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

NORMAJEAN FERLAND, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

COMPREHENSIVE SPINE AND SPORTS
CENTER, an unknown corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. 21CV375218

CLASS ACTION

[Assigned for all purposes to: Hon. Sunil R.
Kulkarni, Dept. 1]

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

[Filed concurrently with: Declaration of
Justin F. Marquez in Support of Plaintiff's
Motion for Final Approval of Class Action
Settlement; Declaration of Makenna Snow in
Support of Plaintiff's Motion for Final
Approval of Class Action Settlement; and
[Proposed] Order Granting Plaintiff's Motion
for Final Approval of Class Action
Settlement]

FINAL APPROVAL HEARING

Date: January 12, 2023
Time: 1:30 p.m.
Dept: 1

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

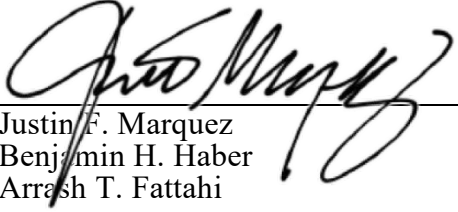
2 PLEASE TAKE NOTICE that on January 12, 2023, at 1:30 p.m., in Department 1 of the
3 Santa Clara County Superior Court, 191 North First Street, San Jose, California 95113-1090,
4 pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*, Plaintiff
5 NormaJean Ferland (“Plaintiff”) will move the Court for an Order granting final approval of the
6 proposed class action settlement between Plaintiff and Defendant Navani Pain Management Inc
7 dba Comprehensive Spine and Sports Center (“Defendant,” and together with Plaintiff, the
8 “Parties”). Plaintiff further moves the Court for an Order:

- 9 1. Certifying a Class for settlement purposes;
- 10 2. Approving the settlement as fair and reasonable and finding that class members were
11 given notice of the settlement, and advised of their right to participate in the settlement,
12 object to the settlement, or exclude themselves from the settlement, in a reasonable
13 manner;
- 14 3. Appointing Plaintiff NormaJean Ferland as Class Representative for settlement
15 purposes, and approving payment of \$7,500.00 to Plaintiff for her services as the Class
16 Representative;
- 17 4. Appointing Plaintiff’s Counsel, Wilshire Law Firm, PLC, as Class Counsel for
18 settlement purposes only;
- 19 5. Approving payment of settlement administrative expenses to ILYM Group, Inc. in the
20 amount of \$9,765.00;
- 21 6. Approving payment of up to \$ 103,333.33 in attorney’s fees, which is 33 1/3% of the
22 initial Settlement Amount of \$310,000.00, and costs of \$13,282.97 for litigating this
23 action to Class Counsel;
- 24 7. Approving the PAGA Settlement in the amount of \$10,076.87;
- 25 8. Directing that the clerk of the Court enter the Court’s order as a final judgment; and
- 26 9. Without affecting the finality of the final judgment, reserving continuing jurisdiction
27 over the parties for the purposes of implementing, enforcing and/or administering the
28 Settlement or enforcing the terms of the judgment.

1 The Motion will be based upon this Notice, the attached Memorandum of Points and
2 Authorities, the Declaration of Justin F. Marquez, and the Declaration of Makenna Snow, filed
3 concurrently herewith, the records and files in this action, including but not limited to the
4 Declarations of NormaJean Ferland and Justin F. Marquez previously filed on May 10, 2022, and
5 any other further evidence or argument that the Court may properly receive at or before the hearing.

6
7 Dated: December 19, 2022

WILSHIRE LAW FIRM

8
9 By: 

10 Justin F. Marquez
11 Benjamin H. Haber
12 Arrash T. Fattahi

13 Attorneys for Plaintiff
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Theodore Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”, 53 UCLA L. Rev. 1303, 1308 (2006)20

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff NormaJean Ferland (“Plaintiff”) seeks final approval of a proposed \$324,658.62
4 non-reversionary, wage and hour class action settlement with Defendant Navani Pain Management
5 Inc dba Comprehensive Spine and Sports Center (“Defendant,” and together with Plaintiff, the
6 “Parties”).

7 The proposed settlement satisfies all the criteria for settlement approval under California law.
8 A presumption of fairness exists as the Settlement was reached through extensive, mediated arm’s-
9 length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently,
10 and Class Counsel is experienced in similar wage-and-hour litigation. The settlement will provide
11 substantial monetary payments to approximately 176 class members. Upon the Court’s approval of
12 the settlement, participating class members will receive an **estimated average payment of \$972.79**.
13 (Declaration of Makenna Snow of ILYM Group, Inc. in Support of Motion for Final Approval of
14 Class Action Settlement [“Snow Decl.”], ¶ 16.) Among the participating class members, the
15 **estimated highest payment will be \$4,413.47** and the estimated lowest payment will be \$21.63.
16 (*Id.*) As of filing this Motion, there are no objections to the settlement and no requests for exclusion.
17 (*Id.* at ¶¶ 12-13.) There were also no disputes as to the calculated workweeks for the Class Members.
18 (*Id.* at ¶ 14.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best
19 interests of the Settlement Class Members.

20 Plaintiff’s request for attorneys’ fees in the amount of up to \$103,333.33 (which is 31.8%
21 of the final Settlement amount), reimbursement of costs and expenses in the amount of
22 \$13,282.97, an enhancement in the amount of \$7,500.00 to the Plaintiff, Administrative Costs
23 of \$9,765.00, and a PAGA Settlement of \$10,076.87, with an approximate 75% allocation to
24 the California Labor Workforce Development Agency “LWDA”) in the amount of \$7,500.00
25 and the remainder, an approximate 25% allocation, to Aggrieved Employees in the amount of
26 \$2,576.87, are also reasonable and thus should be approved by the Court.

27 Accordingly, Plaintiff respectfully requests the Court grant final approval of the
28 Settlement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims

This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and the putative class members worked in California as hourly-paid, non-exempt employees for Defendant during the class period. Defendant specializes in the treatment and management of spinal cord issues and sports-related injuries with multiple offices throughout the state of California. (Declaration of Justin F. Marquez in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement [“Marquez Decl.”], ¶ 2.)

Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked by not accurately recording the actual start and end times of shifts for each workday. Plaintiff further alleges that Defendant failed to include all remuneration in the employees’ overtime rate and meal and rest period premiums. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods. Based on these allegations, Plaintiff asserts claims against Defendant for failure to pay minimum and straight time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final wages at termination, failure to provide accurate itemized wage statements, failure to indemnify employees for expenditures, unfair business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

On January 14, 2021, Plaintiff filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198); (3) failure to provide meal periods (Cal. Lab. Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); (7) failure to indemnify employees for expenditures (Cal. Lab. Code § 2802); and (8) unfair business practices (Cal. Bus. & Prof. Code §§ 17200, *et seq.*).

(*Id.* at ¶ 4.) On December 13, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint adding a claim for civil penalties under PAGA. (*Id.*)

Following the filing of the Complaint, the Parties exchanged documents and information before mediating this action. Defendant produced a sample of time and pay records for the class members. Defendant also provided documents of their wage and hour policies and practices during the class period, and information regarding the total number of current and former employees in its informal discovery responses. (*Id.* at ¶ 5.)

After reviewing documents regarding Defendant's wage and hour policies and practices, analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the Litigation. (*Id.*) Class Counsel reviewed these records and utilized an expert to prepare a damages analysis prior to mediation. (*Id.*)

B. Settlement Negotiations

On July 26, 2021, the Parties participated in private mediation with experienced class action mediator, Lisa Klerman, Esq. (*Id.* at ¶ 7.) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties were able to reach a resolution, the material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 8, **Ex. 1** [Stipulation of Settlement].)

In light of an inadvertent omission of seven class members from the class list by Defendant, the Parties negotiated an amendment to the Settlement Agreement, which provided additional compensation in the amount of \$14,658.62 to the settlement. (*Id.* at ¶ 9, **Ex. 2** [Addendum to Joint Stipulation Re: Class Settlement].)

Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Final Approval. (*Id.* at ¶ 13.)

C. Key Terms of the Proposed Settlement

Under the Settlement, Defendant will pay \$324,658.62 to resolve this Litigation. This amount is all-inclusive. The Settlement's key terms include:

1 1. Settlement Class: For settlement purposes only, the Parties agree to the certification
2 of a class pursuant to California Code of Civil Procedure § 382 defined as: “All persons who
3 worked for Defendant in California as an hourly-paid or non-exempt employee during the
4 Settlement Period (together, collectively referred to as the “Class Members”).” (Settlement, § I
5 (P).)

6 2. Settlement Period: The Settlement Period means the period from January 14, 2017
7 through September 26, 2021. (Settlement, § I (R).)

8 3. PAGA Period: The PAGA Period means the period from January 19, 2020 through
9 September 26, 2021. (Settlement, § I (S).)

10 4. Gross Settlement Amount: This amount is \$324,658.62, for all claims, including
11 wages, interest, the Class Counsel Award, litigation costs, Settlement Administration Costs,
12 payment to the Labor and Workforce Development Agency (“LWDA”) for the alleged PAGA
13 penalties, all other penalties, and the Class Representative Service Award. (Settlement, § I (O);
14 *see also* Addendum to Joint Stipulation Re: Class Settlement)

15 5. No Reversion & Cy Pres: This is a non-reversionary settlement. Settlement checks
16 will be valid for 180 days from the date of issuance. No portion of the uncashed funds shall revert
17 back to Defendant. The uncashed amount shall go into a pool of funds to be divided, pro-rata,
18 among all Settlement Class Members who previously cashed their checks. Those settlement checks
19 will be valid for 180 days, and all funds remaining from those uncashed checks after 180 days shall
20 be void. The uncashed amount will be distributed by the Settlement Administrator to the State
21 Controller’s Unclaimed Property Fund. The Settlement Administrator shall provide a declaration
22 of deposit with the State Controller’s Unclaimed Property Fund, which will be served on Class
23 Counsel and Defendant’s Counsel within ten calendar days of payment of the residual to such
24 beneficiary. However, in the event that the Parties agree that the amount of uncashed checks is
25 less than five thousand dollars (\$5,000.00), the funds shall be paid as a *cy pres* award to the Los
26 Angeles Trial Lawyers’ Charities (“LATLC”), 2708 Wilshire Boulevard, Suite 391, Santa Monica,
27 CA 90403. (Settlement, § XI (C).) As detailed in Justin F. Marquez’s previous declaration
28 submitted in support of Plaintiffs’ Motion for Preliminary Approval, neither Plaintiff nor Class

1 Counsel have any interest, financial or otherwise, in the proposed *cy pres* recipient.¹ If the Court
2 does not approve the *cy pres* designee, the Parties shall select a new *cy pres* designee, with approval
3 by the Court. If the Court determines that Defendant will be required to pay any interest on the *cy*
4 *pres* award, there will be no *cy pres* award, and the uncashed amount will instead be distributed by
5 the Settlement Administrator to the State Controller’s Unclaimed Property Fund.

6 6. Release as to All Settlement Class Members: The class release is limited to “any
7 and all claims alleged in the Litigation arising during the Settlement Period, and all claims arising
8 in connection with or related to the facts or primary rights alleged in the Litigation arising during
9 the Settlement Period, including, but not limited to, failure to pay wages; failure to pay minimum
10 wages; failure to pay straight time compensation, overtime compensation, and/or double-time
11 compensation, and/or interest; the calculation of the regular rate of pay; missed, late, short or
12 interrupted meal and/or rest periods, including any claim for any alleged failure to pay premiums
13 for missed, late, short or interrupted meal or rest periods, or to pay such premiums at the regular
14 rate of compensation; reimbursement for business expenses or any other claim that Defendant
15 allowed or required employees to bear any of the costs associated with the operation of Defendant’s
16 business, including without limitation costs for equipment; payment for all hours worked,
17 including off-the-clock work; inaccurate or otherwise improper wage statements and/or failure to
18 keep or maintain accurate records; unlawful deductions; failure to timely pay wages upon discharge
19 or quitting; any claim for unfair business practices arising out of or related to any or all of the
20 factual allegations; any claim for penalties arising out of or related to any or all of the factual
21 allegations, including, but not limited to, recordkeeping penalties, wage statement penalties,
22 minimum-wage penalties, and waiting-time penalties; and attorneys’ fees and costs. For purposes
23 of clarification, the claims released by the Settlement Class Members include any and all claims
24 that arise out of or in connection with the facts alleged in the Litigation, and any claims which
25 could have been asserted in the Litigation arising from the alleged facts and/or primary rights

26 _____
27 ¹ Plaintiff requests the Court take judicial notice of Declaration of Justin F. Marquez in
28 Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement, filed on May
10, 2022.

1 alleged to have been invaded to the fullest extent permitted by law. Without limitation by any
2 other language in this Joint Stipulation Re: Class Settlement, this Release includes claims that have
3 arisen or could reasonably have arisen based on the factual allegations in the complaints against
4 the Released Parties arising during the Settlement Period alleging a violation of the Wage Orders
5 of the California Industrial Welfare Commission; California Code of Civil Procedure § 1021.5;
6 California *Business and Professions Code* Section 17200, *et seq.*; the California Private Attorneys
7 General Act of 2004; and/or alleging a violation of the California Labor Code (including claims
8 under §§ 200, 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 558.1,
9 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800 and 2802).
10 Settlement Class Members who endorse their settlement checks waive and release any claims under
11 the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) arising during the Settlement
12 Period and reasonably related to any or all of the factual allegations. This Release excludes the
13 release of claims not permitted to be released by law.” (Settlement, § VII (B).) This Release will
14 be deemed effective upon the date the Court’s Final Approval Order becomes “Final” (as that term
15 is defined in the Settlement Agreement, § I (E)). (Settlement, § VII (B).)

16 7. Release as to the PAGA Claims: the PAGA release is limited to “any and all claims
17 alleged in the PAGA letter to the LWDA and any amendments thereto, any and all claims alleged
18 in the Litigation arising under PAGA during the PAGA Period, and all claims arising from or
19 related to the facts or primary rights as those alleged in the Litigation arising under PAGA during
20 the PAGA Period, and includes all claims under PAGA arising during the PAGA Period associated
21 with all claims against the Released Parties for or arising in connection with (a) unpaid wages,
22 including failure to pay minimum wages; failure to pay straight time compensation, overtime
23 compensation, double-time compensation, and/or interest; the calculation of the regular rate of pay;
24 payment for all hours worked, including off-the-clock work; (b) missed, late, short or interrupted
25 meal and/or rest periods, including any claim for any alleged failure to pay premiums for missed,
26 late, short or interrupted meal or rest periods, or to pay such premiums at the regular rate of
27 compensation; (c) reimbursement for business expenses or any other claim that the Released
28 Parties allowed or required employees to bear any of the costs associated with the operation of the

Released Parties’ business; (d) inaccurate or otherwise improper wage statements and/or failure to keep or maintain accurate records; (e) failure to timely pay wages upon discharge or quitting; (f) any claim for unfair business practices arising out of or related to any or all of the aforementioned factual allegations; (g) any claim for penalties arising out of or related to any or all of the aforementioned factual allegations, including, but not limited to, recordkeeping penalties, wage statement penalties, minimum-wage penalties, and waiting-time penalties; and (h) attorneys’ fees and costs. For purposes of clarification, the claims released by the Aggrieved Employees and the LWDA include any and all claims under the PAGA that arise out of or in connection with the facts alleged in the Litigation, and any claims which could have been asserted in the Litigation arising from the alleged facts and/or primary rights alleged to have been invaded to the fullest extent permitted by law. Without limitation by any other language in this Joint Stipulation Re: Class Settlement, the Release includes claims that have arisen or could reasonably have arisen based on the factual allegations in the complaints against the Released Parties arising under PAGA during the PAGA Period alleging violation of the Wage Orders of the California Industrial Welfare Commission; and/or alleging violation of the California Labor Code (including claims under §§ 200, 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800 and 2802). This Release excludes the release of claims not permitted to be released by law.” (Settlement, § VII (C).) This Release will be deemed effective upon the date the Court’s Final Approval Order becomes “Final” (as that term is defined in the Settlement Agreement, § I (E)). (Settlement, § VII (C).)

8. PAGA Allocation: The settlement includes \$10,076.87 allocated to Plaintiff’s claims under PAGA, with approximately 75% of which (\$7,500.00) being paid to the LWDA and the remainder of approximately 25% (\$2,576.87) being paid to the Aggrieved Employees (on a pro-rata basis based on the number of pay periods worked). (Settlement, § XVI; **Ex. 2** [Addendum to Joint Stipulation Re: Class Settlement].)

9. Net Settlement Fund: The “Net Settlement Fund” or “Net Settlement Amount” is the amount that remains and that shall be paid to Settlement Class Members after the following

amounts are subtracted: (1) attorneys' fees and Litigation costs, (2) Administrative Costs, (3) enhancement to the Named Plaintiff, and (4) the penalties recoverable pursuant to the PAGA. (Settlement, § I (K).)

10. Distribution Formula: Members of the Settlement Class not opting out will receive a lump sum payment as good and valuable consideration for the waiver and release of claims as set forth in Section D (6), above, in an amount determined by the Settlement Administrator in accordance with the provisions as outlined in Section XI of the Settlement Agreement.

11. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 33% wages and 67% penalties and interest. (Settlement, § XV.) The tax allocation breakdown comports with Plaintiff's *Kullar* analysis, as detailed in Justin F. Marquez's previous declaration submitted in support of Plaintiffs' Motion for Preliminary Approval. (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 128.)

12. Class Representative Service Award: Subject to Court approval, Plaintiff shall be paid an enhancement award not to exceed \$7,500.00. (Settlement, § XIV.) This amount is for Plaintiff's time and effort in bringing and presenting the action, and in exchange for a general release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, § VII (A).) If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis. (Settlement, § XIV.)

13. Attorneys' Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 33 1/3% (\$103,333.33) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed \$15,000.00. (Settlement, § XIII.)

14. Notice of Proposed Class Action Settlement: The Notice set forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys' fees, costs, and service award being sought, and an explanation of how the settlement allocations are calculated. (Snow Decl., Ex. A.) The Notice also included an opt-out form that class members can complete in the event they decide to not participate in the settlement. (*Id.*) Class Members were notified by first-class mail of the settlement. (*Id.* at ¶¶ 7-9.) ILYM Group, Inc., the

Settlement Administrator, undertook its best efforts to ensure that the notice was provided to the current addresses of class members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.* at ¶¶ 6-9.) Notice was also provided in English and Spanish. (*Id.* at ¶ 3.)

15. Workweek Dispute Form: The Workweek Dispute Form set forth each class member's total workweeks and permitted class members to dispute their number of workweeks by following the procedures as outlined in the Workweek Dispute Form. (Settlement, Ex. B.)

D. Preliminary Settlement Approval, Class Notice, and Settlement Administration.

On June 21, 2022, this Court issued its Order Concerning Plaintiff's Motion for Preliminary Approval of Class Action Settlement, in which the Court granted Plaintiffs' preliminary approval motion. (Marquez Decl., ¶ 12.)

Altogether, notices explaining class member rights were mailed out to all 176 class members in English and Spanish. (Snow Decl., ¶¶ 3, 7, 8, 15.) To date, five notice packets remain undeliverable. (*Id.* at ¶ 11.) ***There are no objections to the settlement and no requests for exclusion.*** (*Id.* at ¶¶ 12-13.) If the Court approves the settlement, participating class members will receive an **estimated average payment of \$972.79**, with the estimated **highest payment being \$4,413.47** and the estimated lowest payment being \$21.63. (*Id.* at ¶ 16.)

III. THE SETTLEMENT MERITS FINAL APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors to be considered in evaluating a class action settlement include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through proceedings, the experience and views of counsel, the presence of a government participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is fair and reasonable exists where, as here, the following four factors are present: "(1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow

1 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
2 the percentage of objectors is small.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
3 224, 245.)

4 Whether a class action settlement should be approved is a question committed to the trial
5 court’s broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give
6 “[d]ue regard ...to what is otherwise a private consensual agreement between the parties.” (*Dunk*
7 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “The inquiry ‘must be limited to the extent
8 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
9 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
10 whole, is fair, reasonable and adequate to all concerned.” (*Id.* [internal citations omitted].)

11 **A. The Settlement Reflects a Reasonable Compromise.**

12 The Settlement represents a significant percentage of the maximum damages that may have
13 been awarded to the class in this case if they had prevailed at trial. The Settlement, of course,
14 reflects a compromise. The amount of settlement benefits takes into account all the litigation risks
15 related to obtaining class certification, proving Defendant’s liability, and proving Class Members’
16 damages. In light of all the defenses asserted by Defendant which posed substantial litigation risks,
17 a compromise effectively awarding Class Members a significant percentage of the maximum value
18 of their claims is eminently fair and reasonable.

19 Because of the Settlement, and through the efforts of Plaintiff and Class Counsel, Class
20 Members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment.

21 To be sure, Defendant ultimately has to pay less under the settlement than it would have
22 had to pay if Plaintiff had achieved a judgment on claims at trial. But an ideal settlement requiring
23 a defendant to pay the full amount of its potential damages is rarely achieved. As the Ninth Circuit
24 has observed, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an
25 abandoning of highest hopes.”’ (*Officers for Justice v. Civil Service Commission of City and*
26 *County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 624.) Thus, a proposed settlement “is not
27 to be judged against a hypothetical or speculative measure of what might have been achieved by
28 the negotiators.” (*Id.* at p. 625.) A court’s “intrusion upon what is otherwise a private consensual

1 agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to
2 reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or
3 collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair,
4 reasonable and adequate to all concerned.” (*Id.*)

5 **B. The Settlement was Reached After Arms-Length Negotiations Following**
6 **Informal Discovery.**

7 The Settlement was reached following extensive negotiations between Class Counsel and
8 Defendant’s counsel. (Marquez Decl., ¶¶ 5-9.) Prior to the mediation, Defendant provided Class
9 Counsel with class-wide information and documents, including its wage and hour policies and
10 practices during the class period and a sampling of time and pay records for class members. (*Id.*)
11 At the mediation that was conducted by experienced class action mediator Lisa Klerman, Esq, the
12 Parties were able to reach a resolution, the material terms of which are encompassed within the
13 Settlement Agreement and Addendum to Settlement Agreement. (*Id.* at ¶¶ 7-9, Exs. 1, 2.)

14 Counsel participated in lengthy arms-length settlement negotiations that involved
15 numerous discussions, exchanges of information and candid evaluation of the respective Parties’
16 strengths and weaknesses. (*Id.* at ¶ 7.) There is no evidence to suggest that the Parties did not
17 have sufficient information to make informed decisions about the value of this case or that the
18 Settlement is a product of fraud, overreaching or collusion.

19 **C. Plaintiff’s Counsel Has Substantial Class Action Experience.**

20 Class Counsel has considerable experience and has demonstrated competence with
21 litigating wage and hour class actions. (*Id.* at ¶¶ 30-41.) Class Counsel has substantial experience
22 in all facets of litigation in state and federal court, including discovery, law and motion, trial,
23 appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf
24 of plaintiffs and have been lead counsel or otherwise exercised significant case handling
25 responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

26 Based on Class Counsel’s experience as employment and class action attorneys, Class
27 Counsel is eminently qualified to evaluate the strength of Plaintiff’s claims, the strength of
28 Defendant’s defenses against certification, the strength of Defendant’s defenses on the merits, and

1 the fairness of the Settlement. Their opinion that final approval of the Settlement and Addendum
2 to Settlement Agreement would be in the best interests of class members in light of the significant
3 risks of litigation is entitled to great weight. (*See Kullar, supra*, 168 Cal.App.4th at 129 [“The
4 court undoubtedly should give considerable weight to the competency and integrity of counsel and
5 the involvement of a neutral mediator in assuring itself that a settlement agreement represents an
6 arms-length transaction entered without self-dealing or other potential misconduct”].)

7 **D. There Are No Objections To The Settlement.**

8 No class members have objected to the Settlement or requested exclusion from the
9 Settlement. (Snow Decl., ¶¶ 12-13.) The overwhelmingly positive response of the class strongly
10 supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc. Marketing and Sales*
11 *Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few objections and requests
12 for exclusion support approval].)

13 Factors to be considered in evaluating a class action settlement include “the reaction of the
14 class members to the proposed settlement.” (*Kullar, supra*, 168 Cal.App.4th at p. 128.) The
15 reaction here has been overwhelmingly positive. Courts have approved class action settlements in
16 lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist.
17 LEXIS 5976, 2001 WL 34089697, *8 [court found that the “class members overwhelmingly
18 support[ed] the settlement” where there were over 37,000 notices sent out, 2,745 class members
19 participated in the settlement, “only nine objections were submitted”, and there were 86 timely
20 opt-outs and over 20 additional defective or untimely opt-outs, “these indicia of the approval of
21 the class of the terms of the settlement support a finding of fairness under Rule 23”], *citing Hanlon*
22 *v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by
23 objectors, “fact that the overwhelming majority of the class willingly approved the offer and stayed
24 in the class presents at least some objective positive commentary as to its fairness”, court did not
25 abuse its discretion in approving settlement].)

26 **IV. THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED AMOUNTS OF**
27 **ATTORNEYS’ FEES, COSTS AND AN ENHANCEMENT PAYMENT.**

28 Under the Settlement, subject to the Court’s approval, Defendant has agreed not to oppose

1 Class Counsel's request for reasonable attorneys' fees in the amount of up to \$103,333.33, which
2 is 33 1/3% of the initial Settlement Amount, and Litigation costs in an amount not to exceed
3 \$15,000.00 for litigating this Action, which shall be paid from the Settlement Amount. However,
4 after factoring in the additional compensation paid by Defendant pursuant to the Addendum to
5 Settlement Agreement, Class Counsel's request for attorneys' fees is ultimately **31.8%** of the
6 overall recovery. In addition, Defendant will not oppose an application for the payment of
7 Administrative Costs in the amount of \$9,765.00 and a Class Representative Enhancement
8 payment in the amount of \$7,500, to be paid from the Settlement Amount. The proposed attorneys'
9 fees and expenses were disclosed to the Class Members in the Notice of Proposed Class Action
10 Settlement.

11 "In general, questions whether a settlement was fair and reasonable, whether certification
12 of the class was proper, and whether the attorney fee award was proper are matters addressed to
13 the trial court's broad discretion." (*Wershba, supra*, 91 Cal.App.4th at pp. 234-235.) "Courts
14 recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier
15 method and the percentage of recovery method." (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.*
16 (9th Cir. 1977) 557 F.2d 759, 769.)

17 **A. Counsel Requests an Award of Fees Based on the "Common Fund" Method.**

18 California courts have long awarded attorneys' fees as a percentage of the benefit created
19 by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when
20 a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff
21 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff
22 or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d
23 25, 34 [quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1.]

24 Class Counsel intends to seek an award of attorneys' fees on the "percentage of recovery/
25 common fund" theory. The purpose of the common fund/percentage approach is to "spread
26 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
27 bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)
28 In *Quinn v. State of California* (1995) 15 Cal. 3d 162, 167, the California Supreme Court stated:

1 “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others
2 derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.”
3 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California
4 Supreme Court recognized that the common fund doctrine has been applied “consistently in
5 California when an action brought by one party creates a fund in which other persons are entitled
6 to share.”

7 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
8 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
9 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
10 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
11 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
12 method—including relative ease of calculation, alignment of incentives between counsel and the
13 class, a better approximation of market conditions in a contingency case, and the encouragement
14 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
15 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
16 (*Id.* [internal citations omitted].)

17 Several courts have expressed frustration with the alternative “lodestar” approach for
18 deciding fee awards, which usually involves wading through voluminous and often indecipherable
19 time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote: “This
20 court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit analysis, the answer
21 would be a resounding, ‘No!’” (*In re Activision Securities Litigation* (N.D. Cal 1989) 723 F. Supp.
22 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the
23 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
24 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
25 demands on judicial resources. (*Id.* at pp. 1378-79.) The Ninth Circuit now routinely uses the
26 percentage of the common fund approach to determine the award of attorney’s fees. (*See, e.g., In*
27 *re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47
28 F.3d 373, 378-79 [approving attorney’s fee of 33 1/3%].)

1 **1. The Standard Fee Award in Class Actions Has Resolved Itself As One-**
2 **Third Of The Recovery In Common Fund Cases.**

3 According to a leading treatise on class actions, “No general rule can be articulated on what
4 is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a
5 reasonable fee award from a common fund in order to assure that the fees do not consume a
6 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
7 are not unprecedented.” (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.)
8 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with *thirty*
9 *to forty percent commonly awarded in cases where the settlement is relatively small.* (*See Id.*;
10 *see also, Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating
11 that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under
12 \$10 million].)

13 The settled-for 31.8% fee award is consistent with the average fee award in class actions.
14 Indeed, the custom and practice in class actions is to award approximately one-third of a fund as a
15 fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies
16 show that, regardless whether the percentage method or the lodestar method is used, fee awards in
17 class actions average around one-third of the recovery.”].) Thus, Plaintiff’s fee request is in line
18 with the prevailing guidelines established in California case law and academic literature, and is
19 consistent with awards in California. Accordingly, Plaintiff requests that the Court approve the
20 attorneys’ fees as negotiated by the Parties and requested herein.

21 **2. This Matter Involves A “Fee-Shifting” Provision of the Labor Code.**

22 Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

23 [A]ny employee receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil action the
25 unpaid balance of the full amount of this minimum wage or overtime compensation,
 including interest thereon, reasonable attorney’s fees, and costs of suit.

26 (Lab. Code § 1194.)

27 As this litigation culminated in a settlement that provided for a recovery of unpaid wages,
28 including unpaid minimum wages and overtime compensation, Plaintiff is entitled to recover

1 reasonable attorneys' fees and costs under the California Labor Code.

2 Class Counsel is also entitled to a fee award under California's private attorney general
3 statute, Code of Civil Procedure § 1021.5. "The award of attorneys fees is proper under Section
4 1021.5 if '(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the
5 public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary, has been conferred
6 on the general public or a large class of persons' and (3) 'the necessity and financial burden of
7 private enforcement are such as to make the award appropriate.'" (*Press v. Lucky Stores* (1983)
8 34 Cal.3d 311, 317-318.) The fundamental objective of the statute is "to encourage suits enforcing
9 public policies by providing substantial attorneys' fees to successful litigants in such cases."
10 (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

11 This action resulted in the enforcement of an important right affecting the public interest,
12 as Plaintiff sought to enforce Settlement Class Members' rights to recover statutory wages arising
13 from Defendant's alleged failure to pay all wages and failure to provide meal and rest breaks. (*See*
14 *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that "health and
15 safety concerns" are what motivated the Industrial Welfare Commission to adopt mandatory meal
16 and rest periods].)

17 This action also conferred a significant benefit on a large class of persons. Notice was sent
18 to 176 individuals, and no Class Member objected to the Settlement or requested exclusion. The
19 Settlement provides a significant monetary benefit, in that it permits all persons who worked for
20 Defendant during the applicable class period to obtain significant compensation for unpaid wages
21 and missed meal and rest periods.

22 Finally, the necessity and financial burden of private enforcement render an award
23 appropriate. Without the incentive of an attorneys' fee award, Plaintiff could not have afforded to
24 hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff's
25 potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th
26 1033, 1044 ["As to the necessity and financial burden of private enforcement, an award is
27 appropriate where the cost of the legal victory transcends the claimants' personal interest; in other
28 words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual

1 stake in the matter.”].)

2 **3. The Experience, Reputation and Ability of Class Counsel Support the**
3 **Fee Award.**

4 As demonstrated by their past experience in pursuing class actions on behalf of consumers
5 and employees, Class Counsel possesses considerable expertise in litigating class action matters.
6 Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting
7 in a multitude of beneficial results to class members in California. Because it is reasonable to
8 compensate class counsel commensurate with their skill, reputation and experience, a fee award of
9 31.8% of the final Settlement Amount is justifiable and considered within the norm in class action
10 practice.

11 Class Counsel’s experience in wage and hour class actions was integral in evaluating the
12 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
13 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
14 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
15 action litigation. Based on these and other factors, Class Counsel has frequently received fee
16 awards amounting to 33 1/3% of the recovery for the class. Therefore, the requested fee award is
17 reasonable and fair.

18 **B. While the Lodestar Method is Not Necessary in Common Fund Cases, Courts**
19 **May Perform a Cross-Check to Award Fees.**

20 “Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.”
21 (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the
22 lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-
23 risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: “(1) ‘increases the workload
24 of an already overtaxed judicial system,’ (2) is ‘insufficiently objective and produce[s] results that
25 are far from homogenous,’ (3) ‘creates a sense of mathematical precision that is unwarranted in
26 terms of the realities of the practice of law,’ (4) ‘is subject to manipulation by judges who prefer
27 to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the
28 plaintiffs or of an overall dollar amount,’ (5) ‘encourages lawyers to expend excessive hours, and

1 . . . engage in duplicative and unjustified work,’ (6) ‘creates a disincentive for the early settlement
2 of cases,’ (7) deprives trial courts of ‘flexibility to reward or deter lawyers so that desirable
3 objectives, such as early settlement, will be fostered,’ (8) ‘works to the particular disadvantage of
4 the public interest bar,’ and (9) results in ‘confusion and lack of predictability.’” (*Id.*)

5 Although California supports the common fund doctrine, the lodestar method can be used
6 to cross-check fee awards. “It may be appropriate in some cases, assuming the class benefit can
7 be monetized with a reasonable degree of certainty, to “cross-check” or adjust the lodestar in
8 comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and
9 within the range of fees freely negotiated in the legal marketplace in comparable litigation.”(*In re*
10 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

11 Applying the lodestar method requires a two-step process. The first step is to multiply the
12 number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a
13 multiplier to the lodestar to take into account various factors. “The purpose of such adjustment is
14 to fix a fee at the fair market value for the particular action. In effect, the court determines,
15 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal
16 skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate
17 for such services.” (*Id.* at pp. 556-57.) “Under certain circumstances, a lodestar calculation may
18 be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id.* at p. 557.)

19 Wilshire Law Firm’s current lodestar is \$100,500 based on at least 165 hours of reported
20 work performed by Class Counsel. (Marquez Decl., ¶ 16.) Accordingly, the requested fee of
21 \$103,333.33 is reasonable and fair as it is based on a multiplier of 1.03. Additionally, there are
22 additional hours devoted by Class Counsel to this litigation that are not reflected in Class Counsel’s
23 request for attorney’s fees, such as future time that will need to be devoted to ensuring the
24 settlement checks are administered. (Marquez Decl., ¶¶ 15-19.)

25 1. Class Counsel’s Rates Have Been Approved by Several Courts.

26 Class Counsel provides a declaration to support their lodestar hourly rates. “Affidavits of
27 the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate
28 determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are

satisfactory evidence of the prevailing market rate.” (*United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of their hourly rates in other wage and hour class action settlements. These rates are not opposed or challenged.

2. The Lawsuit Provided a Public Benefit.

Class Counsel’s choice to litigate this matter provided a public benefit to 176 California employees. Indeed, California Labor Code section 90.5(a) states:

It is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions...and to protect employers who comply with the law from those who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

Moreover, the California Supreme Court stated that “Labor Code section 1194 confirms “a clear public policy ... that is specifically directed at the enforcement of California’s minimum wage and overtime laws for the benefit of workers.” [citation omitted].” (*Sav-on Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous attorney hours attendant to the litigation of Plaintiff’s claims, this factor supports Class Counsel’s fee request and encourages the private enforcement of legal rights for the general good.

C. Costs Are Reasonable.

Class Counsel requests reimbursement of \$13,282.97 in expenses. (Marquez Decl., ¶ 24.) Defendant has previously agreed that it will not oppose any cost award request up to \$15,000. The categories of costs are set forth in the accompanying Declaration of Justin Marquez, and these costs are easily seen to be both reasonable and necessary.

D. The Enhancement Payment to Plaintiff is Reasonable.

Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring

1 about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59.)

2 Service awards are particularly important to plaintiffs in wage and hour cases because they
3 promote the important public policies underlying the wage and hour laws. This strong policy is
4 codified in California Labor Code section 90.5, which provides, “it is the policy of this state to
5 vigorously enforce minimum labor standards in order to ensure employees are not required or
6 permitted to work under substandard unlawful conditions....”).

7 Under the Settlement Agreement, subject to the Court’s approval, Defendant agreed not to
8 oppose an enhancement to Plaintiff in the amount of \$7,500. (Settlement, § XIV.) This amount is
9 also in exchange for Plaintiff’s general release of all claims against Defendant. Plaintiff has
10 submitted a declaration demonstrating that she devoted a great deal of time and work assisting
11 counsel in the case, including numerous meetings with Class Counsel and extensive phone calls to
12 discuss the case, case strategy, mediation, and settlement. (*See generally*, Declaration of Plaintiff
13 NormaJean Ferland [“Ferland Decl.”], which was filed on May 10, 2022 (showing at least 35 hours
14 of estimated time devoted to this case through the preliminary approval stage).)

15 When compared with the amounts awarded in typical class action cases, the amount
16 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
17 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
18 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
19 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
20 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment
21 discrimination class actions received an average award of \$69,850 and a median award of \$31,081,
22 while named plaintiffs in other employment class actions received an average award of \$12,121
23 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards
24 in employment cases reflected the “courts’ wish to make representative plaintiffs whole by
25 compensating them for the high costs of their service to the class, including risks of stigmatization
26 or retaliation on the job.” (*Id.* at p. 1308.)

27 Another factor that supports the awarding of service awards is whether the class
28 representative’s service resulted in notoriety or other personal difficulties. (*See, e.g., Schaffer*

1 *v. Litton Loan Servicing, LP* (C.D. Cal. 2012) 2012 WL 10274679, at *18.) The California
2 Supreme Court has recognized that “retaliation against employees for asserting statutory rights
3 under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect
4 employees. (*Gentry v. Superior Court* (2007) 42 Cal.4th 443, 460-61.) In this context, class
5 representatives should be rewarded for assuming the risk of retaliation for the sake of class
6 members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

7 Here, Plaintiff has lent her name to this case and thus subjected herself to public
8 attention. She has also risked her reputation in the community and with regard to future
9 employment opportunities as a result of stepping forward publicly in a class action. When a
10 class representative shoulders some degree of personal risk in joining the litigation, such as
11 workplace retaliation or financial liability, an incentive award is especially important. (*See*
12 *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977; *Weeks v. Kellogg Co.* (C.D. Cal. 2013)
13 2013 WL 6531177, *36.) Plaintiff has been subject to the rigors of litigation and has had to
14 devote her own time and expenses in participating in the case. (*See, generally*, Ferland Decl.;
15 *see also* Marquez Decl., ¶ 25-29.)

16 **E. Administrative Costs Should be Approved.**

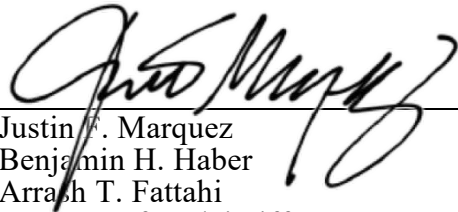
17 ILYM Group, Inc., the Settlement Administrator, estimates that it will incur a total of
18 \$9,765.00 in costs associated with the administration of this Settlement. (Snow Decl., ¶ 17.) These
19 expenses are reasonable, based upon the size of the class and the additional tasks associated with
20 claim and exclusion tracking and Class Member payment processing.

21 **V. CONCLUSION**

22 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval
23 of the proposed settlement.

24 Dated: December 19, 2022

WILSHIRE LAW FIRM

25
26 By: 

Justin F. Marquez
Benjamin H. Haber
Arrash T. Fattahi
Attorneys for Plaintiff

Ferland v. Comprehensive Spine and Sports Center, et al.
21CV375218

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is anarinyans@wilshirelawfirm.com.

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(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

Executed on **December 19, 2022**, at Los Angeles, California.

Signature _____