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individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

JESUS LOPEZ, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

ECOLOGY AUTO PARTS INC., a
California Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. 21STCV15403
ASSIGNED FOR ALL PURPOSES TO:
JUDGE: Hon. Elihu M. Berle
DEPT: 6

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

Date: October 12, 2023
Time: 9:00 a.m.
Dept.:6

1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on October 12, 2023 at 9:00 a.m. or as soon thereafter as the
3 matter may be heard in Department 6 of the Los Angeles County Superior Court, located at 312
4 N. Spring Street, Los Angeles, CA 90012, before the Honorable Elihu M. Berle presiding,
5 Plaintiff Jesus Lopez (“Plaintiff”), by and through Plaintiff’s counsel of record, will and hereby
6 does move the Court for Final Approval of the Class Action Settlement, awarding attorneys’ fees,
7 costs, enhancement award, administration costs and entering judgment.

8 This Motion is made pursuant to Rule 3.769 of the California Rules of Court. This Motion
9 is based on this Notice of Motion and Motion, the attached Memorandum of Points and
10 Authorities, the accompanying Declarations of James R. Hawkins, Declaration of Nathalie
11 Hernandez, the Declaration of Plaintiff Jesus Lopez, the proposed Stipulation of Settlement Class
12 and Representative Action (the “Settlement Agreement”), argument of counsel, all papers and
13 pleadings filed in the action, and upon any further information or evidence requested by the Court
14 at the time of hearing on this Motion.

15 Dated: August 14, 2023

JAMES HAWKINS APLC



JAMES R. HAWKINS
GREGORY MAURO
MICHAEL CALVO

Attorneys for Plaintiff JESUS LOPEZ, the
Putative Class, and the Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jesus Lopez (“Plaintiff”), on behalf of the 389 members conditionally certified
4 class, respectfully requests that this Court grant final approval of the settlement, which seeks to
5 resolve claims against Ecology Auto Parts Inc., (“Defendant”) (collectively with Plaintiff, the
6 “Parties”) in exchange for a non-reversionary Total Settlement Amount (“TSA”) of One-Million
7 Dollars and Zero Cents (\$1,000,000.00). Thus far, the Class Members overwhelmingly supported
8 the Settlement, as there were zero 0 objections and zero (0) request(s) for exclusion from the
9 Settlement representing 100% participation from the Settlement Class Members.¹ The proposed
10 Settlement is projected to pay an average of \$1,469.58 per Class Member, with the highest
11 estimated gross payment at \$4,543.58 (Declaration of Nathalie Hernandez hereinafter Hernandez
12 Decl., ¶¶ 11-14).

13 Plaintiff also moves for final approval of attorneys’ fees in the amount of \$333,333.33 of
14 the TSA. As will be demonstrated herein, Class Counsel’s attorney fee request is supported using
15 the percentage fee method and the lodestar method. Second, Plaintiff moves for final approval of
16 payment of the litigation costs in the amount of \$12,902.88, all of which was incurred in litigating
17 this matter. Third, Plaintiff moves for final approval of the Class Representative Service Payment
18 to Plaintiff in the sum of \$10,000.00, to compensate the Class Representative for the work
19 performed in this case and the resultant settlement benefiting class members, and also providing
20 for a general release of his claims against Defendant – a release significantly greater than the
21 Class Members provided – and for the risks absorbed and time spent litigating the case. Plaintiff
22 played a vital role in representing Class Members in this case and spearheading the lawsuit to
23 seek monetary relief on behalf of all Class Members. Fourth, Plaintiff moves for final approval of
24 the payment of \$10,000.00 in administrative costs to ILYM Group, Inc.. Fifth, Plaintiff moves for
25 final approval of the \$50,000.00 PAGA Payment and the payment to the Labor and Work

26 _____
27 ¹ Presently, as of the date of the filing of Plaintiff’s Motion for Final Approval, the deadline to request exclusion or
28 object to the settlement has not yet passed. The exclusion/objection deadline is currently set for September 14, 2023.
(Hernandez Decl., ¶ 11-12).

1 Development Agency (“LWDA”) for its share of the PAGA Payment (\$37,500.00 which is 75%
2 of \$50,000.00; with the remaining \$12,500.00 payable to Class Members). (Declaration of James
3 Hawkins (hereinafter, Hawkins Decl.,) ¶ 12).

4 This case required many hours of attorney time from Class Counsel and sought relief on
5 behalf of 389 persons within the State of California. Specifically, the Settlement Class consists of
6 “all current and former non-exempt employees employed by Defendant in California or
7 continuing to be employed by Defendant in California between April 22, 2017 through December
8 31, 2022.” (Hawkins Decl., Exh. A - Settlement Agreement I, ¶22).

9 PAGA Settlement Group Member refers to all Class Members employed by Defendant
10 April 22, 2020 through December 31, 2022. Each PAGA Settlement Group Member will be paid
11 an Individual PAGA Payment. (Settlement Agreement I, ¶22.). “PAGA Period” shall mean April
12 22, 2020, to the earlier of preliminary approval or December 31, 2022. (Settlement Agreement I,
13 ¶21.)

14 This litigation involved interviews with Class Members; the review and analysis of
15 documents, policies, and practices; the exchange of informal discovery and a full day of private
16 mediation.

17 Most importantly, the Settlement and all its terms received overwhelming support from
18 Class Members, as there were 0 objections and 0 request(s) for exclusion. (Hernandez Decl., ¶¶
19 11-12). Therefore, Plaintiff respectfully requests the Court grant final approval of the Settlement,
20 attorneys’ fees, litigation costs, class representative service payment, administration costs, and
21 payment to the LWDA in the amounts preliminarily approved by the Court and as fully disclosed
22 to Class Members. (Hawkins Decl., ¶ 14).

23 As discussed below, the Settlement satisfies all criteria for final approval under California
24 law and falls within the range of reasonableness. Accordingly, Plaintiff respectfully requests that
25 this Court grant final approval of the Settlement.
26
27
28

1 **II. BACKGROUND, FACTS, AND PROCEDURE**

2 **A. Brief Overview of the Litigation**

3 Plaintiff filed this action on April 22, 2021, alleging that Defendant violated various
4 provisions of the California Labor Code and seeking restitution pursuant to the California
5 Business and Professions Code section 17200, et seq. Plaintiff’s action is entitled *Jesus Lopez, et*
6 *al. vs. Ecology Auto Parts Inc.*, Los Angeles County Superior Court No. 21STCV15403 (the
7 “Class Action”). (Hawkins Decl. ¶¶ 3-5).

8 On April 22, 2021, Plaintiff provided notice to the LWDA. On or about June 28, 2021,
9 Plaintiff filed his representative action complaint under the Private Attorneys General Act
10 (“PAGA”), entitled *Jesus Lopez, et al. vs. Ecology Auto Parts Inc.*, Los Angeles County Superior
11 Court No. 21STCV23780 (the “PAGA Action”) (collectively, the Class Action and PAGA Action
12 are the “Lawsuits”). (*Id.*) Specifically, Plaintiff’s Lawsuits seek damages and penalties for
13 Defendant’s alleged failure to: failure to pay wages, the failure to pay overtime compensation, the
14 failure to provide meal periods, the failure to provide rest periods, the failure to maintain or
15 provide accurate itemized statements, the failure to maintain records, and any other claims
16 whatsoever that were or could have been alleged in this case based on the facts of the complaints,
17 including all related claims for restitution and other equitable relief under Business and
18 Professions Code section 17200, liquidated damages, waiting-time penalties, and penalties under
19 the Labor Code Private Attorneys General Act of 2004. (*Id.*)

20 On or about January 12, 2023, Plaintiff served an amended notice to the LWDA with a
21 proposed amended complaint. On April 3, 2023, Plaintiff filed his First Amended Class Action
22 Complaint which consolidated Plaintiff’s Class and PAGA Actions under Case No.
23 21STCV15403. (Hawkins Decl. ¶ 5).

24 The Class Representative is represented by Class Counsel. Class Counsel investigated the
25 facts relevant to the Lawsuits, including reviewing documents and information provided by
26 Defendant. Based on their own independent investigation and evaluation, Class Counsel is of the
27 opinion that the Settlement with Defendant is fair, reasonable and adequate, and in the best
28 interest of the Class Members in light of all known facts and circumstances, including the risks of

1 significant delay, defenses asserted by Defendant, uncertainties regarding a class trial, and
2 numerous potential appellate issues. Although Defendant denies any liability, Defendant is
3 agreeing to this Settlement to avoid the cost, distraction, and risks of further litigation.
4 Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise
5 and discharge all disputes and claims arising from or relating to the Lawsuits on the terms set
6 forth herein. (Hawkins Decl., ¶ 6.)

7 **B. The Parties Settled After Mediation and Expert Analysis**

8 On September 22, 2022, the Parties engaged in private mediation with a well-respected wage and
9 hour class action mediator, Lou Marlin, Esq. Prior to mediation, Plaintiff requested and Defendant
10 produced extensive documentation including time and pay data for approximately 10% of the putative
11 class, policy documents, class size information, information on the number of pay periods and workweeks,
12 and information regarding the hourly rates and workweek. In short, Defendant provided informal
13 discovery sufficient to enable the Plaintiff and Class Counsel to rigorously evaluate the strengths and risks
14 of the case and perform an analysis of the potential damages arising from the claims made in this case. As
15 a result of settlement efforts the Parties agreed to settle this matter for the Total Settlement Amount of
16 \$1,000,000.00 for approximately 389 class members and the terms of which are fully memorialized in the
17 Settlement Agreement. (Hawkins Decl. ¶¶ 8-19, Ex. A.)

18 Defendant maintains and denies any wrongdoing and denies liability or any wrongdoing
19 with respect to the matters alleged in the Complaints, and believes that it has valid defenses to all
20 of Plaintiff's claims. Defendant further contends that it has complied with all wage and hour laws
21 applicable to the employment of Plaintiff and the proposed Class Members. Defendant entered
22 into this Settlement to avoid the cost, risk and inconvenience of further litigation. (Hawkins Decl.,
23 ¶¶ 10-11.) (Settlement Agreement II ¶ 2).

24 **C. The Settlement Provides Reasonable Compensation to Class Members**

25 As a result of the mediation, the parties agreed to settle this matter for a Total Settlement
26 Amount of \$1,000,000.00 (Settlement Agreement I. ¶ 34). Based on their own respective
27 independent investigations and evaluations, and after taking into account the sharply disputed
28 factual and legal issues involved in this matter, the risks attending further prosecution of the case,

1 the Defendant's financial viability, and the monetary benefits received under the Settlement
2 despite the questionable nature of the claims, Plaintiff's counsel is of the opinion that Settlement
3 for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable
4 and adequate and is in the best interests of the Class Members.

5 **III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE**

6 **A. Summary of Settlement Terms**

7 Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the Total
8 Settlement Amount of \$1,000,000.00. The Total Settlement Amount includes: (1) attorneys' fees in the
9 amount of \$333,333.33 and reimbursement of reasonable litigation costs and expenses in the amount of up
10 to \$25,000.00² to Class Counsel ("Attorneys' Fees and Costs"); (2) service award to Plaintiff in the
11 amount of up to \$10,000.00 ("Enhancement Award"); (3) fees and expenses of administration of the
12 Settlement to the Settlement Administrator in an amount not to exceed \$10,000.00 ("Settlement
13 Administration Costs"); (4) \$50,000.00 to PAGA with twenty-five percent (25%) share of the PAGA
14 Penalties to be a part of the Net Settlement Sum that will be distributed to Class Members in the PAGA
15 Group in the amount of \$12,500.00; and (5) the seventy-five percent (75%) share of PAGA Penalties
16 ("LWDA Payment") in the amount of \$37,500.00 to the California Labor and Workforce Development
17 Agency ("LWDA"). (Settlement Agreement III. ¶ 10).

18 Subject to the Court approving attorneys' fees and costs, settlement administration costs,
19 the payment to the LWDA, and the enhancement payments, the Net Settlement Fund will be
20 distributed to all Class Members in full. (Settlement Agreement III. ¶ 10).

21 The Net Settlement Amount ("NSA") is approximately \$571,666.67. (Hernandez Decl.,
22 ¶ 14). Additionally, Defendant's share of employer taxes will be paid separate and apart from the
23 TSA. Participating Class Members' Individual Settlement Amounts shall be based on a *pro*
24 *rata* value, based on the ratio of the Applicable Workweeks worked by each Settlement
25 Class Member during the Class Period, to the total number of Applicable Workweeks
26 worked by all Settlement Class Members during the Class Period. (*Id.*). The Settlement is a

27 ² Plaintiff's Counsel's costs are in the amount of \$12,902.88 (Hawkins Decl., ¶ 37, **Exh. 1**).
28

1 common fund settlement with no reversion to Defendant. Thus, each of the participating
2 Settlement Class Members will be paid his or her pro-rata share of the NSA.

3 **B. Formula for Calculating Payments from the Net Settlement Amount**

4 Individual Settlement Payments will be paid from the Net Settlement Amount and shall be
5 paid pursuant to the settlement formula as follows: (i) using the Class Information, the Settlement
6 Administrator will compute the total number of Eligible Workweeks of all Participating Class
7 Members collectively during the Class Period; this sum shall be known as the Workweek Total;
8 (ii) the Settlement Administrator will divide the Net Settlement Amount by the Workweek Total
9 to determine the settlement value for each Eligible Workweek (the “Workweek Value”); and (iii)
10 the Settlement Administrator will multiply the number of Eligible Workweeks of a Participating
11 Class Member during the Class Period by the Workweek Value to determine that Participating
12 Class Member’s Individual Settlement Payment. (Settlement Agreement ¶ III. (10) (a)).

13 Given that there are approximately 389 Class Members, Class Members can expect to receive on
14 average approximately \$1,469.58 with a high payment of up to \$1,469.58. (Hawkins Decl. ¶ 31);
15 (Hernandez Decl., ¶ 14).

16 **C. Released Claims By The Settlement Class**

17 In exchange for the Total Settlement Amount, Plaintiff and Participating Class Members
18 will agree to release the Released Claims during the Settlement Period: All claims and/or causes
19 of action arising from or related to this case under any federal state or local law or administrative
20 order that were or could have been plead based on the facts alleged in the operative class action
21 and PAGA complaint and amendments, PAGA notice letters and amendments, and administrative
22 claims, whether known or unknown, including without limitation the failure to pay wages, the
23 failure to pay overtime compensation, the failure to provide meal periods, the failure to provide
24 rest periods, the failure to maintain or provide accurate itemized statements, the failure to
25 maintain records, and any other claims whatsoever that were or could have been alleged in this
26 case based on the facts of the complaints, including without limitation all related claims for
27 restitution and other equitable relief under Business and Professions Code section 17200,
28 liquidated damages, waiting-time penalties, penalties under the Labor Code Private Attorneys

1 General Act of 2004, including but not limited to California Business and Professions Code
2 sections 17200, *et seq.*, 17203; Labor Code sections 200, 201, 202, 203, 204, 206.5, 210, 218.5,
3 226-226.5, 226.7, 351-356, 510, *et seq.*, 512, 515, 558, 1194, 1197, 1197.1, 1198, 2698, *et seq.*,
4 and 2802; related IWC Wage Orders including Wage Order Nos. 5 and 7; Fair Labor Standards
5 Act, 29 U.S.C. sections 201, *et seq.* (“Released Claims”) (Settlement Agreement I ¶ 28).

6 **D. The Class Members Support the Settlement – 0 Objections and 0 Opt-Outs**

7 On June 15, 2023, the Court granted Preliminary Approval of the Settlement,
8 conditionally certified the Class, appointed ILYM Group, Inc. to act as the administrator,
9 approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class via
10 U.S. First Class Mail. On July 14, 2023, ILYM Group mailed the Notices to 389 Class Members.
11 (Hernandez Decl. ¶ 7). Out of the 389 Notices, 13 Notices were deemed undeliverable. Of the 13
12 returned Notice Packets, 1 was returned with a forwarding address. Of the remaining 12 returned
13 Notice Packets, ILYM Group performed a computerized skip trace on that did not have a
14 forwarding address, in an effort to obtain an updated address for the purpose of re-mailing the
15 Notice Packet. As a result of this skip trace, 11 updated addresses were obtained and the Notice
16 Packets were promptly re-mailed to those Settlement Class Members, via U.S First Class Mail.
17 (*Id.* ¶¶ 8-9). A total of 1 Notice Packet was deemed undeliverable notwithstanding the skip
18 tracing. (*Id.* ¶ 10). Therefore, there is a 100% participation rate at this time and 389 Class
19 Members will be mailed a settlement check. (*Id.* ¶ 13).

20 The Parties agreed per Stipulation and Ordered by the Court that checks remaining
21 uncashed shall be distributed pursuant to California Code of Civil Procedure section 384, and the
22 funds for any uncashed checks shall be distributed to the *cy pres* recipient - Free to Thrive
23 (Settlement Agreement III ¶ 12).

24 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

25 **A. The Settlement Satisfies the Standard for Final Approval**

26 California Rule of Court, Rule 3.769, requires court approval for class action settlements.
27 Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62
28 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602

1 (“[T]he law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what
2 is otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer,*
3 *Inc.* (2001) 91 Cal. App. 4th 224, 245.

4 In deciding whether to approve a class settlement, a court evaluates whether the proposed
5 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
6 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.* (9th Cir.
7 1982) 688 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination.
8 *Dunk*, 48 Cal. App. 4th at 1801. However, “a presumption of fairness exists where: (1) the
9 settlement is reached through arms-length bargaining; (2) investigation and discovery are
10 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
11 litigation; and (4) the percentage of objectors is small.” *Id.* at 1802; *accord Wershba*, 91 Cal.
12 App. 4th at 245. In addition, a court should consider additional relevant factors, including the
13 strength of the plaintiffs’ case compared to the settlement amount; the risk, expenses, complexity,
14 and likely duration of further litigation; and the fair treatment of class members in relation to each
15 other. *Dunk*, 48 Cal. App. 4th at 1802.

16 At the time of preliminary approval, the Court was provided with sufficient information to
17 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
18 until after the Class had an opportunity to respond to the Settlement as explained in the Notice.
19 Subject only to the Class’ reaction to the Settlement, the Court preliminarily presumed the
20 Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and
21 adequate time provided to the Class to object to the Settlement, presently **no** class members
22 submitted an objection and or opted out of the settlement, **resulting in a 100% participation rate**
23 **from the Class.** (Hernandez Decl. ¶ 13). Thus, the proposed Settlement is entitled to the
24 presumption that it is fair and in all other respects proper and should be finally approved.

25 **B. Class Counsel Conducted a Thorough Investigation of the Factual and Legal**
26 **Issues and Were Thus Able to Objectively Assess the Settlement’s Reasonableness**

27 As explained above and in detail in the motion for preliminary approval, Class Counsel conducted
28 a thorough investigation into the factual and legal issues implicated by Plaintiffs’ claims and were able to

1 objectively assess the settlement's reasonableness. For example, prior to filing the action, Plaintiff
2 contacted Plaintiff's Counsel to discuss the factual bases for pursuing his action against Defendant for
3 Labor Code violations. Plaintiff was intimately familiar with Defendant's labor policies and practices, and
4 over the course of multiple interviews, knowledgeably summarized those policies and practices to
5 Plaintiff's Counsel. During those conversations, Plaintiff's Counsel explained how the policies and
6 practices were instituted and provided valuable insight into how they gave rise to the alleged Labor Code
7 violations. Based on these interviews with Plaintiff, Plaintiff's Counsel determined that there were legally
8 sufficient grounds for pursuing the Actions against Defendant and in preparation for drafting the
9 complaint, Plaintiff's Counsel conducted their own independent preliminary investigations into the factual
10 bases for Plaintiff's claims, which entailed, *inter alia*, a careful examination of Plaintiff's personnel files
11 and associated records. (Hawkins Decl. ¶ 6.)

12 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue, which
13 included: (1) determining Plaintiff's suitability as private attorneys general and class representatives
14 through interviews, background investigations, and analyses of their employment files and related records;
15 (2) evaluating all of Plaintiff's potential representative claims; (3) researching similar wage and hour class
16 actions as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing
17 employees' time and wage records; (5) reviewing Defendant's employment policies and practices; (6)
18 researching settlements in similar cases; (7) evaluating Plaintiffs' claims and estimating Defendant's
19 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation.
20 (Hawkins Decl. ¶ 7.)

21 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Class Counsel
22 can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement,
23 is fair, reasonable, an adequate, and is in the best interests of Class Members in light of all known facts and
24 circumstances, including the risk of significant delay and uncertainty associated with litigation, and various
25 defenses asserted by Defendant. (Hawkins Decl., ¶¶ 6-27.)

26 **C. The Settlement Was Reached Through Arm's-Length Bargaining in which**
27 **All Parties Were Represented by Experienced Counsel**

28 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed

1 settlement's fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the
2 absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered;
3 thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

4 As explained above, the Parties settled this matter with the assistance of an experienced wage and
5 hour class and PAGA action mediator. Mr. Marlin helped to manage the Parties' expectations and
6 provided a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth Headset Prod.*
7 *Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in
8 favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL),
9 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably
10 against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir.
11 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the
12 proceedings were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–
13 00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support
14 the conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of*
15 *California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation
16 "tends to support the conclusion that the settlement process was not collusive"). At all times, the Parties'
17 negotiations were adversarial and non-collusive.

18 The Parties were represented by experienced class action counsel throughout the negotiations
19 resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Plaintiff's Counsel employ
20 seasoned class action attorneys who regularly litigate wage and hour claims through certification and on
21 the merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶ 34.).
22 Defendant is represented by Jackson Lewis, P.C., a respected defense firm.

23 **D. The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of**
24 **the Amount in Controversy Discounted by the Risks of Continued Litigation**

25 In seeking Court approval, a settling party must provide sufficient information to "enable the court
26 to make an independent assessment of the adequacy of the settlement terms." *Kullar v. Foot Locker*
27 *Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, "[i]t is well-settled law that a cash settlement
28 amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or

1 unfair.” See *Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628
2 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure
3 of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are
4 tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected
5 delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit*
6 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the
7 claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled
8 claims for risks such as changes in the law, the probability of success, and other factors.³

9 Settling parties are not, however, required to partake in a hypothetical accounting exercise:
10 **“Kullar does not ... require any such explicit statement of [maximum] value;** it requires a record
11 which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of
12 the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting
13 *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining
14 “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits,
15 balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th
16 at 130). As explained in detail below, the Total Settlement Amount is within the range of reasonableness
17 in light of the nature and magnitude of the claims being settled and the various potential impediments to
18 recovery.

19 As explained in detail below, the Total Settlement Amount is within the range of reasonableness
20 in light of the nature and magnitude of the claims being settled and the various potential impediments to

21
22 ³ Federal district courts also recognize that there is an inherent “range of reasonableness” in determining whether to
23 approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant
24 risks and costs necessarily inherent in taking any litigation to completion.” *In re World Trade Ctr. Lower Manhattan*
25 *Disaster Site Litig.*, 66 F. Supp. 3d 477, 482 (S.D.N.Y. 2015); see also *Nat’l Rural Telecomm. Coop. v. Directv, Inc.*,
26 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well-settled law that a proposed settlement may be acceptable even though it
27 amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436,
28 461 (S.D.N.Y. 2004) (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even
dominant, consideration when assessing settlement’s fairness”); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194
F.R.D. 166, 184 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the
most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered
in light of strength of the claims”); *Officers for Just. v. Civ. Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d
615, 628 (9th Cir. 1982) (it is “the complete package, taken as a whole rather than the individual component parts,
that must be examined for overall fairness”).

1 recovery.

2 Defendant denies all allegations pled, along with all allegations intended to be pled in the
3 operative complaints. Defendant contends they implemented written policies and maintained practices that
4 complied with the requirements of the California Labor Code and applicable California Wage Orders.
5 Defendant contends all employees were provided meal periods and authorized rest periods, were paid all
6 wages, and were timely paid wages in compliance with California law and applicable California Wage
7 Orders. Defendant further alleges no work was done off the clock and contrary to its policies. Defendant
8 further alleges the reimbursement claim lacked merit due to vehicles being provided. In addition, an
9 individualized investigation into the circumstances surrounding any missed meal and rest breaks and
10 alleged off the clock work and rounding, is warranted because such claims can only be decided on a case-
11 by-case basis, common issues do not predominate and class certification is neither superior nor proper.
12 (Hawkins Decl. ¶¶ 20-29).

13 Defendant contends Plaintiff could not successfully argue that derivative waiting time penalties
14 were owed. Further, Plaintiff would still face a difficult, if not impossible, hurdle to overcome the
15 willfulness threshold required by Labor Code section 203. The considerable risk that Defendant could
16 defeat certification and prevail on its defenses defeating any and all recovery to the class warranted a
17 compromise of the class claims. Similarly, Defendant contends that they have complied with all such
18 requirements with respect to payroll records and wage statements at all times. Further, Plaintiff would still
19 face a difficult, if not impossible, hurdle to overcome the thresholds required by Labor Code section 226
20 claims. Lastly, many employees signed arbitration agreements which would make certification issues
21 more complex. (*Id.* ¶ 25).

22 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff
23 determined that a settlement amounting to \$1,000,000.00 was fair and reasonable, and accounts for
24 approximately 43% of the overall potential value on the high side and 21% of the overall potential value
25 on the low side and courts have routinely approved settlements that provided a similar discounted range of
26 the maximum potential recovery. (Hawkins Decl., ¶¶ 30-31). *See, e.g., In re Warfarin Sodium Antitrust*
27 *Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be
28 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373

(N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).⁴ (Id.)

V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS

A. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage of a Common Fund

Class Counsel applies for an award of attorneys’ fees in the sum of \$333,333.33 of the TSA, and litigation costs of \$12,902.88 (Hawkins Decl. ¶¶ 35-37). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method survives in California class action cases.” 1 Cal.5th 480, 506 (2016), in stating:

The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging

⁴ See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where Total Settlement Amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and costs.”).

1 the litigation—convince us the percentage method is a valuable tool that should
2 not be denied our trial courts.

3 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34
4 (1977) (“when a number of persons are entitled in common to a specific fund, and an action
5 brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of
6 that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v.*
7 *Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the
8 benefit of all parties, the trial court acts within its equitable power to prevent the other parties’
9 unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir.
10 1993) (the percentage of the fund method for calculating attorney’s fees more accurately reflects
11 the results achieved for the putative class than the lodestar method and “establishes reasonable
12 expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages
13 early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*,
14 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in
15 common fund cases because it allows courts to award fees from the fund ‘in a manner that
16 rewards counsel for success and penalizes it for failure.’”).⁵

17 The purpose of the common fund/percentage approach is to “spread litigation costs
18 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
19 burden alone.” *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d
20 162, 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a
21 fund from which others derive benefits may require those passive beneficiaries to bear a fair share
22 of the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th
23 105, 110, the California Supreme Court recognized that the common fund doctrine has been
24 applied “consistently in California when an action brought by one party creates a fund in which
25 other persons are entitled to share.” The reasons for applying the common fund doctrine include:

26 ⁵ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar
27 cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further that trial courts have discretion
28 to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-
check and use other means to evaluate the reasonableness of a requested percentage fee”).

1 “...fairness to the successful litigant, who might otherwise receive no benefit because his
2 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the
3 others who are entitled to share in the fund and who should bear their share of the burden of its
4 recovery; encouragement of the attorney for the successful litigant, who will be more willing to
5 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he
6 is assured that he will be properly and directly compensated should his efforts be successful.” *Id.*
7 Because there is a defined and clearly traceable benefit to the Class, the Court can base an award
8 of attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.

9 **B. The Requested Attorneys’ Fee is Within the Range of Fees Approved in**
10 **Comparable Common Fund Cases**

11 Assessing an appropriate fee based on a percentage of the fund involves considering “all
12 of the circumstances of the case.” Appellate cases addressing fees arise almost exclusively where
13 awards were challenged by defendants or objectors – the only parties with standing to appeal.
14 *Wershba*, 91 Cal.App.4th at 236. Several studies of class action fee awards have found that the
15 median common fund fee award is approximately one-third of the total settlement fund.⁶

16 The requested fee falls in the mid-range of percentage class fee awards, which generally
17 range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking
18 complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates
19 Class Counsel for their efforts, as well as the result achieved for the benefit of the Class.
20 Numerous state and federal courts in California routinely approve fee requests equal to or greater
21 than 33.33% of the common fund. Indeed, courts have found that an award of 33.33% of the
22 common fund represents the “benchmark” in California.⁷ In short, Class Counsels’ fee request of

23 ⁶See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that “fee
24 awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich,
25 *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 546 ; T.
26 Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report*
27 *to the Advisory Committee on Civil Rules*, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in
28 the traditional range of approximately one-third of the total settlement”).

⁷ *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 WL 163293, *5
27 (“These percentages compare favorably with both California (33%) and federal (25%) benchmarks.”); *Dennis v.*
28 *Kellogg Co.* (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (“This percentage compares
favorably with both California (33%) and federal (25%) benchmarks and the requested fee compares well with a

1 \$333,333.33 (33.33% of the common fund) is in line with awards in similar cases in California
2 and nationwide and demonstrates that Class Counsels' fee request is consistent with market rates
3 and is reasonable.

4 **1. A Lodestar Cross-Check Confirms the Reasonableness of the**
5 **Requested Fee**

6 Class Counsels' fee request is reasonable when calculated using the lodestar method.
7 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
8 spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at
9 48. The court then may enhance this lodestar figure by a "multiplier" to account for a range of
10 factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
11 success achieved. *Id.* at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer*
12 *v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), ["[t]here is no...rule limiting the factors
13 that may justify an exercise of judicial discretion to [adjust the] lodestar"].

14 As of the date of filing, Class Counsel worked 400.8 combined documented hours on this
15 case. Thus, the total lodestar for Class Counsel is \$307,300.00. Given the successful resolution of
16 this matter, Plaintiff's counsel is requesting a modest multiplier of approximately 1.09 be applied.
17 All of the work and tasks performed by Class Counsel were reasonable and necessary to the
18 prosecution of this case. (Hawkins Decl. ¶¶35-36).

19 **2. Class Counsel's Hourly Rates are Reasonable**

20 Class Counsels' hourly rates are between \$200 and \$900 and are in line with rates
21 typically approved in wage and hour class action litigation and which rates have been approved
22 by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and
23 San Diego County Superior Courts.

24 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
25 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084,
26 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and

27 _____
28 lodestar cross-check as well.").

1 experience, the nature of the work performed, the relevant area of expertise and the attorney's
2 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.
3 Class Counsels' skill and experience support their hourly rates. Their practice is limited
4 exclusively to litigation, focusing on the representation of employees in wage and hour and
5 consumer class action matters. (Hawkins Decl., ¶ 34). As prominent attorneys in the field of wage
6 and hour class action litigation, Class Counsel continually monitors the prevailing market rates
7 charged by both defense and plaintiff law firms and set the billing rates of their attorneys and
8 paralegals to be consistent with the prevailing market rates in the private sector for attorneys and
9 staff of comparable skill, qualifications and experience. Other wage and hour attorneys working
10 as class counsel before California courts charge comparable if not higher rates. Therefore, as they
11 are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

12 **3. Class Counsel's Total Hours are Reasonable**

13 In determining a lodestar fee, reasonable hours include, in addition to time spent during
14 litigation, the time spent before the action was filed, including time spent interviewing clients,
15 investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight*
16 *Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to
17 establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

18 Class Counsel expended a total of approximately 400.8 documented hours on this case.
19 The work performed to achieve a settlement that will provide valuable consideration to the Class,
20 is summarized by Class Counsel in the declaration submitted herewith. (Hawkins Decl., ¶ 36). All
21 tasks and work performed were reasonable and necessary to the prosecution of this case. The
22 work performed was justified in light of the result achieved.

23 **4. Costs of Litigation are Reasonable**

24 Class Counsel seeks reimbursement of the litigation costs and expenses of
25 \$12,902.88. These costs were reasonable and necessary to prosecute this case and the results
26 achieved and are fair, and reasonable. (Hawkins Decl. ¶ 38, Ex. 1).

27 **5. The Settlement Penalties Under PAGA are Reasonable**

28 Pursuant to the Settlement Agreement, \$50,000.00 from the Total Settlement Amount shall be

1 allocated to the resolution of the PAGA claim, of which 75% (\$37,500.00) will be paid directly to the
2 LWDA, and the remaining 25% (\$12,500.00) will be paid to PAGA Members who worked during the
3 PAGA Period beginning April 22, 2020 through December 31, 2022. (Settlement Agreement I ¶ 21.);
4 (Hernandez Decl., ¶14).

5 This result was reached after good-faith negotiation between the parties. The amount was valued
6 as follows: Based on information and evidence produced by Defendant during discovery, Plaintiff's
7 Counsel determined that aggrieved employees worked a combined total of approximately 16,000 pay
8 periods during the PAGA Period . Statutory penalties would be calculated according to Labor Code
9 2699(f)(2): If, at the time of the alleged violation, the person employs one or more employees, the civil
10 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
11 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.
12 (Hawkins Decl. ¶ 29).

13 However, a number of courts have found that the "subsequent" penalty under PAGA applies only
14 after a court or the Labor Commissioner determines that the employer has violated the Labor Code. *See*
15 *Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June 10,
16 2019) ("employers are not subject to heightened penalties . . . until a court or commissioner notifies the
17 employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the Labor
18 Commission or a court has notified them of PAGA violations [thus] PAGA's heightened penalty of \$200
19 for subsequent violations will not be calculated to determine the amount in controversy"); *Steenhuyse v.*
20 *UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v. Morgan Stanley*
21 *Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014)
22 ("Under the Labor Code, if an employer does not have notice that they are committing a violation, they are
23 not subject to the heightened penalties."); *Trang v. Turbine Engine Components Technologies Corp.*, No.
24 CV 12-07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012) ("courts have held that
25 employers are not subject to heightened penalties for subsequent violations unless and until a court or
26 commissioner notifies the employer that it is in violation of the Labor Code"), citing *Amaral v. Cintas*
27 *Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

28 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil penalties

1 “based on the facts and circumstances of a particular case” when “to do otherwise would result in an
2 award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In reducing
3 PAGA penalties, courts have considered issues including whether the employees suffered actual injury
4 from the violations, whether the defendant was aware of the violations, and the employer’s willingness to
5 fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA
6 penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D.
7 Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D.
8 Cal. Aug. 12, 2011).

9 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
10 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—**or**
11 **0.21% of the maximum**—and stated that this reduction was warranted because imposing the maximum
12 penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith attempts” to comply
13 with meal period obligations and because the court found the violations were minimal. *Carrington*, 30 Cal.
14 App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced award of a \$150,000 penalty
15 under PAGA. *Id.* at 529.

16 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding \$500,000
17 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also Thurman v.*
18 *Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction under
19 specified PAGA claim where the employer produced evidence that it took its obligations seriously); *Elder*
20 *v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May 12, 2011) (reversing
21 trial court decision denying any civil penalties where violations had been proven, remanding for the trial
22 court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A Perfect Day Franchise,*
23 *Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA
24 penalties for violation of California Labor Code section 226 as redundant with recovery on a class basis
25 pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-
26 00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past
27 PAGA violations from \$1.8 million to \$500,000, after rejecting numerous other PAGA claims).

28 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as a

percentage of the settlement range that was consistent with other hybrid class/PAGA settlements approved by California courts.⁸ Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).

Thus, Plaintiff requests the Court finally approve the PAGA payment to the LWDA.

6. The Class Representative Enhancement Award is Reasonable

Class Counsel seeks approval of a \$10,000.00 enhancement award to the named Plaintiff/Class Representative. The requested enhancement award is reasonable in light of the general releases of all claims Plaintiff agreed to, greater than the release given by Class Members, the benefits Plaintiff conferred upon the entire Class resulting in payments to all Class Members, the time spent assisting counsel with the investigation and prosecution of these claims, commitment to responding to his counsel, and consenting to the proposed Settlement. Furthermore, in pursuing this action on behalf of the Class, Plaintiff risked a judgment for attorneys’ fees and costs in the event this matter had been lost. But not for Plaintiff’s efforts, it is plausible many of the class members would not have sought redress for the alleged wrongs, yet

⁸ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal. June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP, 2011 WL 672645 at *1 (N.D. Cal Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Parra v. Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson) (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super. Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta Food Enterprises, Inc.*, No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F. Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which \$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

1 have now benefited due to Plaintiff's efforts. (Hawkins Decl., ¶ 33, Exh. 2 - Lopez Decl. ISO
2 Preliminary Approval.)

3 Courts routinely approve service payments, or incentive awards, to compensate named
4 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
5 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers*
6 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
7 representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on
8 the foregoing, the \$10,000.00 enhancement payment to the named Plaintiff/Class Representative
9 is fair, appropriate, and justified as part of the overall settlement.

10 **7. The Settlement Administrator Costs are Reasonable**

11 Plaintiff requests final approval of settlement administration costs in the amount of
12 \$10,000.00. The Parties agreed to hire ILYM Group, Inc. as the administrator, and the Court
13 approved this choice. The Administrator was responsible for formatting, printing and mailing the
14 Notice. It was also responsible for updating addresses and re-mailing Notices returned as
15 undeliverable, responding to Class Member inquiries, answering questions from Counsel for the
16 Parties, and providing a declaration to document its duties and responsibilities under the
17 settlement. Plaintiff now request that the Court approve the \$10,000.00 fee to ILYM Group, Inc.
18 for services rendered and to be rendered. (Hernandez Decl. ¶¶ 3-15). Following the grant of final
19 approval, the Administrator's duties will continue in order to calculate and mail the Individual
20 Settlement Payment checks to Class Members, perform tax reporting obligations, disburse other
21 payments as ordered by the Court, and perform such other duties as set forth in the Settlement
22 Agreement. The fee of \$10,000.00 for services rendered and to be rendered is fair and reasonable
23 and should be granted.

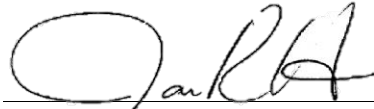
24 **VI. CONCLUSION**

25 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
26 of the Class Action Settlement, award (1) Class Counsel's attorneys' fees in the sum of
27 \$333,333.33 and litigation costs of \$12,902.88; (2) award the named Plaintiff an enhancement
28 service award payment in the sum of \$10,000.00; (3) award \$10,000.00 to ILYM Group, Inc., for

1 settlement administration services, and (4) approve a payment to the LWDA in the amount of
2 \$37,500.00.

3
4 Dated: August 14, 2023

JAMES HAWKINS APLC

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7 

8 JAMES R. HAWKINS
9 GREGORY MAURO
10 MICHAEL CALVO

11 Attorneys for Plaintiff JESUS LOPEZ, the
12 Putative Class, and the Aggrieved Employees
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On August 14, 2023, I served on the interested parties in this action the following document(s) entitled:

**DECLARATION OF JAMES HAWKINS IN SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

XX] BY ELECTRONIC SERVICE: Via electronic filing service provider- electronically transmitting the documents listed above to CaseAnywhere, an electronic filing service provider, at www.caseanywhere.com pursuant to the Court's Order Authorizing Electronic Service. The transmission(s) was reported as complete and without error to the addresses as stated on the service list below.

Paul F. Sorrentino, SBN 126348 Christine M. Fitzgerald SBN 259014 Jackson Lewis P.C. 225 Broadway, Suite 2000 San Diego, CA 92101 Telephone: (619) 573-4900 Christine.Fitzgerald@jacksonlewis.com Paul.Sorrentino@jacksonlewis.com Attorneys for Defendant ECOLOGY AUTO PARTS INC.	<u>Via LWDA Website Only</u> Labor and Workforce Development Agency Attn: PAGA Administrator 1515 Clay Street, Ste 801 Oakland, CA 94612 http://www.dir.ca.gov/Private-Attorneys- General-Act
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Executed on August 14, 2023, at Irvine, California

Alma Chavarin
Alma Chavarin