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

12
13 MICHAEL PEARSON, individually and on
behalf of other persons similarly situated,

14 Plaintiff,

15 vs.

16
17 WEST BRANDS, LLC, a Delaware limited
liability company; VERY GOOD TOURING,
18 INC., a California corporation; KANYE
WEST, an individual; AJR FILMS INC., a
19 California corporation; and DOES 1 through
50, inclusive,

20 Defendants.
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Case No.: 20STCV31684

[The Hon. Carolyn B. Kuhl, Dept. 12]

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

Date: March 19, 2025

Time: 10:30 AM

Dept.: SS-12

Complaint Filed: August 20, 2020

Trial Date: None Set

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28 Attorneys for Plaintiff MICHAEL PEARSON

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 19, 2025, at 10:30 AM in Department 12 of the
3 above-entitled court, Plaintiff Michael Pearson (“Plaintiff”) will, and hereby does, move the Court
4 for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for
5 an order:

6 1. Granting final approval of the settlement in the case pursuant to the Class Action and
7 PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-filed
8 Declaration of Frank H. Kim as Exhibit “1”;

9 2. Affirming Kim Legal APC, Helen Kim Law, APC, and EcoTech Law Group, P.C. as
10 Class Counsel;

11 3. Affirming Michael Pearson as Class Representative and awarding an enhancement
12 award of \$7,500.00;

13 4. Awarding ILYM Group, Inc. claims administration fees of \$11,150.00 for its services as
14 Administrator; and,

15 5. Entering judgment.

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

19 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
20 and Authorities, the Declarations of Frank H. Kim, Helen U. Kim, Dara Tabesh, Michael Pearson,
21 Cassandra Polites, all other papers and records on file in this action, and on such oral and
22 documentary evidence as may be presented at the hearing on this Motion.

23 DATED: February 28, 2025

KIM LEGAL, APC

24
25 By: /s/ Frank H. Kim

26 Frank H. Kim
27 Attorneys for Plaintiff Michael Pearson and
28 the Proposed Class

TABLE OF CONTENTS

I. INTRODUCTION.....	7
II. FACTUAL BACKGROUND	7
A. Litigation Overview and Procedural History	7
1. Removal to Federal Court	8
2. First Attempt at Private Mediation.....	8
3. Mediation and Settlement.....	8
B. Preliminary Approval	10
III. THE PRELIMINARILY APPROVED SETTLEMENT	10
A. The Settlement Class.....	10
B. The Aggrieved Employees.....	10
C. Gross Settlement Amount	10
D. Individual Settlement Payments	11
E. Class Notice	12
F. Check Mailed Settlement – No Reversion.....	12
IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT.....	13
A. The Settlement is Entitled to a Presumption of Fairness	13
B. The Court Should Approve This Class Action Settlement Because it Satisfies Each of the <i>Kullar</i> Factors	14
C. The Strength of Plaintiff’s Case	15
a. The Risks Associated with the Misclassification Theory	15
b. The Risks Associated with Joint Employer Liability	16
c. The Risks Associated with Unpaid Wages/Overtime Claim	16
d. The Risks Associated with the Meal and Rest Break Claims	17
e. The Risks Associated with the Wage Statement Claim.....	18
f. The Risks Associated with the Waiting Time Penalty Claim.....	19
g. The Risks Associated with the PAGA Claim	20
D. The Risk, Expense, Complexity, and Likely Duration of Further Litigation.....	20
E. The Risk Associated With a Potential <i>Pick-Up Stix</i> Campaign	21
F. The Risk of Maintaining Class Action Status through Trial.....	21
G. The Amount Offered in Settlement.....	21
a. Plaintiff’s Assessment of Defendants’ Maximum Exposure	21
H. The Experience and Views of Counsel	23
I. The PAGA Allocation is Reasonable.....	23

J. The Class Payment Allocation Is Fair and Reasonable	24
V. THE SERVICE AWARD TO THE NAMED PLAINTIFF	25
VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY.....	26
VII. CONCLUSION.....	26

TABLE OF AUTHORITIES

CASES

<i>Barnhill v. Robert Saunders & Co.</i> (1981) 125 Cal.App.3d 1, 7	18
<i>Carrington v. Starbucks Corporation</i> (2018) 30 Cal.App.5th 504, 529	20
<i>Chindarah v. Pick Up Stix, Inc.</i> (2009), 171 Cal.App.4th 796	20
<i>Diaz v. Grill Concepts Services, Inc.</i> (2018) 23 Cal.App.5th 859	19
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794, 1801	12, 13
<i>Duran v. U.S. Bank National Assn.,</i> 59 Cal.4th 1, 31 (2014)	17
<i>Glass v. UBS Financial Services, Inc.,</i> Case No. C-06-4068 MMC, 2007 WL 227862,	24
<i>Gonzalez v. San Gabriel Transit, Inc.</i> (2019) 40 Cal.App.5th 1131, 1157.....	14
<i>Helix Energy Solutions Group, Inc. v. Hewitt</i> (2023) 598 U.S. 39	16
<i>Hill v. Walmart Inc.,</i> 32 F.4th 811 (9th Cir. 2022).....	19
<i>Ingram v. The Coca-Cola Company,</i> 200 F.R.D. 685, 694 (N.D. Ga 2001)	24
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4th 116, 128	13
<i>Mamika v. Barca</i> (1998) 68 Cal.App.4th 487, 492.).....	18
<i>Moniz v. Adecco USA, Inc.</i> (2021) 72 Cal.App.5th 56, 76	23
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal. App. 4th 399, 409	14
<i>Naranjo v. Spectrum Security Services, Inc.</i> (Cal., May 6,	

1	2024) 2024 Daily Journal D.A.R.	
2	3799.....	18, 19
3	<i>O'Connor v. Uber Technologies,</i>	
4	<i>Inc.</i> (N.D. Cal. 2016) 201	
5	F.Supp.3d 1110, 1135	23
6	<i>Officers for Justice v. Civil Service</i>	
7	<i>Comm'n</i> (9th Cir. 1982) 688	
8	F.2d 615, 624–625, 629–630	24
9	<i>S.G. Borello & Sons, Inc. v.</i>	
10	<i>Department of Industrial</i>	
11	<i>Relations</i> (1989) 48 Cal.3d 341,	
12	350.....	14
13	<i>Van Vranken v. Atlantic Richfield</i>	
14	<i>Co.</i> , 901 F. Supp. 294, 299 (N.D.	
15	Cal. 1995).....	24
16	<i>Washington v. Joe's Crab Shack</i>	
17	(N.D. Cal. 2010) 271 F.R.D.	
18	629, 641.....	17
19	<u>STATUTES</u>	
20	Cal. Code Regs. § 11120.....	16
21	California Assembly Bill 5	14
22	California Code of Civil Procedure	
23	§ 1781(f).....	12
24	Code of Civil Procedure § 382.....	12
25	Labor Code § 203.....	18
26	Labor Code § 204.....	18
27	Labor Code § 226.....	18
28	Labor Code § 226.7(b).....	16
	Labor Code § 226.8.....	15, 22
	Labor Code § 226(a)(2)	18
	Labor Code § 226(a)(9)	18
	Labor Code § 2699(e)(2)	19
	Labor Code § 515(d)(2)	16
	Labor Code 210.....	18
	Labor Code section 512	16
	Wage Order No. 12-2001, subd. 7	14

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Michael Pearson (“Plaintiff”) submits this Motion for Final Approval of Class
4 Settlement and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Class Action and
6 PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-filed
7 Declaration of Frank H. Kim as Exhibit “1”;

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

10 3. Award ILYM Group, Inc. claims administration fees of \$11,150.00 for its services as
11 Administrator;

12 4. Affirm named Plaintiff Michael Pearson as Class Representative and award a
13 cumulative Class Representative payment of \$7,500.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

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

17 On November 23-24, 2019, Plaintiff worked as a performer at the Hollywood Bowl for the
18 Nebuchadnezzar Opera (the “Opera”) in exchange for a daily rate in the amount of \$250.
19 (Declaration of Frank H. Kim [“Kim Decl.”] ¶ 4.) Plaintiff alleges that Defendants misclassified
20 him as an independent contractor, failed to pay his overtime wages at the appropriate rate of pay,
21 and failed to pay premium wages for missed meal and rest periods at the appropriate rate of pay,
22 among other claims. (Kim Decl. ¶ 5.)

23 On August 20, 2020, Plaintiff filed a Class Action Complaint alleging claims for: (1)
24 Failure to Pay Earned Wages; (2) Failure to Provide Meal Breaks; (3) Failure to Provide Rest
25 Breaks; (4) Failure to Pay Overtime Wages; (5) Waiting Time Penalties; (6) Failure to Provide
26 Itemized Wage Statements; (7) Unlawful and Unfair Business Practices. (Kim Decl. ¶ 6.)

27 On March 29, 2021, Plaintiff filed a First Amended Complaint (“FAC”) to add Very Good
28

1 Touring and Kanye West (also known as “Ye”) as additional defendants and to add a representative
2 cause of action under PAGA. (Kim Decl. ¶ 7.)

3 1. Removal to Federal Court

4 On June 21, 2021, Defendants removed the action to the U.S. District Court for the Central
5 District of California under the Class Action Fairness Act. (Kim Decl. ¶ 8.)

6 On June 28, 2021, AJR Films filed a motion to dismiss the FAC or, in the alternative, to
7 strike certain causes of action. (Kim Decl. ¶ 9.) That same day, Ye, Very Good Touring, and West
8 Brands (the “Ye Defendants”) separately filed a motion to dismiss and strike the FAC. (*Id.*) On
9 July 8, 2021, Plaintiff filed oppositions to both motions. (*Id.*)

10 2. First Attempt at Private Mediation

11 Thereafter, the Parties agreed to private mediation with Jeffrey Krivis and reserved the
12 mediation date for August 20, 2021, which the Parties continued to November 30, 2022 in order
13 to exchange all the agreed-upon information prior to mediation. Pursuant to stipulation and order,
14 the case was stayed pending mediation. (Kim Decl. ¶ 10.)

15 On November 1, 2022, Greenberg Traurig LLP, then counsel for the Ye Defendants, filed
16 a motion to withdraw as counsel, which Plaintiff did not oppose. Around this time, the Parties also
17 agreed to cancel the November 30, 2022 mediation given the difficulties of receiving all the
18 mediation data. (Kim Decl. ¶ 11.)

19 On December 1, 2022, the court granted Greenberg Traurig LLP’s request to withdraw as
20 counsel and set an order to show cause for new counsel. On February 14, 2022, Meservy Law,
21 P.C. and Morello Law, P.C. filed a notice of appearance for the Ye Defendants. (Kim Decl. ¶ 12.)

22 3. Mediation and Settlement

23 In the following months, the Parties resumed their discussions regarding mediation and
24 agreed to mediate with Jason Marsili, Esq. on August 29, 2023, which the Parties continued to
25 October 23, 2023 in order to give the Parties time to resolve outstanding issues regarding pre
26 mediation discovery. (Kim Decl. ¶ 13.)

1 In advance of mediation, Defendants provided Plaintiff's counsel with pertinent data for
2 the Class Members so that the Parties could fully investigate the claims at issue and understand
3 their strengths and weaknesses. (Kim Decl. ¶ 14.) Defendants provided the number of class
4 members and PAGA members and documents pertinent to Plaintiff's allegations that the on-stage
5 performers were misclassified as independent contractors. (Kim Decl. ¶ 15.) Plaintiff's counsel
6 also served formal discovery but agreed to stay that discovery pending settlement negotiations.
7 (Kim Decl. ¶ 16.) Plaintiff's counsel had mediation data analyzed by an expert to prepare a damage
8 model for mediation. (Kim Decl. ¶ 17.)

9 On October 23, 2023, the Parties attended an all-day mediation before Jason Marsili, Esq.
10 (Kim Decl. ¶ 18.) Although the parties did not resolve the matter that day, they continued their
11 settlement discussions in the following weeks with the assistance of the mediator and in response
12 to a mediation proposal, the Parties reached a settlement, as provided herein, to settle Plaintiff's
13 claims on a class-wide and representative basis. (*Id.*) As part of the Settlement Agreement, the
14 Parties stipulated to remand this case back to state court for purposes of preliminary and final
15 approval. (*Id.*)

16 Defendants deny any liability or wrongdoing of any kind associated with the claims alleged
17 in the Action, dispute the damages and penalties claimed by Plaintiff, and further contend that, for
18 any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative
19 action treatment. (Kim Decl. ¶ 19.) Defendants contend, among other things, that, at all times, they
20 have complied with the California Labor Code, and the Industrial Wage Commission Orders. (*Id.*)

21 Based on their own independent investigation and evaluation, Class Counsel is of the
22 opinion that the Settlement Agreement with Defendants is fair, reasonable and adequate, and in
23 the best interest of the settlement classes in light of all known facts and circumstances, including
24 the risk of significant delay, defenses asserted by Defendants, uncertainties regarding a class and
25 representative action trial on the merits, and numerous potential appellate issues. (Kim Decl. ¶ 20.)
26 Although Defendants deny any liability, Defendants are agreeing to this Settlement Agreement
27 solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to settle,
28

1 compromise and discharge all disputes and claims arising from or relating to the Action on the
2 terms set forth here fully, finally, and forever. (*Id.*)

3 **B. Preliminary Approval**

4 On October 3, 2024, the Court issued an Order preliminarily approving the settlement in
5 this case, approving the proposed Class Notice, ordering that the Administrator send notice to the
6 Class, and setting a date for the Final Approval and Fairness Hearing (Kim Decl. ¶ 21.)

7 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

8 **A. The Settlement Class**

9 For purposes of the Settlement Agreement, the settlement class is defined as: “any and all
10 individuals who worked as performers, vocalists, dancers, or other extras in preparation for and
11 during the Nebuchadnezzar concert in Los Angeles, California, at any time from November 23,
12 2019, to November 24, 2019 (“Settlement Class Members” or “Class Members”). (Kim Decl. ¶
13 22; Settlement Agreement, Ex. 1 at ¶ 1.5.)

14 **B. The Aggrieved Employees**

15 For purposes of the Settlement Agreement, the definition of the PAGA settlement group is
16 defined as: “any and all individuals who worked as performers, vocalists, dancers, or other extras
17 in preparation for and during the Nebuchadnezzar concert in Los Angeles, California, at any time
18 from November 23, 2019, to November 24, 2019 (“Aggrieved Employees”) (Kim Decl. ¶ 23;
19 Settlement Agreement, Ex. 1 at ¶¶ 1.4, 1.9.)

20 **C. Gross Settlement Amount**

21 As detailed fully in the Settlement Agreement, the Settlement provides for Ye Defendants
22 to pay a Gross Settlement Amount of \$1,350,000.00, which includes the sum of the Individual
23 Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees,
24 Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the
25 Administrator’s Expenses. (Kim Decl. ¶ 24; Ex. 1 at ¶ 1.24.)

26 The Net Settlement Amount is the Gross Settlement Amount, less the Individual PAGA
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1 Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel
2 Fees Payment,¹ Class Counsel Litigation Expenses Payment, and the Administration Expenses
3 Payment. (Kim Decl. ¶ 25; Ex. 1 ¶ 1.30.)

4 Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to
5 determine the Net Settlement Amount for distribution to the Class as follows:

6	Gross Settlement Amount	\$1,350,000.00
7	Less Class Representative Enhancement	\$7,500.00
8	Less Class Counsel Fees	\$449,955.00
9	Less Class Counsel's Litigation Expenses	\$20,141.83
10	Less PAGA Payment	\$200,000.00
11		<i>(\$150,000 to the LWDA and \$50,000 to remain</i>
12		<i>in the Net Settlement Fund for PAGA</i>
		<i>Settlement Group)</i>
	<u>Less Administrator Costs</u>	<u>\$11,150.00</u>
	Net Settlement Amount	\$661,253.17

13 **D. Individual Settlement Payments**

14 The Individual Class Payment amount of each Participating Class Member will be identical
15 since all 599 Class Members worked exactly 1 Workweek during the Class Period. (Ex. 1 ¶ 3.2.4;
16 see also Ex. A to the Settlement Agreement [Class Notice].) Specifically, Individual Class
17 Payments will be paid from the Net Settlement Fund and calculated by dividing the Net Settlement
18 Amount by the total number of Workweeks worked by all Participating Class Members, one each,
19 during the Class Period.

20 The Individual PAGA Payment will also be paid on a pro-rata basis. The Individual PAGA
21 Payment will be calculated by dividing the amount of the Aggrieved Employees' 25% share of
22 PAGA Penalties (\$50,000.00) by the total number of PAGA Period Pay Periods worked by all
23 Aggrieved Employees, one each, during the PAGA Period. (See Ex. 1 at ¶ 3.2.5.)

24 Twenty-five percent (25%) of each Participating Class Member's Individual Class
25

26 ¹ The Class Counsel Fee Payment will be divided among Class Counsel (Kim Legal, APC,
27 Helen Kim Law, APC, and EcoTech Law Group, P.C.) pursuant to a written agreement signed by
28 Plaintiff as per Prof. Rules of Conduct, Rule 1.5.1. (Kim Decl. ¶ 25; Declaration of Michael
Pearson, ("Pearson Decl.") ¶ 27.)

1 Payment will be deemed payment for settlement of claims for wages and will be subject to
2 appropriate deductions and withholdings calculated and made by the Settlement
3 Administrator.(Ex. 1 at ¶3.2.4.1.) Seventy-five percent (75%) of each Participating Class
4 Member’s Individual Class Payment will be deemed payment for settlement of claims for penalties
5 and interest not subject to withholdings. (*Id.*) All Individual Settlement Payments to PAGA
6 Settlement Group Members shall be allocated as 100% non-wage payment for civil penalties. (Ex.
7 1 at ¶ 3.2.5.1.)

8 Based on these calculations, the average potential net recovery is \$1,052.91 per Class
9 Member. (Declaration of Cassandra Polites, (“Polites Decl.”) ¶ 20.)

10 **E. Class Notice**

11 The Court approved the proposed Class Notice and directed the mailing of the Notice by
12 first-class mail to Class Members in accordance with the proposed implementation schedule. (Kim
13 Decl. ¶ 26.) The procedures for giving notice to the Class Members, as set forth in the Agreement
14 and Plaintiffs’ Motion for Preliminary Approval and approved by the Court, have been fully and
15 properly carried out. (Polites Decl. ¶¶ 2-14.)

16 To date, ILYM Group, Inc. received zero (0) requests to be excluded (“opt-outs”) from the
17 proposed Agreement and zero (0) objections. (Polites Decl. ¶¶ 15-16.) Plaintiff will submit an
18 updated declaration from ILYM Group, Inc. prior to the hearing.

19 **F. Check Mailed Settlement – No Reversion**

20 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
21 without the possibility of reversion of settlement funds to Defendants. Under the Agreement,
22 every Class Member will receive a settlement check and Class Members do not need to submit a
23 claim in order to receive a settlement check. Any funds that remain uncashed after the void date
24 shall be turned over by the Administrator, with information for each Class Member who failed to
25 timely cash his/her settlement check, to the State of California Controller’s Office Unclaimed
26 Property Fund. (Ex. 1 at ¶ 5.4.3.)
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1 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

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

8 **A. The Settlement is Entitled to a Presumption of Fairness**

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

14 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
15 arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were
16 made by experienced and informed counsel, who believe that this settlement represents a favorable
17 resolution for the Class Members. (Kim Decl. ¶ 27.) The settlement negotiations have been, at all
18 times, adversarial and non-collusive, with the aid of a mediator, and no self-dealing or other type
19 of misconduct by either side has taken place. (Kim Decl. ¶ 28.)

20 Second, the Parties engaged in formal discovery that permitted Class Counsel to fairly
21 evaluate the strength of the case and the risks associated with ongoing litigation. Specifically,
22 Defendants produced all the relevant pay and time records for the class members prior to
23 mediation, and all applicable policy documents. (Kim Decl. ¶ 29.) Receipt of appropriate
24 discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each
25 claim alleged in the lawsuit. (Kim Decl. ¶ 30.)

26 Third, Class Counsel have significant experience in cases of this type, including several
27 years prosecuting wage, hour, and working condition violations. (Kim Decl. ¶ 31; Declaration of
28

1 Helen Kim, (“H. Kim Decl.”) ¶¶ 2-4; Declaration of Dara Tabesh (“Tabesh Decl.”) ¶¶ 14-16)
2 Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class
3 Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the
4 class and that the average net recovery for each Class Member of approximately \$1,052.91 is
5 substantial given that they worked two days and earned \$250 per day and also given the risks
6 inherent in litigation and the defenses asserted. (Kim Decl. ¶ 32.)

7 Finally, the fourth *Dunk* factor considers the percentage of objectors. To date, there were
8 zero (0) request to be excluded and no objectors. (Polites Decl. ¶¶ 15-16.)² As all of the *Dunk*
9 factors are satisfied, this settlement is entitled to a presumption of fairness.

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

12 The case of *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, set forth
13 several factors that the Court should analyze in determining whether to approve a class action
14 settlement. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
15 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
16 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
17 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
18 participant; and (8) the reaction of the class members to the proposed settlement.

19 In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399,
20 409, the court clarified that a *Kullar* showing does not require the parties to submit the outer
21 reaches of maximum possible recovery without taking into account the actual risks of certification,
22 decertification, dispositive motions, and trial, so long as there is a record which allows “an
23 understanding of the amount that is in controversy and the realistic range of outcomes of the
24 litigation.” *Munoz*, 186 Cal. App. 4th at 409.

25 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
26 informal discovery before entering into meaningful settlement negotiations in this matter. (Kim

27 ² Plaintiff will submit an updated and final declaration from the Administrator prior to the
28 hearing.

Decl. ¶33.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (*Id.*) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Kim Decl. ¶ 34; H. Kim Decl. ¶ 2-4.)

C. The Strength of Plaintiff's Case

a. The Risks Associated with the Misclassification Theory

Plaintiff's recovery for their misclassification claim faces significant risks. First, Plaintiff must establish misclassification under two standards: the standard set forth in *Dynamex Operations W. v. Superior Court* (2018) 4 Cal.5th 903 and codified in California Assembly Bill 5 ("AB 5") (the "ABC test"), or the one set forth in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 350 (the "*Borello* multi-factor test").

Since Plaintiff's allegations arise from work that occurred in November 2019 the ABC test would apply for Plaintiff's claims for violations of the Wage Order, which includes his claim for unpaid overtime, meal and rest breaks, and itemized wage statements. (Kim Decl. ¶ 35.) (*Gonzalez v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1157; Wage Order No. 12-2001, subd. 7 (requiring employers provide "itemized statement[s]" to workers), subd. 11 and 12 (regulating meal breaks and rest breaks for covered workers). Meanwhile, Plaintiff's claim for waiting time penalties, which does not arise from the Wage Order, is governed by the *Borello* common law employment test. The *Borello* test would also apply to Plaintiff's PAGA and UCL claims to the extent they are derivative of the waiting time penalties claim.

The *Borello* multi-factor test is a more difficult test for Plaintiff than the ABC test, in large part because it does not place the burden on the defendant to refute the presumption of an employer-employee relationship and because no single factor controls. Accordingly, should the Court determine that the *Borello* multi-factor test applies to Plaintiff and the Class, Plaintiff's claims for misclassification would be subject to an even greater risk of failure.

There are specific risks to the Plaintiff's largest civil penalties claim under Labor Code § 226.8. Recovery of civil penalties under Labor Code section 226.8 depends on a finding that an

1 employer engaged in “willful” misclassification of employees as independent contractors. Thus,
2 the risks to Plaintiff’s misclassification claim are twofold: first, there is a risk that the Court could
3 find that Defendants properly classified Plaintiff and the Class Members as independent
4 contractors and deny recovery on this basis. If the Court were to do so, Plaintiff would lose.
5 Second, if the Court found that Defendants did not *willfully* misclassify Plaintiffs and the Class
6 Members, it would eliminate the Plaintiff’s largest monetary remedy.

7 The Court could also determine that Defendants willfully misclassified Plaintiff and the
8 class but did not engage in a pattern or practice of doing so. Plaintiff contends Defendants engaged
9 in a willful pattern and practice of misclassifying the Class Members. However, Plaintiff
10 recognizes the significant risks outlined above. Accounting for such risks required a significant
11 reduction in Plaintiff’s initial demand. (Kim Decl. ¶ 36.)

12 **b. The Risks Associated with Joint Employer Liability**

13 In addition to misclassification, Plaintiff must establish that Defendants were his and the
14 Class Members’ legal employer under joint-employer liability under *Martinez v. Combs*, 49
15 Cal.4th 35 (2010). Moreover, since Plaintiff believed that only the Ye Defendants were financially
16 solvent to make the instant class action lawsuit worthwhile, Plaintiff needed to establish that he
17 had a joint relationship with the Ye Defendants. Here, Plaintiff was recruited by a third-party
18 casting agency, controlled by various subcontractors unrelated to the Ye Defendants, and paid by
19 AJR Films, Inc. (Kim Decl., ¶ 37.) Given the different array of parties who could have “suffered
20 and permitted” Plaintiff and the Class Members to work on November 23 and 24, 2019, Plaintiff
21 understood the risk of pinning the employment relationship on the Ye Defendants (Kim Decl., ¶
22 38.)

23 **c. The Risks Associated with Unpaid Wages/Overtime Claim**

24 Even assuming *arguendo*, the Court were to find that Plaintiff and the Class Members were
25 misclassified and legally employed by Defendants, there is a further risk that Plaintiff’s recovery
26 for unpaid wages or overtime would be limited at best. In order to prevail, Plaintiff must establish
27 that his payment of \$250/day for his first and second day of work, each qualified as a “fixed
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1 salary” under Labor Code § 515(d)(2), and therefore only accounts for payment for his non-
2 overtime hours, and that he should be paid separately for overtime hours. (Kim Decl. ¶ 39.) (Cal.
3 Lab. Code § 515(d)(2).) In opposition, Defendants would argue that Section 515(d)(2) applies only
4 to “weekly” salaries, not a daily salary, that the term “salary” is not defined in the Labor Code or
5 the Wage Orders, and that Plaintiff was not paid a salary under the recent Supreme Court case of
6 *Helix Energy Solutions Group, Inc. v. Hewitt* (2023) 598 U.S. 39 (holding that a “daily rate”
7 worker did not meet the “salary basis test” under the FSLA) (Kim Decl. ¶40.) If Defendants
8 prevails on one of these arguments, Plaintiff’s entire claim for unpaid wages would fail.
9 Accounting for such risks required a significant reduction in Plaintiff’s initial demand. (Kim Decl.
10 ¶ 41.)

11 **d. The Risks Associated with the Meal and Rest Break Claims**

12 Employers must pay one hour at the employee’s “regular rate of compensation” as a
13 penalty when they fail to provide a thirty-minute uninterrupted meal period as required by Labor
14 Code section 512. (*See* Labor Code § 226.7(b).) They must also authorize and permit non-exempt
15 employees covered by the wage orders to take a 10-minute rest break every four hours of work or
16 major fraction thereof. (*Id.*; *see also* 8 Cal. Code Regs. § 11120.)

17 Plaintiff claims that Defendants improperly failed to pay him and the Settlement Class
18 premium wages as a result of misclassifying them as independent contractors. (Kim Decl. ¶ 42.)
19 Accordingly, success on these claims is contingent on the Court finding that Defendants
20 misclassified Plaintiff and the Settlement Class and failed to authorize and permit meal and rest
21 breaks.

22 Moreover, Defendants will contend that, to establish a violation for missed meal periods,
23 a plaintiff must do more than show that a meal break was not taken. (Kim Decl. ¶ 43.) (*Brinker*,
24 53 Cal.4th at 1004.) So long as an employer provides employees with a “reasonable opportunity”
25 to take a duty-free meal period, it has no further duty to “police meal breaks and ensure no work
26 thereafter is performed.” (*Id.* at 1040-41.) Instead, a plaintiff must show the employer impeded,
27 discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release
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1 the employee of all control. (*Id.*) “Thus, the crucial issue with regard to the meal break claim is
2 the reason that a particular employee may have failed to take a meal break.” (*Washington v. Joe’s*
3 *Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641.)

4 There are also risks to Plaintiff’s rest period claim. Employers are not required to record
5 rest periods and such rest periods are paid. Thus, unlike meal periods, where there are often records
6 showing whether an employee clocked out or not, there is no such evidence to prove a missed rest
7 period or that the employer refused to authorize and permit one. Managing such claims at trial may
8 be exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove
9 the claims. (Kim Decl. ¶ 44.) While a victory with such evidence is certainly possible, relevant
10 caselaw makes such claims risky from a trial management and due process perspective. (*See Duran*
11 *v. U.S. Bank National Assn.*, 59 Cal.4th 1, 31 (2014) (explaining “[I]f sufficient common questions
12 exist to support class certification, it may be possible to manage individual issues through the use
13 of surveys and statistical sampling”).)

14 Risks to the both the meal and rest period claims arise from fact that Defendants engaged
15 the Class Members to rehearse and perform in the Opera (Kim Decl. ¶ 45.) Unlike a workforce in
16 a factory that are under the direct and constant supervision of their managers, the Class Members
17 spent a significant amount of time on their own while they waited for instruction from Defendants
18 (*Id.*) Defendants will argue that this freedom of movement and lack of oversight will inhibit any
19 claim that they prevented the Class Members from taking duty-free rest and meal periods – to the
20 extent that they were entitled to any such meal or rest periods (Kim Decl. ¶ 46.)

21 **e. The Risks Associated with the Wage Statement Claim**

22 Labor Code § 226(a)(2) requires that every employer shall furnish each of his or her
23 employees an accurate itemized statement in writing showing total hours worked by the employee.
24 Labor Code § 226(a)(9) requires the wage statement to display all applicable hourly rates in effect
25 during the pay period and the corresponding number of hours worked at each hourly rate by the
26 employee.

27 Plaintiff acknowledged risk posed by Defendants’ argument that he was not misclassified
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1 as an independent contractor under the ABC test, which would completely bar any recovery under
2 this claim. While Plaintiff believed his wage statement claim was relatively strong given that he
3 did not receive any statement associated with his payment, there was still risk that a Court would
4 find no liability as to this issue.³ (Kim Decl. ¶ 47.)

5 **f. The Risks Associated with the Waiting Time Penalty Claim**

6 Under Labor Code § 203, if an employer fails to provide wages at the time of an employee's
7 termination or within 72 hours of resignation, then the employee's wages shall continue as a
8 penalty for up to 30 days. Section 203 reflects a public policy that favors the full and prompt
9 payment of earned wages. (*See Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7;
10 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) Similarly, under Labor Code §§ 204 and 210,
11 an employee may seek a penalty for not being paid timely after the close of a payroll period.

12 Here, Plaintiff provided services as a model for two days November 23-24, 2019 and
13 argues that he is owed waiting time penalties due to Defendants' failure to pay appropriate
14 overtime wages and meal period premiums. (*See Diaz v. Grill Concepts Services, Inc.* (2018) 23
15 Cal.App.5th 859.) (Kim Decl. ¶ 48.)

16 In evaluating settlement, Plaintiff considered Defendants' argument that a good-faith belief
17 exception applies because they had a good faith belief (1) that Plaintiff was properly classified as
18 an independent contractor, (2) that Defendants were not an employer, and (3) that Defendants'
19 payment calculations did not result in underpayment. (Kim Decl. ¶ 49.) (*See, e.g., Hill v. Walmart*
20 *Inc.*, 32 F.4th 811 (9th Cir. 2022) (finding that a good faith dispute about whether a model was
21 properly classified as an independent contractor precluded waiting time penalties.) Significantly,
22 Plaintiff recognized that Defendants need not prevail on any of these defenses; rather, in order to
23 establish a good faith defense, Defendants only need to establish an objectively reasonable basis
24 for a defense based on the facts and law as it existed in November 2019 (Kim Decl. ¶ 50.) Thus,
25

26 ³ Although neither party contemplated this risk at the time of settlement, there is additional
27 risk posed by *Naranjo v. Spectrum Security Services, Inc.* (Cal., May 6, 2024) 2024 Daily Journal
28 D.A.R. 3799, where the California Supreme Court recently upheld a "good faith" defense to a
wage statement claim under Labor Code § 226.

1 even if Plaintiff were to establish that he had an employment relationship with Defendants, and
2 even if he were to establish the underlying wage violations as alleged in the TAC, Defendants
3 could still avoid paying waiting time penalties. (Kim Decl. ¶ 51) (*Naranjo v. Spectrum Security*
4 *Services, Inc.* (Cal., May 6, 2024) 2024 Daily Journal D.A.R. 3799.) Since the waiting time
5 penalties amount to over 70% of class damages, Plaintiff believed that a significant discount on
6 this claim was reasonable given the attendant risks (Kim Decl. ¶ 52.)

7 **g. The Risks Associated with the PAGA Claim**

8 Plaintiff is cognizant of risks associated with their PAGA claim and have therefore agreed
9 to discount this claim for multiple reasons (Kim Decl. ¶ 53.) First, the aggrieved employees’
10 PAGA claims arise from the same violations as the foregoing class claims and bear the same risks
11 on the merits (Kim Decl. ¶ 54.) Second, the Court has discretion to award less than the maximum
12 penalty, which Defendants argued would be appropriate considering the low amount of direct wage
13 damages, even if Plaintiff prevails (Kim Decl. ¶ 55.) (*See* Labor Code § 2699(e)(2) [“a court may
14 award a lesser amount than the maximum civil penalty amount specified by this part if, based on
15 the facts and circumstances of the particular case, to do otherwise would result in an award that is
16 unjust, arbitrary and oppressive, or confiscatory”]; *Carrington v. Starbucks Corporation* (2018)
17 30 Cal.App.5th 504, 529 [affirming award of 10% of maximum PAGA penalty].) Finally, the
18 Settlement Class is compensated for these violations in the proposed Settlement Agreement, and
19 thus any PAGA recovery for these same violations would be duplicative. Thus, PAGA did not
20 make up a significant percentage of the overall potential liability compared to other claims. (Kim
21 Decl. ¶ 56.) As such, the Settlement Agreement’s contemplated PAGA payment of \$200,000.00
22 is appropriate. (*Id.*)

23 **D. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

24 There is significant expense associated with the class certification process, which the
25 Parties can avoid by entering into the contemplated Settlement Agreement now. (Kim Decl. ¶ 57.)
26 If the Court did eventually certify a class, trial of a case involving approximately 599 Settlement
27 Class Members would require the retention of expensive expert witnesses, the accrual of extensive
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1 litigation costs, and a significant time overlay by the Parties. (Kim Decl. ¶ 58.) Moreover, given
2 the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial
3 would have resulted in a lengthy and costly appeal. (Kim Decl. ¶ 59.) An appeal would result in
4 further delay for the Settlement Class Members who are waiting for a resolution in this matter.
5 (*Id.*)

6 **E. The Risk Associated With a Potential *Pick-Up Stix* Campaign**

7 There is also a risk that Defendants could engage in an individual settlement campaign
8 pursuant to *Chindarah v. Pick Up Stix, Inc.* (2009), 171 Cal.App.4th 796. Given the financial strain
9 that Defendants' workers are no doubt experiencing due to the COVID-19 pandemic, there is a
10 significant risk that, if Defendants were to engage in such a campaign, many if not all of the
11 performers would choose to accept Defendants' individual settlement offers. If this were to occur,
12 Plaintiff could be left without a sufficiently numerous class to represent a class action.

13 **F. The Risk of Maintaining Class Action Status through Trial**

14 This case has not yet been certified to be tried as a class action. (Kim Decl. ¶ 60.) While
15 Plaintiff believes there is strong evidence to support certification of several possible subclasses,
16 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
17 decertification is always a possibility. (*Id.*) In attempting to certify a class, the Parties would need
18 to conduct multiple depositions regarding Defendants' policies. (*Id.*) There is a risk for both sides
19 as to what these depositions will reveal and whether they will support class certification to the
20 extent expected. (*Id.*)

21 **G. The Amount Offered in Settlement**

22 It was very difficult for the Parties to reach this Settlement of \$1,350,000.00. (Kim Decl.
23 ¶ 61.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
24 (Kim Decl. ¶ 62.) The Parties arrived at it after extensive investigation and discovery, careful
25 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
26 likely to be awarded to the class were the trier of fact to find Defendants liable. (*Id.*)

27 **a. Plaintiff's Assessment of Defendants' Maximum Exposure**

1 Plaintiff assessed full value of the Meal Period claim and Rest Period claim, without any
2 discount, each at approximately \$37,437.50. (Kim Decl. ¶ 63.)

3 Plaintiff assessed full value of the Unpaid Wages claim, without any discount, at
4 approximately \$112,312.50. (Kim Decl. ¶ 64.) Plaintiff used an hourly average rate of \$31.25 and
5 assumed that the 599 Class Members worked a 10-hour shift on November 23 and 24, 2019. (Kim
6 Decl. ¶ 65.)

7 Plaintiff valued the Wage Statement Claim, without discount, at approximately
8 \$29,950.00. (Kim Decl. ¶ 66.) This is based on one Workweek for 599 Class Members who worked
9 from November 23, 2019 to November 24, 2019. (Id.)

10 Plaintiff valued the Waiting Time Claim, tied to the claims for unpaid wages, at
11 \$7,300,312.50. (Kim Decl. ¶ 67.) This was based on the full amount of waiting time penalties due
12 to Defendants' failure to pay premium wages. (Id.) Considering the derivate nature of Labor Code
13 section 203 and the disputes over willfulness, Plaintiff determined that accepting a steep discount
14 on this claim was appropriate. (Kim Decl. ¶ 68.)

15 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
16 to value the potential reimbursement at \$5 per Class Member, for reimbursement of the cost of
17 using one's personal device for communicating with Defendants' stage directors during rehearsals
18 on November 23 and 24, 2019. This brought the damages for this claim to \$2,995.00 (\$5 x 599
19 Class Members). (Kim Decl. ¶ 69.)

20 Finally, Plaintiff calculated the value of the PAGA claim at \$59,900.00 for the PAGA
21 Period, which consists of one Workweek for 599 Aggrieved Employees. (Kim Decl. ¶ 70.) With
22 Labor Code § 226.8, which provides for penalties from \$5,000 to \$15,000, the value of the PAGA
23 claim could increase by \$2,995,000.00 to \$8,985,000.00. However, Plaintiff will need to first
24 establish that Defendants' misclassification of the Aggrieved Employees was "willful," which is
25 far from certain. Regarding the PAGA claim as a whole, there is the additional risk that the penalty
26 award is discretionary in nature. (Kim Decl. ¶ 71.) The court could award the statutory maximum
27 of one hundred (\$100) dollars for the initial violation for one workweek. (Kim Decl. ¶ 72.) While
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1 there is a dearth of available authority, in Plaintiff's view, were they to succeed on any of the
2 underlying Labor Code violations (especially waiting time penalties), it is not likely that the Court
3 would also award a large amount of PAGA penalties on top of damages. (Kim Decl. ¶ 73.)

4 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
5 Settlement Class Members' claims was approximately \$19,522,907.50. (Kim Decl. ¶ 74.)
6 However, if Defendants could establish that its failure to pay was not "willful"

7 under Labor Code § 203 and if Defendants had a good faith belief that the Settlement Class
8 Members were not misclassified as independent contractors for purposes of Labor Code § 226.8,
9 then there would be no recovery for waiting time penalties or penalties under Labor Code § 226.8,
10 and the maximum potential value of all of Plaintiff's and the Settlement Class members' claims
11 would be approximately \$242,595.00. (Kim Decl. ¶ 75.) As a result of the forgoing risks on the
12 merits, Class Counsel believes the Gross Settlement Fund of \$1,350,000.00 is fair and reasonable.
13 (Kim Decl. ¶ 76.)

14 **H. The Experience and Views of Counsel**

15 Finally, counsel's experience and success in similar class actions also weigh in favor of
16 preliminary approval. (*See Wershba, supra*, 91 Cal.App.4th at 245.) Class Counsel is very
17 experienced in prosecuting complex employment litigation and have focused their practice on
18 complex wage, hour, and working condition violations. (Kim Decl. ¶¶ 83-87; H. Kim Decl. ¶¶ 2-
19 4, Tabesh Decl. ¶¶ 14-16.) Class Counsel is well versed in class action litigation and has diligently
20 and aggressively pursued this action. (Kim Decl. ¶ 84.) Class Counsel currently serves as Class
21 Counsel for multiple pending class action lawsuits throughout California. (Kim Decl. ¶ 87; H. Kim
22 Decl. ¶4.) After factoring in the risks explained above, Class Counsel believes that the proposed
23 settlement is fair and reasonable. (Kim Decl. ¶ 84; H. Kim Decl. ¶ 2; Tabesh Decl. ¶17.)

24 **I. The PAGA Allocation is Reasonable**

25 The "trial court should evaluate a PAGA settlement to determine whether it is fair,
26 reasonable, and adequate in view of PAGA's purposes to remediate present labor law violations,
27 deter future ones, and to maximize enforcement of state labor laws." (*Moniz v. Adecco USA, Inc.*
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(2021) 72 Cal.App.5th 56, 76.) A PAGA allocation, even if a small portion of the gross settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. (*O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1135.)

Here, \$200,000.00 is allocated to PAGA Penalties. (Kim Decl. ¶ 77.) Given that Ye Defendants will pay a total of \$1,350,000.00 as a result of the alleged violations, the class and PAGA settlement is a large disincentive for Defendants to engage in similar Labor Code violations in the future. (Kim Decl. ¶ 78.) And, because all Class Members will receive a Class Notice with contact information for Class Counsel, those employees will know to contact Class Counsel in the future if Defendants attempts to engage in similar practices. (*Id.*) These factors – the payment of a large sum and employee notice of violations and potential violations – serve to maximize enforcement of state labor laws. (Kim Decl. ¶ 79.) Also, unlike in *Moniz*, here there is no unsubstantiated and disproportionate allocation of civil penalties between different groups of employees. (Kim Decl. ¶ 80.) Each Aggrieved Employee will receive the same amount of civil penalty because each worked one Workweek during the PAGA Period. (Kim Decl. ¶ 81.) Based on the foregoing, the PAGA allocation and the individual PAGA payment satisfies policies underlying California’s wage and hour laws (Kim Decl. ¶ 82.)

J. The Class Payment Allocation Is Fair and Reasonable

Plans of allocation are subject to the same standard of review as class action settlements; they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Settlement Class Members pro rata based on the Net Settlement Amount. The payment to each member of the Settlement Class not excluding him/ herself will be determined by dividing the Net Settlement Amount by the total number of Workweeks (1 Workweek) by all members of the Settlement Class during the Settlement Period. This allocation distributes Settlement funds proportionally to each class member’s damages, and should therefore be approved as fair, adequate, and reasonable. (Ex. 1 at ¶ 3.2.4.)

1 **V. THE SERVICE AWARD TO THE NAMED PLAINTIFF**

2 Plaintiff’s Counsel request an enhancement of \$7,500.00 to the Class Representative
3 Michael Pearson for his work on behalf of the Class. (Kim Decl. ¶ 117.) “Courts routinely approve
4 incentive awards to compensate named plaintiffs for the services they provide and the risks they
5 incurred during the course of the class action litigation.” (*Ingram v. The Coca-Cola Company*, 200
6 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken*
7 *v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).) In *Coca-Cola*, the Court
8 approved service awards of \$300,000 to each named plaintiff in recognition of the services they
9 provided to the class by responding to discovery, participating in the mediation process, and taking
10 the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also, e.g.*
11 *Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to plaintiffs); *Glass v.*
12 *UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal.
13 Jan. 26, 2007) (approving \$25,00 enhancement to each named plaintiff).

14 Mr. Pearson is an adequate class representative because he has diligently, adequately and
15 fairly represented the Class and has not placed his interests above any member of the Class.
16 (Pearson Decl. ¶7; Kim Decl. ¶ 118.)

17 Here, Class Counsel requests an enhancement for Mr. Pearson’s valiant effort and time
18 expended in this matter. Mr. Pearson dedicated over 45 hours in this litigation, which includes
19 researching and retaining competent counsel; providing information to Class Counsel regarding
20 the nature of the work for Defendants; compiling relevant documents; working closely with Class
21 Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the
22 status of the case with Class Counsel; discussing the case via telephone with many Settlement
23 Class Members; and responding promptly to Class Counsel’s communications regarding
24 settlement. (Kim Decl. ¶ 119; Pearson Decl. ¶¶ 10-16.)

25 Class Counsel considers this to be a fair and reasonable enhancement. (Kim Decl. ¶ 120.)
26 The enhancement takes into consideration the time, effort, and expense incurred by Mr. Pearson
27 in coming forward to litigate this matter on behalf of all Class Members. (Kim Decl. ¶ 121.)

1 Additionally, the Class Representative was at risk for paying for Defendants' legal fees and costs
2 in the event that Defendants prevailed at trial. (Kim Decl. ¶ 122.)

3 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT**
4 **AGENCY**

5 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
6 Settlement will be concurrently uploaded to the Labor and Workforce Development Agency's
7 ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of
8 Plaintiff's Motion, a copy of the email from the LWDA confirming receipt, is attached to the
9 Declaration Frank H. Kim as Exhibit 6. (Kim Decl. ¶ 126.)

10 **VII. CONCLUSION**

11 Plaintiff respectfully submits that the proposed Settlement Agreement is fair, adequate,
12 reasonable, and in the best interest of the Settlement Class Members. Therefore, the Parties
13 respectfully request that the Court (1) grant final approval of the Joint Stipulation of Class Action
14 Settlement and Release of Claims, and all of its terms; (2) award attorneys' fees and costs; (3)
15 award ILYM Group, Inc. claims administration fees of \$11,150.00; (4) award the Class
16 Representative an enhancement of \$7,500.00; and (5) enter judgment.

17
18 DATED: February 28, 2025

KIM LEGAL, APC

19
20 By: /s/ Frank H. Kim
21 Frank H. Kim
22 Attorneys for Plaintiff Michael Pearson and
23 the Proposed Class
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(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 3435 Wilshire Blvd., Suite 2700, Los Angeles, CA 90010.

On February 28, 2025, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** as follows:

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

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

Executed on February 28, 2025, at Los Angeles, California.

/s/ Frank Kim

Frank Kim