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SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

SHIELA KEE and SILBIA GUTIERREZ and
BELINDA LECHUGA, individually and on
behalf of all other similarly situated
employees,

Plaintiffs,

vs.

DR. JEFFREY A. SALADIN, DENTAL
CORPORATION (D/B/A CHILDREN'S
CHOICE PEDIATRIC DENTAL CARE), a
California Corporation; CC AMULET
MANAGEMENT, LLC, a Delaware Limited
Liability Company; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2020-00290072

CLASS ACTION

*Assigned for All Purposes to Hon. Lauri A. Damrell,
Department 28*

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

Reservation No. 2678139

Date: January 13, 2023

Time: 9:00 a.m.

Dept: 28

Judge: Hon. Lauri A. Damrell

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Trial Date: None Set

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1 **I. INTRODUCTION AND OPENING SUMMARY OF ARGUMENT**

2 This Motion is brought seeking final approval of a wage and hour class action settlement in the
3 gross amount of \$675,000.00. *See generally* Exhibit A (Joint Stipulation Regarding Class Action and
4 PAGA Settlement and Release). Plaintiffs Shiela Kee, Silbia Gutierrez, and Belinda Lechuga
5 (“Plaintiffs”) brought this class action individually and on behalf of other similarly situated employees
6 employed by Defendants Dr. Jeffrey A. Saladin, Dental Corporation (D/B/A Children’s Choice Pediatric
7 Dental Care), and CC Amulet Management, LLC, (“Defendants”). Plaintiffs worked for Defendants
8 during the Class Period as non-exempt employees and were subject to all the same policies and practices
9 that are alleged to be unlawful in this litigation. *See generally* Exhibit B (Plaintiffs’ Operative
10 Complaint); Declaration of Shiela Kee (“Decl. Kee”) ¶ 2; Declaration of Silbia Gutierrez (“Decl.
11 Gutierrez”) ¶ 2; Declaration of and Belinda Lechuga (“Decl. Lechuga”), ¶ 2.

12 Plaintiffs have alleged that Defendants failed to pay overtime wages, failed to pay minimum
13 wages, failed to provide meal and rest periods or pay premiums in lieu thereof, failed to provide
14 accurate wage statements, incurred waiting time penalties, failed to reimburse expenses, and engaged in
15 unfair competition. *See generally* Exhibit B. Plaintiffs have also alleged Defendants are liable for a
16 civil penalties under the Private Attorneys General Act (“PAGA”) based on these violations. *See id.*;
17 Exhibit C (Plaintiffs’ Ltr. to the Labor and Workforce Development Agency [“LWDA”] Regarding
18 PAGA Claims). These violations primarily stem from Plaintiffs’ allegations that Defendants violated
19 California law by 1) failing to properly pay overtime and premium pay due to Defendants’ failure to
20 incorporate non-discretionary remuneration (bonuses) into the Regular Rate of Pay (“RROP”); 2)
21 failing to provide rest periods and pay adequate premiums in lieu thereof; 3) failing to provide all meal
22 periods and pay adequate premiums in lieu thereof; 4) failing to pay employees for all hours worked
23 due their failure to pay for time employees spent waiting to clock into work; 5) failing to pay
24 reimbursements for business-related cell phone use and/or mileage; and 6) failing to accurately itemize
25 the hours and wages earned on paystubs issued to class members. *See* Exhibit B. Plaintiffs have
26 contended that this is a meritorious class action lawsuit and that this case is appropriate for class
27 certification for settlement purposes as the requisites for class certification in this case can be satisfied.
28 *See* Exhibit B.

1 Defendants have denied all of Plaintiffs' allegations in their entirety and any liability or
2 wrongdoing of any kind. *See* Declaration of Justin P. Rodriguez ("Decl. Rodriguez"), ¶ 5. Defendants
3 have denied that this case is appropriate for class certification other than for purposes of settlement and
4 maintain that Plaintiffs would have difficulty proving class certification. *See id.* However, subject to
5 approval by the Court, the parties have been able to compromise and settle all asserted claims for
6 monetary compensation as a result of extensive investigations, informal document and data exchanges,
7 and extended negotiations relating to all aspects of the asserted claims. *See* Exhibit A. Class Counsel
8 is convinced that the proposed settlement is in the best interest of the putative class based on the
9 discovery, investigations, negotiations, and a detailed knowledge of the issues in this case. *See* Decl.
10 Rodriguez, ¶¶ 6-11. The prospect of potential class certification issues and the uncertainty of class
11 certification, difficulties of complex litigation, the lengthy process of establishing specific damages and
12 various possible delays and appeals were carefully considered by Plaintiffs and Class Counsel in
13 agreeing to the proposed settlement. *See id.*

14 The reaction of Class Members to the preliminary approved Agreement has been
15 overwhelmingly positive and gives substantial support to the Agreement and all terms and allocations
16 therein being fair, reasonable, and adequate. Only four Class Members opted out of the settlement and
17 there have been zero objections to the Agreement. *See* Declaration of Madely Nava ("Decl. Nava"), ¶¶
18 11-12. It is well within the discretion of this Court to grant final approval of the preliminarily approved
19 settlement, which satisfies all of the criteria for final settlement approval under California law.
20 Accordingly, Plaintiffs request that the Court: (1) certify the settlement class; (2) grant final approval of
21 the Agreement; (3) find that the procedure used to notify Class Members complied with due process;
22 (4) grant Plaintiffs' request for attorney's fees and costs, the Enhancement Payment to the Class
23 Representatives, and Claims Administration Costs; and (5) approve and adopt the proposed order
24 granting final approval, which is filed concurrently herewith.

25 **II. PROCEDURAL AND LITIGATION HISTORY**

26 This lawsuit was initially filed on approximately December 8, 2020, in Sacramento County
27 Superior Court against Defendants. Prior to filing the Complaint, Plaintiffs exhausted administrative
28 remedies under the PAGA by providing notice of the claims and violations to the LWDA. *See* Exhibit

C; Cal. Lab. Code § 2699.3(a), (c); Decl. Rodriguez, ¶ 3. Then, Plaintiffs filed a First Amended Class Action Complaint on approximately March 2, 2021. *See id.*; Exhibit B. There is no date set for a motion for certification or trial in this matter. *See* Decl. Rodriguez, ¶ 4.

III. INVESTIGATION AND DISCOVERY CONDUCTED

Plaintiffs thoroughly investigated issues affecting certification, the merits of the class claims, and potential damages for such claims. *See id.* Plaintiffs worked during the time all of Defendants' policies and practices at issue in the Complaint were in effect and provided information regarding these policies and practices, enabling pre-filing investigations to take place. *See* Decl. Kee, ¶¶ 2-3, 5-8; Decl. Gutierrez, ¶¶ 2-3, 5-8; Decl. Lechuga, ¶¶ 2-3, 5-8. The parties engaged in informal discovery and exchange of documents, including a representative sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims. The discovery covered all aspects of the asserted claims, including certification issues, merits issues, damages, the scope and configuration of Class Members, the content and implementation of the wage and hour policies at issue, issues relating to manageability concerns at trial, among other relevant areas. *See* Decl. Rodriguez, ¶¶ 6-7. The information allowed Plaintiffs to determine the extent and frequency of any violations in accordance with Plaintiffs' contentions and create an accurate damages model to assess the reasonableness of any settlement. *See id.*

IV. NEGOTIATION AND PROPOSED SETTLEMENT

a. Plaintiffs and Defendants Engaged in Extensive Arm's Length Negotiations

The final settlement occurred only after extended, and sometimes contentious, arm's length negotiations. Over the course of approximately nineteen (19) months, Plaintiffs have been investigating the claims and discussing with Defendants' counsel the merits of the claims and certification issues present in this case. *See id.* at ¶¶ 6-11. The parties exchanged substantial amounts of information and legal analysis regarding the asserted claims. *See id.* Then, only after nineteen (19) months of litigation and negotiation, which included a full day mediation and several months of follow up discussions and negotiations with Kelly A. Knight, Esq., the parties able to reach a mutually agreeable settlement. *See id.* at ¶ 8. In light of the claims and defenses at issue, the parties agreed to a Gross Settlement Amount of \$675,000.00. *See* Exhibit A.

1 **b. The Terms of the Settlement**

2 Under the Agreement, Defendants have agreed to the following:

3 1. The following groups of individuals are covered by the Settlement (*See* Exhibit A, ¶¶
4 1.2, 1.8):

5 All non-exempt employees who have worked, or continue to work, for
6 Defendants in California from September 30, 2019, up to August 30,
7 2022.

7 All non-exempt employees who have worked, or continue to work, for
8 Defendants in California from December 8, 2016, up to August 30, 2022.

8 2. Pay Gross Settlement Amount of \$675,000.00, exclusive of the employer's share of
9 payroll taxes, to resolve and release the claims alleged in the Complaint. *See id.* at ¶¶ 5.1, 5.2. No
10 portion of the Gross Settlement Amount will revert to Defendants. *See id.* at ¶ 5.6. Aggrieved
11 Employees will still be paid their share of the PAGA Payment regardless of whether they opt out of
12 being Class Members. *See id.* at 7.5.1.

13 3. The parties agree that up to \$15,000, each, for Plaintiffs Shiela Kee, Silbia Gutierrez,
14 and Belinda Lechuga will be paid as a Class Representative Enhancement Payment. This amount will
15 be in addition to any amount Plaintiffs may be entitled to under the Agreement. *See id.* at ¶ 5.4.

16 4. The parties agree that the cost of administering this class action settlement shall be paid
17 from the settlement proceeds. Subject to Court approval, the parties have selected ILYM Group, LLC
18 to act as the Claims Administrator, whose final costs are \$13,690.28. *See* Decl. Nava ¶ 15. The
19 difference between the actual administration costs and the originally allocated \$30,000 under the
20 Agreement, will be added to the Net Settlement Amount and paid to Class Members on a pro rata basis.
21 *See* Decl. Rodriguez, ¶ 26; Exhibit A, ¶ 5.3.

22 5. The parties agree that \$10,000 of the Gross Settlement Amount shall be allocated to
23 resolving claims under the PAGA. Seventy-Five percent (75%) of the PAGA Payment will be paid to
24 the LWDA and Twenty-Five percent (25%) will be paid to Aggrieved Employees. *See* Exhibit A, ¶
25 5.5. Given the risk to proving the claims on the merits, the derivative nature of the penalties, the efforts
26 by Defendant to maintain compliant policies and take corrective action, the presence of what may likely
27 be deemed good faith disputes, and the Court's discretion to reduce any penalty award, Plaintiff
28 believes the \$10,000 PAGA Payment allocation represents a meaningful settlement aimed at deterring

1 non-compliance given the facts of this case. *See* Decl. Rodriguez, ¶¶ 5-11; *see also Nordstrom Com.*
2 *Cases*, 186 Cal.App.4th 576, 589 (2010) (approving \$0 allocation to the resolution of PAGA claims
3 based on their being disputed and being part of a class settlement which was evaluated based on the
4 terms of the agreement overall); *Davis v. Cox Commc 'ns California, LLC*, 2017 U.S. Dist. LEXIS
5 63514, *1 (S.D. Cal. 2017) (preliminarily approving \$4,000 PAGA allocation in \$275,000 settlement);
6 *Jack v. Hartford Fire Ins. Co.*, 2011 U.S. Dist. LEXIS 118764, *6 (S.D. Cal. 2011) (approving \$3,000
7 PAGA allocation in \$1,200,000 settlement); *Singer v. Becton Dickinson & Co.*, 2010 U.S. Dist. LEXIS
8 53416, *2 (S.D. Cal. 2010) (approving \$3,000 PAGA allocation in \$1,000,000 settlement); *Hopson v.*
9 *Hanesbrands Inc.*, 2009 U.S. Dist. LEXIS 33900, *9 (N.D. Cal. 2009) (approving \$1,500 PAGA
10 allocation in \$1,026,000 settlement); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052,
11 at *7 (E.D. Cal. 2012) (approving \$10,000 PAGA allocation in a \$3,700,000 settlement); *Franco v.*
12 *Ruiz Food Prod., Inc.*, 2012 WL 5941801, at *14 (E.D. Cal. 2012) (\$10,000 in PAGA payment from
13 \$2,500,000 settlement fund); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, at *1 (N.D. Cal.
14 2011) (approving PAGA settlement payment of \$7,500 to the LWDA out of \$6.9 million common-fund
15 settlement).

16 6. The parties agree that up to thirty-five percent (35%) of the Gross Settlement Amount
17 (\$236,250) will be paid for Plaintiffs' attorneys' fees incurred in the litigation of this case. Defendants
18 will not oppose any application for attorneys' fees so long as it is within this threshold. *See id.* at ¶ 5.2.
19 Additionally, the parties agree that Plaintiffs will also be entitled to the actual litigation costs in the
20 amount of \$10,628.17. *See* Decl. Rodriguez, ¶ 25; Exhibit D (Class Counsel's Itemized Costs). The
21 difference between the actual costs and the originally allocated \$15,000.00 will be redistributed to
22 Class Members on a pro rata basis. *See* Exhibit A, ¶ 5.2.

23 7. Any Claims Administrator Costs, any amounts paid for attorneys' fees and costs, the
24 Class Representative Enhancement Payments, and PAGA Payment will be paid out from the Gross
25 Settlement Amount, not in addition to the Gross Settlement Amount. *See* Exhibit A, ¶¶ 5.1-5.5.

26 8. In consideration for the value received in the Agreement, Class Members who fail to
27 timely opt-out of this settlement will waive all Qualified Claimant's Released Claims as set forth in the
28 Agreement. *See* Exhibit A, ¶¶ 1.30-1.31. Aggrieved Employees will waive all Released PAGA Claims

as set forth in the Agreement regardless of whether they opt out of being a Class Member. *See id.* at 1.33, 7.5.1.

9. For any portion of the Net Settlement Amount or PAGA Payment allocated to Qualified Claimants and/or Aggrieved Employees that is not claimed by them by cashing their respective settlement checks within 120 days, the remaining amount shall be paid 50/50 to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. *See* Exhibit A, ¶ 5.6.

c. Allocation of Settlement Funds

Payment to Qualified Claimants and Aggrieved Employees of their Claim Amount will not require the submission of a claim form. A Net Settlement Amount will be determined by subtracting from the Gross Settlement Amount any amounts for approved attorneys' fees and costs, any Enhancement Payment to the Class Representatives, the Claims Administrator Costs, and the PAGA Payment. Each Class Member's share will be determined by dividing their total weeks worked within the Class Period by the total weeks worked by all Class Members within the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement Amount. Each Aggrieved Employee's share of the 25% portion of the PAGA Payment will be determined by dividing their total weeks worked within the PAGA Claim Period by the total weeks worked by all Aggrieved Employees within the PAGA Claim Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment to arrive at the Aggrieved Employee's individual share. *See* Exhibit A, at ¶ 5.8.

V. PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND THE SUBSEQUENT CLASS ACTION ADMINISTRATION

Plaintiff's motion for preliminary approval of the class action settlement was approved by the Court on September 16, 2022. To comply with Class Members' due process rights, the parties enlisted an exhaustive method to ensure the best practical means possible was used to provide notice to the class. The parties provided the Claims Administrator the names, last known address, and social security numbers for the class. The Claims Administrator then updated this information by doing an address trace for each individual using this information prior to mailing. *See* Decl. Nava, ¶¶ 5-6. If the notices were returned as undeliverable, further investigation was performed and they were re-mailed

1 using updated information. *See id.* at ¶¶ 8-9. Of the 193 Notice Packets mailed, only 55 were
2 undeliverable after use of these methods. *See id.* at ¶ 10. The Notice included information regarding
3 the requested attorneys' fees, costs, payment to the LWDA, administration costs, and tax allocations.
4 *See* Exh. A to Decl. Nava. The average distribution to participating class members is approximately
5 \$266.55, the maximum distribution is approximately \$1,713.33. *See id.* at ¶ 15. No objections to the
6 preliminarily approved settlement have been made and only four Class Members opted out. *See* Decl.
7 Nava, ¶¶ 11-12.

8 It is not required that Class Members be given actual notice of a class settlement; instead, the
9 best practicable notice under the circumstances is all that is required. *See Silber v. Mabon*, 18 F.3d
10 1449, 1453 (9th Cir. 1994); *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1129 (9th Cir. 2017);
11 *Walsh v. CorePower Yoga LLC*, 2017 U.S. Dist. LEXIS 163991, at *12-14 (N.D. Cal. 2017); *Wright v.*
12 *Linkus Enters.*, 259 F.R.D. 468, 474-75 (E.D. Cal. 2009). In *Silber v. Mabon*, 18 F.3d 1449 (9th Cir.
13 1994), the Court rejected a class member's argument that he had not received due process because he
14 did not receive notice until after the opt out period, finding that, so long as the notice process utilized is
15 the best practicable under the circumstances, due process is satisfied even if there is no actual receipt of
16 the notice. *See Silber*, 18 F.3d at 1453-1454. A similar finding was made in *Briseno v. Conagra*
17 *Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017). With regard to any undeliverable Notice in this case, the
18 Court in *Rannis v. Recchia*, 380 F. App'x 646 (9th Cir. 2010) found that class members who did not
19 receive actual notice due to their mailings being deemed undeliverable were still properly held to be
20 part of the class settlement because they received the best notice practicable under the circumstances.
21 *See Rannis v. Recchia*, 380 F. App'x at 650-651. In *Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980-
22 984 (2019), the California Supreme Court noted that California has adopted a similar approach
23 regarding providing notice to class members.

24 The notice method in *Rannis* is similar to that used in the present case. For example, the Notice
25 contains all information necessary for a Class Member to assess the litigation, the settlement, and
26 whether they wanted to participate, object, or opt-out. *See* Exh. A to Decl. Nava. The Claims
27 Administrator utilized a national change of address database, forwarding notices, and skip tracing in an
28 effort to ensure that all reasonable means were exhausted in attempting to provide Class Members

notice of this settlement. *See* Decl. Nava, ¶¶ 6-9. The content of the notice provided and the manner in which it was provided to Class Members was the best practicable notice to satisfy due process.

VI. THE AGREEMENT WARRANTS FINAL APPROVAL AS IT IS FAIR, REASONABLE, AND ADEQUATE AS TO ALL CLASS MEMBERS, PROVIDING AN EXCELLENT RECOVERY UNDER THE FACTS OF THIS CASE

A class action may not be dismissed, compromised, or settled without Court approval and the decision to approve or reject a settlement is committed to the Court’s sound discretion. *See* Cal. Rules of Court, Rule 3.769; Fed. R. Civ. Proc., Rule 23(e)¹; *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 234-35 (2001); *see also* Cal. Lab. Code §§ 2699(l)(2) (requiring Court review of PAGA settlements). However, courts should give “proper deference to the private consensual decision of the parties,” since “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). Where a settlement is reached on terms agreeable to all parties, a court should disapprove of the settlement “only with considerable circumspection.” *Jamison v. Butcher & Sherrerd*, 68 F.R.D. 479, 481 (E.D. Pa. 1975). The law favors settlement of lawsuits, particularly class actions and other complex cases where substantial resources can be conserved by avoiding the time, expense, and rigors of formal litigation. *See Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277-81 (1992).

a. The Terms of The Settlement Are Fair and Within the Range of Reasonableness

The purpose of the Court’s final evaluation of a proposed class action settlement is to determine only whether the proposed settlement is within the range of reasonableness. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within “the range of reasonableness,” it should grant final approval of the class action settlement. *See, e.g., North County Contr. ’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal. App. 4th 1085, 1089-90 (1994); *Kullar v. Foot Locker Retail, Inc.*, 168

¹The California Supreme Court has authorized California’s trial courts to rely on these federal resources to decide class certification issues. *See Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

Cal. App. 4th 116, 133 (2008). To make the fairness determination, the Court must consider several factors, including:

the strength of the Plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage 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.

Dunk v. Ford Motor Co., 48 Cal. App. 4th 1794, 1801 (1996). However, this Court should begin its analysis with a presumption that the proposed settlement is fair. "A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Id.* at 1802; *see also In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 (C.D. Cal. June 10, 2005) ("It is established that the absence of a large number of objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members").

i. The Settlement is a Result of Extensive, Non-Collusive Arm's Length Negotiations Between the Parties

Settlement in this case was reached only after litigation and extensive arm's length negotiations lasting nineteen (19) months, which included a full day mediation with Kelly A. Knight, Esq. *See Decl. Rodriguez*, ¶¶ 6-11. At all times, the negotiations were adversarial and contentious, although still professional in nature. *See id.* Further, while Plaintiffs contend they would ultimately prevail on the claims and the issue of certification, this is not a certainty and there is substantial risk in proceeding to further litigation. *See id.* at ¶¶ 9-11. The ability to secure a guaranteed settlement now and ensure Class Members receive some compensation, rather than proceed to further litigation and potentially recover nothing, was a motivating factor in reaching this settlement. *See id.*

ii. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter Into an Informed and Reasonable Settlement

The parties were in possession of all necessary information during the negotiations. The parties engaged in substantial informal discovery and exchange of documents, including a representative

sampling of employee data, such as timecards, paystubs, payroll data and relevant policies for the entirety of the statute of limitations applicable to the alleged claims, which covered all aspects of the class claims and helped thoroughly vet the extent of Plaintiffs' claims against Defendants and create an accurate damages model. *See id.* at ¶¶ 6-11. Plaintiffs were in possession of this information prior to calculating the potential damages in this case. *See id.* As a result, Plaintiffs were able to make a reasonable estimation of Defendants' potential liability. *See id.* For these reasons, the settlement now before the Court was reached at a stage where "the parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 617 (N.D. Cal. 1979).

iii. Class Counsel are Experienced in Similar Litigation

Class Counsel has considerable experience in class and PAGA actions and wage and hour litigation. Class Counsel has brought and are currently bringing several wage and hour class and/or PAGA actions. Thus, Class Counsel are qualified to evaluate the class claims, value of settlement versus moving for certification and going to trial, and the viability of possible affirmative defenses. *See* Decl. Rodriguez, ¶¶ 13-21. Class Counsel believes that the settlement is fair and reasonable in light of the complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to the class. *See id.* at ¶¶ 9-11.

iv. No Class Members Objected and Only Four Class Members Opted Out

The reaction by Class Members to the Agreement and all the terms and allocations stated therein is overwhelmingly positive. **Zero Class Members have objected to any aspect of the Agreement and only four have opted out.** *See* Decl. Nava ¶¶ 11-12. This provides strong evidence that the settlement is fair, reasonable, and adequate. *In re Heritage Bond Litig.*, 2005 WL 1594403, at *10 ("It is established that the absence of a large number of objectors to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members"); *Nat'l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004) ("That unanimous, positive reaction to the Proposed Settlement is compelling evidence that the Proposed Settlement is fair, just, reasonable, and adequate").

v. The Settlement is Fair and Reasonable Based on the Strength of Plaintiffs' Case and the Risks and Costs of Further Litigation

A review of the Agreement's terms does not give rise to any doubts about its fairness. Based on the records and facts of this case, Plaintiffs have secured a gross recovery of approximately 8% and a net recovery of approximately 4.4% of the claims' maximum likely value. *See id.* at ¶¶ 9-11. Additionally, the average net award per class member is approximately \$266.55 and the highest recovery is approximately \$1,713.33. *See id.* This settlement is a reasonable compromise of the class and PAGA claims, and is within the percentile ranges of the total available damages that have been approved in other class settlements. *See Wershba*, 91 Cal. App. 4th at 246, 250; *Rebney v. Wells Fargo Bank*, 220 Cal.App.3d 1117, 1139 (1990); *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1042 (2007) (noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorney's fees was higher than median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2000 through 2002); *Bravo v. Gale Triangle, Inc.*, 2017 U.S. Dist. LEXIS 77714 (C.D. Cal. 2017) (approving a settlement where the net recovery to class members was approximately 7.5% of the projected maximum recovery amount); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal. 2017): (approving a settlement with a gross recovery of 11% of the projected maximum damages available and a net recovery of approximately 6.7% of the projected maximum recovery); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245 (N.D. Cal 2015) (approving a settlement where the gross recovery was approximately 8.5% of the projected maximum recovery); *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS 80776 at *48 (E.D. Cal. 2012) ("Class Members will receive an average of approximately \$198.70, with the highest payment to a Class Member being \$695.78 . . . Overall, the Court finds that the results achieved are good, which is highlighted by the fact that there was no objection to the settlement amount or the attorneys' fees requested."); *Gardner v. GC Servs., LP*, 2012 U.S. Dist. LEXIS 47043, 18 (S.D. Cal. 2012) ("the results achieved in this case were very favorable. Class members are provided with immediate monetary relief, with an average award of around several hundred dollars and a minimum award of \$50").

1 **vi. The Proposed Settlement is a Reasonable Compromise of Claims**

2 The case of *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116 (2008) requires additional
3 information be presented to the Court, acting as a fiduciary for the absent class members “to ensure that
4 the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims
5 being released, discounted by the risks and expenses of attempting to establish and collect on those
6 claims by pursuing the litigation” *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los*
7 *Angeles*, 186 Cal. App. 4th 399 (2010), clarified that a *Kullar* showing does not require the parties to
8 submit an illusory prediction of the outer reaches of exposure without taking into account the actual
9 risks of certification, decertification, dispositive motions, and trial. The comparison for determining
10 whether the settlement is fair, reasonable, and adequate is with respect to the *realistic range of*
11 *outcomes of the litigation*, not the maximum amount possible. *See Munoz*, 186 Cal. App. 408-409.
12 The *Munoz* Court found that the record before the trial court was sufficient, having included the
13 number of class members, payroll data, declarations describing hours and overtime worked, as well as
14 variances in duties and rest and meal period experience, and a companion action alleging less than
15 \$5,000,000 in damages. This information constituted “an adequate basis from which to garner a
16 reasonably adequate understanding of the amount that is in controversy within the meaning of *Kullar*.”
17 *Id.*

18 It is important to note that the percentage of recovery analysis provided by Plaintiffs is based on
19 the maximum possible damages for the substantive claims and only applies a discount to the PAGA
20 claims based on potential discretionary judicial reductions consistent with the case law and actual
21 awards observed by Plaintiff’s Counsel. *See Decl. Rodriguez*, ¶¶ 9-11. Plaintiffs similarly relied upon
22 payroll data and Class Members’ data to determine the potential damages suffered by the class as a
23 whole. *See Decl. Rodriguez*, ¶¶ 6-11. Even with this more stringent approach to approval, the gross
24 and net settlement recovery percentages Plaintiffs have secured in this case are within the range of what
25 has been found to be sufficient in several other cases. *See, supra*, Section VI.a.v; *see also, e.g., In re*
26 *Omnivision Technologies, Inc.*, 559 F.Supp.2d at 1042; *Reed v. 1-800 Contacts, Inc.*, 2014 U.S. Dist.
27 LEXIS 255 (S.D. Cal. 2014) (approving a settlement of \$11.7 million where the maximum range of
28 damages was \$5,000 for each of the alleged 300,000 instances of unlawful recording violations (\$1.5

1 billion), equaling approximately .78% of the total demand and approximately \$800 per class member).
2 This settlement represents a reasonable compromise given the percentage of the total demand that was
3 secured, the average recovery per class member, the Court’s ability and discretion to cut PAGA
4 penalties, and the uncertainty of class certification.

5 Although the amount allocated to PAGA is less than 1% of the estimated civil penalties after
6 accounting for potential reductions based on judicial discretion, this does not mean the amount
7 allocated is not meaningful or fails to fulfill the purpose of the PAGA. *See* Decl. Rodriguez, ¶ 11; *see*
8 *also Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (“The fact that a proposed
9 settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that
10 the proposed settlement is grossly inadequate and should be disapproved”); *City of Detroit v. Grinnell*
11 *Corp.*, 495 F.2d 448, 455 (2d Cir. 1974) (“In fact there is no reason, at least in theory, why a
12 satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of
13 the potential recovery”). The asserted claims were heavily disputed. Each factual and legal risk the
14 substantive claims were subject to also applied to the PAGA claims, compounding the risk for the
15 stated value of the PAGA claim. *See* Decl. Rodriguez, ¶¶ 9-11. As noted above, Courts have approved
16 similar allocations on similar claims whether viewed as a percentage or the potential recovery or as a
17 percentage of the gross valuer of the settlement. *See, supra*, IV.b.5; *see also Junkersfeld v. Med.*
18 *Staffing Sols., Inc.*, 2022 WL 2318173, at *8 n.2 (E.D. Cal. 2022) (collecting cases with PAGA
19 settlement values ranging from .037%-1%).

20 **b. Certification of the Class is Appropriate**

21 Class certification is appropriate when (1) the class is ascertainable and (2) there is “a well-
22 defined community of interest in the questions of law and fact involved affecting the parties to be
23 represented.” *Dunk*, 48 Cal. App. 4th at 1806. The “community of interest” element “embodies three
24 factors: (1) common questions of law or fact predominate; (2) class representatives with claims or
25 defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Id.*
26 Here, the Court conditionally certified the settlement class on September 16, 2022, and nothing has
27 happened in the interim that would warrant changing that decision. *See Garcia v. City of King City*,
28 2017 WL 363257, *4 (N.D. Cal. 2017); *Messineo v. Ocwen Loan Servicing, LLC*, 2017 WL 733219, *4

(N.D. Cal. 2017). Here, the parties agree that, for the purposes of settlement, these prerequisites are met. *See* Exhibit A.

i. The Proposed Settlement Class is Ascertainable and Sufficiently Numerous

The proposed settlement class is ascertainable because all putative class members can be readily identified through employee personnel and payroll files. *See Noel v. Thrifty Payless, Inc.*, 7 Cal.5th 955, 980 (2019); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 932 (1981); *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th 1325, 1334 (2008). The numerosity requirement is met because there are 1,362 individuals who fall within the definition of Class Member, which makes joinder of all members impracticable. *See Gay v. Waiters' & Dairy Lunchmen's Union*, 489 F.Supp. 282 (N.D. Cal. 1980), *aff'd* 694 F.2d 531 (9th Cir. 1982); *Hebbard v. Calgrove*, 28 Cal. App. 3d 1017, 1030 (1972) (noting no set minimum to meet the numerosity prerequisite, but a class as few as twenty-eight (28) members is acceptable). Thus, these requirements are satisfied.

ii. The Commonality, Predominance, and Typicality Requirements are Met

The commonality requirement is met when there are questions of law or fact regarding the class as a whole. *See Hanlon*, 150 F.3d at 1019. Commonality requires only that some common legal or factual questions exist; Plaintiffs need not show that all issues in the litigation are identical. *See Richmond v. Dart Ind., Inc.*, 29 Cal.3d 462, 473 (1981); *City of San Jose v. Superior Court*, 12 Cal.3d 447, 460 (1974). Common questions of law or fact must also predominate over individual questions and class-wide treatment of a dispute must be superior to individual litigation.² *See Richmond*, 29 Cal.3d at 469. Predominance requires a putative class be sufficiently cohesive to warrant adjudication by representation. *See Hanlon*, 150 F.3d at 1022. The typicality requirement is met when claims of the named representative are typical of those of the class, though “they need not be substantially identical.” *Id.* at 1020; *Classen v. Weller*, 145 Cal. App. 3d 27, 46-47 (1983).

The common questions of law and fact in this case stem from Plaintiffs’ contention that Defendants 1) failing to properly pay overtime and premium pay due to Defendants’ failure to incorporate non-discretionary remuneration (bonuses) into the Regular Rate of Pay (“RROP”); 2)

²When assessing predominance and superiority, a court may consider that the class will be certified for settlement purposes only and that manageability of trial is therefore irrelevant. *See Amchem Products v. Windsor*, 521 U.S. 591 (1997).

1 failing to provide rest periods and pay adequate premiums in lieu thereof; 3) failing to provide all meal
2 periods and pay adequate premiums in lieu thereof; 4) failing to pay employees for all hours worked
3 due their failure to pay for time employees spent waiting to clock into work; 5) failing to pay
4 reimbursements for business-related cell phone use and/or mileage; and 6) failing to accurately itemize
5 the hours and wages earned on paystubs issued to class members. *See* Exhibit B. The waiting time
6 penalties, unfair competition, and PAGA claims are derivative of these violations. *See id.* Plaintiffs
7 and the Class Members seek the same remedies under state law. Under these specific circumstances,
8 the commonality and predominance requirements are satisfied. Regarding the typicality requirement,
9 Plaintiffs contends they suffered from the same unlawful policies, treatment, and circumstances as
10 Class Members did, will request the same remedies, and will rely on the same methods of proof to
11 establish liability and damages. *See id.* Thus, the typicality requirement is also satisfied for settlement
12 purposes.

13 **iii. The Adequacy Requirement is Met**

14 The adequacy of representation requirement is met if the named representative and counsel have
15 no interests adverse to those of the putative class members and are committed to vigorously prosecuting
16 the case on behalf of the class. *See Hanlon*, 150 F.3d at 1020; *McGhee v. Bank of America*, 60
17 Cal.App.3d 442, 450-51 (1976). Those standards are met here. Under the proposed settlement,
18 Plaintiffs and the putative Class Members will receive a pro rata share of the settlement based on the
19 number of workweeks they worked for Defendants. *See* Exhibit A. Finally, any settlement class
20 member who wished to opt-out of the settlement was able to do so, and he or she was also able to
21 dispute the number of workweeks stated in the Notice of Settlement.

22 There is no conflict of interest between Plaintiffs and Class Members. Plaintiffs and Class
23 Counsel have pursued the claims made in the operative Complaint vigorously on behalf of the class.
24 Class Counsel, with Plaintiffs' assistance, thoroughly investigated the claims made in this case by
25 speaking with Plaintiffs and reviewing substantial amounts of documents. Class Counsel thereafter
26 engaged Defendants' counsel in settlement discussions over the course of approximately nineteen (19)
27 months. Moreover, Class Counsel has experience defending and bringing wage and hour claims.
28

Because Class Counsel has vigorously pursued Plaintiffs' and the Class Members' claims, the adequacy requirement is met. *See generally* Decl. Rodriguez.

VII. THE AMOUNTS REQUESTED FOR ATTORNEY'S FEES AND COSTS, AN ENHANCEMENT PAYMENTS TO THE CLASS REPRESENTATIVES, AND CLAIMS ADMINISTRATOR COSTS ARE REASONABLE AND SHOULD BE APPROVED

The Notice of Settlement sent to Class Members specifically identified the allocations for attorney's fees and costs, the Class Representative Enhancement Payments, and Claims Administrator Costs. *See* Exh. A to Decl. Nava. The reaction of Class Members to these requested amounts provides useful evidence of whether they are reasonable. *See In re Heritage Bond Litig.*, 2005 WL 1594403, *21 ("The absence of objections or disapproval by class members to Class Counsel's fee request further supports finding the fee request reasonable"). As noted above, there were no objections raised to the Agreement or any term or allocation therein whatsoever. *See* Decl. Nava, ¶¶ 11-12. In addition to Class Members' reactions supporting the requested amount, the facts and applicable case law also support awarding these amounts in full.

An award of attorney's fees should include compensation for all hours reasonably spent. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *see also Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983) (finding hours are reasonably spent if they are the kind normally billed to a fee-paying client). California has not adopted any "benchmark" percentage utilized by several federal courts. *See Emmons v. Quest Diagnostics Clinical Lab's, Inc.*, 2017 WL 749018, at *7 (E.D. Cal. 2017) ("Notably, while the California Supreme Court recognized the Ninth Circuit's 25 percent benchmark for percentage awards in common fund cases, it did not adopt such a benchmark for California cases"). Instead, "[t]he benchmark in determining attorney fees is reasonableness." *Karton v. Ari Design & Constr., Inc.*, 61 Cal.App.5th 734, 744 (2021).

a. A Fee of Thirty-Five Percent of the Common Fund Is Reasonable Because It Is Within the Ranges Historically Approved by Courts in Class Settlements and a Lodestar Cross Check Validates the Proposed Fee

An award of attorney's fees under the common fund doctrine is appropriate in this case as there is sufficiently identifiable class of beneficiaries (*e.g.* the settlement class), the benefits received can be accurately traced to the settlement Plaintiff and Class Counsel were able to negotiate on behalf of Class Members, and the fee can be shifted with exactitude to those benefiting as the fee request is a specific,

1 lump-sum percentage of the fund. *See Laffitte v. Robert Half Internat., Inc.*, 1 Cal.5th 480, 506 (2016);
2 *Paul, Johnson, Alston & Hunt v. Grauly*, 886 F.2d 268, 271 (9th Cir. 1989); *Boeing Co. v. Van*
3 *Gemert*, 444 U.S. 472, 477-478 (1980) (“A lawyer who recovers a common fund for the benefit of
4 persons other than . . . her client is entitled to a reasonable attorney’s fee from the fund as a whole.”).
5 The requested fee, 35% of the common fund, is within ranges awarded in other cases. *See Martin v.*
6 *Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v.*
7 *Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a
8 \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
9 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class
10 action settlement); Decl. Rodriguez, ¶¶ 22; Exhibit G (Sacramento County Superior Court May 2016
11 Minute Order) (awarding 35% of a common fund class action settlement); Exhibit H (Strawn, et. al. v.
12 Bridgestone Retail Operations, LLC, Final Approval Order) (awarding 35% of a common fund class
13 action settlement).

14 To the extent there may be some Courts that have granted fees at a percentage less than 35%,
15 that does not justify an arbitrary cap on Class Counsel’s fees in this case. First, in many instances, the
16 treatises or cases discussing these percentages are relying on federal decisions guided by a
17 “benchmark” percentage of 25% that has not been adopted by the California Supreme Court. *See*
18 *Emmons*, 2017 WL 749018, at *7. This artificially lowers the average percentage of fees awarded.
19 Second, many of the same decisions and treatises refer to cases that have a substantial gross settlement
20 fund to begin with, which will generally correspond to a lower percentage of fees being deemed
21 reasonable. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002) (compiling an
22 appendix of class settlements with gross settlement funds of \$53 million to \$193 million and a range of
23 2.8% to 40% in awarded attorney’s fees, averaging approximately 22%). Rather than acting as a cap on
24 any fee, the percentages applied in cases are a tool to cross check the reasonableness of the fee just as
25 the lodestar method is a tool to cross check the reasonableness of the requested percentage. *See Karton*,
26 61 Cal.App.5th at 744; *Vizcaino*, 290 F.3d at 1048 (“courts cannot rationally apply any particular
27 percentage—whether 13.6 percent, 25 percent or any other number—in the abstract, without reference
28 to all the circumstances of the case”).

1 To the extent the Court wishes to exercise its discretion to conduct a lodestar cross check, the
2 cross check only validates the fee request. *See Laffitte*, 1 Cal.5th at 503-506. Again, an award of
3 attorney’s fees should include compensation for all hours reasonably spent. *See Ketchum*, 24 Cal.4th at
4 1133; *see also Hensley*, 461 U.S. at 431 (finding hours are reasonably spent if they are the kind
5 normally billed to a fee-paying client). To date, Class Counsel has spent approximately 407.2 hours
6 performing tasks that would normally be billed to any fee playing client in complex litigation and
7 estimate that this number will increase to approximately 432.2 after monitoring the disbursement of all
8 funds and compliance hearing(s). *See Decl. Rodriguez*, ¶ 23; Exhibit F; *Syers Props. III, Inc. v. Rankin*,
9 226 Cal.App.4th 691, 699 (2014) (“Because time records are not required under California law ... ,
10 there is no required level of detail that counsel must achieve.”) (internal quotations omitted).
11 At the prevailing market rates for Class Counsel’s level of experience and this type of complex
12 litigation, this equates to a lodestar of approximately \$252,165.00. *See Decl. Rodriguez*, ¶¶ 23-24;
13 Exhibit G; Exhibit H; *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002)
14 (noting rates were reasonable where they were “within the range of reasonable rates charged by and
15 judicially awarded comparable attorneys for comparable work”).

16 The reasonableness of Class Counsel’s fee request is also demonstrated by the fact that the
17 amount requested would actually result in a negative multiplier to their lodestar. Multipliers are
18 typically awarded in contingent fee litigation to compensate counsel for the risk of non-payment:

19 It is an established practice in the private legal market to reward attorneys
20 for taking the risk of non-payment by paying them a premium over their
21 normal hourly rates for winning contingency cases. *See Richard Posner*,
22 *Economic Analysis of Law* § 21.9, at 534-35 (3d ed. 1986). Contingent
23 fees that may far exceed the market value of the services if rendered on a
non-contingent basis are accepted in the legal profession as a legitimate
way of assuring competent representation for Plaintiff who could not
afford to pay on an hourly basis regardless whether they win or lose.

24 *Chem. Bank v. City of Seattle (In re Wash. Pub. Power Supply Sys. Sec. Litig.)*, 19 F.3d 1291, 1299 (9th
25 Cir. 1994). Moreover, “in the common fund context, attorneys whose compensation depends on their
26 winning the case, must make up in compensation in the cases they win for the lack of compensation in
27 the cases they lose.” *Id.* at 1300-01; *see also Ketchum*, 24 Cal.4th at 1138 (“The adjustment to the
28 lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive

1 payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither
2 unexpected nor fortuitous”); *Wershba*, 91 Cal.App.4th at 255 (“Multipliers can range from 2 to 4 or
3 even higher”). Because awarding attorney’s fees at the requested 35% would still result in a negative
4 multiplier, a lodestar cross check validates the common fund percentage requested and the Court should
5 grant Class Counsel’s fee request. *See* Decl. Rodriguez, ¶¶ 22-24.

6 **b. Class Counsel’s Expenses and Costs Were Necessarily Incurred to Achieve the Benefit**
7 **Obtained**

8 The appropriate analysis in determining whether particular costs are compensable is whether
9 they are of the type typically billed by attorneys to paying clients in the marketplace. *See Harris v.*
10 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees
11 those out-of pocket expenses that ‘would normally be charged to a fee paying client’”); *Abrams v.*
12 *Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995); *Bratcher v. Bray-Doyle Indep. Sch. Dist. No. 42*, 8
13 F.3d 722, 725-26 (10th Cir. 1993). The categories of expenses for which Class Counsel seek
14 reimbursement here are categories normally charged to hourly clients and, therefore, should be
15 reimbursed out of the common fund. *See* Decl. Rodriguez, ¶ 25; Exhibit D.

16 **c. Class Counsel’s Request for Class Representatives Enhancement Payments Is Justified**
17 **In Light of The Results Achieved for the Class**

18 A service payment to a named plaintiff is intended to recognize their time and effort on behalf
19 of the class. Indeed, courts routinely approve incentive awards to compensate named plaintiffs for the
20 services they provide and the risks they incurred during the course of the class action litigation. *See*
21 *Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (approving incentive awards of
22 \$300,000.00 to each named plaintiff); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294 (N.D.
23 Cal. 1995) (approving a \$50,000.00 participation award); *Cellphone Termination Fee Cases*, 186
24 Cal.App.4th 1380, 1393 (2010) (approving \$10,000 awards to each of the four (4) named plaintiffs);
25 *See* Exhibit G (awarding class representative service fee enhancements ranging from \$20,000 to
26 \$10,000); Exhibit H (awarding class representative enhancement payments of \$15,000).

27 In this case Plaintiffs provided substantial support in helping to secure payment to Class
28 Members. Plaintiffs have spent tremendous amounts of time and effort to help secure payment for
Class Members. *See* Decl. Rodriguez, ¶ 7; Decl. Kee, ¶¶ 2-3, 5-8; Decl. Gutierrez, ¶¶ 2-3, 5-8; Decl.

1 Lechuga, ¶¶ 2-3, 5-8. Plaintiffs are also subject to a much broader release of claims than Class
2 Members, including a Civil Code section 1542 release. Payment of \$15,000.00 to Plaintiffs are
3 appropriate given the risk, assistance, time required, and burden experienced in bringing and resolving
4 this case, especially since this amount was identified in the Notice of Settlement and no objections to it
5 have been received. *See West v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, at *7-*8, *12,
6 *27 (E.D. Cal. 2006) (awarding a \$15,000 representative enhancement where 10,000 class members
7 were to receive a gross award of approximately \$500 each from the \$5,000,000 settlement); *Dent v. ITC*
8 *Serv. Group*, 2013 U.S. Dist. LEXIS 139359, at *9-*10, *15-*16 (D. Nev. 2013) (awarding a \$15,000
9 representative enhancement out of a \$150,000 settlement for approximately 530 class members).

10 **d. The Court Should Approve the Payment of Claims Administrator Costs**

11 Since being preliminarily approved as the Claims Administrator, ILYM Group, Inc., has carried
12 out its duties as set forth in the Court's order and the Agreement. *See generally* See Decl. Nava. Under
13 the Agreement, a maximum of \$30,000 was set aside for potential Claims Administrator Costs. ILYM
14 Group, Inc.'s final costs are \$13,690.28, well under the potential maximum Class Members were given
15 notice of. Plaintiffs request that the Court approve payment to the Claims Administrator in the amount
16 of \$13,690.28 to compensate it for the costs of administration as part of the final order approving the
17 Settlement.

18 **VIII. CONCLUSION**

19 For all of the foregoing reasons, Plaintiffs respectfully request that this Court certify the class
20 for settlement purposes; grant approval to the proposed settlement, including the Plaintiffs' Class
21 Representative Enhancement Payments, the payment to the LWDA under PAGA, and Class Counsel's
22 application for reasonable attorneys' fees and costs; find that the Notice of Settlement and the
23 administration process satisfied Class Members' due process rights; and approve proposed order
24 submitted concurrently herewith.

25 Dated: December 15, 2022

Shimoda & Rodriguez Law, PC

26 By: _____

Galen T. Shimoda

Justin P. Rodriguez

Renald Konini

Attorneys for Plaintiffs