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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE – CIVIL COMPLEX CENTER

MIGUEL CATALAN, individually and on
behalf of others similarly situated, and as an
aggrieved employee and Private Attorney
General,

Plaintiff,

vs.

CALIFORNIA ROADSIDE SERVICE, LLC,
a California limited liability company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2020-01165556-CU-OECXC

[Assigned for all purposes to the Hon. William
D. Claster, Dept. CX104]

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Hearing Date: October 6, 2023
Hearing Time: 9:00 a.m.
Dept: CX104

Reservation Number: 74090220

Complaint filed: October 16, 2020
Trial: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on October 6, 2023 at 9:00 a.m. in Department CX104 of the above-captioned Court located at 751 West Santa Ana Blvd., Santa Ana, California 92701, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Plaintiff Miguel Catalan (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant California Roadside Service, LLC. (“Defendant”). As part of that approval, the Plaintiff will request that the Court:

1. Grant final approval of the Settlement attached to the Declaration of Heather M. Davis, Esq., on the grounds that the proposed settlement is fair, adequate, and reasonable because:
 - a. The non-reversionary Net Settlement Amount of approximately \$170,393.63 will be paid out to the Participating Class Members;
 - b. Proper Notice was provided to all Class Members pursuant to the terms of the Settlement;
 - c. No objections were submitted to the Settlement; and
 - d. No Class Members requested to be excluded from the Settlement;
2. Award attorneys’ fees in the amount One Hundred Sixteen Thousand Nine Hundred Ninety-Two Dollars and Forty-Eight Cents (\$116,992.48) (35% of the Gross Settlement Amount) to Protection Law Group, LLP (“Class Counsel”);
3. Award costs in the amount of \$14,378.13 to Class Counsel for litigation costs and expenses;
4. Award payment of \$7,500.00 to the Settlement Administrator, ILYM Group, Inc, for the costs of settlement administration;
5. Award a class representative incentive payment of \$5,000.00 to Plaintiff Miguel Catalan;
6. Approve payment of \$20,000.00 for penalties pursuant to California Labor Code Section 2698 *et. seq.* the Private Attorneys General Act of 2004 (“PAGA”) and the distribution of seventy-five percent of these penalties (\$15,000.00) to the California Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (\$5,000.00) to class members who worked

1 within the PAGA Period (“PAGA Members”); and

2 7. Order the funding and distribution of the Gross Settlement Amount in the manner set
3 forth in the Settlement.

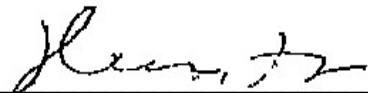
4 The motion is based upon this notice; the attached memorandum of points and authorities; the
5 Declaration of Heather M. Davis, Esq.; the Declaration of Plaintiff Miguel Catalan; the Declaration of
6 Makenna Snow on behalf of ILYM Group, Inc.; the pleadings and other records on file with the Court
7 in this matter, and any other further evidence or argument that the Court may properly receive at or
8 before the hearing.

9 Respectfully submitted,

10 DATED: September 11, 2023

PROTECTION LAW GROUP, LLP

11
12 By:



13 Heather M. Davis
14 Amir Nayebdadash
15 Carlos Jimenez
16 Attorneys for Plaintiff
17 FRANCISCO SALOME RENOJ HERNANDEZ
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Miguel Catalan (“Plaintiff”) seeks final approval of a class action and PAGA settlement with Defendant California Roadside Service, LLC (“Defendant”). The settlement provides for: (1) A non-reversionary Gross Settlement Amount of \$334,264.24; (2) attorneys’ fees in the amount of \$116,992.48 (35% of the Gross Settlement Amount); (3) actual litigation costs and expenses incurred by Class Counsel in the amount of \$14,378.13; (4) payment of \$20,000.00 for PAGA Penalties (75% of which shall be distributed to the LWDA and 25% to PAGA Members); (5) payment of \$7,500.00 to the Settlement Administrator, ILYM Group, Inc. (“ILYM”); and (6) a requested class representative service award payment of \$5,000.00 to Plaintiff. The result is a Net Settlement Amount (“NSA”) of \$170,393.63 that will be distributed to a Class of 71 Participating Class Members who worked for Defendant as hourly-paid, non-exempt employees in the State of California at any time from October 16, 2016, and ending on May 31, 2022. Participating Class Members will receive an average Individual Settlement Payment of approximately \$2,399.91 and a high payment of \$8,550.11. Declaration of Makenna Snow of ILYM Group, Inc. (“ILYM Decl.”) ¶13. PAGA Members will receive an average of \$73.53, with the estimated highest payment being \$145.80. ILYM Decl. ¶13.

At Preliminary Approval, the Court established a presumption of fairness after extensively analyzing the terms of the Settlement and underlying settlement efforts. This presumption of fairness is confirmed here following notice of the proposed settlement to the class. There have been zero requests for exclusion, and there have been zero objections to the terms of the proposed settlement. ILYM Decl. ¶¶10-12. The lack of objections and the lack of requests for exclusion is further evidence, in addition to the factors extensively analyzed at Preliminary Approval, that demonstrate the Settlement is a fair and reasonable result. Accordingly, the Court should approve of the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant is a tow truck service operator which also responds to and provides various roadside services including battery service/replacement, tire installations, lock-out services, fuel delivery, and vehicle towing. Plaintiff Miguel Catalan was employed by Defendant as a non-exempt,

hourly paid employee during the Class Period. Declaration of Heather M. Davis (“Davis Decl.”) ¶12 see also Declaration of Plaintiff Miguel Catalan in support of Motion for final Approval (“Catalan Decl.”) ¶4.

On October 16, 2020, Plaintiff provided notice to the California Labor Workforce Development Agency (“LWDA”) and Defendant of his intent to seek civil penalties under Labor Code § 2699, *et seq.* (“PAGA”). That same day, Plaintiff filed his wage and hour class action complaint with the Orange County Superior Court (Case No. 30-20200116556-CU-OE-CXC) alleging the following ten (10) causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Failure to Provide Accurate Wage Statements; (8) Failure to Keep Accurate Payroll Records; (9) Failure to Reimburse Necessary Business Expenses; and (10) Violation of California Business & Professions Code §§ 17200, *et. seq.* against Defendant. On December 21, 2020, Plaintiff filed a First Amended Complaint (“FAC”) adding a cause of action for Violation of the Private Attorneys General Act (PAGA). Davis Decl. ¶13. On June 2, 2021, Defendant filed its Motion to Compel (“MTC”) Plaintiff to arbitrate his claims, and Plaintiff filed his Opposition. Davis Decl. ¶14. Defendant’s MTC was heard on July 2, 2021, and the Parties stipulated to continue the MTC until after the March 29, 2022 mediation with respected mediator, Lynn Frank, Esq. *Id.*

The Parties agreed to stay formal discovery, exchange informal discovery and engage in a private mediation with Lynn Frank, Esq. Davis Decl. ¶15. Pursuant to this agreement, Defendant provided Plaintiff with extensive discovery including a 20% sampling of time and payroll records for all pay periods at issue. The 20% sampling included all employees employed during the identified pay periods and the Parties made efforts to ensure that the sampling included pay periods throughout the class period to ensure that it was a large enough and representative sampling to ensure they could analyze the claims of the class in a representative fashion. In addition, Defendant also produced its employee handbooks which included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of wages and other relevant areas of investigation. Finally, Defendant produced information regarding the number of putative class members, the number of current versus

1 former employees, the total workweeks and pay periods worked by the Class, and the average rate of
2 pay for hourly employees during the class period. *Id.*, ¶¶ 16-18. This discovery and investigation
3 allowed Plaintiff's Counsel to perform a comprehensive damages analysis and estimate Defendant's
4 potential liability. *Id.* ¶19.

5 After a thorough investigation and analysis of this data, on March 29, 2022, the Parties
6 attended a formal mediation with Lynn Frank, Esq., a neutral and highly respected mediator with
7 extensive experience in complex wage and hour matters. At the mediation, the Parties engaged in
8 intensive settlement discussions during which they debated their respective positions and exchanged
9 views regarding the strengths and weaknesses of the alleged claims. For the first time at mediation,
10 Defendant represented that it was in financial distress. At the conclusion of the mediation, the
11 mediator issued a mediator's proposal. Plaintiff's acceptance was contingent Defendant providing
12 substantial financial documents, tax returns, balance sheets, and letters from a Certified Public
13 Accountant to support the claim that it was under serious financial distress. *Id.*, ¶20. On April 1, 2022,
14 the Parties accepted the mediator's proposal on a class and representative basis for a Gross Settlement
15 Amount of \$250,000.00. *Id.*, ¶21. Thereafter, the Parties worked diligently to negotiate and
16 memorialize the terms of a long form settlement. Between April 25 and 28, 2022, after extensive
17 discussions and revisions to the agreement, the Parties entered into a fully executed Class Action
18 Settlement Agreement. *Id.*, ¶22, **Ex. 1** (hereinafter "Agreement").

19 On May 23, 2022, Plaintiff filed his Motion for Preliminary of Class Action Settlement
20 ("MPA"). Davis Decl. ¶23. The Court continued Plaintiff's MPA a few times, and set it for
21 September 22, 2022. *Id.* At the September 22, 2022 MPA hearing, the Court ordered supplemental
22 briefing to be filed by October 21, 2022 to address the Court's concerns and continued Plaintiff's
23 MPA hearing to November 4, 2022. Davis Decl. ¶24.

24 Plaintiff filed the supplemental briefing on October 21, 2022, which included a First
25 Amendment to Joint Stipulation of Class Action and PAGA Settlement ("First Amendment"). The
26 First Amendment changed the Responses deadline from 45 days to 60 days. Davis Decl. ¶25, **Ex. 2.**

27 On November 3, 2022, the Court issued a Tentative Ruling granting Plaintiff's MPA. Davis
28 Decl. ¶26.

1 On November 8, 2022, ILYM sent the Parties an administration timeline, indicating that the
2 deadline for Defendant to produce the class data to the ILYM was November 18, 2022. Defendant
3 failed to produce the class data to ILYM by November 18, 2023, and did not produce the class data
4 to ILYM until March 14, 2023. Davis Decl. ¶27.

5 The Court originally set Plaintiff's Motion for Final Approval ("MFA") to be heard on May
6 5, 2023, requiring Plaintiff to file his MFA by April 13, 2023. In order to address this timing issue,
7 on March 23, 2023, the Parties filed a Joint Stipulation to Continue the Hearing Date on Plaintiff's
8 MFA asking the Court to continue the hearing date to August 11, 2023. Davis Decl. ¶28.

9 Due to the escalator clause being triggered (Agreement ¶39), on May 8, 2023, the Parties filed
10 a Second Joint Stipulation to Continue the Hearing Date on Plaintiff's MFA asking the Court to
11 continue the hearing date to October 6, 2023. Thereafter, on May 12, 2023, the Parties filed a Second
12 Amendment to the Agreement. Davis Decl. ¶29, Ex. 3.

13 Now, following notice of the proposed settlement to the Class and providing Class Members
14 the opportunity of opt-out of the Settlement or be heard, Plaintiff moves for final approval of the
15 Settlement and have notified the LWDA of the hearing date, time and location for the scheduled final
16 approval hearing on this matter. Davis Decl. ¶30.

17 **III. THE ADMINISTRATION PROCESS AND PLAN OF DISTRIBUTION**

18 On November 4, 2022, Class Counsel sent ILYM a copy of the Minute Order granting
19 Preliminary Approval, the Agreement, the First Amendment to the Agreement, and a copy of the Court
20 approved text for the Notice Packet from Class Counsel. The Agreement included the formula for
21 determining the estimated sum to paid to each individual. Davis Decl. ¶¶39-41; IYLM Decl. ¶4.

22 On March 14, 2023, ILYM Group received the class data file from Counsel for Defendant,
23 which contained the name, social security number, last known mailing address, last known telephone
24 number, and the number of Workweeks worked for each Settlement Class Member during the Class
25 Period and PAGA Members during the PAGA Period. The Class List contained 71 Class Members
26 and 68 PAGA Members. Davis Decl. ¶¶42; IYLM Decl. ¶5.

27 After receiving the Order and Notice Packet, and as part of the preparation for mailing, ILYM
28 processed all 71 names and addresses contained in the class list against the National Change of Address

1 database maintained by the U.S. Postal Service in an attempt to verify the Class Members mailing
2 address and then mailed the Notice Packet in English and Spanish to the Class Members on May 16,
3 2023. IYLM Decl. ¶¶6-7, Ex. A; Davis Decl. ¶43. If a notice was returned to ILYM without a
4 forwarding address, ILYM performed a computerized skip trace in an effort to obtain an updated
5 address to remail the Notice Packet. Using these processes, ILYM successfully delivered 7 out of 10
6 returned notices. ILYM Decl. ¶¶8-9.

7 Following final approval of the settlement, and starting on May 31, 2022 and ending on January
8 30, 2025, Defendant shall make installment payments to ILYM of the Gross Settlement Amount.
9 Thereafter, within 10 calendar days after January 30, 2025, the Settlement Administrator shall make
10 all Court-approved payments, including payments to (a) the Participating Class Members and PAGA
11 Members; (b) Plaintiff; (c) Plaintiff's Counsel; (d) the LWDA; and (e) itself, for Court-approved
12 services. Davis Decl. ¶44; Second Amendment to Agreement.

13 **IV. STANDARD OF REVIEW FOR FINAL APPROVAL**

14 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48
15 Cal.App.4th 1794 (1996). California courts look to federal authority for guidance with class action
16 settlements. *Id.* at 1801, n.7. "In general, questions whether a settlement was fair and reasonable,
17 whether certification of the class was proper, and whether the attorney fee award was proper are
18 matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91
19 Cal.App.4th 224, 234-35 (2001)(disapproved of on other grounds).

20 Accordingly, a court's decision to approve a class action settlement may be reversed only upon
21 a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
22 Cir. 1998). To determine whether the settlement is fair, courts consider relevant factors such as "the
23 strength of Plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the
24 risk of maintaining class action status through trial, the amount offered in settlement, the extent of
25 discovery completed, the stage of the proceedings, the experience and views of counsel, the presence
26 of a governmental participant, and the reaction of the class members to the proposed settlement."
27 *Dunk*, 48 Cal.App.4th at 1801. "The list of factors is not exclusive and the court is free to engage in a
28

balancing and weighing of the factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at 245 (disapproved of on other grounds).

In considering the class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement taken as a whole is “fair, adequate, and reasonable.” *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 55 (2008). Even if the relief afforded by the proposed settlement is substantially narrower than it would be if the lawsuit was to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.* The burden is on the proponent of the settlement to show that it is fair and reasonable. *Id.* at 245 (disapproved of on other grounds). However, 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. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

V. THE SETTLEMENT IS PRESUMED FAIR

Because this court preliminarily approved the Settlement, it necessarily determined that the Settlement appeared to be fair and reasonable. The same factors that allowed the Court to preliminarily approve the settlement apply here and are reinforced in these moving papers including that: (1) the Settlement was reached through arm’s-length bargaining; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; and (3) class counsel is experienced in similar litigation. Additionally, the reaction of the class members, which was unknown at preliminary approval, also supports the reasonableness of the proposed Settlement. *See generally*, Davis Decl. ¶¶14-30.

A. The Settlement Was Reached Through Arm’s-Length Bargaining

California courts recognize that “a presumption of fairness exists where . . . [a] settlement is reached through arm’s-length bargaining.” *Wershba*, 91 Cal. App. 4th at 245 (disapproved on other

1 grounds); see also *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the
2 Parties engaged in arm's-length, non-collusive negotiations at all times. This litigation was hotly
3 contested and settlement negotiations were at all times at arm's length and adversarial. The Settlement
4 was only reached following a full day of mediation with Lynn Frank, Esq, a highly respected mediator
5 with substantial experience mediating wage and hour cases. Following mediation, the Parties engaged
6 in additional negotiations before finalizing the long-form settlement agreement presently before the
7 Court. At all times, Plaintiff was willing and prepared to litigate this matter if the Parties had been
8 unable to reach a favorable resolution. Davis Decl. ¶¶14-30 & 32-36.

9 **B. There was Sufficient Investigation, Discovery and Analysis by Experienced Counsel**

10 Class Counsel conducted significant investigation into the claims alleged by Plaintiff before
11 reaching a settlement in this matter. Class Counsel met with Plaintiff, conducted legal research
12 regarding the applicable Labor Code Sections and thoroughly researched Defendant's employment
13 policies and practices. Prior to mediation, the parties engaged in extensive formal and informal
14 discovery. As previously reviewed by the Court and set forth extensively in Plaintiff's Motion for
15 Preliminary Approval, prior to mediation, Defendant informally produced a randomly selected 20%
16 sampling of time records and payroll records, all relevant written policies in effect during the class
17 period, and other relevant documents. Defendant also produced information regarding the number of
18 putative class members, the number of current versus former employees, the total workweeks and pay
19 periods worked by the Class, and the class members' average rate of pay. Review and analysis of this
20 information allowed Plaintiff to conduct a class-wide analysis of Defendant's potential damages and
21 intelligently and effectively analyze the strengths and weaknesses of the case and Defendant's
22 potential exposure. The Parties extensively briefed these issues, provided their analysis to the
23 mediator, and debated their respective positions. After a full day of mediation, and with the help of
24 the mediator, the parties were able to reach an agreement to resolve this dispute on a class and
25 representative basis for a Gross Settlement Amount of \$250,000.00 (which increased to \$334,264.24
26 after the escalator clause was triggered). Davis Decl. ¶¶14-30.

27 Moreover, the settlement negotiations were conducted by highly capable and experienced
28 counsel. Class Counsel's experience and the extensive investigation allowed Plaintiff to enter this

1 Settlement aware of the risks associated with the case and permitted Class Counsel to negotiate an
2 informed, reasonable, and intelligent Settlement. Davis Decl. ¶¶2-9, After substantial informal
3 discovery and investigation, it is Class Counsel’s opinion that the settlement is in the best interest of
4 the class and provides for a guaranteed result over a reasonably short period as opposed to waiting
5 years for the same, or possibly worse, result. Davis Decl. ¶¶11, 35-38.

6 **C. There Have Been No Objections, and No Requests for Exclusion**

7 California courts have consistently found that a small number of objectors indicates the class’s
8 support for a settlement and strongly favors final approval. See *Wershba*, 91 Cal.App.4th at 250-51
9 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-53 (final
10 approval granted despite 9 objectors). Here, as of the filing of this Motion, there have been no
11 objections to the settlement and no requests for exclusion, a participation rate of one hundred percent
12 (100.00%). ILYM Decl. ¶¶10-12. The lack of objections, zero requests for exclusion, and strong
13 participation in the Settlement by the Class further demonstrate that the proposed settlement is both
14 fair and reasonable. Davis Decl. ¶37.

15 **VI. THE REQUESTED ATTORNEYS’ FEES SHOULD BE APPROVED**

16 **A. The Standard For Attorneys’ Fees In A Class Action**

17 Where the amount of a settlement is a “certain easily calculable sum of money,” California
18 courts may calculate attorneys’ fees as a reasonable percentage of the settlement created. See *Dunk*,
19 48 Cal.App.4th at 1808. The ultimate goal is the award of a “reasonable” fee to compensate counsel
20 for their efforts, irrespective of the method of calculation. See *Apple Computer, Inc. v. Super. Ct.*, 126
21 Cal.App.4th 1253, 1270 (2005). Trial courts have wide latitude in assessing the value of attorneys’
22 fees and their decisions will not be disturbed on appeal absent a manifest abuse of discretion. See
23 *Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). California law provides that attorneys’
24 fees awards should be equivalent to fees freely negotiated in the legal marketplace and paid in
25 comparable litigation based on the result achieved and risk incurred. *Id.* at 47, 50. Fee awards that are
26 too small will “chill the private enforcement essential to the vindication of many legal rights and
27 obstruct the representative actions that often relieve the courts of the need to separately adjudicate
28 numerous claims.” *Id.* at 53. Therefore, fees in class and representative actions should approximate

1 the probable terms of a contingent-fee contract negotiated by a sophisticated attorney and client in
2 comparable litigation. *Id.* at 47. The percentage-of-the-benefit approach is preferred in such cases
3 because “it better approximates the workings of the marketplace than the lodestar approach.” *Id.*

4 **B. A Percentage of the Entire Fund is Appropriate**

5 California and federal courts have long recognized that an appropriate method for determining
6 the award of attorneys’ fees is based on a percentage of the total value made available to class members
7 by the settlement. *See Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977) *Serrano v.*
8 *Priest*, 20 Cal.3d 25, 34 (1977). The California Supreme Court has urged trial courts to follow federal
9 authority in this area. *See Green v. Obledo*, 29 Cal.3d 126, 146 (1981). The purpose of this equitable
10 doctrine is to spread litigation costs among all beneficiaries so that the active beneficiary does not bear
11 the entire burden alone. *See Vincent*, 557 F.2d at 769.

12 Courts have consistently recognized that class litigation is necessary to protect the rights of
13 individuals whose injuries and/or damages are too small to economically justify individual
14 representation. Accordingly, in determining a reasonable common fund fee award, courts award fees
15 to serve as an economic incentive for lawyers to engage in class litigation that will permit increased
16 access to the judicial system for meritorious claims and deter wrongdoing. *See R. Pearle, California*
17 *Attorney Fee Awards* (CEB, 1993) §7A, p. 5-7; *Vincent*, 557 F.2d at 769.

18 Furthermore, a common fund award is not dependent on a determination of the actual amount
19 claimed out of the fund by those entitled—it is the creation of the fund that is the crucial fact. *In*
20 *Winslow v. Harold G. Ferguson Corp.*, 25 Cal.2d 274, 284 (1944), the California Supreme Court
21 expressly held that “it is equitable that [the attorney’s] compensation and expenses should come from
22 the entire fund saved for all classes concerned before it is distributed.” Likewise, *Lealao* expressly
23 recognizes that “in a traditional common fund case, [a percentage-based fee] may be calculated on the
24 basis of the total fund made available rather than the actual payments made to the class.” *Lealao*, 82
25 Cal.App.4th at 51. *In Wershba v. Apple Computer, Inc.*, the Court of Appeal definitively decided the
26 issue in favor of granting attorneys’ fees that are a percentage of the total value of the settlement
27 obtained by the efforts of counsel. In determining reasonable attorneys’ fees, the court valued a
28 settlement based on the total value of the settlement made available to class members. 91 Cal.App.4th

at 247 (disapproved on other grounds).

Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *Newberg on Class Actions*, 4th Ed. 2002, §14:6. According to *Newberg*, “. . . no general rule could be articulated as to what is a reasonable percentage of a common fund. Usually, 50 percent of the fund is the upper limit on a reasonable fee award . . . though somewhat larger percentages are not unprecedented.” *Id.*

The amount of attorney fees provided by the Settlement Agreement, *i.e.*, 35% of the Gross Settlement Amount, is clearly reasonable. Class Counsel risked substantial economic loss when they took this case on a contingency basis, knowing that there would likely be a long battle with an aggressive defense firm including the very real possibility of potential appeals. As a result of class counsel taking on this risk and the efforts of class counsel, the Class Members will now be able to recover for these claims. The requested fee therefore makes sense because (1) it is consistent with the private marketplace where contingent-fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving the maximum possible resolution of the case; and (3) it encourages the most efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement. As such, Class Counsel has obtained a fair recovery for the Class which justifies a fee award based on the percentage of the common fund. See Davis Decl. ¶¶45, 52-53.

C. The Fee is Reasonable Based on the Dunkel Factors

In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir. 1991), the court identified twelve factors to consider in awarding fees in a common fund case.¹ The court noted that, “the analysis in a common fund case focuses not on the Plaintiff’s position as ‘prevailing parties,’ but on a showing that the fund conferring a benefit on the class resulted from their efforts” and thus in common fund cases “the monetary results achieved predominate over all other criteria.” *Id.* at 774. Plaintiff will address some of the factors that are particularly relevant here.

¹ These factors include the (1) time and labor required, (2) difficulty involved, (3) skill required, (4) preclusion of employment, (5) customary fee, (6) contingent or fixed fee, (7) time limitations, (8) results obtained, (9) experience of the attorney, (10) undesirability of the case, (11) relationship with the client, and (12) awards in similar cases.

1 ***1. Time and Labor Required***

2 Class Counsel has aggressively litigated this case from the initial pleading to the settlement of
3 this action. Class Counsel participated in case strategy and analysis and drafted, reviewed, and revised
4 pleadings, including extensive investigation, analysis, and research prior to filing the lawsuit and
5 during litigation and mediation. Plaintiff's Counsel was able to convince Defendant to attend
6 mediation and thereafter spent substantial time reviewing and analyzing documents and discovery in
7 preparation for mediation and participating in settlement negotiations. Even after an agreement was
8 reached in principle, Class Counsel spent numerous hours drafting and revising the Settlement
9 Agreement, drafting the motion for preliminary approval, and coordinating the notice process with the
10 settlement administrator. Davis Decl. ¶¶48-50. In the end, this case consumed more than 332.90 hours
11 of Class Counsel's efforts. However, a settlement was finally achieved, despite all obstacles, because
12 of the work performed by Class Counsel. Davis Decl. ¶57, **Ex. 4**. In addition to Class Counsel's time,
13 litigating this case also required counsel to incur significant costs. In total, more than \$14,378.13 in
14 costs have been necessary to successfully resolve this case. Davis Decl. ¶66, **Ex. 5**. In light of the time
15 expended and costs involved, the requested attorneys' fees are reasonable. *Id.*

16 ***2. The Skill Required to Perform Legal Services***

17 In addition to the time and effort required, this matter also required substantial skill to litigate
18 and Class Counsel were required to overcome numerous barriers in order to reach a settlement.
19 Defendant denied liability, felt strongly about its ability to prevail, challenged the theories of Class
20 Counsel, and mounted several defenses that posed significant problems moving forward. Substantial
21 skill was also necessary in order to adequately evaluate Plaintiff's claims. Class Counsel were required
22 to review and analyze a large amount of poorly formatted time and payroll data, a complex process
23 that took considerable time and energy in order to determine Defendant's underlying practices. Class
24 Counsel were able achieve a substantial settlement against experienced defense counsel and despite
25 several strong defenses. This result was made possible in large part due to Class Counsel's skill and
26 experience. Davis Decl. ¶¶ 15-16, 35, 48, 57-60 & 63.

1 **3. The Value, Amount, and Results Achieved**

2 The Settlement represents a fair resolution of this case given the risks inherent in litigating it
3 through trial and possible appeals. Counsel obtained a non-reversionary Gross Settlement Amount of
4 \$250,000.00 (which increased to \$334,264.24 after the escalator clause was triggered). Although Class
5 Counsel predicted that Plaintiff would prevail on all causes of action at trial, a number of risks reduced
6 the case's value. For instance, as discussed extensively in Plaintiff's Motion for Preliminary Approval,
7 Defendant raised issues with Plaintiff's meal and rest claims regarding the necessity of individualized
8 proof. Plaintiff faced similar difficulties with his claims regarding off-the-clock work. Defendant
9 contended these issues would prevent Plaintiff from successfully recovering on these claims which
10 were a major focus of the litigation. Despite these challenges, Defendant ultimately agreed to pay a
11 non-reversionary Gross Settlement Amount of \$250,000.00 (which increased to \$334,264.24 after the
12 escalator clause was triggered). Davis Decl. ¶35. This will provide an average payment of
13 approximately \$2,399.91 to the putative class members and an estimated high payment of more than
14 \$8,550.11. ILYM Decl. ¶13.

15 **4. Whether the Fee is Fixed or Contingent**

16 Whether the representation was provided on a contingency basis, as it was in this case, is an
17 important factor:

18 **A contingent fee must be higher than a fee for the same legal services paid as they**
19 **are performed** [and] [...] compensates the lawyer not only for the legal services he
20 renders but for the loan of those services. A lawyer who both bears the risk of not being
21 paid and provides legal services is not receiving the fair market value of his work if he
22 is paid only for the second of these functions.

23 *Cates v. Chiang*, 213 Cal.App.4th 791, 823 (2013).

24 The fact that this case was litigated on a contingent basis strongly supports the award of
25 attorneys' fees requested by Plaintiff. If Class Counsel had been unsuccessful they would not have
26 received any fee or recovered any portion of the expenses spent litigating this matter. Class Counsel
27 has borne all of the risks and costs of litigation and will not receive any compensation until recovery
28 is obtained in this case. These are the types of risks Class Counsel faced litigating this matter on a
contingent basis and this risk is a relevant factor when considering the reasonableness of the requested
fee. Davis Decl. ¶¶ 51, & 62-63.

D. The Fee is Reasonable Under a Lodestar Analysis

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to “cross-check” the results of the other. This said, Courts have cautioned that the primary basis of the fee award in common fund cases remains the percentage of the fund method and have cautioned that class counsel should not necessarily receive a lesser fee achieving a speedy and timely result for class members in need of immediate relief. *See e.g. Vizcaino v. Microsoft Corp.*, 290 F. 3d. 1043, 1050 fn.1 (2002). Indeed, courts have noted that “it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement.” *Id.* (quoting *Camden I Condominium Ass’n*, 946 F.2d at 773–74.)

Here, the lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys who worked on this matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-1132 (2001). Counsel are entitled to compensation for every hour reasonably spent on the matter. *See id.* at 1133.

1. Counsel Spent a Reasonable Amount of Time

Reasonableness of hours is assessed by “the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las Virgenes Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, this case was highly contested and required a significant amount of time and labor. Defendant raised significant defenses and denied liability. Class Counsel invested significant time and labor into this matter even before this action was filed to investigate Defendant’s policies, practices, business model, and merits-based issues including significant time investigating and reviewing Plaintiff’s personnel files, time records, and payroll records, and strategizing how to certify the alleged claims and bring these claims to trial. Class Counsel also spent significant time drafting and revising the PAGA Notice sent to the LWDA, drafting the complaint, drafting the pleadings filed with this Court and investigating the alleged claims. Class Counsel engaged in extensive efforts to meet and confer with Defendant’s counsel and as a result were able to reach an agreement to attend mediation rather than engaging in further litigation. Davis Decl. ¶¶ 15-20, 32-34, 47-49, & 57-59.

1 In advance of mediation, class counsel engaged in extensive investigation, review, and analysis
2 of the informal discovery provided by Defendant so that they could effectively negotiate the proposed
3 settlement. Class Counsel spent many hours reviewing the documents produced by Defendant and
4 analyzing data from thousands of pages of documents. After an agreement was reached in principle,
5 class counsel spent significant time negotiating terms of the settlement to obtain the best possible
6 outcome for the class. Class Counsel conservatively worked a total of 332.90 hours on this matter.
7 Davis Decl. ¶¶ 57-60, **Ex. 4**. As detailed above and set forth more fully in the accompanying
8 Declaration of Heather M. Davis and the exhibits thereto, these services included drafting the initial
9 pleadings, research into claims and defenses presented by Defendant, communicating with Plaintiff,
10 reviewing and analyzing records, policies, and memorandum, drafting the mediation brief, attending
11 mediation, drafting the settlement agreement, and many more. *See* Davis Decl. **Ex. 4**. Accordingly,
12 Class Counsel has spent a reasonable number of hours working on this matter.

13 ***2. Class Counsel's Hourly Rate is Reasonable***

14 Both California and federal courts recognize that attorneys should be compensated for
15 providing representation on a contingency basis and for taking on the risks associated with said
16 representation, as well as being provided with financial incentives to enforce important rights and
17 protections like those at issue in this Action. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding
18 attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding
19 attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates
20 for winning contingency cases." *See id.*

21 As previously discussed, Class Counsel has been actively involved in this case from the filing
22 of the initial complaint to completing these final approval papers. Class Counsel invested time and
23 bore the risk that there could have been no recovery. Ultimately, Class Counsel was successful in
24 reaching a settlement of \$250,000.00 (which increased to \$334,264.24 after the escalator clause was
25 triggered) on behalf of the Class. To date, the lodestar for Class Counsel is approximately \$151,670.00.
26 *See* Davis Decl. ¶¶ 54-60.

27 First, Settlement represents an outstanding result at the conclusion of heavily contested
28 litigation. The Settlement provides Class Members with an average payment of approximately

1 \$2,399.91. ILYM Decl. ¶13. In Class Counsel's view, this amount equals or exceeds many of the
2 payments achieved in similar litigation. *See e.g. Salucci v. Amada Senior Care, Inc.*, Orange
3 County Superior Court Case No. 30-2015-00778081 (average settlement payment of \$293); *Waquia*
4 *v. JAMV*, Alameda Superior Court Case No. RG19001253 (March 25, 2021) (average payment of
5 \$79.04). While each case faces its own unique challenges and circumstances that can make direct
6 comparison difficult, the overwhelming value obtained for the class here demonstrates the
7 outstanding results obtained and should be an important factor in the Court's decision to approve the
8 requested multiplier and ultimately Class Counsel's requested fee.

9 Second, this matter involved difficult questions and required substantial skill by Class Counsel
10 in order to obtain a settlement for the Class including a complex data analysis to prove the minimum
11 wage and overtime claims. These claims were largely based on unrecorded, off-the-clock work
12 performed by the Class Members both before and after their shift and as a result of timekeeping errors
13 by Defendant. This matter also required substantial skill by Class Counsel to establish a pattern and
14 practice that pressured employees to work off-the-clock, and the individualized nature of such
15 damages presented legitimate concerns regarding the manageability of the case. Furthermore, despite
16 these complications, Class Counsel took on this case on a contingent basis at considerable risk. This
17 risk is particularly relevant here in light of the complex questions related to certification of the
18 proposed claims and substantial hurdles that were required to overcome. Given the complex nature of
19 these claims, many attorneys would have been unprepared to litigate these claims and unable to obtain
20 the substantial settlement reached by Class Counsel. This risk is also notable given the broad economic
21 uncertainty many companies face during these challenging times. Davis Decl. ¶¶ 61-65.

22 For these reasons, Plaintiff respectfully requests the Court award the requested attorneys' fees
23 of \$116,992.48. *Id.* ¶65.

24 **VII. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

25 Class Counsel request the reimbursement of the costs incurred litigating this case in the amount
26 of \$14,378.13. These costs include filing fees, mediation fees costs for attending hearings with the
27 Court, court reporter transcripts and other deposition costs, expert costs, and many others. These costs
28 are \$20,621.87 less than the \$35,000.00 allocated under the Settlement Agreement meaning an

1 additional \$20,621.87 will be available for distribution to the Participating Class Members. These
2 costs are both reasonable and necessary for the successful resolution of this matter and should be
3 approved by the Court. Davis Decl. ¶66, Ex. 5.

4 **VIII. THE REQUESTED SERVICE PAYMENT IS REASONABLE**

5 Plaintiffs in class action lawsuits are eligible for reasonable service payments as compensation
6 “for the expense or risk they have incurred in conferring a benefit on other members of the class.”
7 *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant
8 approval of class action settlement agreements containing enhancements for the class representative,
9 which are necessary to provide incentive to represent the class and are appropriate given the benefit
10 the class representatives helped to bring about for the class. *See In re Online DVD Rental*, 779 F.3d
11 934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments).

12 Plaintiff initiated and has stepped forward in this litigation on behalf of his former co-workers
13 and the LWDA, who will now benefit from the settlement. Plaintiff invested substantial time and effort
14 into this litigation including his own research, reviewing documents, and extensive discussions with
15 Class Counsel. Further, the requested amount is also extremely reasonable given the benefit gained by
16 other Class Members. For these reasons, Plaintiff requests that a Class Representative Incentive
17 Payment of \$5,000.00 to Plaintiff be preliminarily approved by the Court. *See Catalan Decl.* ¶¶4-19;
18 *Davis Decl.* ¶¶ 67-73.

19 **IX. PAYMENT TO THE SETTLEMENT ADMINISTRATOR**

20 The Settlement Agreement calls for the award of up to \$7,500.00 to the Settlement
21 Administrator, ILYM Group, Inc, for the costs associated with administration of the settlement. ILYM
22 was able to administer this matter for \$7,500 and is seeking \$7,500.00 in costs associated with
23 administration of the settlement. The Settlement Administrator is a necessary third-party who has
24 performed substantial services on behalf of the putative class, and this payment should be approved
25 by the Court. *Davis Decl.* ¶74; *ILYM Decl.* ¶14.

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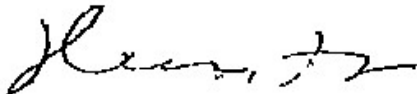
1 **X. CONCLUSION**

2 For reasons stated above, Plaintiff respectfully requests that the Court grant Plaintiff's Motion
3 for Final Approval and enter Judgment in this case pursuant to the terms of the Settlement.

4 DATED: September 11, 2023

Respectfully Submitted,

5 **PROTECTION LAW GROUP, LLP**

6
7 By: 
8 Heather Davis
9 Amir Nayebdadash
Attorneys for Plaintiff