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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

FRANCISCO SALOME RENOJ
HERNANDEZ, individually and on behalf of
others similarly situated,

Plaintiff,

vs.

BALTAZAR CONSTRUCTION, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 21STCV11456

*Assigned for All Purposes to the Honorable
Yvette M. Palazuelos, Dept. 9*

CLASS ACTION

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

Hearing Date: June 14, 2023
Hearing Time: 10:00 a.m.
Dept: 9

Complaint filed: March 24, 2021
Trial: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on June 14, 2023 at 10:00 a.m. in Department 9 of the above-captioned Court located at 312 North Spring Street, Los Angeles, California 90012, pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, Plaintiff Francisco Salome Renoj Hernandez (“Plaintiff”) will and hereby does move the Court for an Order granting preliminary approval of the proposed class action settlement between Plaintiff and Defendant Baltazar Construction, Inc. (“Defendant”). As part of that approval, the Plaintiff will request that the Court:

1. Grant final approval of the Settlement attached to the Declaration of Heather Davis, Esq., on the grounds that the proposed settlement is fair, adequate, and reasonable because:

- a. The non-reversionary Net Settlement Amount of approximately \$266,299.22 will be paid out to the Participating Class Members, which includes a credit of \$93,000.00 to compensate Defendant for settlement payments previously made to Participating Class Members for individual releases of the claims at issue and which was deducted from the calculation of the class portion of these individuals’ Individual Settlement Payments;
- b. Proper Notice was provided to all Class Members pursuant to the terms of the Settlement;
- c. No objections were submitted to the Settlement; and
- d. Only one Class Member requested to be excluded from the settlement, leaving 313 Participating Class Members;

2. Award attorneys’ fees in the amount One Hundred Eighty-Nine Thousand Dollars and Zero Cents (\$189,000.00) (35% of the Gross Settlement Amount) to Protection Law Group, LLP (“Class Counsel”);

3. Award costs in the amount of \$14,700.78 to Class Counsel for litigation costs and expenses;

4. Award payment of \$15,000.00 to the Settlement Administrator, ILYM Group, Inc, for the costs of settlement administration;

5. Award a class representative incentive payment of \$5,000.00 to Plaintiff Francisco

Salome Renoj Hernandez;

6. Approve payment of \$50,000.00 for penalties pursuant to California Labor Code Section 2698 *et. seq.* the Private Attorneys General Act of 2004 (“PAGA”) and the distribution of seventy-five percent of these penalties (\$37,500.00) to the California Labor and Workforce Development Agency (“LWDA”) and twenty-five percent (\$12,500.00) to class members who worked within the PAGA Period (“PAGA Members”); and

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

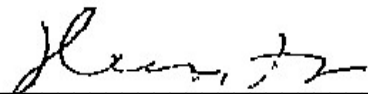
The motion is based upon this notice; the attached memorandum of points and authorities; the Declaration of Heather Davis, Esq.; the Declaration of Plaintiff Francisco Salome Renoj Hernandez; the Declaration of Nicole Bench on behalf of ILYM Group, Inc.; the pleadings and other records on file with the Court in this matter, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

DATED: May 10, 2023

PROTECTION LAW GROUP, LLP

By:



Heather Davis
Amir Nayebdadash
Carlos Jimenez
Attorneys for Plaintiff
FRANCISCO SALOME RENOJ HERNANDEZ

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Francisco Salome Renoj Hernandez (“Plaintiff”) seeks final approval of a class action and PAGA settlement with Defendant Baltazar Construction, Inc. (“Defendant”). The settlement provides for: (1) A non-reversionary Gross Settlement Amount of \$540,000.00; (2) attorneys’ fees in the amount of \$189,000.00 (35% of the Gross Settlement Amount); (3) actual litigation costs and expenses incurred by Class Counsel in the amount of \$14,700.78; (4) payment of \$50,000.00 for PAGA Penalties (75% of which shall be distributed to the LWDA and 25% to PAGA Members); (5) payment of \$15,000.00 to the Settlement Administrator, ILYM Group, Inc.; and (6) a requested class representative service award payment of \$5,000.00 to Plaintiff. The result is a Net Settlement Amount (“NSA”) of \$266,299.22 (which includes a credit of \$93,000.00 to compensate Defendant for settlement payments previously made to Participating Class Members for individual releases of the claims at issue and which was deducted from the calculation of the class portion of these individuals’ Individual Settlement Payments) that will be distributed to a Class of 313 Participating Class Members who worked for Defendant as hourly-paid, non-exempt employees in the State of California at any time from March 24, 2017, and ending on November 13, 2021. Participating Class Members/PAGA Members will receive an average Individual Settlement Payment of approximately \$551.91 and a high payment of \$2,806.10. Declaration of Nicole Bench of ILYM Group, Inc. (“ILYM Decl.”) ¶14.

At Preliminary Approval, the Court established a presumption of fairness after extensively analyzing the terms of the Settlement and underlying settlement efforts. This presumption of fairness is confirmed here following notice of the proposed settlement to the class. Out of the 314 Class Members, only one Class Member has submitted a request for exclusion, and there have been zero objections to the terms of the proposed settlement. ILYM Decl. ¶¶11-13. The lack of objections and participation by all but one class member is further evidence, in addition to the factors extensively analyzed at Preliminary Approval, that demonstrate the Settlement is a fair and reasonable result. Accordingly, the Court should approve of the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant holds licenses for General Building Contractor and General Engineering Contractor and its work in the construction industry includes both residential and government projects. Plaintiff was employed by Defendant from approximately May 1, 2017, to approximately March 2020 as an hourly-paid, non-exempt Rebar Installer at Defendant's various work sites throughout California. Declaration of Heather Davis in support of Motion for Preliminary Approval ("Davis Decl.") ¶12; see also Declaration of Plaintiff Francisco Salome Renoj Hernandez in support of Motion for Preliminary Approval ("Hernandez Decl.") ¶2.

On March 22, 2021, Plaintiff provided notice to the California Labor Workforce Development Agency ("LWDA") and Defendant of his intent to investigate and seek civil penalties under Labor Code § 2699, et seq. ("PAGA"). Davis Decl. ¶13, Ex. 1. On March 24, 2021, Plaintiff filed a wage and hour class action complaint ("Complaint") with the Los Angeles County Superior Court (Case No. 21STCV11456) against Defendant, alleging the following causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Failure to Provide Accurate Wage Statements; (7) Failure to Reimburse Necessary Business Expenses; and (8) Violation of Business and Professions Code § 17200, et seq. On July 5, 2021, Plaintiff filed a First Amended Complaint ("FAC"), which added a cause of action under PAGA. Davis Decl. ¶13.

On May 19, 2021, Plaintiff served Defendant with formal discovery including Form Interrogatories-General, Set One; Special Interrogatories, Set One; and Requests for Production of Documents, Set One. Plaintiff also served Defendant with a Notice of Deposition of Defendant's Person Most Knowledgeable and Requests for Production of Documents. Davis Decl. ¶14. On July 5, 2021, Defendant provided objection only responses to all of Plaintiff's discovery requests. Davis Decl. ¶14. Thereafter, Plaintiff and Defendant (collectively, "the Parties") met and conferred with respect to the potential resolution of this Action, staying formal discovery, and agreed to exchange informal discovery and engage in a private mediation. Davis Decl. ¶15. However, on approximately July 13, 2021, as a result of Plaintiff's investigation, Plaintiff's counsel discovered Defendant was offering individual settlement releases to the putative class members covering the claims in Plaintiff's

1 Complaint. *Id.* Defendant had entered into individual settlement agreements with approximately 186
2 class members totaling \$93,000.00 in value (“Prior Release Payments”). Davis Decl. ¶16.

3 On August 25, 2021, the Parties executed a Joint Mediation Stipulation to attend private
4 mediation with Deborah Crandall Saxe, esq. to be held on September 14, 2021. Davis Decl. ¶17. As
5 part of the Parties’ Mediation Stipulation, Defendant agreed to and eventually did provide Plaintiff’s
6 counsel the following data points (“Informal Data Points”); (i) Total number of covered employees
7 from March 27, 2017 to the present; (ii) Total number of PAGA eligible employees from March 24,
8 2020 to the present; (iii) Total number of eligible employees during the one year prior to the filing of
9 the complaint; (iv) Total number of current employees; (v) Total number of terminated employees
10 during the class covered period; (vi) Total number of terminated employees during the three years
11 prior to the filing of the complaint; (vii) Average number of employees per pay period during the
12 class covered period; (viii) Average number of employees per pay period during the PAGA period;
13 (ix) Total workweeks during the class covered period; (x) Total pay periods during the PAGA period;
14 (xi) Total pay periods one year prior to the filing of the complaint; (xi) Average rates of pay for 2017-
15 2021; and the (xii) Average overtime rate of pay. *Id.*

16 Pursuant to the Parties’ Mediation Stipulation, Defendant provided Plaintiff with extensive
17 informal discovery, including Plaintiff’s personnel file, and all relevant policies and handbooks in
18 place during the Class Covered Period which included Defendant’s 2015 and 2018 Employee
19 Handbooks that were used during the Class Covered Period. Davis Decl. ¶18. Moreover, pursuant to
20 the Parties’ Mediation Stipulation, Defendant provided a 20% sampling of time records and payroll
21 records for the putative class members during the covered period. *Id.*

22 Defendant eventually claimed it was suffering from financial difficulties and provided
23 Plaintiff’s counsel the following documents (“financial documents”); (i) three years tax returns; (ii)
24 Balance sheet for recent closed account period; (iii) Income statement/profit/loss statement for most
25 recent closed year to date; (iv) Year-end balance sheet for each of the three prior fiscal/calendar years;
26 (v) Income statement for each of the three prior fiscal or calendar years; (vi) Detailed Annual General
27 Ledger for 2020; (vii) Monthly interim financial statements for 2021; (viii) All documents related to
28 Defendant obtaining a Payroll Protection Program (PPP) loan; and (ix) All documents related to

1 proving the expected forgivable portion of the PPP loan. Davis Decl. ¶19. Defendant also provided
2 Plaintiff a copy of the Release Agreement that was offered to the putative class members covering
3 the claims in Plaintiff's Complaint. *Id.*

4 In preparation for the Parties' private mediation on September 14, 2021, Plaintiff's counsel
5 had Defendant's financial documents analyzed by Plaintiff's counsel's financial expert regarding
6 Defendant's claim of financial difficulties. Davis Decl. ¶20. Moreover, Plaintiff's counsel analyzed
7 Defendant's 20% sampling which indicated a 100% synthetic rate of time records worked by
8 employees. *Id.* In combination with Defendant's Informal Data Points, Plaintiff's personnel file,
9 Defendant's 2015 and 2018 Employee Handbooks, the Release Agreement offered to Employees,
10 and informal conversations with Plaintiff, Plaintiff's counsel was able to intelligently evaluate the
11 strengths and weaknesses of the claims of the Action. *Id.*

12 After extensive review of these documents, on September 14, 2021, the Parties attended a full
13 day mediation with Deborah Saxe, Esq., a mediator with substantial experience handling complex
14 wage and hour matters. Davis Decl. ¶21. At the mediation, the Parties engaged in intensive settlement
15 discussions during which they debated their respective positions and exchanged views regarding the
16 strengths and weaknesses of the alleged claims. Davis Decl. ¶22.

17 After a full day of mediation, and with the help of the mediator, the Parties were able to reach
18 an agreement to resolve this dispute on a class and representative basis for a Gross Settlement Amount
19 of \$540,000.00, and shortly thereafter executed a memorandum of understanding memorializing the
20 key settlement terms. Davis Decl. ¶23. Thereafter, the Parties worked diligently to negotiate and
21 memorialize the terms on a long form settlement agreement. Davis Decl. ¶24.

22 On April 4, 2022, Plaintiff filed his motion for preliminary approval of the proposed class
23 action and PAGA Settlement and uploaded the proposed settlement to the LWDA. Davis Decl. ¶25.
24 On June 29, 2022, the Court issued a checklist of items for counsel to address. *Id.* In response, on
25 October 19, 2022, the Parties filed a Second Amended Settlement Agreement. *Id.*

26 On November 9, 2022, the Parties submitted on the Court's Tentative Ruling. Davis Decl.
27 ¶26. On November 10, 2022, the Court issued an order granting Plaintiff's Motion for Preliminary
28 Approval and ordered that notice be provided to the class. *Id.* Ex. 2. Now, following notice to the class

1 and the opportunity for class members to opt-out of the settlement and be head, Plaintiff moves for
2 final approval of the proposed settlement. *Id.*

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

4 On November 10, 2022, Class Counsel sent ILYM Group, Inc. (“ILYM”) a copy of the Second
5 Amended Joint Stipulation of Class Action and PAGA Settlement, the Court-approved text for the
6 Notice Packet and a copy of the Court’s Ruling granting Plaintiff’s Motion for Preliminary Approval.
7 The Agreement included the formula for determining the estimated sum to paid to each individual.
8 Davis Decl. ¶¶35-36. IYLM Decl. ¶4.

9 On November 22, 2022, ILYM received the class list from Defendant which contained the
10 name, social security number, last known mailing address, the total number of applicated workweeks
11 worked by each Class Member. The Class List contained 314 Class Members and the total number of
12 applicable workweeks for each Settlement Member. Davis Decl. ¶38. IYLM Decl. ¶5.

13 After receiving the Order and Notice Packet, and as part of the preparation for mailing, ILYM
14 processed all 314 names and addresses contained in the class list against the National Change of
15 Address database maintained by the U.S. Postal Service in an attempt to verify the Class Members
16 mailing address and then mailed the Notice Packet to the Class Members on November 30, 2022.
17 IYLM Decl. ¶¶6-7, Ex. A.; Davis Decl. ¶40. If a notice was returned to ILYM without a forwarding
18 address, ILYM performed a computerized skip trace in an effort to obtain an updated address to remail
19 the Notice Packet. Using these processes, ILYM successfully delivered 10 out of 26 returned notices.
20 ILYM Decl. ¶¶8-9.

21 Following final approval of the settlement, and within 14 days of the Effective Date, Defendant
22 shall provide ILYM with the Gross Settlement Amount. Thereafter, within 7 days of the funding date,
23 the Settlement Administrator shall make all Court-approved payments, including payments to (a) the
24 Participating Class Members and PAGA Members; (b) Plaintiff; (c) Plaintiff’s Counsel; (d) the
25 LWDA; and (e) itself, for Court-approved services. Davis Decl. ¶41; See Ex. 3 - Settlement Agreement
26 ¶¶39-44.

IV. STANDARD OF REVIEW FOR FINAL APPROVAL

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

Accordingly, a court’s decision to approve a class action settlement may be reversed only upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). To determine whether the settlement is fair, courts consider relevant factors such as “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed, the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.” *Dunk*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at 245 (disapproved of on other grounds).

In considering the class settlement, the court need not reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement taken as a whole is “fair, adequate, and reasonable.” *See Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 55 (2008). Even if the relief afforded by the proposed settlement is substantially narrower than it would be if the lawsuit was to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.* The burden is on the proponent of the settlement to show that it is fair and reasonable. *Id.* at 245 (disapproved of on other grounds). However, a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is

1 experienced in similar litigation; and (4) the percentage of objectors is small. *In re Microsoft I-V Cases*,
2 135 Cal.App.4th 706, 723 (2006).

3 **V. THE SETTLEMENT IS PRESUMED FAIR**

4 Because this court preliminarily approved the Settlement, it necessarily determined that the
5 Settlement appeared to be fair and reasonable. The same factors that allowed the Court to preliminarily
6 approve the settlement apply here and are reinforced in these moving papers including that: (1) the
7 Settlement was reached through arm's-length bargaining; (2) investigation and discovery were
8 sufficient to allow counsel and the court to act intelligently; and (3) class counsel is experienced in
9 similar litigation. Additionally, the reaction of the class members, which was unknown at preliminary
10 approval, also supports the reasonableness of the proposed Settlement. See generally, Davis Decl.
11 ¶¶20-26.

12 **A. The Settlement Was Reached Through Arm's-Length Bargaining**

13 California courts recognize that "a presumption of fairness exists where . . . [a] settlement is
14 reached through arm's-length bargaining." *Wershba*, 91 Cal. App. 4th at 245 (disapproved on other
15 grounds); see also *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the
16 Parties engaged in arm's-length, non-collusive negotiations at all times. This litigation was hotly
17 contested and settlement negotiations were at all times at arm's length and adversarial. The Settlement
18 was only reached following a full day of mediation with Deborah Saxe, Esq., a highly respected
19 mediator with substantial experience mediating wage and hour cases. Following mediation, the Parties
20 engaged in additional negotiations before finalizing the long-form settlement agreement presently
21 before the Court. At all times, Plaintiff was willing and prepared to litigate this matter if the Parties
22 had been unable to reach a favorable resolution. Davis Decl. ¶¶14, 20-26, & 28-32.

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

24 Class Counsel conducted significant investigation into the claims alleged by Plaintiff before
25 reaching a settlement in this matter. Class Counsel met with Plaintiff, conducted legal research
26 regarding the applicable Labor Code Sections and thoroughly researched Defendant's employment
27 policies and practices. Prior to mediation, the parties engaged in extensive formal and informal
28 discovery. As previously reviewed by the Court and set forth extensively in Plaintiff's Motion for

1 Preliminary Approval, prior to mediation, Defendant informally produced a randomly selected 20%
2 sampling of time records and payroll records, all relevant written policies in effect during the class
3 period, and other relevant documents. Defendant also produced information regarding the number of
4 putative class members, the number of current versus former employees, the total workweeks and pay
5 periods worked by the Class, and the class members' average rate of pay. Review and analysis of this
6 information allowed Plaintiff to conduct a class-wide analysis of Defendant's potential damages and
7 intelligently and effectively analyze the strengths and weaknesses of the case and Defendant's
8 potential exposure. The Parties extensively briefed these issues, provided their analysis to the
9 mediator, and debated their respective positions. After a full day of mediation, and with the help of
10 the mediator, the parties were able to reach an agreement to resolve this dispute on a class and
11 representative basis for a Gross Settlement Amount of \$540,000.00. Davis Decl. ¶¶14-26.

12 Moreover, the settlement negotiations were conducted by highly capable and experienced
13 counsel. Class Counsel's experience and the extensive investigation allowed Plaintiff to enter this
14 Settlement aware of the risks associated with the case and permitted Class Counsel to negotiate an
15 informed, reasonable, and intelligent Settlement. Davis Decl. ¶¶3-9, After substantial informal
16 discovery and investigation, it is Class Counsel's opinion that the settlement is in the best interest of
17 the class and provides for a guaranteed result over a reasonably short period as opposed to waiting
18 years for the same, or possibly worse, result. Davis Decl. ¶¶11, 31-34.

19 **C. There Have Been No Objections, and Only One Request for Exclusion**

20 California courts have consistently found that a small number of objectors indicates the class's
21 support for a settlement and strongly favors final approval. See *Wershba*, 91 Cal.App.4th at 250-51
22 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-53 (final
23 approval granted despite 9 objectors). Here, as of the filing of this Motion, there have been no
24 objections to the settlement and only one class member has requested to be excluded, a participation
25 rate of one hundred percent (99.68%). ILYM Decl. ¶¶11-13. The lack of objections and strong
26 participation in the Settlement by the Class further demonstrate that the proposed settlement is both
27 fair and reasonable. Davis Decl. ¶33.
28

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

2 **A. An Ascertainable and Class Exists Which Is So Numerous That Joinder Of All Members**
3 **Is Impracticable**

4 Where the amount of a settlement is a “certain easily calculable sum of money,” California
5 courts may calculate attorneys’ fees as a reasonable percentage of the settlement created. *See Dunk,*
6 *48 Cal.App.4th at 1808.* The ultimate goal is the award of a “reasonable” fee to compensate counsel
7 for their efforts, irrespective of the method of calculation. *See Apple Computer, Inc. v. Super. Ct.,* 126
8 *Cal.App.4th 1253, 1270 (2005).* Trial courts have wide latitude in assessing the value of attorneys’
9 fees and their decisions will not be disturbed on appeal absent a manifest abuse of discretion. *See*
10 *Lealao v. Beneficial Cal., Inc.,* 82 *Cal.App.4th 19, 41 (2000).* California law provides that attorneys’
11 fees awards should be equivalent to fees freely negotiated in the legal marketplace and paid in
12 comparable litigation based on the result achieved and risk incurred. *Id.* at 47, 50. Fee awards that are
13 too small will “chill the private enforcement essential to the vindication of many legal rights and
14 obstruct the representative actions that often relieve the courts of the need to separately adjudicate
15 numerous claims.” *Id.* at 53. Therefore, fees in class and representative actions should approximate
16 the probable terms of a contingent-fee contract negotiated by a sophisticated attorney and client in
17 comparable litigation. *Id.* at 47. The percentage-of-the-benefit approach is preferred in such cases
18 because “it better approximates the workings of the marketplace than the lodestar approach.” *Id.*

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

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

27 Courts have consistently recognized that class litigation is necessary to protect the rights of
28 individuals whose injuries and/or damages are too small to economically justify individual
representation. Accordingly, in determining a reasonable common fund fee award, courts award fees

1 to serve as an economic incentive for lawyers to engage in class litigation that will permit increased
2 access to the judicial system for meritorious claims and deter wrongdoing. *See* R. Pearle, *California*
3 *Attorney Fee Awards* (CEB, 1993) §7A, p. 5-7; *Vincent*, 557 F.2d at 769.

4 Furthermore, a common fund award is not dependent on a determination of the actual amount
5 claimed out of the fund by those entitled—it is the creation of the fund that is the crucial fact. *In*
6 *Winslow v. Harold G. Ferguson Corp.*, 25 Cal.2d 274, 284 (1944), the California Supreme Court
7 expressly held that “it is equitable that [the attorney’s] compensation and expenses should come from
8 the entire fund saved for all classes concerned before it is distributed.” Likewise, *Lealao* expressly
9 recognizes that “in a traditional common fund case, [a percentage-based fee] may be calculated on the
10 basis of the total fund made available rather than the actual payments made to the class.” *Lealao*, 82
11 Cal.App.4th at 51. *In Wershba v. Apple Computer, Inc.*, the Court of Appeal definitively decided the
12 issue in favor of granting attorneys’ fees that are a percentage of the total value of the settlement
13 obtained by the efforts of counsel. In determining reasonable attorneys’ fees, the court valued a
14 settlement based on the total value of the settlement made available to class members. 91 Cal.App.4th
15 at 247 (disapproved on other grounds).

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

21 The amount of attorney fees provided by the Settlement Agreement, i.e., 35% of the Gross
22 Settlement Amount, is clearly reasonable. Class Counsel risked substantial economic loss when they
23 took this case on a contingency basis, knowing that there would likely be a long battle with an
24 aggressive defense firm including the very real possibility of potential appeals. As a result of class
25 counsel taking on this risk and the efforts of class counsel, the Class Members will now be able to
26 recover for these claims. The requested fee therefore makes sense because (1) it is consistent with the
27 private marketplace where contingent-fee attorneys are customarily compensated on such a basis; (2)
28 it aligns the interests of class counsel and absent class members in achieving the maximum possible

1 resolution of the case; and (3) it encourages the most efficient resolution of the litigation by providing
2 an incentive for early, yet reasonable, settlement. As such, Class Counsel has obtained a fair recovery
3 for the Class which justifies a fee award based on the percentage of the common fund. See Davis Decl.
4 ¶¶42, 49-50.

5 **C. The Fee is Reasonable Based on the Dunkel Factors**

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

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

13 Class Counsel has aggressively litigated this case from the initial pleading to the settlement of
14 this action. Class Counsel participated in case strategy and analysis and drafted, reviewed, and revised
15 pleadings, including extensive investigation, analysis, and research prior to filing the lawsuit and
16 during litigation and mediation. Plaintiff’s Counsel was able to convince Defendant to attend
17 mediation and thereafter spent substantial time reviewing and analyzing documents and discovery in
18 preparation for mediation and participating in settlement negotiations. Even after an agreement was
19 reached in principle, Class Counsel spent numerous hours drafting and revising the Settlement
20 Agreement, drafting the motion for preliminary approval, and coordinating the notice process with the
21 settlement administrator. Davis Decl. ¶45-47. In the end, this case consumed more than 275.00 hours
22 of Class Counsel’s efforts. However, a settlement was finally achieved, despite all obstacles, because
23 of the work performed by Class Counsel. Davis Decl. ¶57, Ex. 4. In addition to Class Counsel’s time,
24 litigating this case also required counsel to incur significant costs. In total, more than \$14,700.78 in
25 costs have been necessary to successfully resolve this case. Davis Decl. ¶67, Ex. 5. In light of the time
26

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

1 expended and costs involved, the requested attorneys' fees are reasonable. *Id.*

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

3 In addition to the time and effort required, this matter also required substantial skill to litigate
4 and Class Counsel were required to overcome numerous barriers in order to reach a settlement.
5 Defendant denied liability, felt strongly about its ability to prevail, challenged the theories of Class
6 Counsel, and mounted several defenses that posed significant problems moving forward. Substantial
7 skill was also necessary in order to adequately evaluate Plaintiff's claims. Class Counsel were required
8 to review and analyze a large amount of poorly formatted time and payroll data, a complex process
9 that took considerable time and energy in order to determine Defendant's underlying practices. Class
10 Counsel were able achieve a substantial settlement against experienced defense counsel and despite
11 several strong defenses. This result was made possible in large part due to Class Counsel's skill and
12 experience. Davis Decl. ¶¶ 18, 31, 45, 56 & 64.

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

14 The Settlement represents a fair resolution of this case given the risks inherent in litigating it
15 through trial and possible appeals. Counsel obtained a non-reversionary Gross Settlement Amount of
16 \$540,000.00. Although Class Counsel predicted that Plaintiff would prevail on all causes of action at
17 trial, a number of risks reduced the case's value. For instance, as discussed extensively in Plaintiff's
18 Motion for Preliminary Approval, Defendant raised issues with Plaintiff's meal and rest claims
19 regarding the necessity of individualized proof. Plaintiff faced similar difficulties with his claims
20 regarding off-the-clock work. Defendant contended these issues would prevent Plaintiff from
21 successfully recovering on these claims which were a major focus of the litigation. Despite these
22 challenges, Defendant ultimately agreed to pay a non-reversionary Gross Settlement Amount of
23 \$540,000.00. Davis Decl. ¶31. This will provide an average payment of approximately \$551,91 to the
24 putative class members and an estimated high payment of more than \$2,806.10. ILYM Decl. ¶14.

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

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

28 **A contingent fee must be higher than a fee for the same legal services paid as they
are performed** [and] [...] compensates the lawyer not only for the legal services he

renders but for the loan of those services. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions.

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

The fact that this case was litigated on a contingent basis strongly supports the award of attorneys' fees requested by Plaintiff. If Class Counsel had been unsuccessful they would not have received any fee or recovered any portion of the expenses spent litigating this matter. Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained in this case. These are the types of risks Class Counsel faced litigating this matter on a contingent basis and this risk is a relevant factor when considering the reasonableness of the requested fee. Davis Decl. ¶¶ 48, 61, & 63-64.

D. The Fee is Reasonable Under a Lodestar Analysis

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

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

1. Counsel Spent a Reasonable Amount of Time

Reasonableness of hours is assessed by "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v. Las Virgenes*

1 *Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, this case was highly
2 contested and required a significant amount of time and labor. Defendant raised significant defenses
3 and denied liability. Class Counsel invested significant time and labor into this matter even before this
4 action was filed to investigate Defendant's policies, practices, business model, and merits-based issues
5 including significant time investigating and reviewing Plaintiff's personnel files, time records, and
6 payroll records, and strategizing how to certify the alleged claims and bring these claims to trial. Class
7 Counsel also spent significant time drafting and revising the PAGA Notice sent to the LWDA, drafting
8 the complaint, drafting the pleadings filed with this Court and investigating the alleged claims. Class
9 Counsel engaged in extensive efforts to meet and confer with Defendant's counsel and as a result were
10 able to reach an agreement to attend mediation rather than engaging in further litigation. Davis Decl.
11 ¶¶ 15, 20-22, 28, 30, 44-46, & 55-56.

12 In advance of mediation, class counsel engaged in extensive investigation, review, and analysis
13 of the informal discovery provided by Defendant so that they could effectively negotiate the proposed
14 settlement. Class Counsel spent many hours reviewing the documents produced by Defendant and
15 analyzing data from thousands of pages of documents. After an agreement was reached in principle,
16 class counsel spent significant time negotiating terms of the settlement to obtain the best possible
17 outcome for the class. Class Counsel conservatively worked a total of 275.00 hours on this matter.
18 Davis Decl. ¶¶ 55-57, Ex. 4. As detailed above and set forth more fully in the accompanying
19 Declaration of Heather Davis and the exhibits thereto, these services included drafting the initial
20 pleadings, research into claims and defenses presented by Defendant, communicating with Plaintiff,
21 reviewing and analyzing records, policies, and memorandum, drafting the mediation brief, attending
22 mediation, drafting the settlement agreement, and many more. See Davis Decl. Ex. 4. Accordingly,
23 Class Counsel has spent a reasonable number of hours working on this matter.

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

25 Both California and federal courts recognize that attorneys should be compensated for
26 providing representation on a contingency basis and for taking on the risks associated with said
27 representation, as well as being provided with financial incentives to enforce important rights and
28 protections like those at issue in this Action. See *Ketchum*, 24 Cal.4th at 1132-33. In awarding

attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *See id.*

As previously discussed, Class Counsel has been actively involved in this case from the filing of the initial complaint to completing these final approval papers. Class Counsel invested time and bore the risk that there could have been no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$540,000.00 on behalf of the Class. To date, the lodestar for Class Counsel is approximately \$178,750.00. *See Davis Decl.* ¶¶ 51-58.

3. The Use of a Multiplier is Reasonable and Appropriate

The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal.3d at 49. In California, "[m]ultipliers can range from two to four or even higher" and are routinely applied in the range requested by Class Counsel. *Wershba*, 91 Cal.App.4th at 254 (upholding multiplier of 1.42); *Chavez*, 162 Cal.App.4th at 66 (upholding 2.5 multiplier); *Vizcaino*, 290 F.3d at 1051, n.6 (noting multipliers of 1-4 are commonly applied). Factors considered include: (1) the difficulty of the questions involved; (2) the skill displayed; (3) the extent to which the litigation precluded other employment; and (4) the contingent nature of the fee award and the associated risk. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001).

In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is necessary to (1) fully compensate counsel for the "loan" of legal services in light of the inherent high risk of "default" posed by losing the case, and (2) to encourage competent counsel to take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-33. As the court noted, "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." *Id.* at 1133. Similarly, in *Greene v. Dillingham Construction*, 101 Cal.App.4th 418, 426 (2002) the Court of Appeal held that the trial court erred by refusing to consider contingent risk as a factor in the decision to apply a multiplier. The court recognized that "[t]he adjustment to the lodestar figure, e.g., to provide a fee enhancement

1 reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes
2 earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is
3 intended to approximate market-level compensation for such services, which typically includes a
4 premium for the risk of nonpayment or delay in payment of attorney fees.” *Id.*

5 Here, the use of a multiplier of approximately 1.06 is appropriate. This multiplier is appropriate
6 in light of (1) the outstanding results obtained on behalf of the Class Members, PAGA Members, and
7 the State of California; (2) the difficult questions involved and skill displayed by Class Counsel in
8 obtaining this outstanding result; and (3) the contingent risk assumed by Class Counsel. See Davis
9 Decl. ¶¶ 58-66.

10 First, the Settlement represents an outstanding result at the conclusion of heavily contested
11 litigation. The Settlement provides Class Members with an average payment of approximately
12 \$551.91. ILYM Decl. ¶ 14. In Class Counsel’s view, this amount equals or exceeds many of the
13 payments achieved in similar litigation. *See e.g. Salucci v. Amada Senior Care, Inc.*, Orange
14 County Superior Court Case No. 30-2015-00778081 (average settlement payment of \$293); *Waquia*
15 *v. JAMV*, Alameda Superior Court Case No. RG19001253 (March 25, 2021) (average payment of
16 \$79.04). While each case faces its own unique challenges and circumstances that can make direct
17 comparison difficult, the overwhelming value obtained for the class here demonstrates the
18 outstanding results obtained and should be an important factor in the Court’s decision to approve the
19 requested multiplier and ultimately Class Counsel’s requested fee.

20 Second, this matter involved difficult questions and required substantial skill by Class Counsel
21 in order to obtain a settlement for the Class including a complex data analysis to prove the minimum
22 wage and overtime claims. These claims were largely based on unrecorded, off-the-clock work
23 performed by the Class Members both before and after their shift and as a result of timekeeping errors
24 by Defendant. This matter also required substantial skill by Class Counsel to establish a pattern and
25 practice that pressured employees to work off-the-clock, and the individualized nature of such
26 damages presented legitimate concerns regarding the manageability of the case. Furthermore, despite
27 these complications, Class Counsel took on this case on a contingent basis at considerable risk. This
28 risk is particularly relevant here in light of the complex questions related to certification of the

1 proposed claims and substantial hurdles that were required to overcome. Given the complex nature of
2 these claims, many attorneys would have been unprepared to litigate these claims and unable to obtain
3 the substantial settlement reached by Class Counsel. This risk is also notable given the broad economic
4 uncertainty many companies face during these challenging times. Davis Decl. ¶¶ 58-66.

5 As recognized by the California Supreme Court in *Ketchum*, these risks illustrate that if
6 multipliers are not awarded to class counsel in the cases that are successfully settled class counsel will
7 not be fully compensated because the lodestar in and of itself cannot account for contingent risk
8 associated with the litigation. Further, a decision to withhold a multiplier not only fails to
9 compensate attorneys for this associated risk, but actively penalizes counsel who obtain a timely and
10 efficient result. Thus, given the contingent risk incurred by Class Counsel, the difficulty of the
11 questions involved, the benefit conferred on the Class, and the skill displayed by Class Counsel
12 the application of a multiplier is appropriate. For these reasons, Plaintiff respectfully requests the
13 Court award the requested attorneys' fees of \$189,000.00. *Id.*

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

15 Class Counsel request the reimbursement of the costs incurred litigating this case in the amount
16 of \$14,700.78. These costs include filing fees, mediation fees costs for attending hearings with the
17 Court, court reporter transcripts and other deposition costs, expert costs, and many others. These costs
18 are \$5,299.22 less than the \$20,000.00 allocated under the Settlement Agreement meaning an
19 additional \$5,299.22 will be available for distribution to the Participating Class Members. These costs
20 are both reasonable and necessary for the successful resolution of this matter and should be approved
21 by the Court. Davis Decl. ¶67, Ex. 5.

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

23 Plaintiffs in class action lawsuits are eligible for reasonable service payments as compensation
24 "for the expense or risk they have incurred in conferring a benefit on other members of the class."
25 *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). Courts routinely grant
26 approval of class action settlement agreements containing enhancements for the class representative,
27 which are necessary to provide incentive to represent the class and are appropriate given the benefit
28 the class representatives helped to bring about for the class. *See In re Online DVD Rental*, 779 F.3d

934, 947-948 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments).

Plaintiff initiated and has stepped forward in this litigation on behalf of his former co-workers and the LWDA, who will now benefit from the settlement. Plaintiff invested substantial time and effort into this litigation including his own research, reviewing documents, and extensive discussions with Class Counsel. Further, the requested amount is also extremely reasonable given the benefit gained by other Class Members. For these reasons, Plaintiff requests that a Class Representative Incentive Payment of \$5,000.00 to Plaintiff Francisco Salome Renoj Hernandez be preliminarily approved by the Court. *See* Hernandez Decl. ¶¶4-16; Davis Decl. ¶¶ 68-74.

IX. PAYMENT TO THE SETTLEMENT ADMINISTRATOR

The Settlement Agreement calls for the award of up to \$15,000.00 to the Settlement Administrator, ILYM Group, Inc, for the costs associated with administration of the settlement. ILYM was able to administer this matter for \$15,000 and is seeking \$15,000.00 in costs associated with administration of the settlement. The Settlement Administrator is a necessary third-party who has performed substantial services on behalf of the putative class, and this payment should be approved by the Court. Davis Decl. ¶75; ILYM Decl. ¶16.

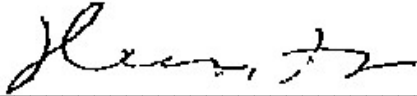
X. CONCLUSION

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

DATED: May 10, 2023

Respectfully Submitted,

PROTECTION LAW GROUP, LLP

By: 
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