

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
SHANNEN T. GARRETT, Esq. (SBN 316248)
shannen@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

DAVTYAN LAW FIRM, INC.
EMIL DAVTYAN, Esq. (SBN 299363)
emil@davtyanlaw.com
880 E. Broadway
Glendale, CA 91205
Tel: (818) 875-2008, Fax: (818) 722-3974

Attorneys for Plaintiff and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

CARLOS HUMBERTO CARRILLO DIAZ,
an individual, on behalf of himself and others
similarly situated

PLAINTIFF,

v.

RECON360, LLC; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 20CV370603

[Case Assigned for All Purposes to Hon. Sunil
R. Kulkarni in Dept. 1]

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

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Kelsey M. Szamet, Carlos Humberto Carrillo
Diaz, and Nathalie Hernandez, Proposed
Order, and Judgment]*

Date: June 9, 2022

Time: 1:30 p.m.

Dept.: 1

Complaint Filed: September 22, 2020

FAC Filed: November 30, 2020

Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on June 9, 2022 at 1:30 p.m. in Department 1 of the above-
3 entitled court, Plaintiff CARLOS HUMBERTO CARRILLO DIAZ ("Plaintiff") will, and hereby
4 does, move the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff
5 moves the Court for an order:

6 1. Granting final approval of the settlement in the case pursuant to the Joint
7 Stipulation of Class Action Settlement and Release of Claims ("Settlement" or "Settlement
8 Agreement"), a copy of which is attached to the concurrently filed Declaration of Kelsey M.
9 Szamet as Exhibit "1";

10 2. Affirming Kingsley & Kingsley, APC as Class Counsel;

11 3. Affirming CARLOS HUMBERTO CARRILLO DIAZ as Named Plaintiff and
12 awarding an enhancement award of \$5,000.00;

13 4. Awarding ILYM Group, Inc. claims administration fees of \$15,000.00 for its
14 services as Settlement 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 Settlement is fair, adequate, reasonable,
18 and in the best interest of the Settlement 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 Kelsey M. Szamet, Carlos Humberto Carrillo Diaz, Nathalie
21 Hernandez, all other papers and records on file in this action, and on such oral and documentary
22 evidence as may be presented at the hearing on this Motion.

23
24 DATED: May 17, 2022

KINGSLEY & KINGSLEY, APC

25
26 By:

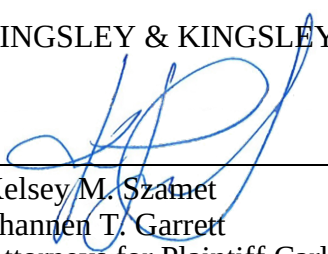

Kelsey M. Szamet
Shannen T. Garrett
Attorneys for Plaintiff Carlos Humberto Carrillo
Diaz and the Proposed Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff CARLOS HUMBERTO CARRILLO DIAZ (“Plaintiff”) submits this Motion for
4 Final Approval of Class Settlement and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Joint Stipulation
6 of Class Action Settlement and Release of Claims (“Settlement” or “Settlement Agreement”), a
7 copy of which is attached to the concurrently filed Declaration of Kelsey M. Szamet as Exhibit
8 “1”;

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

11 3. Award ILYM Group, Inc. claims administration fees of \$15,000.00 for its services
12 as Settlement Administrator;

13 4. Affirm named Plaintiff CARLOS HUMBERTO CARRILLO DIAZ as Named
14 Plaintiff and award a cumulative Named Plaintiff payment of \$5,000.00; and

15 5. Enter judgment.

16 **II. FACTUAL BACKGROUND**

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

18 Recon360, LLC is a construction company that provides services such as maintenance,
19 roofing, painting, and electrical work. (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶5.)
20 Plaintiff began performing work for Defendant from 2018 to on or about April 4, 2020 in Santa
21 Clara County. (Szamet Decl. ¶6.) Plaintiff contends that Defendant failed to provide lawful meal
22 periods, failed to provide lawful rest periods, failed to reimburse Plaintiff and the proposed class
23 for work-related expenses, and failed to pay all wages due at the time of termination. (*Id.*)

24 On September 22, 2020, Plaintiff submitted a notice letter to the Labor and Workforce
25 Development Agency (“LWDA”) and Defendant regarding his intent to file an action seeking civil
26 penalties under the Labor Code Private Attorneys General Act of 2004, §2699, *et seq.* (“PAGA”).
27 (Szamet Decl. ¶7; Settlement Agreement, Ex. 1 at (“Ex. 1 at”) § II, ¶2.) That same day, Plaintiff
28 filed a Class Action Complaint on behalf of himself and the proposed class in the California

1 Superior Court, in and for the County of Santa Clara, thereby initiating the civil action entitled
2 *CARLOS HUMBERTO CARRILLO DIAZ an individual, on behalf of himself and others similarly*
3 *situated v. RECON360, LLC; and Does 1 thru 50, inclusive.* (hereinafter, the “Action”) (Szamet
4 Decl. ¶8; *Id.*) Specifically, the Action alleges that Defendant failed to provide meal breaks
5 pursuant to Labor Code §§ 226.7 and 512, failed to provide rest breaks pursuant to Labor Code §
6 226.7, failed to reimburse expenses pursuant to Labor Code § 2802, failed to provide all wages
7 due at the time of termination pursuant to Labor Code § 203, and violated of Business &
8 Professions Code § 17200. (*Id.*)

9 On November 30, 2020, Plaintiff amended his complaint, adding an additional cause of
10 action for penalties under the California Labor Code’s Private Attorneys General Act (“PAGA”)
11 based upon the facts previously alleged in the Complaint. (Szamet Decl. ¶9; *Id.*)

12 B. The Discovery Process and Mediation

13 After the matter was at issue, the Parties began to engage in informal discovery to
14 understand the nature of the allegations and the scope of potential liability. (Szamet Decl. ¶10.)
15 Through this discovery, Plaintiff sought numerous documents and substantial amounts of data that
16 were needed to evaluate the case. (Szamet Decl. ¶11.) These documents included requests for
17 time and wage records for the Class, policies and practices in place during the class period,
18 including any policies regarding meal breaks, rest breaks, the payment of wages, and employee
19 training in place during the class period, as well as data surrounding the number of current and
20 former employees. (Szamet Decl. ¶12.) Defendant provided Plaintiff’s counsel with pertinent
21 documents and data for the Class Members so that the Parties could fully investigate the claims at
22 issue and understand their strengths and weaknesses. (Szamet Decl. ¶13.)

23 Thereafter, the Parties began to discuss potential resolution. (Szamet Decl. ¶14.) The
24 Parties attended a full-day mediation with experienced class action mediator the Hon. Jamie
25 Jacobs-May (Ret.) on May 13, 2021. (Szamet Decl. ¶15; *Id.*) The Parties engaged in good faith,
26 arms-length negotiations aided by Judge Jacobs-May and were able to reach a tentative settlement
27 of the Action, subject to finalization of the formal Joint Stipulation of Class Action Settlement and
28 Release of Claims and the approval of the Court. (*Id.*) The Parties have since engaged in extensive

1 negotiations about the terms and conditions of the Settlement Agreement. (*Id.*) The Parties have
2 now entered into this formalized Settlement Agreement now presented to the Court for Preliminary
3 Approval. (*Id.*)

4 Defendant denies any liability or wrongdoing of any kind associated with the claims
5 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
6 that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or
7 representative action treatment. (Szamet Decl. ¶16.) Defendant contends, among other things,
8 that, at all times, it has complied with the California Labor Code, and the Industrial Wage
9 Commission Orders. (*Id.*)

10 Based on their own independent investigation and evaluation, Class Counsel is of the
11 opinion that the Settlement Agreement with Defendant is fair, reasonable and adequate, and in the
12 best interest of the settlement classes in light of all known facts and circumstances, including the
13 risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
14 representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl.
15 ¶17.) Although Defendant denies any liability, Defendant is agreeing to this Settlement Agreement
16 solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to
17 fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or
18 relating to the Action on the terms set forth here. (*Id.*)

19 C. Preliminary Approval

20 On February 11, 2022, the Court issued an Order preliminarily approving the settlement in
21 this case, approving the proposed Class Notice, ordering that the Settlement Administrator send
22 notice to the Settlement Class, and setting a date for the Final Approval and Fairness Hearing.
23 (Szamet Decl. ¶18.)

24 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

25 A. The Settlement Class

26 For purposes of Settlement Agreement, the settlement class is defined as: "all persons who
27 are employed or have been employed as hourly, non-exempt employees by RECON360, LLC, in
28 the State of California during the Covered Period." ("Settlement Class Members" or "Class

Members”) The “Settlement Class Members” shall not include any person who submits a timely and valid Request for Exclusion as provided in this Agreement, or any person who previously released the Released Claims under a separate agreement. (Szamet Decl. ¶19; Settlement Agreement, Ex. 1 at § III, ¶11.)

The final Settlement Class contained 276 individuals. (Hernandez Decl. ¶13.)

B. Settlement Payments

As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of \$700,000.00, which includes the sum of the Individual Settlement Amounts, the Named Plaintiff service award, the Class Counsel Award¹, PAGA Payment, and the Settlement Administration Costs. (Szamet Decl. ¶20; Ex. 1 at § I, ¶36.) Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Settlement Class as follows:

Gross Settlement Amount:	\$	700,000.00
Named Plaintiff Enhancement:	\$	5,000.00
Class Counsel’s Fees:	\$	233,333.33
Class Counsel’s Costs:	\$	8,617.27
PAGA Payment:	\$	25,000.00
		<i>(\$18,750.00 to the LWDA and \$6,250.00 to remain in the Net Settlement Amount)</i>
<u>Settlement Administrator Costs:</u>	<u>\$</u>	<u>15,000.00</u>
Net Settlement Amount	\$	413,049.40

(Ex. 1 at § III, ¶15.)

C. Individual Settlement Payments

The amount of each Class Member’s Individual Settlement Amount is an individualized amount that is based on the number of compensable workweeks worked by the Class Member during the Covered Period. (Ex. 1 at § I, ¶17; *see also* Ex. A to the Settlement Agreement at pp. 3 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Settlement Agreement. (*See* Ex. 1 at § III, ¶17; *Id.* at Ex. A to the Settlement Agreement [Class Notice].)

¹ Kingsley and Kingsley, APC and Davtyan Law Firm, Inc. have entered into a written fee sharing agreement that was also signed by the named Plaintiff.

1 Based on these calculations, the average potential recovery is \$1,519.20 per Settlement
2 Class Member. (Hernandez Decl. ¶14.)

3 D. Class Notice

4 The Court approved the proposed Class Notice and directed the mailing of the Notice by
5 first-class mail to Settlement Class Members in accordance with the proposed implementation
6 schedule. (Szamet Decl. ¶21.) The procedures for giving notice to the Settlement Class Members,
7 as set forth in the Settlement and Plaintiffs’ Motion for Preliminary Approval and approved by the
8 Court, have been fully and properly carried out. (Hernandez Decl. ¶3.)

9 To date, ILYM Group, Inc. received one (1) request to be excluded (“opt-outs”) from the
10 proposed Settlement and zero (0) objections. (Hernandez Decl. ¶¶11-12.)

11 E. Check Mailed Settlement – No Reversion

12 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
13 without the possibility of reversion of settlement funds to Defendant. Under the Settlement, every
14 Settlement Class Member will receive a settlement check and Settlement Class Members do not
15 need to submit a claim in order to receive a settlement check. Any funds that remain uncashed
16 after 180 days shall be turned over by the Settlement Administrator, with information for each
17 Settlement Class Member who failed to timely cash his/her settlement check, to the State of
18 California Controller’s Office Unclaimed Property Fund. (Ex. 1 at § III, ¶20.)

19 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

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

26 A. The Settlement is Entitled to a Presumption of Fairness

27 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
28 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.” (*Dunk*, *supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were made by experienced and informed counsel, who believe that this settlement represents a favorable resolution for the Settlement Class Members. (Szamet Decl. ¶22.) The settlement negotiations have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-dealing or other type of misconduct by either side has taken place. (Szamet Decl. ¶23.)

Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. Defendant provided Plaintiff’s counsel with pertinent documents and data for the Class Members. (Szamet Decl. ¶24.) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Szamet Decl. ¶25.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶26.) Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Settlement Class Member of over \$1,500 is substantial, given the risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶27.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there was one (1) request to be excluded and no objectors. (Hernandez Decl. ¶¶11-12.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

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

In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,

1 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
2 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
3 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
4 participant; and (8) the reaction of the class members to the proposed settlement. *Kullar, supra*,
5 at 128.

6 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
7 informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at
8 Szamet Decl. ¶¶10-13.) This discovery permitted Class Counsel to fairly evaluate the strength of
9 the case and the risks associated with ongoing litigation. (Szamet Decl. ¶28.) Class Counsel is
10 experienced in handling wage and hour class actions and, after weighing all of the following
11 factors, supports this Settlement Agreement. (Szamet Decl. ¶29.)

12 1. The Strength of Plaintiff's Case

13 a) The Risks Associated with the Meal Break Claim

14 Based upon the discovery conducted, Plaintiff contends – and Defendant denies – that
15 Defendant has a policy and practice under which all Class Members are not provided with a full
16 30 minutes in which to take their meal periods.

17 Under California Labor Code section 512 and IWC Wage Order No. 16, no employer shall
18 employ any person for a work period of more than five hours without providing a meal period of
19 not less than thirty minutes. The first meal period must be permitted to commence no later than
20 after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (*Brinker*
21 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1049.) The second meal period must be
22 permitted to commence no later than after ten hours of work, or the start of the eleventh hour of
23 work (10.0 hours on the clock). (*Ibid.*) The California Supreme Court succinctly described Section
24 512's mandate: "Employers must afford employees uninterrupted half-hour periods in which they
25 are relieved of any duty or employer control and are free to come and go as they please." (*Brinker*
26 *Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.)

27 It is well settled that if an employer fails to maintain a uniform policy that authorizes and
28 permits the meal periods or rest breaks called for under the law (as specified in the applicable

1 Wage Order), “it has violated the wage order and is liable.” (See *Brinker*, 53 Cal.4th at p. 1033.)
2 Following *Brinker*, California courts have confirmed that liability for meal and rest period
3 violations arises when an employer adopts a uniform policy that fails to comply with the Labor
4 Code. (See *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 235, [“In
5 *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break policy was unlawful,
6 [defendant] would be liable only when it actually failed to provide a required off-duty meal break.
7 *Brinker* leads us now to conclude [defendant] would be liable upon a determination that
8 [defendant]’s uniform on-duty meal break policy was unlawful.” (emphasis added)]; accord
9 *Bradley v. Networkers International LLC* (2012) 211 Cal.App.4th 1129; *Benton v. Telecom*
10 *Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, 725–726 [finding that the employer would
11 become liable upon a showing that it failed to maintain a policy authorizing required breaks, which
12 does not require an individual technician to provide he or she actually missed breaks as a result of
13 the employer’s policies. Rather, “the Wage Order . . . imposes an affirmative obligation on every
14 employer to authorize and provide legally-required meal and rest breaks; if it fails to do so, it has
15 violated the law and is liable.”].)

16 *Brinker* and its progeny are relevant here. It appears as though Defendant did not maintain
17 a valid written meal period policy from September 2016 to July 2017. If Defendant failed to
18 maintain a valid written meal period policy, per *Benton*, it is liable.

19 Very recently in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the California
20 Supreme Court decided two issues of law relevant to meal periods. First, though not relevant here,
21 the Court held that employers cannot round time punches, i.e., adjust the hours that an employee
22 has actually worked to the nearest preset time increment, in the meal period context. Second, the
23 Court held that time records depicting noncompliant (late, interrupted, or missed) meal periods
24 raise a rebuttable presumption of meal period violations, including at the summary judgment stage
25 of litigation.² *Id.* at 77.

26 This latest decision makes clear that it is not enough for California employers to have a

27 ² Reasoning that the “affirmative defense” of waiver goes to the merits of the case, the
28 Court in *Donohue* held, “the presumption goes to the question of liability and applies at the
summary judgment stage, not just at the class certification stage.” *Id.* at 76.

1 policy that “provides” required meal periods or even to record the actual timing and length of such
2 meal periods. Employers must also be prepared to prove that any deviation from the required meal
3 period was by employee choice, without any pressure or influence by the employer (i.e. “bona fide
4 relief from duty and that this is accurately reflected in the employer's time records.”) *Donahue*,
5 *supra*, at 77-78. Thus, for each time an employee’s meal period is short of 30 minutes, late, or
6 missed altogether, the employer bears the burden of proving (through “Representative testimony,
7 surveys, and statistical analysis,”) that the employer provided the meal period, and that the
8 employee voluntarily chose not to take it — even in some circumstances when an employee signs
9 a timesheet each pay period, confirming that the employer had in fact provided all such breaks.³
10 Once a plaintiff can show prima facie evidence of potential meal period violations, courts will now
11 presume the employer violated the law and the employer has the burden of rebutting this
12 presumption.

13 Plaintiff maintains that *Donahue*’s relevance here is interesting.⁴ Defendant produced a
14 sampling of both handwritten and electronic time records for class members from approximately
15 August 2017 to present. (Szamet Decl. ¶30.) Plaintiff contends that the handwritten time records
16 are facially very similar generally showing that class members clocked in at 8:00 am, clocked out
17 for lunch from 12-12:30 pm, and clocked out for the day at 4:30pm. (Szamet Decl. ¶31.) Indeed,
18 per a review of the handwritten timecards produced, it appears that every person, every single day
19 worked the following schedule:

20 In 8:00 am – 12:00 pm Lunch 12:00-12:30 pm Out 4:30pm

21
22 ³ Employers that rely only on employee general acknowledgments and certifications that
23 the employee received compliant meal periods, such as timesheet certifications, should be aware
24 of the Court’s view that such certifications cannot be used to prove that the employer provided the
25 compliant meal period if employees would not have known about the potentially noncompliant
meal periods that were not flagged by the employer. The Court reasoned, “It is the employer’s
duty to keep accurate time records; the law does not expect or require employees to keep their own
time records to uncover potential meal period violations.” (*Donohue v. AMN Services, LLC* (2021)
11 Cal.5th 58.)

26 ⁴ “The rebuttable presumption does not require employers to police meal periods. **Instead,**
27 **it requires employers to give employees a mechanism for recording their meal periods and**
28 **to ensure that employees use the mechanism properly.**” Where, as here, there are identical
meal period punches for the vast majority of people during the entire relevant class period, one of
the important questions for Defendant becomes was it ensuring that employees were accurately
recording meal periods?

1 At some point in mid-2019, Defendant switched over to electronic timekeeping. (Szamet
2 Decl. ¶32.) Again, these records are quite remarkably similar for all class members. (Szamet Decl.
3 ¶33.) As with the handwritten notes, the majority of electronic time records show similar time
4 punches of working 8:00 am – 12:00 pm, Lunch 12:00-12:30pm, and Out 4:30pm. (Szamet Decl.
5 ¶34.)

6 Though Plaintiff acknowledges that there are some punches where the person clocked in
7 at perhaps 7:59 am or 8:01 am, Plaintiff argues that often those punch records show meals periods
8 that are not 30 minutes in length, are taken late, or missed altogether. (Szamet Decl. ¶35.) Taken
9 together, Plaintiff maintained that Defendant's records are potentially very problematic for
10 Defendant. (Szamet Decl. ¶36.) Plaintiff argues that these records are so specious that they are
11 akin to having no records at all. (Szamet Decl. ¶37.) As a result, Plaintiff asserts that the class
12 can invoke the burden shifting clearly set forth in *Donahue* to successfully argue that nearly
13 identical records are the same as having records rife with violations which will create a
14 presumption of liability. (Szamet Decl. ¶38.) The burden would then, in theory, shift to Defendant
15 to prove that in fact all class members got their meal periods at exactly 12-12:30 each day
16 throughout the entire class period without fail. (Szamet Decl. ¶39.)

17 Plaintiff was confident that if the burden did shift to Defendant, Defendant would attempt
18 to gather testimonial evidence from class members indicating that the records were accurate and
19 they took their meal breaks as reflected in the records. (Szamet Decl. ¶40.) Though Plaintiff does
20 not believe this was the case, Plaintiff must acknowledge it poses risks for the Class. (Szamet
21 Decl. ¶41.) There is risk as to both sides as to what declarations and depositions of class members
22 might reveal. (Szamet Decl. ¶42.)

23 Apart from the issue above regarding Defendant's records, Plaintiff contends that
24 Defendant failed to provide Plaintiff and the proposed class with proper meal periods of not less
25 than thirty (30) minutes as required by the Labor Code during the relevant time period because he
26 and other class members were required to keep personal cellphones on and be available at all times
27 for calls/texts. (Szamet Decl. ¶43.) Therefore, Plaintiff contends that he was routinely interrupted,
28 was not relieved of all duties and free from Defendant's control, and was sometimes required to

1 clock out for lunch and keep working. (Szamet Decl. ¶44.)

2 In response, first and foremost, Defendant argued that Class Members were unquestionably
3 provided with legally compliant meal periods. (Szamet Decl. ¶45.) In addition, Plaintiff
4 anticipated that Defendant would assert that such an argument would pose individual issues and
5 Defendant would be entitled to inquire of each class member, on each day whether or not they
6 were interrupted, thereby creating individual issues and defeating class certification. (Szamet
7 Decl. ¶46.)

8 Taken together, Plaintiff acknowledged some risk but was confident that he could certify
9 the meal period claim and that Defendant faced significant risk and exposure on the meal period
10 claim. (Szamet Decl. ¶47.) Plaintiff contends that as a result of its failure to provide compliant
11 meal periods to Plaintiff and all class members, Defendant must pay an additional hour at the
12 employee's regular rate of compensation for each workday the employer failed to provide a lawful
13 meal period to each employee. (See Lab. Code, § 226.7, subd. (c).)

14 b) The Risks Associated with the Rest Break Claim

15 Under IWC Wage Order No. 16, every employer shall authorize and permit all employees
16 to take rest periods. Employees are entitled to a paid ten minute rest break for every four hours
17 worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11160, subd. 11(A).)

18 The *Brinker* court clarified what steps an employer must take to make rest breaks available
19 to its employees:

20 An employer is required to authorize and permit the amount of rest break time
21 called for under the wage order for its industry. If it does not—if, for example, it
22 adopts a uniform policy authorizing and permitting only one rest break for
23 employees working a seven-hour shift when two are required—it *has violated the*
wage order and is liable. No issue of waiver ever arises for a rest break that was
24 required by law but never authorized; if a break is not authorized, an employee has
no opportunity to decline to take it.

25 (*Ibid.*)

26 The California Supreme Court further refined requirements for rest periods, holding that
27 employees must be relieved of all duty and employer control and free to leave the premises during
28 rest breaks. (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 270 (2016) [“[A] rest period means
an interval of time free from labor, work, or any other employment-related duties. And employees

1 must not only be relieved of work duties, but also be freed from employer control over how they
2 spend their time.”].)

3 The 10-minute rest break must be a net 10-minutes in a suitable rest area. None of
4 the time allotted for rest breaks can be consumed by the time it takes to get to a suitable rest area.
5 *See Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 267-268 (2016) (relying on 1/3/86 and
6 2/22/02 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest breaks
7 means 10-minutes of time in a rest area and cannot include time it takes to get to and from the rest
8 area). The employer must show that it clearly articulates the right to rest periods and rest periods
9 of net ten minutes, which means it must clearly communicate “net” ten minutes and that, regardless
10 of what happens along the way to or from the rest area, employees are entitled to a full ten minutes
11 in the rest area. *See Bufil v. Dollar Fin. Grp., Inc.* (2008) 162 Cal.App.4th 1193, 1199 (the “onus
12 is on the employer to clearly communicate the authorization and permission [to take meal and rest
13 breaks] to its employees.”) Labor Code section 226.7, subdivision (c), requires an employer to
14 pay an additional hour of compensation for each workday the employer fails to provide a rest
15 period according to law. Plaintiff contends that Defendant therefore owes Plaintiff and proposed
16 class members a rest period penalty for every shift of three and one half hours in length or more.
17 (Szamet Decl. ¶48.)

18 Here, Plaintiff maintains that the same factual contentions apply to the rest break claim as
19 discussed above regarding the meal break claim namely that: (1) Plaintiff was not able to take two
20 compliant rest periods each day; and (2) if he was able to take a moment to rest, he was required
21 to keep his cellphone on at all times and therefore not free from employer control; and he was
22 routinely called/interrupted. (Szamet Decl. ¶49.)

23 The same risk analysis does not apply as with the meal periods, though, because there
24 generally are no records associated with rest periods. (Szamet Decl. ¶50.) As such, Plaintiff does
25 not believe that he would be able to invoke the *Donahue* burden shifting in the same way. (Szamet
26 Decl. ¶51.) Plaintiff had to acknowledge that it could potentially be easier for Defendant to defeat
27 certification of this claim if it was able to gather testimonial evidence from class members
28 indicating that they were able to take all required rest breaks each day. (Szamet Decl. ¶52.)

1 Though Plaintiff does not believe this was the case, Plaintiff must acknowledge it poses risks for
2 the Class. (Szamet Decl. ¶53.) Just as with meal periods, there is risk as to both sides as to what
3 declarations and depositions of class members might reveal. (Szamet Decl. ¶54.)

4 c) The Risks Associated with the Reimbursement Claim

5 Labor Code §2802 requires employers to indemnify employees for all necessary
6 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
7 her duties. Of importance here, Labor Code section 2802(c) provides that the employee is entitled
8 to “attorney’s fees incurred by the employee enforcing the rights granted by this section.”

9 Here, Plaintiff alleges that Defendant failed to reimburse Plaintiff and the proposed class
10 for the cost of personal cellphone usage for work purposes including (1) downloading and using
11 the “Paylocity” application for time clock purposes; and (2) being available and using his phone
12 for calls and texts throughout the day, each day. (Szamet Decl. ¶55.)

13 Plaintiff also contends that he was required to use his personal vehicle for work related
14 purposes. (Szamet Decl. ¶56.) As a result, Plaintiff contends that Defendant owes reimbursement
15 and a PAGA penalty for each pay period worked by each class member/aggrieved employee during
16 the relevant time period. (Szamet Decl. ¶57.)

17 Plaintiff anticipated that Defendant would argue that Plaintiff was not required to use his
18 personal cellphone for work purposes and that if he did, it was by choice. (Szamet Decl. ¶58.)
19 Defendant would also argue that it did not require class members to use personal vehicles for work
20 related purposes. (Szamet Decl. ¶59.) Defendant would also likely argue that if Plaintiff used his
21 phone or personal vehicle those issues were unique to him and not common to the class, thereby
22 defeating commonality. (Szamet Decl. ¶60.)

23 d) The Risks Associated with the Waiting Time Penalty Claim

24 Under Labor Code section 203, if an employer fails to provide wages at the time of an
25 employee’s termination or within seventy-two (72) hours of resignation, then the employee’s
26 wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203
27 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g.,
28 *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68

1 Cal.App.4th 487, 492.)

2 Here, Plaintiff and numerous proposed class members are no longer employed by
3 Defendant. (Szamet Decl. ¶61.) Due to Defendant’s failure to pay meal and rest period premiums,
4 Defendant failed to pay all wages owed and due upon their termination and/or resignation. (*Id.*)
5 Defendant’s actions were willful, as they have intentionally failed or refused to perform an act
6 which was required to be done. (See *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157,
7 1201.) “The failure to pay is willful if the employer ‘knows what [it] is doing [and] intends to do
8 what [it] is doing’, and does not also require proof that the employer acted with “a deliberate evil
9 purpose to defraud work[ers] of wages which the employer knows to be due.” (*Diaz v. Grill*
10 *Concepts Services, Inc.* (2018) 23 Cal.App.5th 859, 868.) Plaintiff contends that Defendant was
11 fully aware of its payment policies and practices and intended to carry out said policies and
12 practices. (Szamet Decl. ¶62.) Therefore, Plaintiff maintains that Defendant is liable for damages.
13 (Szamet Decl. ¶63.)

14 It goes without saying that *Naranjo* is extremely impactful here. (*Naranjo v. Spectrum*
15 *Security Services, Inc.* (2019) 40 Cal.App.5th 444.) Prior to review being granted in *Naranjo*,
16 recovery of waiting time penalties on meal and rest claims was admittedly unlikely. However, it
17 is reasonable to assume that the Supreme Court took *Naranjo* to address this issue and overrule
18 the lower court with a clear statement that waiting penalties do flow from meal and rest period
19 violations. (Szamet Decl. ¶64.) If this assumption turns out to be correct, there is significant risk
20 and exposure for Defendant on the Section 203 penalties. (Szamet Decl. ¶65.)

21 e) The Risks Associated with the PAGA Claim

22 As a result of Defendant’s conduct alleged above, Plaintiff seeks PAGA penalties available
23 for violations under Labor Code sections 201, 202, 203, 226.7, 512, and 2802. (Szamet Decl. ¶66.)
24 Labor Code section 2699(f) provides, in relevant part, “[f]or all provisions of this code except
25 those for which a civil penalty is specifically provided, there is established a civil penalty for a
26 violation of these provisions, as follows: one hundred dollars (\$100) for each aggrieved employee
27 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
28 per pay period for each subsequent violation.” In addition, the statute provides that “[a]ny

employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.” (Labor Code § 2699(g)(1).)

Plaintiff assessed multiple risks associated with the PAGA claim. (Szamet Decl. ¶67.) First, the aggrieved employees’ PAGA claims are derivative of all the foregoing class claims. (Szamet Decl. ¶68.) If Plaintiff cannot establish liability on the underlying claim (taking into account the risks discussed above), then the derivative PAGA claim will also necessarily fail. (*Id.*) Second, a court has discretion to award less than the maximum penalty. (Szamet Decl. ¶69.) (Labor Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). See *e.g., Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Third, the likelihood of the Court reducing the PAGA damages awarded to Plaintiffs and the aggrieved employees – assuming liability is proven as to each of Plaintiffs’ claims – is also higher in this case where these same individuals will also be receiving money for the same unlawful conduct under the class claims. (Szamet Decl. ¶70.) (see *Avila v. Cold Spring Granite Co.* (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 (“Because the PAGA penalties sought are at least partially duplicative of penalties granted by the underlying Labor Code violations, see, *e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award PAGA penalties, see Cal. Lab. Code § 2699(e)(2), Plaintiff recognizes that the potential PAGA penalties are highly uncertain.”); and see *Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement Agreement now. (Szamet Decl. ¶71.) If the Court did eventually certify class, trial of a case involving approximately 265 Settlement Class Members would require the retention of expensive expert witnesses, the accrual

1 of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶72.)
2 Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any
3 outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶73.) An
4 appeal would result in further delay for the Settlement Class Members who are waiting for a
5 resolution in this matter. (*Id.*)

6 3. The Risk of Maintaining Class Action Status through Trial

7 This case has not been certified to be tried as a class action. (Szamet Decl. ¶74.) While
8 Plaintiff believes there is strong evidence to support certification of several possible subclasses
9 (especially a rest period class), certification is always hard fought and subject to judicial discretion.
10 Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a
11 class, the parties would need to conduct multiple depositions, including of the Named Plaintiff and
12 of several person(s) most knowledgeable regarding Defendant's meal and rest policies. (*Id.*) There
13 is a risk for both sides as to what these depositions would reveal and whether they would support
14 class certification to the extent expected. (*Id.*)

15 4. The Amount Offered in Settlement

16 It was very difficult for the Parties to reach this Settlement of \$700,000.00. (Szamet Decl.
17 ¶75.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
18 (Szamet Decl. ¶76.) The Parties arrived at it after extensive investigation and discovery, careful
19 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
20 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
21 of an experienced mediator, Judge Jacobs-May. (*Id.*)

22 a) Plaintiff's Assessment of Defendant's Maximum Exposure

23 Plaintiff assessed the full value of the meal period claim, without any discount, at
24 approximately \$1,044,051.20. (Szamet Decl. ¶77.) This calculation was based upon the
25 assumption that each Settlement Class Members was not provided a complaint meal period for
26 each day worked so a total of 5 meal period penalties per person, per week, at an average rate of
27 pay of \$23.68. (Szamet Decl. ¶78.) Of course, if the violation rate was reduced from five times
28 per week to two, for purposes of assessing damages, this number would go down. (Szamet Decl.

¶79.) Indeed, if Plaintiff assumed there were two meal period violations per workweek per Class Member for the purposes of assessing maximum potential liability that number drops to \$417,620.48. (Szamet Decl. ¶80.) For the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Szamet Decl. ¶81.)

The calculations for the maximum potential value of the Rest Period claim are the same as a meal premium is assessed at the same amount as a rest period premium. (Szamet Decl. ¶82.) Thus, Plaintiff assessed the full value of the rest period claim, without any discount, at approximately \$1,044,051.20. (Szamet Decl. ¶83.) Again, this assumes 5 rest period violations per workweek per Settlement Class Members. (Szamet Decl. ¶84.) If Plaintiff assumed there were two meal period violations per workweek per Class Member for the purposes of assessing maximum potential liability that number drops to \$417,620.48. (Szamet Decl. ¶85.) For the reasons above, Plaintiff determined that accepting a discount of the full amount of the rest period claim was appropriate. (Szamet Decl. ¶86.)

With regard to the reimbursement claim analysis, Plaintiff believed that it was reasonable to value the potential reimbursement at \$25 per month, per Settlement Class Members, for reimbursement of personal cell phone usage and any incurred mileage from driving personal vehicle. (Szamet Decl. ¶87.) This brought the damages for this claim to \$30,650.00. (Szamet Decl. ¶88.)

Plaintiff assessed the full value of the waiting time claim for penalties pursuant to Labor Code §203 at \$1,360,022.40. (Szamet Decl. ¶89.) Considering the derivative nature of Labor Code §203 and the unresolved nature of whether Section 203 penalties are available for alleged meal and rest period violations, Plaintiff determined that accepting a significant discount on this claim was appropriate. (Szamet Decl. ¶90.)

Finally, Plaintiff calculated the value of the PAGA claim at \$302,400.00 for Settlement Class Members (using \$100 per pay period) for one alleged underlying Labor Code violation. (Szamet Decl. ¶91.) As the law is unsettled regarding whether PAGA penalties can be awarded for each of the underlying Labor Code violations (i.e. “stacked”) for the purposes of assessing the maximum penalty amount, Plaintiff calculated the exposure at one penalty of \$100 per person per

1 pay period. (Szamet Decl. ¶92.) If PAGA penalties can be stacked, then the maximum amount
2 increases to \$882,583.33. (Szamet Decl. ¶93.) The main risk taken into account with PAGA is
3 the discretionary nature of the penalty award. (Szamet Decl. ¶94.) A judge can award the statutory
4 maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent per wage
5 statement. (Szamet Decl. ¶95.) While there is a dearth of available authority, in Plaintiff’s view,
6 were he to succeed on any of the underlying Labor Code violations, it is not likely that a Judge
7 would also award a large amount of penalties of top of any damages recovered. (Szamet Decl.
8 ¶96.)

9 Using the figures set forth above, per Plaintiff’s assessment, the maximum potential value
10 of all of Plaintiff’s and the Settlement Class Members’ claims was approximately \$ \$4,361,358.13.
11 (Szamet Decl. ¶97.) If the more conservative estimates are used with only two meal and rest period
12 violations per workweek and one PAGA penalty assessment, this maximum exposure drops
13 significantly to \$2,528,313.36. (Szamet Decl. ¶98.)

14 As a result of the forgoing risks on the merits discussed extensively above, Class Counsel
15 believes the Gross Settlement Amount of \$700,000.00 is fair and reasonable. (Szamet Decl. ¶99.)

16 5. The Extent of Discovery Completed and Stage of the proceedings

17 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
18 claims alleged. (Szamet Decl. ¶100.) The agreement to settle did not occur until Class Counsel
19 exchanged and possessed sufficient information to make an informed judgement regarding the
20 likelihood of success on the merits and the results that could be obtained through further litigation.
21 (*Id.*)

22 6. The Experience and Views of Counsel

23 Kingsley & Kingsley is very experienced in prosecuting and defending employment
24 litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition
25 violations. (Szamet Decl. ¶¶101-102.) The firm is well versed in class action litigation and has
26 diligently and aggressively pursued this action. (*Ibid.*) Kingsley & Kingsley, APC currently serves
27 as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern
28 California. (*Ibid.*) A list of representative cases that Kingsley & Kingsley, APC has handled is

1 included in the accompanying declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶101-102.) After
2 factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair
3 and reasonable. (Szamet Decl. ¶103.)

4 7. The Presence of a Governmental Participant

5 There is no governmental participant in this action. (Szamet Decl. ¶104.)

6 8. The Proposed Plan of Allocation Is Fair and Reasonable

7 Plans of allocation are subject to the same standard of review as class action settlements;
8 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
9 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
10 compensates Settlement Class Members pro rata based on the number of Compensable Work
11 Weeks worked by the Settlement Class Member during the Covered Period. The lump sum
12 payment to each Settlement Class Member not excluding him/ herself will be determined on an
13 individualized basis based upon the compensable pay periods worked by the Settlement Class
14 Member. (Ex. 1 at § III, ¶17.) This allocation distributes Settlement Agreement funds
15 proportionally to each class member’s potential damages and should therefore be approved as fair,
16 adequate, and reasonable. (Szamet Decl. ¶105.)

17 9. The Reaction of the Class Members to the Proposed Settlement

18 To date, there is one (1) request to be excluded from the proposed Settlement and zero (0)
19 objections. (Hernandez Decl. ¶¶11-12.) Such indicates that the reaction of Settlement Class
20 Members on the whole is positive and weighs in favor of approval.

21 **V. ENHANCEMENT TO PLAINTIFF**

22 Plaintiff’s Counsel request an enhancement of \$5,000.00 to the Named Plaintiff CARLOS
23 HUMBERTO CARRILLO DIAZ for his work on behalf of the Settlement Class. (Szamet Decl.
24 ¶149.) “Courts routinely approve incentive awards to compensate named plaintiffs for the services
25 they provide and the risks they incurred during the course of the class action litigation.” *Ingram v.*
26 *The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations
27 omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).
28 In *Coca-Cola*, the Court approved service awards of \$300,000 to each named plaintiff in

1 recognition of the services they provided to the class by responding to discovery, participating in
2 the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*,
3 200 F.R.D. at 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000
4 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068
5 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,00 enhancement to each
6 named plaintiff).

7 Mr. Diaz is an adequate class representative because he has diligently, adequately and fairly
8 represented the Settlement Class and has not placed his interests above any member of the
9 Settlement Class. (*see* Declaration of CARLOS HUMBERTO CARRILLO DIAZ (“Diaz Decl.”)
10 ¶¶3-10.)

11 Here, Class Counsel requests an enhancement for Mr. Diaz’s valiant effort and time
12 expended in this matter. The time spent by Carlos Humberto Carrillo Diaz is significant and
13 includes researching and retaining competent counsel; providing information to Class Counsel
14 regarding the nature of the work at Defendant; compiling relevant documents; working closely
15 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly
16 discussing the status of the case with Class Counsel; discussing the case via telephone with many
17 Settlement Class Members; and responding promptly to Class Counsel’s communications
18 regarding settlement. (Szamet Decl. ¶150; Diaz Decl. ¶¶4-10.) As set forth in the Settlement,
19 Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section
20 1542. (Szamet Decl. ¶151; Ex. 1 at § III, ¶2.)

21 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶152.)
22 The enhancement takes into consideration the time, effort, and expense incurred by Mr. Diaz in
23 coming forward to litigate this matter on behalf of all Settlement Class Members. (Szamet Decl.
24 ¶153.) Additionally, the Named Plaintiff was at risk for paying for Defendant’s legal fees and
25 costs in the event that Defendant prevailed at trial. (Szamet Decl. ¶154.)

26 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

27 As indicated on the Proof of Service, Plaintiff’s Motion for Final Approval of Class Action
28 Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development

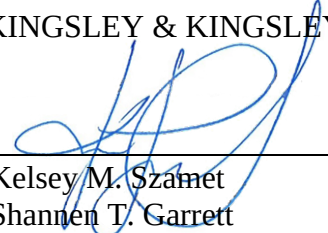
Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "6." (Szamet Decl. ¶160.)

VII. CONCLUSION

Plaintiff respectfully submits that the proposed Settlement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests that the Court (1) grant Final Approval of the Settlement and all of its terms; (2) award attorneys' fees and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs; (3) award ILYM Group, Inc. claims administration fees of \$15,000.00; and (4) award the Named Plaintiff an enhancement of \$5,000.00; and (5) enter judgment.

DATED: May 17, 2022

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

Shannen T. Garrett

Attorneys for Plaintiff Carlos Humberto Carrillo
Diaz and the Proposed Class

(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 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On May 17, 2022, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

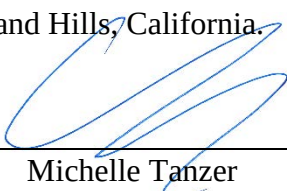
Sarju A. Naran Maysa Saeed Jackie Rivera sarju.naran@hogefenton.com maysa.saeed@hogefenton.com jackie.rivera@hogefenton.com Hoge, Fenton, Jones & Appel, Inc. 55 South Market Street, Suite 900 San Jose, CA 95113-2324	Emil Davtyan emil@davtyanlaw.com Davtyan Law Firm, Inc. 880 E. Broadway Glendale, CA 91205
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[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] (BY ELECTRONIC MAIL TRANSMISSION): I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[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 May 17, 2022, at Woodland Hills, California.



Michelle Tanzer