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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

CHARLES RHYU, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

v.

ATIEVA USA, INC., an unknown entity;
ATIEVA, INC., a California corporation;
Lucid USA, Inc. a Corporation, and DOES
1 through 50, inclusive,

Defendants.

) Case No. RG20084138
)
) [Assigned for All Purposes to the Hon. Evelio
) Grillo, Dept. 21]
)
) **PLAINTIFF'S NOTICE OF MOTION AND**
) **MOTION FOR FINAL APPROVAL OF**
) **CLASS ACTION SETTLEMENT;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT**
)
) **Date: September 12, 2023**
) **Time: 10:00 A.M.**
) **Dept.: 21**
)
) **Reservation No.: 855045207260**
)
) Complaint Filed: December 30, 2020
) FAC Filed: February 24, 2021
) SAC Filed: June 9, 2021
) Trial Date: None Set
)

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Attorneys for Plaintiff and the Class

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

2 **PLEASE TAKE NOTICE** that on September 12, 2023, at 10:00 a.m., or as soon
3 thereafter as the matter may be heard, before the Honorable Evelio Grillo, judge presiding, in
4 Department 21 of the above referenced Court located at 1221 Oak Street, Oakland, CA 94612,
5 Plaintiff CHARLES RHYU (“RHYU” or “Plaintiff”) will seek an Order:

6 (1) granting final approval to the Amended Stipulation and Settlement of Class Action
7 and PAGA Claims (“Settlement Agreement” or “Settlement”) in this action;

8 (2) approving distribution of the settlement funds to the class members pursuant to the
9 terms of the Settlement Agreement;

10 (3) approving Plaintiff’s request for an award of the class representative enhancement of
11 \$2,500.00 to Plaintiff pursuant to the terms of the Settlement Agreement;

12 (4) approving Class Counsel’s request for an award of attorneys’ fees to Class Counsel
13 for one-third of the \$90,000.00 gross settlement amount (\$30,000.00, with 10% held back until
14 completion of administration, or \$3,000.00), and reimbursement of litigation costs of \$4,089.89,
15 pursuant to the terms of the Settlement Agreement;

16 (5) approving Plaintiff’s request for payment of the settlement administration costs to
17 ILYM Group, Inc., the Settlement Administrator, in the amount of \$5,990.00 pursuant to the
18 terms of the Settlement Agreement;

19 (6) approving Plaintiff’s request for payment to the LWDA for \$7,500.00 pursuant to the
20 terms of the Settlement Agreement; and

21 (7) entering final judgment as to all members of the Settlement Class in this action.

22 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
23 provides for court approval of the settlement of a purported class action and allows the Court to
24 grant final certification of a class for settlement purposes. In light of the overwhelmingly positive
25 response, as shown by the lack of objections to the settlement and only two (2) opt-outs, there is
26 no question that the settlement is fair, reasonable and adequate and thus should be granted final
27 approval.

28 This Motion will be based on the attached Memorandum of Points and Authorities and

1 the supporting Declarations of Larry W. Lee, Dennis S. Hyun, Edward W. Choi, Plaintiff Charles
2 Rhyu, and Cassandra Polites of ILYM Group, Inc., upon the oral arguments of counsel (should
3 there be any), and on the complete records and file herein.

4
5 Dated: August 17, 2023

DIVERSITY LAW GROUP, P.C.
LAW OFFICES OF CHOI & ASSOCIATES, APLC
HYUN LEGAL, APC
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6
7
8
9 By:



Larry W. Lee
Attorney for Plaintiff and the Class

TABLE OF CONTENTS

Page(s)

I.	INTRODUCTION.....	1
II.	CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT	3
III.	THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL	4
A.	Strength of Plaintiff's Case and Likelihood of Certifying the Class	4
1.	The Class is Ascertainable.....	4
2.	There is a Community of Interest.....	5
a.	There Are Predominant Common Questions of Law and Fact.....	5
b.	Plaintiff's Claims are Typical of the Class Claims	5
c.	Plaintiff Adequately Represented the Class	6
B.	Defendant's Allegations and Unlikelihood of Class Certification	6
C.	Risks, Expenses, and Complexity of Further Litigation	6
D.	The Terms of the Settlement, Negotiation of Settlement, and Reception of the Settlement by Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable	7
E.	Under Well-Established Legal Principles, the Court Should Grant Final Approval of the Settlement.....	8
1.	Standard of Review	8
2.	The Settlement is Presumed to Be Fair.....	9
3.	Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final Approval	10
4.	The Complexity, Expense, and Likely Duration of Continued Litigation Against Defendant Favor Final Approval	11
5.	The Opinion of Experienced Counsel Favors Final Approval	11
IV.	THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT	

1	CHECKS SHOULD BE APPROVED	12
2	V. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT	
3	SHOULD BE APPROVED	12
4	VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED.....	13
5	VII. THE COURT SHOULD APPROVE THE REQUEST FOR	
6	REIMBURSEMENT OF COSTS.....	19
7	VIII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD	
8	BE APPROVED	19
9	IX. LWDA HAS BEEN PROVIDED NOTICE OF THIS MOTION.....	19
10	X. CONCLUSION	19

TABLE OF AUTHORITIES

State Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135, 1146 (2000)	9
<i>City of Oakland v. Oakland Raiders</i> , 203 Cal. App. 3d 78 (1988)	16
<i>Classen v. Weller</i> , 145 Cal. App. 3d 27, 45 (1983)	5
<i>Daar v. Yellow Cab Co.</i> , 67 Cal. 2d. 695, 704 (1967)	4
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794, 1801 (1996)	8, 9
<i>Duran v. U.S. Bank Nat’l Ass’n</i> , 59 Cal. 4th 1 (2014)	7
<i>Flannery v. California Highway Patrol</i> , 61 Cal. App. 4th 629, 632-33 (1998)	17
<i>Ketchum v. Moses</i> , 24 Cal. 4th 1122, 1139 (2001)	17
<i>Laffitte v. Robert Half Int’l</i> , 1 Cal. 5th 480, 503 (Aug. 11, 2016)	13, 15
<i>Lealao</i> , 82 Cal. App. 4th 19, 29–30	15, 17, 18
<i>Lockheed Martin Corp. v. Superior Court</i> , 29 Cal. 4th 1096, 1104-05 (2003)	5
<i>Martino v. Denevi</i> , 182 Cal. App. 3d 553, 559 (1986)	16
<i>PLCM Group, Inc. v. Drexler</i> , 22 Cal. 4th 1084, 1095 (2000)	17
<i>Reese v. Wal-Mart Stores, Inc.</i> , 73 Cal. App. 4th 1225, 1234 (1999)	5
<i>Reyes v. San Diego County Board of Supervisors</i> , 196 Cal. App. 3d 1263, 1271 (1987)	4
<i>Richmond v. Dart Industries</i> , 29 Cal. 3d. 462, 470 (1981)	4, 5
<i>Serrano III</i> , 20 Cal. 3d at 48	17
<i>Serrano v. Priest</i> , 20 Cal. 3d 25, 34 (1977) [<i>Serrano III</i>]	13
<i>Serrano v. Unruh</i> , 32 Cal. 3d 621, 639 (1982)	17
<i>Simons v. Horowitz</i> , 151 Cal.App.3d 834, 846 (1984)	6
<i>Sutter Health Uninsured Pricing Cases</i> , 171 Cal App.4th 495, 512 (2009)	16
<i>Vasquez v. Superior Court</i> , 4 Cal.3d 800, 809 (1971)	4
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal. App. 4th 224, 255 (2001)	16, 18
<i>Wershba v. Apple Computer, Inc.</i> , 91 Cal.App.4th 224, 254 (2001)	13

Statutes

California Code of Civil Procedure §382	4, 8
Labor Code §226.....	19
Labor Code §226(a)	1
Labor Code §226(a)(8)	1
Labor Code §2698, <i>et seq.</i>	1
Labor Code §2699.....	19

Other Authorities

<i>4 Newberg on Class Actions</i> , 4th § 11.41 (2008)	8, 11
Eisenberg & Miller, <i>Attorney Fees in Class Action Settlements: An Empirical Study: 1993-2008</i> , 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010)	14
<i>Manual for Complex Litigation Fourth</i> (Fed. Judicial Center 2004) (“MCL”), § 21.6 at 309.....	8
<i>Report of the Third Circuit Task Force, Court Awarded Attorney Fees</i> 108 F.R.D. 237, 258 (1985).....	15

Rules

California Rule of Court 3.769	8
--------------------------------------	---

Federal Cases

<i>Ackerman v. Kassar</i> , 1993 WL 326453 (9th Cir. 1993)	9
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472, 478 (1980).....	13
<i>Boyd v. Bank of Am. Corp.</i> , 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014).....	18
<i>Boyd v. Bechtel Corp.</i> , 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).....	10, 11
<i>Brotherton v. Cleveland</i> , 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001)	13
<i>Byrd v. Civil Serv. Comm’n</i> , 459 U.S. 1217 (1983).....	8
<i>Church v. Consolidated Freightways, Inc.</i> , 1993 WL 149840 (N.D. Cal. 1993)	8
<i>City of Detroit v. Grinnell Corp.</i> , 495 F. 2d 448, 470 (2d Cir. 1974)	15
<i>Class Plaintiff v. City of Seattle</i> , 955 F.2d 1268, 1291 (9th Cir. 1992).....	7, 8
<i>Cook v. Niedert</i> , 142 F.3d 1004, 1016 (7th Cir. 1998)	13
<i>Eisen v. Carlisle & Jacquelin</i> , 417 U.S. 156, 174-75 (1974)	4

1	<i>Ellis v. Naval Air Rework Facility</i> , 87 F.R.D. 15, 18 (N.D. Cal. 1980)	9, 11
2	<i>Enter. Energy Corp. v. Columbia Gas Transmission Corp.</i> , 137 F.R.D. 240, 251-52 (S.D. Ohio	
3	1991)	13
4	<i>Gaskill v. Gordon</i> , 160 F.3d 361, 363 (7th Cir. 1998).....	14
5	<i>Girsh v. Jepson</i> , 521 F.2d 1 53, 157 (3d Cir. 1975).....	10, 11
6	<i>Glass v. UBS Fin. Servs.</i> , No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan.	
7	27, 2007)	13
8	<i>Hanon v. Dataproducts Corp.</i> , 976 F.2d 497, 508 (9th Cir. 1992).....	6
9	<i>In re Dun & Bradstreet Credit Servs. Customer Litig.</i> , 130 F.R.D. 366, 374 (S.D. Ohio 1990) .	13
10	<i>In re General Motors Corp.</i> , 55 F.3d 768, 806 (3d Cir. 1995).....	10
11	<i>In re Rite Aid Corp. Secs. Litig.</i> , 396 F.3d 294, 306-307 (3d Cir. 2005).....	15
12	<i>In re Wash. Pub. Power Supply Sys. Sec. Litig.</i> , 720 F. Supp. 1379 (D. Ariz. 1989).....	8, 9
13	<i>Linney v. Cellular Alaska P’ship</i> , 151 F.3d 1234, 1238 (9th Cir. 1998)	9, 11
14	<i>Martin v. AmeriPride Servs.</i> , 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011).....	14
15	<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U.S. 306, 314 (1950)	4
16	<i>New York Gaslight Club, Inc. v. Carey</i> , 447 U.S. 54, 62 (1980).....	17
17	<i>Officers for Justice v. Civil Serv. Comm’n</i> , 688 F.2d 615, 625 (9th Cir. 1982)	8, 11
18	<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797, 811-12 (1985)	4
19	<i>Swedish Hospital v. Shalala</i> , 1 F.3d 1261, 1272 (D.C. Cir. 1993)	14
20	<i>Van Bronkhorst v. Safeco Corp.</i> , 529 F.2d 943, 950 (9th Cir. 1976)	8, 11
21	<i>Van Vranken v. Atlantic Richfield Co.</i> , 901 F. Supp. 294, 299-300 (N.D. Cal. 1995)	13
22	<i>Vandervort v. Balboa Capital Corp.</i> , 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014).....	18
23	<i>Vincent v. Hughes Air West, Inc.</i> , 557 F. 2d 759, 769 (9th Cir. 1997)	13
24	<i>Young v. Katz</i> , 447 F.2d 431, 433-34 (5th Cir. 1971).....	11

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On December 30, 2020, Plaintiff CHARLES RHYU (“Plaintiff”) filed a class action
4 Complaint against Defendants Atieva, Inc. and Lucid USA, Inc. (collectively referred to as
5 “Defendants”) for (1) Violation of Labor Code §226(a); and (2) Violation of Labor Code §2698,
6 *et seq.* (the “PAGA”) (Declaration of Edward W. Choi (“Choi Decl.”) at ¶2). After engaging in
7 informal discovery with Defendants, on February 24, 2021, Plaintiff filed his First Amended
8 Complaint redefining the class definitions to exclude a claim for violation of Labor Code
9 §226(a)(8). (*Id.* at ¶3).

10 On April 28, 2021, Defendants filed a Motion to Strike Portions of Plaintiff’s First
11 Amended Complaint. (*Id.* at ¶4). On June 4, 2021, the Court granted, in part, Defendants’
12 motion limiting the class and PAGA period start date to July 5, 2019. (*Id.* at ¶5). Pursuant to the
13 Court’s Order, on June 9, 2021, Plaintiff filed the operative Second Amended Complaint, which
14 amended the class and PAGA period start dates to July 5, 2019 and further added a sub-class. (*Id.*
15 at ¶6). After the filing of the Second Amended Complaint, Plaintiff conducted discovery,
16 including propounding written discovery, engaging in an extensive meet and confer process and
17 the production of documents and class payroll data. (*Id.* at ¶7). Further, Plaintiff sat for his
18 deposition and Plaintiff’s counsel took the deposition of Defendant’s person most knowledgeable
19 (“PMK”). (*Id.*)

20 Plaintiff now seeks the Court’s final approval of the Amended Stipulation and Settlement
21 of Class Action And PAGA Claims (“Settlement Agreement” or “Settlement”).¹ The Settlement
22 Agreement provides for a \$90,000.00 fund to be created for the benefit of the Class, from which
23 attorneys’ fees, litigation costs, enhancement payment to the Plaintiff, payment to the California
24 Labor and Workforce Development Agency (“LWDA”), and costs of settlement administration
25 are to be paid. The entire net settlement fund after these deductions will be paid to all class
26

27
28 ¹ Pursuant to the Court’s Tentative Ruling on Plaintiff’s Motion for Preliminary Approval, the
Parties executed the Amended Stipulation and Settlement of Class Action And PAGA Claims,
which revised the PAGA release and added Legal Aid at Work as the *cy pres* recipient.

members who did not opt-out of the Settlement.

The history of this litigation was previously detailed in Plaintiff’s Preliminary Approval Motion. This Court preliminarily approved this Settlement on April 20, 2023, directing distribution of class notice and scheduling the hearing for final approval of settlement (the “Preliminary Approval Order”).

As directed by the Court, the Settlement Administrator distributed the Notice Packet to 186 Class Members. (Declaration of Cassandra Polites on behalf of ILYM Group, Inc., (“ILYM”) (“Polites Decl.”) ¶¶ 3-5.) To date, 2 requests for exclusion have been received, and there have been no objections filed. (Polites Decl. ¶¶ 7-8.) As such, there is a 98.9% participation rate. Thus, this Court can infer that the Class supports the Court’s Preliminary Approval Order finding that the Settlement Agreement is fair and reasonable.

In addition to the results of the notice process, for the same reasons as set forth earlier in Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, the following represent the basic points supporting approval of the Settlement:

- The Settlement provides a total settlement sum of \$90,000.00;
- The Settlement is fair given that Settlement Class Members will receive (*after deductions for fees, costs, etc.*) a substantial amount of money (on average, each Settlement Class Member will receive approximately \$203.37) (*See* Polites Decl. ¶ 13);
- Class Members did not need to submit claim forms to participate in the settlement, but are being paid automatically;
- The allocation reflects that payment of claims will be paid to all Class Members in proportion to the number of wage statements that included overtime and double-time wages received by each Class Member;
- Plaintiff conducted significant investigation in this case, including formal and informal discovery, the completion of the depositions of Plaintiff and Defendant’s PMK, and exchanges of information by Plaintiff and Defendant of class data for the entire class necessary for Plaintiff to fully evaluate this case;

- A highly regarded administrator, ILYM Group, Inc., was retained for fees estimated to be \$5,990.00; and
- California’s LWDA will also be the beneficiary of this Settlement as it will receive 7,500.00, should this Settlement be granted final approval.

Accordingly, the Court should grant Final Approval consistent with the Preliminary Approval Order.

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

The notice procedures required by the Preliminary Approval Order, have been followed and satisfy all due process rights of Class Members. The Preliminary Approval Order contemplated that the Notice of Proposed Class Action Settlement (the “Notice Packet”), as approved in the Preliminary Approval Order, be sent to all Class Members by first class mail, as specified in the Settlement. The Preliminary Approval Order contemplated, further, that ILYM Group, Inc. would serve as the Settlement Administrator.

As clearly stated in the Polites Declaration, notice was provided to Class Members, as required by the Preliminary Approval Order. On May 3, 2023, the Settlement Administrator received a Class Member mailing list from Defendant’s counsel that included 186 Class Members. (Polites Decl. ¶ 4.) On June 12, 2023, each of the persons identified on the mailing list were sent the Class Notice via first class mail. (*Id.* ¶ 6.) A total of 8 Notice Packets were returned and the Settlement Administrator performed a skip trace which resulted in 4 updated addresses, to which the Notice Packets were promptly re-mailed via first class mail (*Id.* ¶ 10.)

To date, a total of 4 Notice Packets have been deemed undeliverable as no updated addresses were found via the skip trace (*Id.* ¶ 11.) Further, the Notice Packet provided Class Members with Class Counsel’s contact information, where they could further seek information regarding the class settlement, leave questions for the Settlement Administrator, and update their address.

The provision of sending the notice to class members as described above meets the requirements for the “best notice practicable” in this case as necessary to protect the due process

rights of class members. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985) (provision of “best notice practicable” with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) (individual notice must be sent to class members who can be identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”).

Here, the Class Members were provided with a mailing regarding the settlement that explained the settlement and allowed Class Members to seek information, ask questions, and object, if so desired. As such, proper notice has been given to the Class Members. Thus, the Court may proceed to determine the fairness and adequacy of the Settlement and enter its Order granting final approval, secure in the knowledge that all absent Class Members have been given the opportunity to participate fully in the claims, exclusion, and the approval process.

III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL

A. Strength of Plaintiff’s Case and Likelihood of Certifying the Class

In order to proceed as a class, there are two requirements which must be met—ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d. 695, 704 (1967); *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809 (1971). “The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Richmond v. Dart Industries*, 29 Cal. 3d. 462, 470 (1981).

1. The Class is Ascertainable

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means available for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). Here, the class is defined as all past and present non-

1 exempt California employees of Defendant who were paid overtime wages at any time between
2 October 1, 2018 through March 17, 2020. There are 186 members that comprise of the Class.
3 (Polites Decl. ¶ 6.) This is far more than the minimum required to certify a class. Within the
4 context of manageability, the issue is whether there exists sufficient means for identifying class
5 members at the remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-75. Class Members have already
6 been identified by Defendant and notice was provided to the above Class Members.

7 **2. There is a Community of Interest**

8 The “community of interest” requirement embodies three separate factors: (1)
9 predominant common questions of law or fact; (2) class representatives whose claims are typical
10 of the class; and (3) class representatives who can adequately represent the class. *Richmond*, 29
11 Cal. 3d at 470; *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

12 **a. There Are Predominant Common Questions of Law and Fact**

13 “The ultimate question in every case of this type [class actions] is whether...the issues
14 which may be jointly tried, when compared with those requiring separate adjudication, are so
15 numerous and substantial that the maintenance of a class action would be advantageous to the
16 judicial process and to the litigants.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th 1096,
17 1104-05 (2003).

18 Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure
19 violated the Labor Code by its failure to provide accurate wage statements. Defendant denies that
20 liability could be established on a class-wide basis and contends instead that liability and
21 damages would need to be conducted on a case-by-case basis. Nevertheless, it is well-settled that
22 wage statement cases are perfectly suited for class treatment.

23 **b. Plaintiff’s Claims are Typical of the Class Claims**

24 The purported class representative’s claim must be “typical” but not necessarily identical
25 to the claims of other class members; it is sufficient that the representative is similarly situated so
26 that he or she will have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal.
27 App. 3d 27, 45 (1983). Courts look to whether class members have similar injuries, “whether the
28 action is based on conduct which is not unique to the named Plaintiff,” and whether other class

1 members were injured by the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508
2 (9th Cir. 1992). The purpose of the typicality requirement “is to assure that the interest of the
3 named representative aligns with the interests of the class.” *Id.* at 508.

4 Here, like other members of the Class, Plaintiff received wage statements which Plaintiff
5 contends did not include the correct overtime and double-time rate of pay. (Declaration of
6 Charles Rhyu (“Rhyu Decl.”) ¶ 2.) Plaintiff was subjected to the same policies and practices as
7 other Class Members. Thus, Plaintiff’s claims are typical to those of Class Members.

8 **c. Plaintiff Adequately Represented the Class**

9 The class representative, through qualified counsel, must be capable of “vigorously and
10 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d
11 834, 846 (1984). Here, Plaintiff does not have any interests adverse to the Class, nor have any
12 such issues been raised or presented. Plaintiff has taken all necessary steps to represent the
13 interests of the Class, including providing information and documents to his counsel, preparing
14 and sitting for his deposition, and reviewing pleadings in this case. (Rhyu Decl. ¶¶ 3-6.) For such
15 reasons, Plaintiff has adequately represented the Class members and will continue to do so.

16 **B. Defendant’s Allegations and Unlikelihood of Class Certification**

17 Defendant asserts that individualized issues predominate in this case, including without
18 limitation, whether Defendant provided accurate wage statements in compliance with the law. In
19 any event, even assuming that a class could be certified, Defendant asserts that it has complied
20 with all laws and even if it did, that Defendant did not act knowingly or intentionally. Based
21 thereon, Defendant continues to maintain that it is not liable for the allegations made by the
22 Plaintiff.

23 **C. Risks, Expenses, and Complexity of Further Litigation**

24 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the
25 fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff
26 involved in not prevailing on one or more of the causes of action or theories alleged in his First
27 Amended Complaint, the possibility of non-certification, and potential for appeals. These risks
28 on class certification are compounded by the California Supreme Court’s holding in *Duran v.*

1 *U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1 (2014).

2 Defendant has maintained that there is no liability. As stated above, Defendant alleges
3 that a class could not have been certified. There is always a risk that the court will not grant
4 certification of the class, wherein the class will not be entitled to any damages. Based on the
5 foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of
6 damages alleged, and a substantial amount of complex issues that would have necessitated
7 significant expenditure of time and expenses. Therefore, the risks, expenses, and complexity of
8 further litigation warrant granting of this Motion.

9 **D. The Terms of the Settlement, Negotiation of Settlement, and Reception of the**
10 **Settlement by Class Members All Strongly Support the Conclusion that the**
Settlement is Fair, Adequate, and Reasonable

11 Without reiterating the Parties’ showing that the Settlement Agreement and the
12 negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for
13 Preliminary Approval of Class Action Settlement, the Parties highlight the following facts. The
14 Settlement Agreement was the product of negotiation between highly able and experienced
15 attorneys on both sides who possessed the relevant data and extensive legal research which they
16 had carefully analyzed. (Choi Decl. ¶8.) Significantly, this settlement was reached after formal
17 discovery, including the depositions of Plaintiff and Defendant’s PMK, as well as after
18 Defendant filed its Motion for Summary Judgment. (*Id.*)

19 The results after mailing of the Notice Packet support confirmation of the Court’s
20 preliminary approval of the settlement with final approval of the settlement, as evidenced by the
21 fact that to date, 2 requests for exclusion and no objections to the settlement have been received.
22 (Polites Decl. ¶¶ 7-8.) In other words, there is a 98.9% participation rate. The Court may
23 appropriately infer that the class action settlement is fair, adequate and reasonable, given that not
24 a single class member has submitted an objection. *See Class Plaintiff v. City of Seattle*, 955 F.2d
25 1268, 1291 (9th Cir. 1992).

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1 **E. Under Well-Established Legal Principles, the Court Should Grant Final**
2 **Approval of the Settlement**

3 **1. Standard of Review**

4 On a motion for final approval of a class action settlement under California Code of Civil
5 Procedure Section 382 and California Rule of Court 3.769, a court’s inquiry is whether the
6 settlement is “fair, adequate and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688
7 F.2d 615, 625 (9th Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm’n*, 459 U.S. 1217
8 (1983). A settlement is fair, adequate, and reasonable, and therefore merits final approval, when
9 “the interests of the class are better served by the settlement than by further litigation.” *See*
10 *Manual for Complex Litigation Fourth* (Fed. Judicial Center 2004) (“MCL”), § 21.6 at 309. The
11 law favors settlement, particularly in class actions and other complex cases, where substantial
12 resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See* 4
13 *Newberg on Class Actions*, 4th § 11.41 (2008); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268,
14 1276 (9th Cir. 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

15 Although the Court possesses “broad discretion” in determining that a proposed class
16 action settlement is fair, the Court’s role must be limited to the extent necessary to reach a
17 reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
18 between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and
19 adequate to all concerned. *See Officers for Justice*, 688 F.2d at 625. Accordingly, the Court
20 should give due regard to what is otherwise a “private consensual agreement” between the
21 parties. *Id.*; *see also Church v. Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal.
22 1993); *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff’d*
23 *sub nom.*; *City of Seattle*, 955 F.2d 1268; Manual § 21.6 at 309 (“The judicial role in reviewing a
24 proposed settlement is critical, but limited to approving the proposed settlement, disapproving it,
25 or imposing conditions on it. The judge cannot rewrite the agreement”).

26 A court’s approval of a class action settlement will only be reversed for a clear abuse of
27 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for*
28 *Justice*, 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision

was a clear abuse of discretion”); *Ackerman v. Kassar*, 1993 WL 326453 (9th Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998).

As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

“It cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge does not try out or attempt to decide the merits of the controversy,’ [citation] and the appellate court ‘need not and should not reach any dispositive conclusions on the admittedly unsettled legal issue.’”

85 Cal. App. 4th 1135, 1146 (2000).

2. The Settlement is Presumed to Be Fair

The Court should begin its analysis with the presumption that the settlement is fair and should be approved:

[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.

Dunk, 48 Cal. App. 4th at 1802; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at 1387.

The settlement in the case at bar warrants approval and carries a presumption of fairness. As previously noted in the application for Preliminary Approval, this current settlement was negotiated at arm’s length. (Choi Decl. ¶ 8.)

Second, Class Counsel engaged in extensive factual investigation before settling, including reviewing class data. (*Id.*) Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. (Declaration of Larry W. Lee (“Lee Decl.”) ¶¶ 10-13; Choi Decl. ¶13; Declaration of Dennis S. Hyun (“Hyun Decl.”) ¶¶ 3-6.)

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1 **3. Two-Way Costs and Other Risks Inherent in Continued Litigation**
2 **Favor Final Approval**

3 To assess the fairness, adequacy, and reasonableness of a class action settlement, the
4 Court also should weigh the immediacy and certainty of substantial settlement proceeds against
5 the risks inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806
6 (3d Cir. 1995) (“present value of the damages plaintiffs would likely recover if successful,
7 appropriately discounted for the risk of not prevailing, should be compared with the amount of
8 the proposed settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d
9 Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

10 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have
11 been potentially responsible for Defendant’s costs. (Rhyu Decl. ¶ 7.) As such, should individual
12 current or former employees of Defendant bring individual claims on the same causes of action,
13 they would each face the uncertainty of prevailing and the possibility of paying costs to
14 Defendant. Accordingly, such claims likely would not be brought by many of these current and
15 former employees—thus, this lawsuit achieves a true benefit for the class that they might not
16 otherwise get or seek as individuals. Here, given that a fair and reasonable settlement has been
17 reached, neither Plaintiff nor any of the Class Members will be required to pay for Defendant’s
18 litigation costs.

19 The risks of this case were weighed by Class Counsel and, should be considered a
20 significant factor by the Court in its determination of final approval. Class Counsel obtained a
21 very substantial settlement for the Class that resulted in a fair recovery which at the same time
22 provides for finality and no risk of costs by the Class Members or Class Representative.

23 The Settlement Agreement also affords the Class prompt, fair relief while avoiding
24 significant legal and factual battles that otherwise may have prevented the Class from obtaining
25 any recovery at all. While Class Counsel believe the Class Members’ claims are meritorious and
26 can be successfully litigated, they are experienced and fully understand the inherent risks and
27 uncertainty involved with such matters as the resolution of class certification, the outcome of a
28 potential trial, and the outcome of any appeals that would inevitably follow should the Class

1 prevail at trial. Class Counsel has also assessed the same risks in connection with the current
2 settlement. Because the settlement provides immediate and substantial relief, without the
3 attendant risks and delay of continued litigation—not to mention the threat of litigation fees and
4 costs—Class Counsel believe that the settlement warrants the Court’s final approval.

5 **4. The Complexity, Expense, and Likely Duration of Continued**
6 **Litigation Against Defendant Favor Final Approval**

7 Another factor considered by courts in approving a settlement is the complexity, expense,
8 and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at
9 157. In applying this factor, the Court must weigh the benefits of the settlement against the
10 expense and delay involved in achieving an equivalent or more favorable result at trial. *Young v.*
11 *Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971).

12 As noted above, continued litigation could have led to appeals on a number of issues. On
13 the other hand, the settlement that was reached provides to all Class Members—regardless of
14 their means—fair relief in a prompt and efficient manner. Were the Court to deny final approval,
15 the Class Members would be left without a remedy as a practical matter and courts across the
16 State would have to address the issues presented here in a piecemeal, costly, and time-consuming
17 manner. The settlement in this case is therefore consistent with the “overriding public interest in
18 settling and quieting litigation” that is “particularly true in class action suits.” *See Van*
19 *Bronkhorst*, 529 F.2d at 950 (footnote omitted); *see also 4 Newberg* at § 11.41. Here, this case
20 would have likely involved years of litigation, as evidenced by the Parties’ litigation record.

21 **5. The Opinion of Experienced Counsel Favors Final Approval**

22 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
23 interest of the Class Members as a whole. (Lee Decl. ¶ 6; Marder Decl. ¶¶ 2-3; Choi Decl. ¶¶9-
24 11; Hyun Decl. ¶¶ 7-8.) Similarly, counsel for Defendant is in favor of this settlement. The
25 endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and
26 adequate is entitled to significant weight by the Court in its final approval determination. *See*
27 *Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*,
28 151 F.3d at 1242.

IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS SHOULD BE APPROVED

As ordered by the Court, the Parties amended the Agreement to send any Settlement Payments remaining uncashed after 180 days to Legal Aid at Work. (Settlement Agreement III.16(e)). Plaintiff and his counsel do not have any type of relationship with Legal Aid at Work. (Lee Decl. ¶ 14; Choi Decl. ¶ 17; Hyun Decl. ¶ 12; Rhyu Decl. ¶ 8).

V. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE APPROVED

Plaintiff requests a total enhancement of \$2,500.00. Plaintiff personally met with Class Counsel, including providing substantive information regarding Defendant's practices, as well as prepared for and sat for his deposition. (Rhyu Decl. ¶ 6.) Accordingly, Plaintiff provided invaluable information, evidence, and documents that resulted in this Settlement.

In addition to the invaluable services that he provided, Plaintiff took significant risks, both professionally and monetarily, in acting as Class Representative, seeking benefits on behalf of the Class. Because the claims alleged by the Class Representative involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had he not prevailed in this action. (*Id.* ¶ 7.) Moreover, Plaintiff understood that an individual case would have resolved much faster than a class action and involved much less financial risk than a class action. Despite this, however, Plaintiff agreed to pursue this case on behalf of the Class.

Also, given that future employers are much less likely to hire individuals who have filed employment-related lawsuits, particularly cases of this nature, the Class Representative also faced significant risk in not being able to find suitable employment, all as a result of filing of this case against Defendant. Plaintiff took these risks upon himself to the benefit of the Class. (*Id.* ¶ 8.) Class Members did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail, nor did they have to face the potential for retaliation and not getting future employment had they filed a lawsuit which is a public record. These are significant benefits that weigh in favor of granting the requested enhancement. Moreover, this litigation has resulted in a

1 significantly valuable benefit to the Class, and Plaintiff took on substantial risks in helping to get
2 this financial benefit to the Class. As such, the enhancement should be awarded to Plaintiff for
3 his commitment, dedication, and risks taken for this litigation.

4 Courts have routinely granted approval of settlements containing such enhancements. *See*
5 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive
6 award of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374
7 (S.D. Ohio 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000);
8 *Brotherton v. Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000
9 incentive award); *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240,
10 251-52 (S.D. Ohio 1991) (\$50,000 awarded to each class representative); *Glass v. UBS Fin.*
11 *Servs.*, No. C-06-4068, 2007 U.S. Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007)
12 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook v. Niedert*, 142
13 F.3d 1004, 1016 (7th Cir. 1998) (affirming \$25,000 Incentive award to class representative in
14 ERISA case).

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

16 Class Counsel seeks a fee award calculated at one-third of the total value of the
17 Settlement for the successful prosecution and resolution of this action. California state and
18 federal courts have recognized that an appropriate method for determining award of attorneys'
19 fees is based on a percentage of the total value of benefits to Class Members by the settlement.
20 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Serrano v. Priest*, 20 Cal.
21 3d 25, 34 (1977) [*Serrano III*]; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v.*
22 *Hughes Air West, Inc.*, 557 F. 2d 759, 769 (9th Cir. 1997). The purpose of this equitable doctrine
23 is to avoid unjust enrichment to the Class and to "spread litigation costs proportionally among all
24 the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v.*
25 *Hughes Air West, Inc.*, *supra*, 557 F. 2d at 769.

26 Under California law, the award of attorneys' fees in common fund wage and hour class
27 action settlements is proper under the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal.
28 5th 480, 503 (Aug. 11, 2016) ("We join the overwhelming majority of federal and state courts in

1 holding that when class action litigation establishes a monetary fund for the benefit of the class
2 members, and the trial court in its equitable powers awards class counsel a fee out of that fund,
3 the court may determine the amount of a reasonable fee by choosing an appropriate percentage
4 of the fund created”). Under the percentage of the fund method, the Court’s objective remains to
5 “mimic the market” in fixing a reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th
6 Cir. 1998) (J. Posner) (“When a fee is set by a court rather than by contract, the object is to set it
7 at a level that will approximate what the market will set... The judge, in other words, is trying to
8 mimic the market in legal services.”).

9 Here, the fee award representing one-third of the fund clearly falls within that range and
10 is consistent with other rulings of other courts and comprehensive surveys of class action
11 settlements and fee awards. *See Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23
12 (S.D. Cal. June 9, 2011) (recognizing that “courts may award attorney’s fees in the 30-40%
13 range in wage and hour class actions that result in recovery of a common fund under \$10
14 million”); *see also* Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical*
15 *Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010) (independent studies of
16 class action litigation nationwide conclude that fees in the range sought here are consistent with
17 market rates).

18 The results delivered by Class Counsel also support the requested percentage of the fund.
19 Here, Plaintiff and his counsel secured a \$90,000.00 settlement.

20 Finally, “the response of the class members to attorneys’ fee notice, though not decisive,
21 is relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d
22 1261, 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s
23 “approximation of the market” for fees is well supported. *Id.* at p. 1269. In this case, the Notice
24 Packet specifically notified Class Members that Class Counsel would be seeking \$30,000.00 in
25 attorneys’ fees. To date, no Class Member has objected to the Settlement. This strong favorable
26 response also supports the requested fees.

27 In addition, it is recognized that one of the primary factors justifying an enhanced
28 attorney’s fees reward is the attendant risks inherent in the litigation. As observed in *City of*

1 *Detroit v. Grinnell Corp.*:

2 No one expects a lawyer whose compensation is contingent upon
3 his success to charge, when successful, as little as he would charge
4 a client who had agreed to pay for his services, regardless of
5 success. Nor, particularly in complicated cases producing large
6 recoveries, is it just to make a fee depend solely on the reasonable
7 amount of time expended.

8 495 F.2d 448, 470 (2d Cir. 1974). Here, it is clear that a settlement fund of \$90,000.00 has been
9 created. For Class Counsel, the fees here were wholly contingent in nature and the case presented
10 far more risk than the usual contingent fee case. Among the risks was the cost inherent in class
11 action litigation, as well as a long battle with a corporate Defendant who had retained a premier
12 and highly experienced defense firm. As such, the requested fee should be awarded.

13 As a secondary backup support for the percentage of the fund method, when fees are
14 allocated by percentage method, courts have discretion to “cross-check” the fees awarded
15 through the lodestar method. However, the *Laffitte* Court “emphasize[d] [that] the lodestar
16 calculation, when used in this manner, does not override the trial court’s primary determination
17 of the fee as a percentage of the common fund and thus does not impose an absolute maximum
18 or minimum on the potential fee award.” *Laffitte*, 1 Cal. 5th at 505 (emphasis added); *In re Rite
19 Aid Corp. Secs. Litig.*, 396 F.3d 294, 306-307 (3d Cir. 2005) (“[The lodestar cross-check does
20 not trump the primary reliance on the percentage of common fund method”).

21 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar
22 cross-check is extraordinarily high or low, the trial court should consider whether the percentage
23 used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the
24 court is not necessarily required to make such an adjustment.” *Id.* Thus, a lodestar cross-check is
25 aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases,
26 performing a cross-check “undermines” one of the primary reasons for using the percentage
27 method: aligning counsel’s incentives with the benefits delivered to the class and discouraging
28 protracted litigation. *Id.* at 506 (finding trial courts “retain the discretion to forgo a lodestar
cross-check”); *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* 108 F.R.D.
237, 258 (1985); *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 29-30 (2000) (citing

1 the recommendations of the Third Circuit Task Force with approval and observing that “[t]he
2 criticisms of the lodestar approach set forth in this Report are now echoed by many authorities,
3 who have been most vocal about the manner in which it exacerbates the problem of ‘cheap
4 settlements’ and burdens already overworked trial judge”).

5 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to
6 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001); *see also*,
7 *e.g.*, *Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 512 (2009) (applying a 2.52
8 multiplier on a cross-check in an antitrust class action); *Chavez*, 162 Cal. App. 4th at 60
9 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders*, 203
10 Cal. App. 3d 78 (1988) (affirming a 2.34 multiplier without remand). The intermediate court in
11 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed
12 a 2.13 multiplier. *Laffitte*, 231 Cal. App. 4th at 881-82. The intermediate court opinion was
13 affirmed in full by the California Supreme Court in its new decision guiding lower courts on
14 assessing fees.

15 With respect to Class Counsel’s lodestar, to date, as of the date of this filing,
16 approximately 184.30 hours have been expended by Class Counsel. (Lee Decl. ¶ 7, Ex. A; Choi
17 Decl. ¶ 15, Ex. A; Hyun Decl. ¶9, Ex. A.) Moreover, Class Counsel expects to incur
18 approximately 30 additional hours of attorney time in finalizing this settlement, including
19 overseeing the administration and payments, filing post-judgment pleadings, and appearing for
20 any post-judgment hearings. (Lee Decl. ¶ 9; Choi Decl. ¶ 15; Hyun Decl. ¶ 10.) Messrs. Lee,
21 Choi, and Hyun request hourly rate of \$850 per hour. (Lee Decl. ¶ 9; Choi Decl. ¶14; Hyun Decl.
22 ¶ 11.) The courts are quite liberal in the evidence required to prove an attorney’s hours. Detailed
23 time records are not required. An attorney’s testimony alone may suffice: “Testimony of an
24 attorney as to the number of hours worked on a particular case is sufficient evidence to support
25 an award of attorney fees, even in the absence of detailed time records.” *Martino v. Denevi*, 182
26 Cal. App. 3d 553, 559 (1986).

27 Reasonable hours include, in addition to time spent during litigation, the time spent
28 before the action is filed, including time spent interviewing the clients, investigating the facts and

1 the law, and preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54,
2 62 (1980). Further, the fee award should include fees incurred to establish and defend the
3 attorneys' fee claim. *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Class
4 Counsel requests that the court find that these hours were reasonable in this litigation.

5 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
6 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095
7 (2000). The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
8 attorney's skill and experience, the nature of the work performed, the relevant area of expertise
9 and the attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App.
10 4th 629, 632-33 (1998).

11 Class Counsel's skill and experience justify the requested rate. As shown in the
12 supporting declarations, Class Counsel have significant experience in the area of employment
13 and wage and hour class actions. Specifically, Class Counsel's practice focuses on representing
14 employees in employment matters, particularly wage and hour cases. (Lee Decl. ¶¶ 10-13;
15 Marder Decl. ¶¶ 5-12; Choi Decl. ¶13; Hyun Decl. ¶¶ 3-6.) As such, based on the hours and
16 applicable rate, the total lodestar to be expended by Class Counsel through finalizing this
17 settlement will be approximately \$178,185.00. (Lee Decl. ¶ 8, Ex. A; Choi Decl. ¶¶14-15, Ex. A;
18 Hyun Decl. ¶¶ 9-11, Ex. A.)

19 Once the court establishes the lodestar amount, it may enhance the fee award by a
20 multiplier in order to make an appropriate fee award. *Serrano III*, 20 Cal. 3d at 48. The pertinent
21 factors include the difficulty of the questions involved and the skill in presenting them, the
22 contingent nature of the fee award, the extent to which the litigation precluded other
23 employment, and the percentage-of-the-fund the attorney would have received on the fair
24 market. *Id.*, *Lealao*, 82 Cal. App. 4th at 49. However, this list is not exhaustive and the court can
25 consider other factors it deems important in setting the multiplier. *Ketchum v. Moses*, 24 Cal. 4th
26 1122, 1139 (2001).

27 *Lealao* contains several factors justifying an enhancement based on the percentage-of-
28 the-benefit, namely, no objections by Class Members, commendable conduct by counsel, and

1 significant recoveries by Class Members, all of which were previously detailed above. *Lealao*,
2 82 Cal. App. 4th at 51-53. As in *Lealao*, the Class was notified of the settlement and attorney's
3 fee with no objections. The extreme effort undertaken by counsel, as shown by their hours and
4 the significantly high amount of claims being paid out, shows commendable conduct.

5 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
6 enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal. App. 4th at 52 (the promptness
7 of settlement "cannot be used to justify the refusal to apply a multiplier"). According to *Lealao*,
8 courts placed "an extraordinarily high value" on settlement, and counsel should be rewarded, not
9 punished, for achieving this goal in a timely fashion. *Id.*

10 The multiplier should be enhanced by the contingent nature of counsel's fee recovery.
11 The risks in taking on a class action case are enormous, not the least of which is time and effort.
12 Not only was there significant risk taken upon by Plaintiff's counsel, but their ability to obtain
13 the current settlement should be seen as quite commendable.

14 As explained previously, Defendant maintained that there were significant obstacles.
15 Thus, the risk involved in this case was quite significant for Plaintiff and his counsel, and in the
16 face of such risks, the current settlement was still able to be obtained by Plaintiff's counsel.

17 Here based upon Plaintiff's counsel's lodestar of \$178,185 a negative multiplier of 5.9 is
18 necessary, which makes the fee request all the more reasonable. *Wershba v. Apple Computer*,
19 *Inc.*, 91 Cal. App. 4th 224 (Ct. App. 2001) (noting that courts using the lodestar method to
20 calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to 4);
21 *Boyd v. Bank of Am. Corp.*, 2014 U.S. Dist. LEXIS 162880 (C.D. Cal. Nov. 18, 2014) (awarding
22 33% of the common fund, based on a multiplier of 2.58, in a wage and hour class action
23 settlement); *Vandervort v. Balboa Capital Corp.*, 8 F. Supp. 3d 1200, 1210 (C.D. Cal. 2014)
24 (awarding 33% of the common fund, based on a multiplier of 2.52).

25 As such, the requested fee award is fair and reasonable, and should be awarded in its
26 entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
27 ensure the successful litigation of this action on behalf of all Class Members. For such reasons,
28 Class Counsel's request for attorneys' fees in the amount of \$30,000.00 is fair, reasonable, and

adequate.

VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS

The request for reimbursement of costs, in the amount of \$4,089.89 is fair and reasonable. The costs are all litigation related costs. (Lee Decl. ¶ 13, Ex. B.; Choi Decl. ¶ 16, Ex. B; Hyun Decl. ¶ 12). The authority for the Court to award this is the Parties' Settlement Agreement and Labor Code Sections 226 and 2699. As such, this request should be approved.

VIII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE APPROVED

Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement Administrator, ILYM Group, Inc., are to be paid out of the class settlement funds. As shown on the Declaration of Cassandra Polites, the class administration fees expended in this matter amount to a total of \$5,990.00, which is an amount that was agreed upon by the Parties. (Polites Decl. ¶ 16, Ex. B.) For such reasons, it is requested that the Settlement Administrator's fees be approved.

IX. LWDA HAS BEEN PROVIDED NOTICE OF THIS MOTION

Plaintiff uploaded a copy of this Motion and proposed Order to the LWDA's website. (Choi Decl. ¶18, Ex. C).

X. CONCLUSION

For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff respectfully submits that the standards for final approval have been met and the terms of the Settlement Agreement are fair, adequate, and reasonable.

Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form proposed and submitted:

1. Granting final approval to the proposed Settlement Agreement in this action;
2. Approving distribution of the settlement funds to the Class Members pursuant to the terms of the Settlement Agreement;
3. Approving Plaintiff's request for an award of the class representative

enhancement of \$2,500.00, with payments pursuant to the terms of the Settlement Agreement;

4. Approving Class Counsel's request for an award to Class Counsel for \$30,000.00 in attorneys' fees and \$4,089.89 in costs with payment pursuant to the terms of the Settlement Agreement;

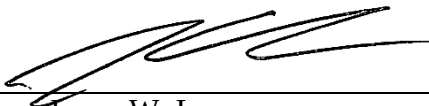
5. Approving Plaintiff's request for payment of the settlement administration costs to ILYM Group, Inc. Settlement Administrators in the amount of \$5,990.00 with payment pursuant to the terms of the Settlement Agreement;

6. Approving Plaintiff's request for payment to the LWDA for \$7,500.00 with payment pursuant to the terms of the Settlement Agreement; and

7. Entering final judgment as to all members of the Class in this action.

DATED: August 17, 2023

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee

Attorneys for Plaintiff and the Class



Court Reservation Receipt

Reservation

Reservation ID:
855045207260

Status:
RESERVED

Reservation Type:
Motion re: (Final Approval of Class Action Settlement)

Number of Motions:
1

Case Number:
RG20084138

Case Title:
Rhyu VS Atieva USA, Inc.

Filing Party:
Charles Rhyu (Plaintiff)

Location:
Rene C. Davidson Courthouse - Department 21

Date/Time:
September 12th 2023, 10:00AM

Confirmation Code:
CR-ECM9XZ7M6THXXJJZU

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount:
\$1.00

Type:
Visa

Account Number:
XXXX6929

Authorization:
06755G

Payment Date:
2023-04-19

[◀ Back to Main](#)[🖨 Print Page](#)[Terms of Service](#)[Contact Us](#)[About this Site](#)