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

JULIO TESCHERA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

GAWFCO ENTERPRISES, INC., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 21CV376213

[Assigned for all purposes of the Hon. Sunil
R. Kulkarni, Dept. 1]

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

Date: August 25, 2022

Time: 1:30 p.m.

Dept.: 1

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

2 **PLEASE TAKE NOTICE** that, on August 25, 2022, at 1:30 p.m., or as soon thereafter as the
3 matter may be heard before the Hon. Sunil R. Kulkarni, Judge presiding in Department 1 of the
4 above-referenced Court located at 191 N. First St., San Jose, California 95113, Plaintiff Julio
5 Teschera (“Plaintiff”) will and hereby does move the Court for an Order:

6 (1) granting final approval to the Joint Stipulation of Class Action Settlement (“Settlement
7 Agreement,” or “Joint Stipulation”) between Plaintiff and Defendant Eden Housing Management,
8 Inc. (“Defendant”) in this matter;

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

11 (3) approving Plaintiff’s request for an award of the class representative enhancement of
12 \$7,500.00 to Plaintiff pursuant to the terms of the Settlement Agreement;

13 (4) approving Plaintiff’s Counsel’s request for an award of attorneys’ fees to Class
14 Counsel for one-third of the \$170,000.00 Gross Settlement Amount, or \$56,666.67, and
15 reimbursement of litigation costs of \$14,906.50 pursuant to the terms of the Settlement Agreement;

16 (5) approving Plaintiff’s request for payment of the class administration costs to ILYM
17 Group in the amount of \$5,000.00 pursuant to the terms of the Settlement Agreement; and

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

19 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides
20 for court approval of the settlement of a purported class action and allows the Court to grant final
21 certification of a class for settlement purposes. In light of the overwhelmingly positive response, as
22 shown by the absence of objections and opt-outs, there is no question that the settlement is fair,
reasonable, and adequate and thus should be granted final approval.

23 This Motion will be based on the attached Memorandum of Point and Authorities and the
24 supporting Declarations of William L. Marder, Dennis S. Hyun, Plaintiff and Lluvia Islas of ILYM
25 Group and upon the oral arguments of counsel (should there be any), and on the complete records and
26 file herein.

1 DATED: July 22, 2022

POLARIS LAW GROUP, LLP

2 By: William L. Marder

3 William L. Marder

4 Attorneys for Plaintiff and the Class

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1 **I. INTRODUCTION**

2 Plaintiff Julio Teschera (“Plaintiff”) now seeks the Court’s final approval of the Class Action
3 Settlement. The settlement provides for a \$170,000 non-reversionary fund to be created for the
4 benefit of the Class, from which attorneys’ fees, litigation costs, enhancement payment to the
5 Plaintiff, and costs of settlement administration are to be paid. After these deductions from the Gross
6 Settlement Amount, the Net Settlement Amount will be paid to all Class Members who did not opt-
7 out of the Settlement. Again, the Settlement Class is defined as all current and former non-exempt
8 employees of Defendant who worked at any time during the period of time from August 25, 2016,
9 through August 30, 2021, who received overtime pay and non-discretionary incentive pay covering
10 the same time period, including without limitation, commissions and shift differentials.

11 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
12 Approval of Class Action Settlement. The Court preliminarily approved this Settlement on May 4,
13 2022, directing distribution of class notice and scheduling the hearing for final approval of settlement
14 (the “Preliminary Approval Order”).

15 As directed by the Court, the Administrator distributed the class notice to 68 class members.
16 Declaration of Lluvia Islas for ILYM Group (“Islas Decl.”) ¶¶ 4-9. To date, only one request for
17 exclusion has been received. *Id.* ¶ 10. More importantly, there have been zero objections to the
18 settlement. *Id.* ¶ 11. Given the lack of objections and only request for exclusion, an inference can be
19 made that the Class supports the Court’s Preliminary Approval Order finding that the Settlement
20 Agreement is fair and reasonable.

21 In sum, as a result of the settlement administration process, the lack of any objections and opt-
22 outs, and the amount of class funds being paid out to the Class Members, the Court may confirm its
23 preliminary approval as this process supports the Court’s initial finding that the settlement is fair and
24 reasonable. The fact that no objections were filed is instructive that class members believe that the
25 settlement is fair and reasonable.

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

1 information regarding the class settlement, leave questions for the Administrator, and update their
2 address. Islas Decl. ¶ 7, Exh. A.

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

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

18 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND** 19 **THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

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

21 In order to proceed as a class, there are two requirements which must be met—an
22 ascertainable class and a community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d. 695, 704
23 (1967); *Vasquez v. Superior Court*, 4 Cal.3d 800, 809 (1971) (there are two basic requirements which
24 must exist to sustain a class action: “[t]he first is existence of an ascertainable class, and the second is
25 a well-defined community of interest in the questions of law and fact involved.”) “The community of
26 interest requirement embodies three factors: (1) predominant common questions of law or fact; (2)
27 class representatives with claims or defenses typical of the class; and (3) class representatives who
28 can adequately represent the class.” *Richmond v. Dart Industries*, 29 Cal. 3d. 462, 470 (1981).

1 **1. The Class is Ascertainable**

2 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382
3 “is determined by examining (1) class definition, (2) the size of the class, and (3) the means available
4 for identifying the class members.” *Reyes v. San Diego County Board of Supervisors*, 196 Cal. App.
5 3d 1263, 1271 (1987). Here, the Settlement Class is defined as all current and former non-exempt
6 employees of Defendant who worked at any time during the period of time from August 25, 2016,
7 through August 30, 2021, who received overtime pay and non-discretionary incentive pay covering
8 the same time period, including without limitation, commissions and shift differentials. There are 68
9 individuals that comprise members of the Settlement Class. Islas Decl. ¶ 5. This is far more than the
10 minimum required to certify a class. Within the context of manageability, the issue is whether there
11 exists sufficient means for identifying class members at the remedial stage. *Reyes*, 196 Cal. App. 3d
12 at 1274-75. Class members have already been identified by Defendant and Notice was sent to all of
13 the above Class Members.

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

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

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

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

24 Here, Plaintiff asserts Defendant failed to pay overtime based on the regular rate of pay by not
25 including all non-discretionary remuneration into the rate. Such claims are perfectly suited for class
26 certification. *Faulkinbury v. Boyd & Associates, Inc.*, 216 Cal. App. 4th 220, 238 (2013) (“whether
27 the work uniform maintenance allowance and gasoline reimbursement must be included in
28

1 calculating the overtime rate of pay can be decided on a class-wide basis as a legal matter based on
2 common proof”).

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

4 The purported class representative’s claim must be “typical” but not necessarily identical to
5 the claims of other class members; it is sufficient that the representative is similarly situated so that he
6 or she will have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal. App. 3d 27,
7 45 (1983). Courts look to whether class members have similar injuries, “whether the action is based
8 on conduct which is not unique to the named Plaintiff,” and whether other class members were
9 injured by the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The
10 purpose of the typicality requirement “is to assure that the interest of the named representative aligns
11 with the interests of the class.” *Id.* at 508.

12 Here, Plaintiff believes that he was not paid overtime based on the regular rate of pay.
13 Declaration of Julio Teschera (“Teschera Decl.”) ¶ 2. Thus, Plaintiff’s claims are typical of other
14 class members. *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.*, 191 Cal. App. 3d 1341, 1347 (1987).

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

16 The class representative, through qualified counsel, must be capable of “vigorously and
17 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
18 846 (1984). Here, Plaintiff does not have any interests adverse to the class, nor has any such issues
19 been raised or presented. Teschera Decl. ¶¶ 3-5. Plaintiff has taken all necessary steps to represent the
20 interests of the Class, including providing information and documents to counsel and reviewing
21 pleadings in this case, as well as testifying at his deposition. *Id.* For such reasons, Plaintiff has
adequately represented the Class Members and will continue to do so.

22 **B. Defendant’s Defenses and Arguments Against Class Certification**

23 Defendant continues to assert that individualized issues predominate in this case, including
24 without limitation, that individualized inquiries are required to adjudicate injury and that Defendant
25 did not act knowingly and intentionally. Defendant contends that it provided compliant electronic
26 wage statements to all employees. Defendant further asserts that it has complied with all laws. Based
27 thereon, Defendant continues to maintain that it is not liable for the allegations made by the Plaintiff.
28

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

2 Plaintiff believes in the fairness of the settlement that is based on factoring in the uncertainty
3 and risks to Plaintiff involved in not prevailing on one or more of the causes of action or theories
4 alleged in his Complaint, the possibility of decertification and potential for appeals. These risks on
5 class certification are compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank*
6 *Nat’l Ass’n*, 59 Cal. 4th 1 (2014).

7 Defendant has maintained that there is no liability. Defendant may have prevailed on any of
8 the elements for liability, including that it had maintained and enforced lawful policies. Based on the
9 foregoing, there was a substantial risk that Plaintiff would not have obtained the total amount of
10 damages alleged, and a substantial amount of complex issues that would have necessitated significant
11 expenditure of time and expenses. Therefore, the risks, expenses and complexity of further litigation
12 warrant granting of this Motion.

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

16 Without reiterating the Parties’ showing that the Settlement Agreement and the negotiation
17 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
18 Approval of Class Action Settlement, the Parties highlight the following facts. The Agreement was
19 the product of negotiation between highly able and experienced attorneys on both sides who
20 possessed the relevant data and extensive legal research which they had carefully analyzed.
21 Declaration of Dennis S. Hyun (“Hyun Decl.”) ¶¶ 7-9. The parties engaged in arm’s length
22 negotiations between experienced employment attorneys and were able to reach the settlement after a
full day of mediation. *Ibid.*

23 The results after mailing of the Notice support confirmation of the Court’s preliminary
24 approval of the settlement with final approval of the settlement, as evidenced by the fact that to date,
25 no objections and only one request for exclusion have been received. Islas Decl. ¶¶ 10-11. The Court
26 may appropriately infer that the class action settlement is fair, adequate, and reasonable, given that
27
28

not a single class member has submitted an objection. *See Class Plaintiff v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

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

1. Standard of Review

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

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

1 A court's approval of a class action settlement will only be reversed for a clear abuse of
2 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for Justice*, 688
3 F.2d at 626 ("reverse only upon a strong showing that the district court's decision was a clear abuse
4 of discretion"); *Chemical Bank*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993 WL 326453 (9th Cir.
5 1993); *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998).

6 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.
7 App. 4th 1135, 1146 (2000):

8 "It cannot be overemphasized that neither the trial court in approving the settlement
9 nor this Court in reviewing that approval have the right or duty to reach any ultimate
10 conclusions on the issues of fact and law which underlie the merits of the dispute. It is
11 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.'"

12 2. The Settlement is Presumed to Be Fair

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

15 [A] presumption of fairness exists where: (1) the settlement is reached through arm's-
16 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.

17 *Dunk*, 48 Cal. App. 4th at 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146;
18 *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *In re Wash. Pub*
19 *Power Supply*, 720 F. Supp. at 1387.

20 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
21 previously noted in the application for Preliminary Approval, this current settlement was negotiated
22 at arm's length between experienced employment attorneys through an experienced wage and hour
23 mediator, Michael Loeb, Esq. Hyun Decl. ¶ 7. Since the inception of this case, the Parties have
24 engaged in formal litigation, including exchanging discovery responses and documents. *Id.* Further,
25 Class Counsel is highly experienced in this type of litigation. As shown in the supporting
26 declarations, Class Counsel has significant experience in class actions and employment wage and
27 hour matters. Declaration of William L. Marder ("Marder Decl.") ¶¶ 8-14; Hyun Decl. ¶¶ 3-6.

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

3 To assess the fairness, adequacy and reasonableness of a class action settlement, the Court
4 also should weigh the immediacy and certainty of substantial settlement proceeds against the risks
5 inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995)
6 (“present value of the damages plaintiffs would likely recover if successful, appropriately discounted
7 for the risk of not prevailing, should be compared with the amount of the proposed settlement”)
8 (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 1 53, 157 (3d Cir. 1975); *Boyd v. Bechtel*
9 *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. As such, should individual current or former
12 employees of Defendant bring individual claims on the same causes of action, they would each face
13 the uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such
14 claims likely would not be brought by many of these current and former employees—thus, this
15 lawsuit achieves a true benefit for the class that they might not otherwise get or seek as individuals.
16 Here, given that a fair and reasonable settlement has been reached, neither Plaintiff, nor any of the
17 class members will be required to pay for Defendant’s litigation costs.

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

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

1 settlement provides immediate and substantial relief, without the attendant risks and delay of
2 continued litigation—not to mention the threat of litigation fees and costs—Class Counsel believe
3 that the settlement warrants the Court’s final approval.

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

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

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

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

20 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
21 interest of the Class Members as a whole. Marder Decl. ¶¶ 2-5; Hyun Decl. ¶¶ 7-9. Similarly, counsel
22 for Defendant is in favor of this settlement. The endorsement of qualified and well-informed counsel
23 of a settlement as fair, reasonable, and adequate is entitled to significant weight by the Court in its
24 final approval determination. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*,
25 485 F. Supp. at 617; *Linney*, 151 F.3d at 1242.

1 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT SHOULD BE**
2 **APPROVED**

3 Plaintiff requests an enhancement of \$7,500.00. Plaintiff personally met with Class Counsel
4 on a number of occasions to discuss the case, including providing substantive documents and
5 information regarding Defendant's practices, and preparing and sitting for his deposition. Teschera
6 Decl. ¶ 3. Accordingly, Plaintiff provided invaluable information, evidence, and documents that
7 resulted in this settlement.

8 In addition to the invaluable services that Plaintiff provided, Plaintiff assumed significant
9 risks, both professionally and monetarily, in acting as the Class Representative, seeking benefits on
10 behalf of the class. Teschera Decl. ¶¶ 4-6. Because the claims alleged by the Class Representative
11 involved the payment of costs to the prevailing party, Plaintiff could have possibly faced paying the
12 costs of Defendant, had Plaintiff not prevailed in this action. *Id.* ¶ 7. Despite this, however, Plaintiff
13 agreed to pursue this case on behalf of the Class.

14 Also, given that future employers are much less likely to hire individuals who have filed
15 employment-related lawsuits, particularly cases of this nature, the Class Representative also faced
16 significant risk in not being able to find suitable employment, all as a result of filing of this case
17 against Defendant. *Id.* ¶ 8. Plaintiff assumed these risks for the benefit of the Class. Class Members
18 did not have to file individual lawsuits and bear the risks of payment of costs if they did not prevail,
19 nor did they have to face the potential for retaliation and not getting future employment had they filed
20 a lawsuit which is a public record. These are significant benefits that weigh in favor of granting the
21 requested enhancement. Moreover, this litigation has resulted in a significantly valuable benefit to the
22 class, and Plaintiff took on substantial risks in helping to get this financial benefit to the Class. As
23 such, the enhancement should be awarded for Plaintiff's commitment, dedication, and risks taken for
24 this litigation.

25 Courts have routinely granted approval of settlements containing such enhancements. *See Van*
26 *Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award of
27 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio
28 1990) (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v.*

1 *Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award);
2 *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991)
3 (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S.
4 Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA
5 overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming
6 \$25,000 Incentive award to class representative in ERISA case).

7 **V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

8 Class Counsel seeks a fee award calculated as one-third (1/3) of the total value of the
9 Settlement for the successful prosecution and resolution of this action. Recently, the California
10 Supreme Court issued its ruling regarding the award of attorney's fees in wage and hour class action
11 settlements. Under California law, the award of attorneys' fees in common fund wage and hour class
12 action settlements should start with the percentage method. *See Laffitte v. Robert Half Int'l*, 1 Cal. 5th
13 480, 503 (2016) ("We join the overwhelming majority of federal and state courts in holding that when
14 class action litigation establishes a monetary fund for the benefit of the class members, and the trial
15 court in its equitable powers awards class counsel a fee out of that fund, the court may determine the
16 amount of a reasonable fee by choosing an appropriate percentage of the fund created"). Under the
17 percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a
18 reasonable fee. *See Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) ("When a fee is set by a
19 court rather than by contract, the object is to set it at a level that will approximate what the market
20 will set...The judge, in other words, is trying to mimic the market in legal services").

21 An award of one-third of the fund in attorneys' fees mimics the marketplace as it "is
22 supported by the fact that typical contingency fee agreements provide that class counsel will recover
23 33% if the case is resolved before trial and 40% if the case is tried." *Fernandez v. Victoria Secret*
24 *Stores LLC*, 2008 WL 8150856, *16 n. 59 (C.D. Cal. July 21, 2008) (citing Brickman, *Effective*
25 *Hourly Rates of Contingency-Fee Lawyers: Competing Data and Non-Competitive Fees* (Fall 2003)
26 81 Wash U. L. Q. 653, 659 n. 11). Indeed, "empirical studies [that] show that...fee awards in class
27 actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66
28 n.11 (2008).

1 The California Supreme Court in *Laffitte* affirmed a fee award representing 33 1/3 percent of
2 the fund. *Laffitte*, 1 Cal. 5th at 506. And this was based on a lodestar amount that required a
3 multiplier of 2.13. *Id.* at 487. As the Court held, only when the multiplier is “extraordinarily high or
4 low [should] the trial court [] consider whether the percentage method should be adjusted so as to
5 bring the imputed multiplier within a justifiable range.” *Id.* at 505.

6 Moreover, in the *Laffitte* intermediate court decision, the court observed that “33 1/3 percent
7 of the common fund is consistent with, and in the range of, awards in other class action lawsuits.”
8 *Laffitte v. Robert Half Int’l*, 231 Cal. App. 4th 860, 871 (2014). Here, the fee award representing one-
9 third of the fund clearly falls within that range and is consistent with other comprehensive surveys of
10 class action settlements and fee awards. See Fitzpatrick, *An Empirical Study of Class Action*
11 *Settlements and Their Fee Award*, 7 J. Empirical Leg. Stud. 811, 833 (2010) (analyzing 444 cases
12 between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35 percent,
13 with almost no awards more than 35 percent”); Eisenberg & Miller, *Attorney Fees in Class Action*
14 *Settlements: An Empirical Study: 1993-2008*, 7 J. of Empirical Leg. Stud. 248, 262, fn.16 (2010)
15 (independent studies of class action litigation nationwide conclude that fees representing one-third of
16 the total recovery is consistent with market rates).

17 The results delivered by Plaintiff’s Counsel also support the requested percentage of the fund.
18 Here, Plaintiff and her counsel secured a \$170,000 non-reversionary common fund settlement.

19 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
20 relevant to the... reasonable determination” regarding fees. *Swedish Hospital v. Shalala*, 1 F.3d 1261,
21 1272 (D.C. Cir. 1993). A positive response rate tends to suggest that the court’s “approximation of
22 the market” for fees is well supported. *Id.* at p. 1269. In this case, the Notice specifically notified
23 Class Members that Plaintiff’s Counsel would be seeking \$56,666.67 of the Gross Settlement
24 Amount as attorneys’ fees. To date, no class member has objected to the settlement. This strong
25 favorable response also supports the requested fees.

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

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

6 495 F. 2d 448, 470 (2d Cir. 1974). Here, it is clear that a common fund of \$170,000 has been created
7 as the entire amount is to be paid out without any reversions. For Class Counsel, the fees here were
8 wholly contingent in nature and the case presented far more risk than the usual contingent fee case.
9 Among the risks was the cost inherent in class action litigation, as well as a potentially drawn-out
10 battle with a defendant that has retained premier defense counsel.

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

17 The Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a lodestar
18 cross-check is extraordinarily high or low, the trial court should consider whether the percentage used
19 should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not
20 necessarily required to make such an adjustment.” *Id.* Thus, a lodestar cross-check is aimed at
21 astronomical multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-
22 check “undermines” one of the primary reasons for using the percentage method: aligning counsel’s
23 incentives with the benefits delivered to the class and discouraging protracted litigation. *Id.* at 506
24 (finding trial courts “retain the discretion to forgo a lodestar cross-check”); *Report of the Third*
25 *Circuit Task Force, Court Awarded Attorney Fees* 108 F.R.D. 237, 258 (1985); *Lealao v. Beneficial*
26 *Cal. Inc.* 82 Cal.App.4th 19, 48 (2000) (citing the recommendations of the Third Circuit Task Force
27 with approval and observing that “[t]he criticisms of the lodestar approach set forth in this Report are
28

1 now echoed by many authorities, who have been most vocal about the manner in which it exacerbates
2 the problem of ‘cheap settlements’ and burdens already overworked trial judge”).

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

12 With respect to Class Counsel’s lodestar, to date, approximately 125.1 hours have been
13 expended by Class Counsel in this matter. Marder Decl. ¶ 15, Ex. A; Hyun Decl. ¶ 10, Ex. A.
14 Moreover, Class Counsel expects to incur approximately 20 additional hours of attorney time in
15 finalizing this settlement. Marder Decl. ¶ 15; Hyun Decl. ¶ 11. Plaintiff’s attorneys request an hourly
16 rate of \$750. Marder Decl. ¶ 15; Hyun Decl. ¶ 12. The courts are quite liberal in the evidence required
17 to prove an attorney’s hours. Detailed time records are not required. An attorney’s testimony alone
18 may suffice: “Testimony of an attorney as to the number of hours worked on a particular case is
19 sufficient evidence to support an award of attorney fees, even in the absence of detailed time
20 records.” *Martino v. Denevi*, 182 Cal. App. 3d 553, 559 (1986).

21 Reasonable hours include, in addition to time spent during litigation, the time spent before the
22 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
23 preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 62 (1980).
24 Further, the fee award should include fees incurred to establish and defend the attorneys’ fee claim.
25 *Serrano v. Unruh*, 32 Cal. 3d 621, 639 (1982) [*Serrano IV*]. Thus, Class Counsel requests that the
26 court find that these hours were reasonable in this litigation.

27 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
28 experience in the relevant community. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000).

1 The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's
2 skill and experience, the nature of the work performed, the relevant area of expertise and the
3 attorney's customary billing rates. *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632-
4 33 (1998).

5 Class Counsel's skill and experience justify the requested rate. As shown in the supporting
6 declarations, Class Counsel have significant experience in the area of employment and wage and hour
7 class actions. Specifically, Class Counsel's practice focuses on representing employees in
8 employment matters, particularly wage and hour cases. Marder Decl. ¶¶ 8-14; Hyun Decl. ¶¶ 3-6. As
9 such, based on the hours and applicable rate, the total lodestar to be expended by Class Counsel
10 through finalizing this settlement will be approximately \$108,825.00. Marder Decl. ¶ 15; Hyun Decl.
11 ¶ 12. Here, Plaintiff's counsel's lodestar exceeds 1/3 of the common fund, or \$56,666.67. As such, a
12 multiplier is not necessary. The requested fee award is fair and reasonable, and should be awarded in
13 its entirety. Class Counsel risked not only a great deal of time, but also a great deal of expense to
14 ensure the successful litigation of this action on behalf of all Class Members. For such reasons, Class
15 Counsel's request for attorneys' fees in the amount of \$56,666.67 is fair, reasonable, and adequate.

16 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF** 17 **COSTS**

18 The request for reimbursement of costs in the amount of \$14,906.50 is fair and reasonable.
19 This amount is much lower than the \$30,000 allocated for in the Agreement and the unclaimed costs
20 will be allocated to the Net Settlement Amount. The costs are all litigation related costs, which have
21 been detailed in the supporting declarations of Class Counsel. Marder Decl. ¶ 16, Exh. B; Hyun Decl.
22 ¶ 13. The authority for the Court to award this is the Parties' Settlement Agreement and Labor Code
Sections 218.5, 1194, and 2699. As such, this request should be approved.

23 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE** 24 **APPROVED**

25 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Administrator,
26 ILYM Group, are to be paid out of the class settlement funds. As shown in the Declaration of Ms.
27 Islas, the class administration fees of \$5,000.00 have been incurred and were agreed upon in the
28

Settlement Agreement. Islas Decl. ¶ 14. For such reasons, it is requested that the Administrator's fees be approved.

VIII. 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 request 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 \$7,500.00 to Plaintiff, with payments pursuant to the terms of the Settlement Agreement;
4. Approving Plaintiff Counsel's request for an award to Class Counsel for \$56,666.67 in attorneys' fees and \$14,906.50 in costs with payment pursuant to the terms of the Settlement Agreement;
5. Approving Plaintiff's request for payment of the class administration costs to ILYM Group in the amount of \$5,000.00 with payment pursuant to the terms of the Settlement Agreement; and
6. Entering final judgment as to all members of the Class in this action.

DATED: July 22, 2022

POLARIS LAW GROUP, LLP

By: William L. Marder
William L. Marder
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