Complaint”). ((Declaration of James Hawkins
20 [“Hawkins Decl.”] ¶ 3.) On September 9, 2020, the Class Action was removed to the United States District
21 Court of California, Case No. 5:20-cv-01847-MWF-SHK. Plaintiff submitted a PAGA notice to the LWDA
22 on July 7, 2020, which alleged that Defendant had violated, among others, the various California Labor
23 Code sections alleged in her class action complaint. (Hawkins Decl., ¶ 6.)

24 On September 22, 2020, Plaintiff filed a PAGA complaint commencing the above-entitled action
25 in which she asserted a single cause of action under California Labor Code sections 2698, *et seq.* (Private
26 Attorney General Act of 2004), which includes allegations of (a) failure to pay all wages owed, including
27 minimum wage and overtime, (b) failure to provide lawful meal periods or compensation in lieu thereof, (c)
28 failure to authorize or permit lawful rest periods or provide compensation in lieu thereof, (d) willful failure

1 to provide accurate semi-monthly itemized wage statements, (e) failure to pay all wages due upon separation
2 of employment, and (f) failure to provide suitable seating (hereinafter, “PAGA Complaint” or “PAGA
3 Action”).

4 Defendant timely filed answers to both complaints that generally and specifically denied Plaintiff’s
5 claims of wrongdoing as alleged, while asserting all applicable affirmative defenses. (Hawkins Decl., ¶ 7.)
6 Defendant has at all times denied, and continues to deny, all of these allegations, and denies any and all
7 liability for Plaintiff’s claims. Defendant further denies that Plaintiff’s allegations are appropriate for class,
8 and/or representative treatment for any purpose other than for settlement purposes only. (Id., ¶ 8.)

9 Upon stipulation of the Parties, Plaintiff filed a First Amended Complaint in the present matter
10 consolidating the class claims from the Class Complaint with the PAGA claims into one Operative
11 Complaint for purposes of this Settlement. (Declaration of James Hawkins [“Hawkins Decl.”], ¶ 3, 9.)¹.
12 The FAC and all allegations and causes of action were deemed denied by Defendant, and Defendant was
13 not required to file an Answer or any other responsive pleading. (Id.)

14 **B. The Mediation, Formal and Informal Discovery and Information Exchange,**
15 **and Legal Analysis by Parties’ Counsel**

16 As detailed in the Motion for Preliminary Approval, after substantial investigation,
17 research, formal and informal information exchange and discovery, the Parties engaged arms-
18 length negotiations by experienced counsel in a voluntary 11-hour mediation session with highly
19 qualified mediator specializing in wage-and-hour class actions, Jeff Ross, on June 17, 2021. (Ex 3,
20 ¶ 12.) The Settlement is the product of a Memorandum of Understanding that was submitted
21 through a mediator’s proposal. (Id.)

22 **C. Preliminary Approval of the Settlement**

23 On February 16, 2022, Plaintiff initially filed a Motion for Preliminary Approval of Class
24 Action Settlement. On May 2, 2022, the Court granted Plaintiff’s Motion for Preliminary Approval.

26 ¹ On March 8, 2021, Plaintiff filed a single-plaintiff discrimination and wrongful termination action, entitled *Kayla*
27 *Milligan v. CWI, Inc. and Jerry Lopez*, in Shasta County Superior Court, Case No. 196840, alleging twelve individual
28 causes of action. (hereinafter the “Individual Complaint”). The Parties did not settle, nor did they attempt to settle, the
claims in Plaintiff’s Individual Complaint. (Agreement, ¶¶ 1.12-1.15, 2.13, 2.20). (Hawkins Decl. ¶ 11.) These claims
were separately settled with Defendant outside of the instant action.

(Id.; Ex. 2, Order Granting Preliminary Approval.) The Court set the hearing on Plaintiff's Motion for Final Approval for September 7, 2022, at 10:00 a.m.

D. Summary of the Settlement Terms Preliminarily Approved

Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to settle the lawsuit upon the terms and conditions and for the consideration set forth in the Settlement Agreement, **Exhibit 1** to the Declaration of James R. Hawkins In Support of Final Approval and Fees and Costs Motion. (Hawkins Decl., Ex. 1.)

In summary, the Parties agreed to settle the Settlement Class Members' Released Claims against the Released Parties, as defined in the Agreement, in the action for a non-reversionary "Maximum Gross Settlement Amount" of One Million Five Hundred Thousand Dollars and Zero Cents (\$1,500,000.00). (Agreement, ¶¶ 2.18, 2.37-2.38.). The Settlement Class Members are all current and former hourly-paid or non-exempt employees employed by Defendant within the State of California at any time during the Settlement Period (defined as July 8, 2016, through May 2, 2022, Agreement ¶ 2.47) who did not opt out. (Agreement, ¶¶ 2.1, 2.36, 2.44.) The Net Settlement Amount is the Maximum Gross Settlement Amount less: (1) Class Counsel's attorneys' fees (up to 1/3 of the Maximum Gross Settlement); (2) Class Counsel's costs and expenses related to these Settled Lawsuits not to exceed \$30,000.00 (to date, costs have totaled \$14,624.27); (3) all fees, costs, and expenses associated with a mutually agreed upon Settlement Administrator to administer the settlement currently estimated at \$15,000.00; and (4) Service Award to the Plaintiff (up to \$10,000). (Agreement, ¶¶ 2.21, 4.7, 4.8). The Net Settlement Amount will be divided amongst the Settlement Class Members in Individual Settlement Payments on a *pro rata* basis. (Agreement, ¶¶ 2.14, 2.49.). PAGA Releasees will also receive a PAGA Payment Check for the number of Pay Periods worked between July 7, 2019, and May 2, 2022. (Agreement, ¶¶ 2.27, 2.31.). Each Settlement Class Member's payment shall be treated 33.33% as wages; 33.33% as civil penalties or liquidated damages; and 33.33% as interest. The Parties further agree that the PAGA payment distributed to each PAGA Releasee will be treated entirely as civil penalties. The payments will be reported on the subject tax forms. (Agreement, ¶ 4.10.). Settlement Class Members shall have

one hundred eighty (180) days to cash their Individual Settlement Payment check. A reminder postcard will be sent to those Settlement Class Members who have not negotiated their Individual Settlement Payment checks within ninety (90) days of mailing. Any funds not distributed after the expiration of the Individual Settlement Payment checks shall escheat to the State of California Controller's Office to be held in the name of the Settlement Class Member who is the payee of the check. (Agreement, ¶ 4.5.1(b).)

III. CLASS NOTICE AND RESULTS OF THE NOTICE PROCEDURE

On May 6, 2022, ILYM received the Notice Packet prepared by the Parties and approved by the Court. (Snow Decl., ¶ 4.) On May 24, 2022, counsel for Defendants provided ILYM with a complete mailing list ("Class List") which contained the name, personnel number, social security number, last known mailing address, and workweeks for each Settlement Class Member. (Id., ¶ 5.) After updating the Class List against the National Change of Address Database maintained by the U.S. Postal Service, the Settlement Administrator mailed the Class Notice to 662 Class Members via First Class Mail. (Id., ¶ 6.)

Forty-eight (48) Notice Packets were returned without a forwarding address; in an effort to obtain an updated address to re-mail the Notice Packet, ILYM performed a computerized skip trace. (Snow Decl., ¶ 8). As a result, 32 updated addresses were obtained, and the Notice Packets were re-mailed to those 32 individuals. (Id., ¶ 9) A total of 16 Notice Packets have been deemed undeliverable as no updated addresses could be found notwithstanding the skip trace. (Id., ¶ 10.)

The deadline for Class Members to submit requests for exclusions and objections was July 13, 2022. (Snow Decl., ¶¶ 11, 13.) At the completion of the notice period, ILYM has not received any requests for exclusion and no objections to the Settlement. (Id.) Similarly, none of the class members disputed their respective workweek or pay period calculations. (Id., ¶ 12.) Therefore, there are 662 Participating Class Members who will receive their share of the Net Settlement Amount. (Id., ¶ 14.)

The Settlement Administrator estimates the Participating Settlement Class Members' average settlement payment from the Settlement to be \$1,261.90 and the highest settlement payment to be \$4,648.26. (Snow Decl., ¶ 15.)

1 **IV. EVALUATION OF THE SETTLEMENT**

2 **A. The Legal Standard for Final Approval**

3 “[V]oluntary conciliation and settlement are the preferred means of dispute resolution.
4 This is especially true in complex class action litigation...” *7-Eleven Owners for Fair Franchising*
5 *v. Southland Corp.*, 85 Cal. App. 4th 1140, 1151 (2000)(quoting *Officers for Justice v. Civil Serv.*
6 *Comm. Of the City and Cnty. & S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)). The decision to approve
7 or reject a proposed settlement is committed to the trial court’s sound discretion. *Wershba v. Apple*
8 *Comp., Inc.*, 91 Cal. App. 4th 224, 234-35 (2001). Thus, when evaluating a class action settlement
9 for final approval, the Court should give “[due] regard to what is otherwise a private consensual
10 agreement between the parties.” *Id.* at 245. The Court’s inquiry thus is limited to whether the
11 proposed settlement is “fair, adequate, and reasonable.” *Id.* at 244-45; *Dunk v. Ford Motor Co.*, 48
12 Cal. App. 4th 1794, 1801 (1996). A settlement is “fair, adequate, and reasonable” warranting final
13 approval when “the interests of the class are better served by the settlement than by further
14 litigation.” Manual for Complex Litigation (4th ed. 2008) § 21.61.

15 CRC 3.769 explains the procedure for final approval of a class action settlement, which
16 involves three distinct steps: (1) preliminary approval of the proposed settlement by the trial court;
17 (2) dissemination of mailed and/or published notice of the settlement to all affected Class Members;
18 and (3) a “formal fairness hearing,” or final settlement approval hearing, at which Class Members
19 may be heard regarding the settlement, and at which matters concerning the fairness, adequacy, and
20 reasonableness of the settlement may be presented.

21 In this case, the first step was completed on May 2, 2022, when the Court preliminarily
22 approved the Settlement and determined that it was within the range of possible final approval.
23 (See, Ex. 2, Preliminary Approval Minute Order). The second step, dissemination of Class Notice
24 to the Settlement Class, was completed on June 13, 2022, at the close of the notice period. (Snow
25 Decl., ¶¶ 7-14)

26 “[T]he trial court has broad powers to determine whether a proposed settlement in a class
27 action is fair.” *Mallick v. Super. Ct.*, 89 Cal. App. 3d 434, 438 (1979). Fairness is presumed when:
28 (1) the settlement is reached through arm’s-length bargaining, (2) investigation and discovery are

1 sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar
2 litigation, and (4) the percentage of objectors is low. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th
3 1794, 1802 (1996); see also *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010). “Where
4 the settlement terms are fair and reasonable, the settlement is presumptively valid, subject only to
5 objections that may be raised at a final hearing.” Conte & Newberg, *Newberg on Class Actions* §
6 11.26 (4th ed. 2002) (Newberg).

7 “The list of factors is not exclusive, and the court is free to engage in a balancing and
8 weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at
9 245. Courts must also give:

10 proper deference to the private consensual decision of the parties, [since] the court’s
11 intrusion upon what is otherwise a private consensual agreement negotiated
12 between the parties to a lawsuit must be limited to the extent necessary to reach a
13 reasoned judgment that the agreement is not the product of fraud or overreaching
14 by, or collusion between, the negotiating parties, and the settlement, taken as a
15 whole, is fair, reasonable and adequate to all concerned.

16 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

17 Here, by granting preliminary approval, this Court has already determined that the
18 Settlement Agreement is fair and reasonable subject to objections. (Ex. 2, Preliminary Approval
19 Order.). Moreover, no objections have been filed. (Hawkins Final Approval Decl., 19.) In fact,
20 no Class Member disputed their allocated Workweeks or Pay Periods at issue and no Class Member
21 opted out of the Settlement. (Hawkins Final Approval Decl., 19.). Thus, Plaintiff respectfully posits
22 that the Court’s preliminary assessment has been separately and overwhelmingly endorsed by the
23 Settlement Class. Accordingly, this Court should grant final approval of the Settlement.

24 **B. Plaintiff’s Counsel Conducted a Thorough Investigation of the Factual and Legal
25 Issues and Were Thus Able to Objectively Assess the Settlement’s
26 Reasonableness.**

27 “[T]he extent of discovery completed and the stage of proceedings” are factors considered
28 in assessing the fairness, adequacy, and reasonableness of a class action Settlement. *Dunk*, 48 Cal.
App. 4th at 1801. “This factor evaluates whether the parties have sufficient information to make
an informed decision about settlement.” *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 588,

1 (N.D. Cal. 2015) (citation omitted).

2 Plaintiff and Defendant entered into the Settlement only after conducting an extensive
3 investigation, formal and informal discovery, and engaging in a full-day mediation session with
4 Jeff Ross. (Ex. 3, Hawkins Prelim. Approval Decl. ¶ 12). This enabled Class Counsel and Defense
5 Counsel to thoroughly evaluate the strengths and weaknesses of the claims. (Hawkins Final
6 Approval Decl., ¶¶ 13-16). As detailed more extensively in the previously filed Motion for
7 Preliminary Approval, the Parties engaged in extensive exchanges of information and informal and
8 formal discovery. The Parties also engaged in numerous lengthy discussions regarding the
9 information in the data exchanged, the Parties' respective claims and defenses, and the Plaintiff's
10 claimed damages. The Parties shared damages information with the mediator during the mediation
11 session and each other for purposes of reaching a settlement. (Id.)

12 Plaintiff's counsel also conducted a thorough investigation into the factual and legal issues
13 implicated by Plaintiff's claims and were able to objectively assess the settlement's reasonableness.
14 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Plaintiff's
15 counsel can opine that the Settlement, for the consideration and on the terms set forth in the
16 Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of Class
17 Members in light of all known facts and circumstances, including the risk of significant delay and
18 uncertainty associated with litigation, and various defenses asserted by Defendants. (Ex. 3,
19 Hawkins Prelim. Approval Decl. ¶¶ 16, 23, and 28; Hawkins Final Approval Decl. ¶ 23.)

20
21 **C. The Settlement Was Reached Through Arm's-Length Bargaining in Which All
22 Parties Were Represented by Experienced Counsel**

23 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a
24 proposed settlement's fairness." *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts
25 presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the
26 contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good
27 faith. Newberg, § 11.51.

28 As discussed above, the Parties settled on a mediator's proposal after a mediation with an

1 experienced wage and hour mediator, Jeff Ross. (Ex. 3, Hawkins Prelim. Approval Decl. ¶ 12.)
2 The mediator helped to manage the Parties' expectations and provided a useful, neutral analysis of
3 the issues and risks to both sides. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948
4 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of finding of no
5 collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist.
6 LEXIS 108195 (N.D. Cal. Nov. 5, 2008 (mediator's participation weighs considerably against any
7 inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a
8 "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
9 proceedings were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*,
10 No. 09-00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012 (participation in mediation
11 "tends to support the conclusion that the settlement process was not collusive"); *Ogbuehi v.*
12 *Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014
13 (participation in mediation "tends to support the conclusion that the settlement process was not
14 collusive"). At all times, the Parties' negotiations were adversarial and non-collusive, conducted at
15 arm's length, and supported by a knowledgeable mediator. (Ex. 3, Hawkins Prelim. Approval Decl.
16 ¶ 12.) Indeed, it ultimately took 11 hours of negotiations to reach resolution. Even then, however,
17 the process was so adversarial, the Parties were unable to reach an agreement regarding the MOU on the
18 day of the mediation and needed an additional day of negotiations and requesting that Mr. Ross submit a
19 mediator's proposal before an MOU was signed by the Parties. At all times, the Parties' negotiations were
20 adversarial and non-collusive
21

22 The Parties were represented by experienced class action counsel throughout the
23 negotiations resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC.
24 Plaintiff's counsel are seasoned class action attorneys who regularly litigate wage and hour claims
25 through certification and on the merits and have considerable experience settling wage and hour
26 class actions. (Ex. 3, Hawkins Prelim Approval Decl. ¶ 42.). Defendants are represented by Littler
27 Mendelson, P.C., a respected defense firm.
28

1 **D. The Proposed Settlement Is Reasonable Given the Strength of Plaintiff’s Case,**
2 **the Risks and Expense of Continued Litigation**

3 In seeking approval, a settling party must provide sufficient information to “enable the court
4 to make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker*
5 *Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law that a cash
6 settlement amounting to only a fraction of the potential recovery will not per se render the
7 settlement inadequate or unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of*
8 *San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). “The proposed settlement is not to be judged
9 against a hypothetical or speculative measure of what might have been achieved by the
10 negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the
11 risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often
12 measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act*
13 *(FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims within
14 a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims
15 for risks such as changes in the law, the probability of success, and other factors.

16 Settling parties are not, however, required to partake in a hypothetical accounting exercise:
17 “***Kullar* does not ... require any such explicit statement of [maximum] value**; it requires a
18 record which allows ‘an understanding of the amount that is in controversy and the realistic range
19 of outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-
20 10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most
21 important factor” in determining “whether a settlement is fair and reasonable” is the “strength of
22 the case for Plaintiff on the merits, balanced against the amount offered in the settlement.” *Id.* at
23 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).

24 Based on their analysis of documents and data produced by Defendants, Plaintiff’s counsel
25 was able to assess the value of each of the asserted claims for settlement purposes (discussed in
26 more detail in Ex. 3, Hawkins Prelim. Approval Decl., ¶31-35.) As detailed in the Hawkins
27 Preliminary Approval Declaration, Plaintiff estimated Defendants’ maximum potential liability to
28 be approximately \$6.8 million. (Ex. 3, Hawkins Prelim. Approval Declaration, ¶ 32.). After

1 reviewing Defendants’ additional records, evidence produced, and class information, Plaintiff’s
2 counsel estimated Defendants’ maximum realistic liability for the thrust of Plaintiff’s claims to be
3 approximately \$3.8 million. (Id. at ¶ 33.) This estimate assumes, however, that each and every
4 one of Plaintiff’s claims would have been certified for class-wide resolution, that Plaintiff would
5 have prevailed at trial, and that the jury’s verdict would have been affirmed on appeal. In other
6 words, this estimate assumes complete and total victory. Understandably, for purposes of
7 evaluating the settlement’s reasonableness, this estimate must be “tempered by factors such as the risk
8 of losing at trial, the expense of litigating the case, and the expected delay in recovery (often
9 measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act*
10 *(FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).

11 Ultimately, Plaintiff’s counsel determined an appropriate range of recovery for settlement
12 purposes by offsetting Defendants’ maximum theoretical liability by: (i) the strength of the defenses
13 to the merits of Plaintiff’s claims; (ii) the risk of class certification being denied; (iii) the risk of
14 losing on any of a number of dispositive motions that could have been brought between certification
15 and trial (e.g., motions to decertify the class, motions for summary judgment, and/or *motions in*
16 *limine*) that might have eliminated all or some of Plaintiff’s claims, or barred evidence/testimony
17 in support of the claims; (iv) the risk of losing at trial; (v) the chances of a favorable verdict being
18 reversed on appeal; and (vi) the difficulties attendant to collecting on a judgment. (Hawkins Final
19 Approval Decl. ¶ 29.)

20 Plaintiff determined that a settlement amounting to \$1,500,000, or approximately 39.5% of
21 the estimated realistic liability for the thrust of Plaintiff’s class claims, was fair and reasonable in
22 view of the odds of: (i) overcoming Defendants’ arguments and evidence that it properly provided
23 meal and rest breaks, paid for all hours of work, and properly reimbursed business expenses; (ii)
24 the obstacles inherent in satisfying the requirements to certify a class and satisfy manageability
25 requirements; (iii) the challenges of proving the elements of each cause of action; (iv) the derivative
26 nature of many of the claims; (v) the expenses of further litigation; and (vi) the recovery rate, even
27 if Plaintiff were to prevail, after years of continued and costly litigation. (Ex. 2, Hawkins Prelim
28 Approval Decl. ¶ 33-34; Hawkins Final Approval Decl. ¶ 30.)

1 Courts have routinely approved settlements that provided an even greater discounted range
2 of the maximum potential recovery. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D.
3 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14%
4 of the total estimated damages); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D.
5 Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved);
6 *In re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of
7 damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July
8 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the
9 range of possible initial approval based on the strength of plaintiff’s case and the risk and expense
10 of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal.
11 2008) (approving settlement of 6% to 8% of estimated damages).

12 **E. The Endorsement of the Parties’ Counsel Favors Final Approval**

13 The endorsement of experienced and well-informed counsel of a settlement as fair, reasonable,
14 and adequate is entitled to significant weight. *Dunk*, 48 Cal. App. 4th at 1801-02; *see also Larsen*
15 *v. Trader Joe’s Company*, No. 11cv05188-WHO, 2014 WL 3404531 (N.D. Cal. July 11, 2014) (“A
16 [trial] court is entitled to give consideration to the opinion of competent counsel that the settlement
17 is fair, reasonable, and adequate.”) Here, counsel for both Parties have significant experience
18 litigating wage and hour class actions and endorse the Settlement as being fair, adequate and
19 reasonable. Class Counsel believes that the Settlement is the best interest of the Class, and an
20 excellent result for the Class. (See, Ex. 3, Hawkins Prelim Approval Decl. generally; see also
21 Hawkins Final Approval Decl. ¶ 23.) This endorsement of counsel is entitled to significant weight
22 in favor of final approval. *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. Aug. 22, 1979)
23 (“The recommendation of Plaintiff’s counsel should be given a presumption of reasonableness.”)
24 *In re Salomon Inc. Sec. Litig.*, 1194 U.S. Dist. LEXIS 8038, at *42 (S.D.N.Y. June 15, 1994).

25 **F. The Settlement Class Has Responded Positively to the Settlement**

26 In evaluating the fairness of a Settlement, the “absence of a large number of objections to a
27 proposed class action settlement raises a strong presumption that the terms of a proposed class
28 settlement action are favorable to the class members.” *National Rural Tele. Coop. v. DIRECTV*,

1 *Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). Here, **none** of the Class Members opted out, and none
2 of the Class Members submitted an objection to the Settlement. (Snow Decl. ¶¶ 11-13; Hawkins
3 Final Approval Decl. ¶ 19.) Thus, the Class’s response is “overwhelmingly positive,” supporting
4 approval of the Settlement. *See 7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1152-
5 53 (finding support for the settlement where 80 out of 5,454 class members elected to opt out and
6 nine class members objected); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D.
7 Cal. 2010) (finding 0 objections and 16 opt-outs out of 329 class members [4.86%] “strongly
8 support[] settlement”); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW EMC, 2010
9 WL 1687832, at *15 (N.D. Cal. Apr. 22, 2010) (finding an opt-out rate of 0.4% supported
10 settlement). In other words, “[t]he fact that the overwhelming majority of the class willingly
11 approved the offer and stayed in the class presents at least some objective positive commentary as
12 to its fairness.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

13 As **no Class Member objected or submitted a request for exclusion**, 662 of the 662 Class
14 Members (100%) will participate in the Settlement and receive their individual settlement shares.
15 (Snow Decl., ¶ 14; Hawkins Final Approval Decl. ¶ 19.) In addition, the Participating Settlement
16 Class Members’ average settlement payment from the Net Settlement Amount is estimated to be
17 \$1,261.90 and the highest settlement payment is \$4,648.26 (Snow Decl., ¶ 15.)

18 This average net recovery is significantly higher than many wage and hour class action
19 settlements approved by California state and federal courts. *See, e.g., Badami v. Grassroots*
20 *Campaigns, Inc.*, Case No. C 07-03465 JSW (N.D. Cal. Sept. 15, 2008) (average net recovery of
21 approximately \$195); *Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego
22 County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No.
23 BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v.*
24 *United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of
25 approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A.
26 County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*,
27 Case No. CV05-3241 FMC-JWJx (C.D. Cal. May 14, 2007) (average net recovery of approximately
28 \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net

1 recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213
2 (Orange County Super. Ct.) (average net recovery of approximately \$35); and *Gomez v. Amadeus*
3 *Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20).

4 **V. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE**
5 **REASONABLE**

6 In accordance with the Court's Preliminary Approval Order (Ex. 2), the Parties retained
7 ILYM Group, Inc. to administer the notice process. ILYM's duties include: (i) compile and send
8 via U.S. Mail to the Putative Class Members and PAGA Releasees the Class Notice; (ii) confirm
9 the accuracy of the addresses of Putative Class Members and PAGA Releasees through the United
10 States Post Office's National Change of Address database before mailing; (iii) perform one skip
11 trace on any Class Notice returned as undeliverable; (iv) re-mail Class Notice one time only by
12 First Class Mail if the Class Notice was returned undeliverable and a new address is located or upon
13 a Putative Class Member's or PAGA Releasees request; (v) send deficiency letters as needed; (vi)
14 the allocation duties described below; (vii) process Workweek Disputes, Requests for Exclusion,
15 and Objections; (viii) calculate and distribute all payments due under the Settlement Agreement;
16 (ix) undertake tax reporting, withholding, remittances, and calculation of Employer Taxes; and (x)
17 create and operate the settlement website and toll-free call center. The Settlement Administrator
18 also provided a declaration under penalty of perjury ("Administrator's Declaration") which
19 summarizes its findings and the results of the notice process, including and not limited to, stating:
20 the number of individuals and Workweeks at Issues reflected in the data provided by Defendant;
21 the number of mailings; the number of Workweeks Disputes, Objections, and Requests for
22 Exclusion received; and other information as is required to obtain Final Approval of the Settlement
23 and the Settlement Agreement. (Agreement ¶ 5.2.1.)

24 ILYM Group, Inc. is an experienced class administrator and has adequately performed the
25 administration tasks required by the preliminary approval order. ILYM Group's total fees and costs
26 for services in connection with the administration of the Settlement are \$15,000 (Snow Decl., ¶ 15.)
27 Plaintiff's counsel believes this sum is appropriate and respectfully requests the Court award to
28 ILYM. (Hawkins Final Approval Decl. ¶ 19.)

1 **VI. CONCLUSION**

2 For the foregoing reasons, and in accordance with the above and the Parties' Settlement
3 Agreement, the Settlement should be approved as fair, adequate, and reasonable. It will result in
4 fair payment to Participating Settlement Class Members, is non-collusive, and was achieved as a
5 result of informed, extensive litigation, and arm's-length negotiations conducted by counsel for the
6 respective parties who are experienced in wage and hour class action litigation, with the assistance
7 of an experienced and well-regarded mediator. The Class Members' overwhelmingly positive
8 response indicates that the Settlement is fair and reasonable. Accordingly, Plaintiff respectfully
9 request that the Court grant final approval to the Settlement.

10
11 Dated: August 15, 2022

JAMES HAWKINS APLC

12
13 By: 

14 James Hawkins, Esq.
Christina M. Lucio, Esq.

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16 Attorneys for Plaintiff KAYLA MILLIGAN
and the conditionally certified class
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