

JAMES HAWKINS APLC

James R. Hawkins, Esq. (#192925)

Gregory Mauro, Esq. (#222239)

Michael Calvo, Esq. (#314986)

9880 Research Drive, Suite 200

Irvine, CA 92618

Tel.: (949) 387-7200

Fax: (949) 387-6697

Email: James@jameshawkinsaplc.com

Email: Greg@jameshawkinsaplc.com

Email: Michael@jameshawkinsaplc.com

Attorneys for Plaintiff KASSANDRA

VASQUEZ, individually and on behalf of all
other similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

KASSANDRA VASQUEZ, individually and
on behalf of all others similarly situated,

Plaintiffs,

vs.

RLMK, INC., dba MCDONALD'S, a
California Corporation; and DOES 1-50,
inclusive

Defendants.

Case No. VCU280653

Assigned for All Purposes to:
Hon. Nathan Ide
Dept.: 2

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

Date: November 15, 2021
Time: 8:30 a.m.
Dept.: 2

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 15, 2021 at 8:30 a.m., or as soon thereafter as counsel may be heard, in Department 2 of the above-captioned court, located at 221 South Mooney Blvd, # 201, Visalia, CA 93291, the Honorable Nathan Ide presiding, Plaintiff Kassandra Vasquez will, and hereby does, move this Court for entry of an order and judgment granting final approval of the class action settlement and all agreed-upon terms therein.

This Motion, unopposed by Defendant RLMK Inc. doing business as McDonald's Restaurant and include via the proposed amended complaint the following Defendants: Leapday Enterprise, Inc.; KAD Enterprises, LLC; Delph Enterprises, LLC; and KAD91, Inc. ("Defendants" or "RLMK"), seek final approval of: (1) the Amended Class Action Settlement Agreement, (2) settlement payments to Settlement Class Members, PAGA Members, and the LWDA, and (3) costs/expenses to the settlement administrator, ILYM Group, Inc.

This Motion is based upon: (1) this Notice of Motion and Motion; (2) the Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement; (3) the concurrently filed Motion for Attorneys' Fees, Costs and Expenses, and Class Representative Service Awards; (4) the Declaration of James R. Hawkins (5) the Declaration of Gregory Mauro; (6) the Declaration of Nathalie Hernandez on behalf of ILYM Group, Inc., the settlement administrator; (7) the [Proposed] Order Granting Final Approval of Class Action Settlement and Judgment; (8) the records, pleadings, and papers filed in this action; and (9) upon such other documentary and/or oral evidence as may be presented to the Court at the hearing.

Dated: October 21, 2021

Respectfully submitted,
JAMES HAWKINS, APLC

By: _____

JMAES HAWKINS
GREGORY MAURO
MICHAEL CALVO

Attorney for Plaintiff and the Class

TABLE OF CONTENTS

I.	INTRODUCTION.....	8
II.	FACTS AND PROCEDURE.....	9
A.	Litigation Overview	10
B.	The Parties Settled After Protracted Negotiations	10
III.	THE PROPOSED SETTLEMENT FULLY RESOLVES PLAINTIFFS' CLAIMS.....	10
A.	Composition of the Settlement Class.....	10
B.	Settlement Consideration	11
C.	Formula for Calculating Payments from the Net Settlement Amount.....	11
D.	Formula for Calculating Payments from the PAGA Fund	13
E.	Release by the Settlement Class.....	13
F.	Release by PAGA Members.....	14
G.	The Notice and Settlement Administration Processes Were Completed Pursuant to the Court's Order	14
IV.	ARGUMENT.....	15
A.	The Court Should Grant Final Approval of the Proposed Class Action Settlement.	15
1.	Courts Review Class Action Settlements to Ensure that the Terms Are Fair, Adequate, and Reasonable.....	15
2.	Class Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Were Thus Able to Objectively Assess the Settlement's Reasonableness.....	16
3.	The Settlement Was Reached Through Arm's-Length Bargaining in Which All Parties Were Represented by Experienced Counsel.....	17
4.	The Consideration Provided for the Class Claims Is Fair and Reasonable in Light of the Amount in Controversy Discounted by the Risks of Continued Litigation	17
5.	The Settlement Class Has Responded Positively to the Settlement.....	18
B.	The Requested Attornys' Fee is WWithin the Range of Fees Approved in Comparable Common Fund Cases	18
1.	Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee.....	19
2.	Class Counsel's Hourly Rates arte Reasonable.....	20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

2. Class Counsel's Hourly Rates are Reasonable.....20

3. Class Counsel's Total Hours are Reasonable.....21

4 Costs of Litigation are Reasonable.....21

C.. The Court Should Approve the PAGA Settlement.....21

D. The Requested Payment to the Settlement Administrator Is Reasonable and Should
Recieve Final Approval.....24

V, CONCLUSION.....24

TABLE OF AUTHORITIES

STATE CASES

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> , 85 Cal. App. 4th 1135 (2000)	15,18
<i>Carrington v. Starbucks Corp.</i> , 30 Cal. App. 5th 504 (2018)	22,23
<i>Cellphone Termination Fee Cases</i> , 180 Cal. App. 4th 1110 (2009)	15
<i>Dunk v. Ford Motor Co.</i> , 48 Cal. App. 4th 1794 (1996)	16
<i>Elder v. Schwan Food Co.</i> , No. B223911, 2011 WL 1797254 (Cal. Ct. App. May 12, 2011)	23
<i>Kullar v. Foot Locker Retail, Inc.</i> , 168 Cal. App. 4th 116 (2008)	17,18
<i>Mallick v. Super. Ct.</i> , 89 Cal. App. 3d 434 (1979)	15
<i>Munoz v. BCI Coca-Cola Bottling Co.</i> , 186 Cal. App. 4th 399 (2010)	18
<i>Nordstrom Com. Cases</i> , 186 Cal. App. 4th 576 (2010)	16,24
<i>Thurman v. Bayshore Transit Mgmt.</i> , 203 Cal. App. 4th 1112 (2012)	33

FEDERAL CASES

<i>Aguirre v. Genesis Logistics</i> , No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 (C.D. Cal. Dec. 30, 2013)	23
<i>Chu v. Wells Fargo Invst., LLC</i> , No. C 05-4526 MHP, 2011 WL 672645 (N.D. Cal. Feb. 16, 2011)	20,23
<i>Chun-Hoon v. McKee Foods Corp.</i> , 716 F. Supp. 2d 848 (N.D. Cal. 2010)	18
<i>Cotter v. Lyft, Inc.</i> , 193 F. Supp. 3d 1030 (N.D. Cal. 2016)	22
<i>Dearaujo v. Regis Corp.</i> , No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 (E.D. Cal. June 29, 2016)	23
<i>Fleming v. Covidien Inc.</i> , No. ED CV 10-01487 RGK (OPx) (OPX), 2011 WL 7563047 (C.D. Cal. Aug. 12, 2011)	22
<i>Garcia v. Gordon Trucking, Inc.</i> , No. 1:10-CV-0324 AWI SKO, 2012 WL 5364575 (E.D. Cal. Oct. 31, 2012)	23
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	18
<i>Hopson v. Hanesbrands Inc.</i> , Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009)	24

1	<i>In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA)</i>	
2	<i>Litig.</i> , 295 F.R.D. 438 (C.D. Cal. 2014).....	17
3	<i>Li v. A Perfect Day Franchise, Inc.</i> , No. 5:10-CV-01189-LHK, 2012 WL 2236752 (N.D.	
4	Cal. June 15, 2012)	23
5	<i>National Rural Tele. Coop. v. DIRECTV, Inc.</i> , 221 F.R.D. 523 (C.D. Cal. 2004).....	18
6	<i>Steenhuyse v. UBS Fin. Servs., Inc.</i> , 317 F. Supp. 3d 1062 (N.D. Cal. 2018)	22
7	<i>Trang v. Turbine Engine Components Technologies Corp.</i> , No. CV 12-07658 DDP	
8	(RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19, 2012)	22
9		
10	STATE STATUTES	
11	8 Cal. Code Regs. § 11090 (12)	23
12	8 Cal. Code Regs. § 11090 subd. 2(g)	22
13	Cal. Code Regs. tit. 8, § 13520.....	25
14	Cal. Lab. Code § 201	13
15	Cal. Lab. Code § 202	13
16	Cal. Lab. Code § 203	13,14,23
17	Cal. Lab. Code § 226	13,14,23
18	Cal. Lab. Code § 226(e)(1)	13
19	Cal. Lab. Code § 226.7	13,14
20	Cal. Lab. Code § 226.7(a).....	13,14
21	Cal. Lab. Code § 510	13,14
22	Cal. Lab. Code § 512(a).....	13,14
23	Cal. Lab. Code § 1194	13,14
24	Cal. Lab. Code § 1197	13,14
25	Cal. Lab. Code § 1197.1	13,14
26	Cal. Lab. Code § 1198	13,14
27	Cal. Lab. Code § 2699.3(a).....	10
28	Cal. Lab. Code § 2699(f).....	23
29	Cal. Lab. Code § 2800	13,14
30	Cal. Lab. Code § 2802	13,14
31	Cal. R. Ct. 3.769	15
32		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

SECONDARY AUTHORITIES

Conte & Newberg, *Newberg on Class Actions* (4th ed. 2002) 16,17

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On July 21, 2021, this Court granted preliminary approval of the Class Action Settlement
4 Agreement¹ and approved distribution of the Notice of Class Action Settlement (“Class Notice”) to all
5 Settlement Class Members and PAGA Members. Class Members were given 60 days (with extensions
6 in the case of remailed Class Notices) to opt out or submit written objections to the Settlement. Plaintiff
7 Kassandra Vasquez is pleased to report that to date, only 10 individuals opted out of the Settlement
8 Class, and no Class Members have objected to the Settlement.² (Declaration of Nathalie Hernandez
9 [“Hernandez Decl.”] ¶¶ 10-12.)

10 Plaintiff now moves for final approval of the class action settlement. This motion is unopposed
11 by Defendant RLMK Inc. doing business as McDonald’s Restaurant and include via the amended
12 complaint the following Defendants: Leapday Enterprise, Inc.; KAD Enterprises, LLC; Delph
13 Enterprises, LLC; and KAD91, Inc. (“Defendants” or “RLMK”), (collectively with Plaintiffs, the
14 “Parties”). The principal terms of the Settlement provide for the following:

- 15 (1) A Settlement Class comprised of any and all current and former hourly-paid or non-
16 exempt employees who worked for Defendants within the State of California at any time
17 from October 2, 2015 to the Preliminary Approval Date, or 60 days after full
18 execution, whichever date occurs first. (Settlement Agreement ¶ 1.1.).
- 19 (2) A **non-reversionary** Total Settlement Amount of **\$4,250,000**. The Total Settlement
20 Amount includes:
- 21 (a) A **non-reversionary** Gross Settlement Amount of \$4,250,000. The Gross
22 Settlement Amount includes: (a) A “Net Settlement Amount” means the Maximum
23 Settlement Amount, less the amount that will be available for payment to all
24 Participating Class Members (subject to the occurrence of the Effective Date), and is
25 calculated by subtracting all of the following from the Maximum Settlement Amount:
- 26 (1) attorneys’ fees in the amount of up to \$1,416,666.00 and reimbursement of
27 litigation costs and expenses in the amount of \$16,465.30 to Class Counsel (“Attorneys’
28 Fees and Costs”);

29 ¹ Hereinafter, the “Settlement” or “Settlement Agreement.” Unless indicated otherwise,
30 capitalized terms used herein have the same meaning as those defined by the Settlement.

31 ² This information is update as to the filing of this Motion. A supplemental Administrator
32 Declaration will be submitted as the Class Notice Period expires Nov. 1, 2021, after the motion for final
approval is due to be filed. An updated administration declaration will be filed with final numbers.

- (2) service award to Plaintiff in the amount of up to \$7,500.00 (“Service Payment”);
- (3) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount of \$70,000.00 (“Settlement Administration Costs”);
- (4) the twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Sum that will be distributed to Class Members in the PAGA Group in the amount of \$62,500.00; and
- (5) the seventy-five percent (75%) share of PAGA Penalties (“LWDA Payment”) in the amount of \$187,500.00 to the California Labor and Workforce Development Agency (“LWDA”). **The Entire Gross Settlement Amount will be paid to all Class Members who do not opt out of the Settlement Class without the need to submit claims for payment.**

An objective evaluation of the Settlement confirms that the relief negotiated on the Settlement Class’ behalf is fair, reasonable, and valuable. The Settlement was negotiated by the Parties at arm’s length and confers substantial benefits to Settlement Class Members. This relief—averaging approximately \$329.06 per Settlement Class Member with the highest payment of \$2,213.68 from the Net Settlement Amount—is particularly impressive when viewed against the difficulties encountered by plaintiffs pursuing wage and hour cases. Moreover, by settling now rather than proceeding to trial, Settlement Class Members will not have to wait (possibly years) for relief, nor will they have to bear the risk of Defendant prevailing at trial, or of Plaintiffs prevailing at trial but losing on appeal. Class Counsel also engaged, an expert to conduct forensic analyses of Defendant’s financial condition and ability to fund a settlement. The results of this work contributed to Class Counsel’s good faith belief that the settlement sought in this Motion is in the best interest of the Class.

Accordingly, given the Settlement’s favorable terms, the Court’s previous findings concerning the Settlement’s fairness and reasonableness, and the complete absence of objection to the Settlement, Plaintiff respectfully request that the Court: (1) grant this Motion for Final Approval of the Settlement Agreement; (2) grant final approval of the settlement administration costs/expenses; (3) enter judgment pursuant to the Settlement Agreement; and (4) retain jurisdiction to enforce the Settlement.

II. FACTS AND PROCEDURE

The Settlement is the culmination of two years of litigation of novel and developing issues that often require extensive original legal research. During the course of the litigation, there were intervening California Supreme Court decisions which influenced the case’s prosecution and settlement negotiations, and occasioned extensive arguments between the parties. As such, the Parties thoroughly explored the

1 claims and Defendants' defenses, which is particularly noteworthy given the evolution of the relevant
2 substantive and procedural law.

3 **A. *Litigation Overview***

4 On October 2, 2019, Plaintiff Vasquez filed her class action complaint alleging the following
5 claims (1) failure to pay minimum wages and overtime wages; (2) failure to provide meal breaks; (3)
6 failure to authorize/permit rest breaks; (4) failure to timely pay wages; (5) failure to reimburse business
7 expenses; and (6) unfair competition. On April 1, 2021 Plaintiff Vasquez submitted a PAGA notice to
8 the LWDA in accordance with the requirements of Labor Code section 2699.3(a). The PAGA notice
9 alleged that Defendant had violated various California Labor Code sections alleged in the class
10 complaints. The parties awaited the LWDA response if any to investigate the alleged violations. Plaintiff
11 filed a First Amended Complaint on or about June 3, 2021 which alleges claims under PAGA based on
12 the same allegations and Labor Code provisions in the complaint and adding a claim for Labor Code
13 section 226 wage statement violations. (Declaration of James Hawkins ["Hawkins Decl."] ¶ 2.)

14 **B. *The Parties Settled After Mediation and Mediator Proposal***

15 On September 28, 2020, Plaintiff Vasquez and Defendant attended a full-day mediation with
16 mediator Jeff Ross, but were not able to reach a settlement on that date. Plaintiff Vasquez and Defendant
17 continued to engage in informal settlement discussions with the assistance of Jeff Ross, including having
18 the financial documents of Defendant reviewed by Plaintiff's expert CPA. During this process, the
19 parties continued to negotiate, and mediator Jeff Ross communicated a mediator proposal for
20 \$4,250,000. On January 7, 2021, the parties accepted the mediator proposal and ultimately reached a
21 settlement, the terms of which are fully memorialized in the Settlement Agreement. (Hawkins Decl. ¶ 3,
22 Ex. 1.)

23 **III. THE PROPOSED SETTLEMENT FULLY RESOLVES PLAINTIFFS' CLAIMS**

24 **A. *Composition of the Settlement Class***

25 The proposed Settlement Class consists of any and all current and former hourly-paid or
26 non-exempt employees who worked for Defendants within the State of California at any time
27 from October 2, 2015 to the Preliminary Approval Date, or 60 days after full execution,
28 whichever date occurs first. (Settlement Agreement ¶ 1.1.) There are approximately 7,755
29 Class Members who were mailed notices.

30 To protect the integrity of the settlement and to account for passage of time in obtaining
31 settlement approval, Class Counsel negotiated paragraph 3.6.2 which states that Settlement is based on
32 Defendants' representation that there were approximately 340,000 Workweeks through

September 28, 2020. Should the actual number of Workweeks increase by more than ten percent (10%), Defendants, at their option may choose to (1) increase the Gross Settlement Amount on a *pro-rata* basis equal to the percentage increase in the number of Workweeks worked by the Class Members above 10%; or (2) cut off the date of the Class Period upon the date the total workweeks reach 374,000. Defendant exercised option 2 which cut off the class period at February 25, 2021 rather than the June 2, 2021 end class period. As a result, approximately 551 putative class members are not in the class and have not released any claims, nor did they receive notice and are free to pursue their claims as they see fit. (Hawkins Decl. ¶ 12).

B. Settlement Consideration

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the Gross Settlement Amount of \$4,250,000. The Gross Settlement Amount includes: (1) automatic payments from the Net Settlement Amount to all Class Members who do not opt out; (2) attorneys' fees in the amount of up to \$1,416,666.00 and reimbursement of litigation costs and expenses in the amount of up to \$20,000.00 to Class Counsel ("Attorneys' Fees and Costs"); (3) service award to Plaintiff in the amount of up to \$7,500.00 ("Service Payment"); (4) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed \$80,000.00 ("Settlement Administration Costs"); (5) the twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Sum that will be distributed to Class Members in the PAGA Group in the amount of \$62,500.00; and (6) the seventy-five percent (75%) share of PAGA Penalties ("LWDA Payment") in the amount of \$187,500.00 to the California Labor and Workforce Development Agency ("LWDA"). (Settlement Agreement ¶¶ 1.9, 1.13.)

Subject to the Court approving attorneys' fees and costs, settlement administration costs, the payment to the LWDA, and the enhancement payments, the Net Settlement Fund will be distributed to all Class Members in full. (Settlement Agreement ¶¶ 1.9, 1.13.)

C. Formula for Calculating Payments from the Net Settlement Amount

Each Class Member's share of the Class Payout Fund will be proportional to the number of work weeks during which s/he or they worked during the Settlement Period. (Settlement Agreement ¶¶ 1.10, 1.18, 2.5.) The Settlement Administrator will calculate payments as follows:

- The amount of each Class Member Payment will be calculated on a pro rata basis, based on the number of work weeks each Settlement Class Member worked during the Settlement Period.
- To establish the work week period value, the Settlement Administrator will first

determine the total number of pay periods worked by the Employees during the Settlement Period.

- The pay period value will be equal to the Class Payout Fund divided by the total number of pay periods worked by Employees during the Settlement Period. The pay period value will be rounded to the nearest cent. The Class Member Payment to each Settlement Class Member will be determined by multiplying the pay period value by the total number of pay periods each Employee worked during the Settlement Period.
- The total of all Class Member Payments to all Settlement Class Members shall equal the Class Payout Fund. There is no need for a Settlement Class Member to submit a claim form in order to be eligible for and to receive a Class Member Payment. Any partial pay period will be rounded up to the nearest full pay period.
- Class Member Payments will be reduced by any required deductions for each Settlement Class Member, including employee-side tax withholdings and/or deductions.

(Settlement Agreement ¶¶ 1.18, 2.5.)

Given that there are approximately 7,200 Class Members, the average net recovery will be approximately \$329.06 with the highest payment of \$2,213.68. This average net recovery is significantly greater than many other wage and hour class action settlements approved by California state and federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*, Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v. Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D. Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35); *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D. Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of approximately \$80).

D. Formula for Calculating Payments from the PAGA Fund

The amount of each PAGA Member's share of the PAGA Fund will be calculated in direct

1 proportion to ILYM's best estimate of each PAGA Member's Active Settlement Periods during the
2 PAGA Period, as determined from the Class Information provided to the Settlement Administrator by
3 Defendant, and according to the following formula: Pursuant to the Settlement Agreement, \$250,000.00
4 from the Gross Settlement Amount shall be allocated to the resolution of the PAGA claim, of which
5 75% (\$187,500.00) will be paid directly to the LWDA, and the remaining 25% (\$62,500.00) will be paid
6 to Class Members (Settlement Agreement ¶¶ 1.13, 1.18.). All PAGA Members will receive a payment
7 from the PAGA Fund (regardless whether they opt out of the Settlement Class), and without the need to
8 submit claims for payment. (*Id.*)

9
10 **E. Release by the Settlement Class**

11 Plaintiff and Settlement Class Members who do not opt out will release the Settlement Class
12 Members' Released Claims:

13 "Released Claims" means all claims, demands, rights, liabilities and causes of action
14 of every nature and description whatsoever including without limitation statutory,
15 constitutional, contractual or common law claims, against the Released Parties (as
16 defined below), and any of them, for relief and penalties, that accrued during the
17 Class Period, and as a result of Class Members' employment by Defendants in
18 California, that arise under any law or administrative order, rule, or other precedent
19 that, pled based on the claims, allegations or facts alleged in the operative Complaint,
20 including claims of failure to pay wages, failure to pay minimum wages, failure to
21 pay overtime wages, failure to provide compliant meal periods and/or associated
22 premiums, failure to provide compliant rest periods and/or associated premiums,
23 failure to provide accurate wage statements, failure to pay wages timely at
24 termination, failure to reimburse for business expenses, unfair competition, PAGA
25 penalties and violations of California Labor Code §§201, 202, 203, 204, 226(a),
26 226.7, 510, 512, 558, 1021.5, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2800,
27 2802, 2804 the applicable Wage Order of the Industrial Wage Commission, civil
28 penalties pursuant to §2698 *et seq.* and other related penalties, and California
29 Business & Professions Code §§ 17200 to 17208, including without limitation all
30 related claims for restitution and other equitable relief arising from California
31 Business and Professions Code §§ 17200, *et seq.*, interest on unpaid wages, unpaid
32 wages, attorneys' fees or litigation costs, and any other related claims and/or
penalties, including civil penalties. The release does not extend to any claims not
alleged in the operative Complaint and specifically excludes claims for workers'
compensation, personal injuries, unemployment insurance, state disability
compensation, claims under the Employment Retirement Income Security Act of
1974, previously vested benefits under any employer sponsored benefits plan,
wrongful termination, discrimination, retaliation, and harassment including but not
limited to those arising under the Age Discrimination In Employment Act, the
California Fair Employment and Housing Act, Title VII of the Federal Civil Rights
Act of 1964, and/or Federal Civil Rights Act of 1991, or any similar state or federal

1 laws, the California Family Rights Act, the Federal Family Medical Leave Act, the
2 California Pregnancy Leave Law, or similar state or federal laws, the Federal Equal
3 Pay Act of 1963, violations of the Americans with Disabilities Act of 1990 or
4 violations of any other state or federal law, rule or regulation concerning
discrimination, retaliation and/or harassment.

5 (Settlement Agreement ¶ 1.27.)

6 **F. Release by PAGA Members**

7 Plaintiffs and PAGA Members will release the PAGA Claims:

8 “Released PAGA Claims” means all claims, demands, rights, liabilities and causes of action of
9 every nature and description whatsoever against the Released Parties (as defined below), and any of
10 them, for relief and penalties, that accrued during the PAGA Period, and as a result of Class Members’
11 employment by Defendants in California, that arise under any law or administrative order, rule, or other
12 precedent that, , was pled based on the claims, allegations or facts alleged in the operative Complaint
13 under the PAGA, including civil penalties pursuant to §2698 *et seq.* for claims of failure to pay wages,
14 failure to pay minimum wages, failure to pay overtime wages, failure to provide compliant meal periods
15 and/or associated premiums, failure to provide compliant rest periods and/or associated premiums,
16 failure to provide accurate wage statements, failure to pay wages timely at termination, failure to
17 reimburse for business expenses and violations of California Labor Code §§201, 202, 203, 204, 226(a),
18 226.7, 510, 512, 558, 1021.5, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2800, 2802, 2804 the
19 applicable Wage Order of the Industrial Wage Commission, and including attorneys’ fees or litigation
20 costs. (Settlement Agreement ¶ 1.28.)
21
22

23 **G. The Notice and Settlement Administration Processes Were Completed Pursuant to**
24 **the Court’s Order**

25 As authorized by the Court’s Order preliminarily approving the Settlement Agreement, the
26 Parties engaged ILYM to provide settlement administration services. (Hernandez Decl. ¶¶ 4-9.) ILYM’s
27 duties have, and if the Court enters the final approval order, will include: (1) printing and mailing the
28 Class Notice; (2) receiving and processing undeliverable Class Notices and locating updated addresses
29 for Class Members; (3) receiving and validating Requests for Exclusion; (4) calculating and distributing
30 the Class Settlement Amount; (5) tax reporting; (6) providing necessary reports and declarations; and (7)
31 performing such other tasks as set forth in the Settlement Agreement or as the Parties mutually agree or
32 that the Court orders. (*Id.*)

1 On July 19, 2021, ILYM received the Class Notice prepared jointly by Class Counsel and
2 counsel for Defendants and approved by the Court. (Hernandez Decl. ¶ 4.) The Class Notice
3 summarized the Settlement’s principal terms, provided Class Members with an estimate of how much
4 they would be paid if the Settlement received final approval, and advised Class Members about how to
5 opt out of the Settlement and how to object. (*Id.*)

6 Separately, counsel for Defendant provided ILYM with a mailing list (the “Class List”), which
7 included each Class Member’s full name, last known address, and information necessary to calculate
8 payments. (Hernandez Decl. ¶ 5.) The mailing addresses contained in the Class List were processed (*Id.*
9 at ¶¶ 5-9.) On September 1, 2021, ILYM mailed Class Notices to Class Members via First-Class U.S.
10 mail. (*Id.*) Class Members were given 60 days (with extensions in the case of remailed Class Notices) to
11 opt out or submit written object to the Settlement. Plaintiffs are pleased to report that only 10 individuals
12 opted out of the Settlement Class, and no Class Members objected to the Settlement. (*Id.* at ¶¶ 10-12.)

13 **IV. ARGUMENT**

14 **A. The Court Should Grant Final Approval of the Proposed Class Action Settlement.**

15 **1. Courts Review Class Action Settlements to Ensure that the Terms Are** 16 **Fair, Adequate, and Reasonable**

17 “Public policy generally favors the compromise of complex class action litigation.” *Cellphone*
18 *Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2009), *see also 7-Eleven Owners for*
19 *Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and
20 settlement are the preferred means of dispute resolution . . . [t]his is especially true in complex class
21 action litigation . . .”).

22 Class action settlement approval occurs in two steps: (1) an early (preliminary) review by the
23 trial court, and (2) a subsequent (final) review after notice has been distributed to Class Members for
24 their comments and/or objections. Cal. R. Ct. 3.769. The Court granted preliminary approval on August
25 6, 2021. Plaintiffs now seek final approval.

26 “[T]he trial court has broad powers to determine whether a proposed settlement in a class action
27 is fair.” *Mallick v. Super. Ct.*, 89 Cal. App. 3d 434, 438 (1979). Fairness is presumed when: (1) the
28 settlement is reached through arm’s-length bargaining, (2) investigation and discovery are sufficient to
29 allow counsel and the court to act intelligently, (3) counsel is experienced in similar litigation, and (4) the
30 percentage of objectors is low. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1802 (1996); *see also*
31 *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 581 (2010). “Where the settlement terms are fair and
32 reasonable, the settlement is presumptively valid, subject only to objections that may be raised at a final

hearing.” Conte & Newberg, *Newberg on Class Actions* § 11.26 (4th ed. 2002) (Newberg).

By granting preliminary approval, this Court has already determined that the Settlement Agreement is fair and reasonable, subject to objections. With no objections to the Settlement, the Court’s preliminary assessment has been separately endorsed by the Settlement Class. Accordingly, this Court should grant final approval.

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

Class Counsel’s evaluation of the settlement terms was informed by several factors, including their analysis of the considerable discovery and information that had been exchanged during the Actions’ pendency. (Hawkins Decl. ¶¶ 6-11; Gregory Mauro Decl. ¶¶ 1-8.)

Pre-Litigation Investigation: At the outset of the litigation, Plaintiff provided detailed accounts of her experiences while employed by Defendants, and the circumstances that gave rise to the alleged Labor Code violations. In addition to informing Class Counsel’s initial evaluation of the lawsuits, the information that Plaintiff provided also influenced Class Counsel’s discovery efforts. (Id.)

Investigation: Defendants’ production contained considerable evidence, including the policies and practices directly at issue. Class Counsel analyzed voluminous pages of documents that has been produced by Defendants. Class Counsel also sought Settlement Class Members’ time keeping, payroll, and wage statement records which they derived approximate data. Class Counsel’s analysis of these records was used in connection with Class Counsel’s evaluation of Defendants’ potential liability for the alleged claims. (Id.)

In summary, by engaging in such a thorough investigation and evaluation of Plaintiff’s claims, Class Counsel can opine that the Settlement, for the consideration and on the terms set forth in the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Settlement Class Members considering all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendant. (Hawkins Decl. ¶¶ 6-11.)

3. The Settlement Was Reached Through Arm’s-Length Bargaining in Which All Parties Were Represented by Experienced Counsel

“[W]hat transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement’s fairness.” *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in good faith. Newberg, § 11.51.

As explained above, during the pendency of the litigation, the Parties participated in multiple negotiations in an attempt to settle the claims at issue. These settlement efforts were conducted during formal mediation with Jeff Ross. After arm's length negotiations, the Parties were finally able to negotiate a complete and fair resolution of all claims at issue, which are set forth in complete and final form in the Settlement Agreement.

The Parties were represented by experienced class action counsel throughout the negotiations resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Class Counsel employ seasoned class action attorneys who regularly litigate wage and hour claims through certification and on the merits, and have considerable experience settling wage and hour class actions. (Hawkins Decl. ¶¶ 3, 13-23.)

Defendant is represented by Lewis Brisboid Bisgard & Smith LLP, a respected defense firm.

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

In seeking court approval of a class action settlement, a settling party must provide sufficient information to “enable the court to make an independent assessment of the adequacy of the settlement terms.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). “The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims within a realistic range of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.

Settling parties are not required to partake in a hypothetical accounting exercise: “**Kullar does not ... require any such explicit statement of [maximum] value**; it requires a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether a

1 settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against
2 the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).

3 As discussed in detail in the Hawkins declaration in support of the motion for preliminary
4 approval, the Court determined preliminarily the settlement to be fair and reasonable in light of the
5 amount in controversy discounted by the continued risks. Nothing has changed to disturb this finding as
6 the class overwhelmingly approved the settlement based on the nominal opt outs and lack of objections.

7 **5. The Settlement Class Has Responded Positively to the Settlement**

8 In evaluating the fairness of a Settlement, the “absence of a large number of objections to a
9 proposed class action settlement raises a strong presumption that the terms of a proposed class settlement
10 action are favorable to the class members.” *National Rural Tele. Coop. v. DIRECTV, Inc.*, 221 F.R.D.
11 523, 529 (C.D. Cal. 2004). Here, only 10 individuals opted out of the Settlement Class and no Class
12 Members have objected to the Settlement. (Hernandez Decl. ¶¶ 11-13.) The Class’s response is
13 “overwhelmingly positive,” supporting approval of the Settlement. *See 7-Eleven Owners for Fair*
14 *Franchising*, 85 Cal. App. 4th at 1152-53 (finding support for the settlement where 80 out of 5,454 class
15 members elected to opt out and nine class members objected); *Chun-Hoon v. McKee Foods Corp.*, 716
16 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (finding 0 objections and 16 opt-outs out of 329 class members
17 [4.86%] “strongly support[] settlement”); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365
18 CW EMC, 2010 WL 1687832, at *15 (N.D. Cal. Apr. 22, 2010) (finding an opt-out rate of 0.4%
19 supported settlement). In other words, “[t]he fact that the overwhelming majority of the class willingly
20 approved the offer and stayed in the class presents at least some objective positive commentary as to its
21 fairness.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

22 Additionally, the average settlement payment from the Net Settlement Amount is approximately
23 \$329.06 and the highest is approximately \$2,213.68. (Hernandez Decl. ¶ 14.).

24 **B. The Requested Attorneys’ Fee is Within the Range of Fees Approved in** 25 **Comparable Common Fund Cases**

26 Assessing an appropriate fee based on a percentage of the fund involves considering “all
27 of the circumstances of the case.” Appellate cases addressing fees arise almost exclusively
28 where awards were challenged by defendants or objectors – the only parties with standing to
29 appeal. *Wershba*, 91 Cal.App.4th at 236. Several studies of class action fee awards have found
30 that the median common fund fee award is approximately one-third of the total settlement
31
32

fund.³

The requested fee falls in the mid-range of percentage class fee awards, which generally range from 25% to 40% of a common fund, and it constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous state and federal courts in California routinely approve fee requests equal to or greater than 33% of the common fund. Indeed, courts have found that an award of 33% of the common fund represents the “benchmark” in California⁴ while Federal courts use the 25% benchmark. In short, Class Counsels’ fee request of \$1,416,16,666.00 (33.3% of the GSA) is in line with awards in similar cases in California and nationwide and demonstrates that Class Counsels’ fee request is consistent with market rates and is reasonable.

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

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

As of the date of filing, Class Counsel worked approximately 473.40 hours on this case. The hours calculates the base lodestar of \$365,485. All of the work and tasks performed

³See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that “fee awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 546 ; T. Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules*, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in the traditional range of approximately one-third of the total settlement”).

⁴ *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 WL 163293, *5 (“These percentages compare favorably with both California (33%) and federal (25%) benchmarks.”); *Dennis v. 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 lodestar cross-check as well.”).

1 by Class Counsel were reasonable and necessary to the prosecution of this case. (Hawkins
2 Decl. ¶¶ 26-30). As Class Counsel's lodestar fee is less than the fee request, Plaintiff requests a
3 multiplier. Where a fee must be based on lodestar, a court may adjust it upward by using a
4 positive multiplier to reflect "reasonableness" factors, including: (1) quality of representation,
5 (2) class benefits, (3) complexity and novelty of issues presented, and (4) risk of nonpayment.⁵
6 *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011).
7 "Multipliers can range from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc.*, 91 Cal.
8 App. 4th 224, 255 (2001). As discussed herein, and as a result of the outstanding recovery for
9 each class member, if deemed necessary, Plaintiff requests a multiplier of 3.87 which is
10 believed to be reasonable given the results achieved.

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

13 Class Counsels' hourly rates are between \$850 and \$900 and are in line with rates
14 typically approved in wage and hour class action litigation and which rates have been approved
15 by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and
16 San Diego County Superior Courts. (Hawkins Decl. ¶¶ 28-30).

17 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
18 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084,
19 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and
20 experience, the nature of the work performed, the relevant area of expertise and the attorney's
21 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629,
22 632. Class Counsels' skill and experience support their hourly rates. Their practice is limited
23 exclusively to litigation, focusing on the representation of employees in wage and hour and
24 consumer class action matters. (Id.). As prominent attorneys in the field of wage and hour class
25 action litigation, Class Counsel continually monitors the prevailing market rates charged by both
26 defense and plaintiff law firms and set the billing rates of their attorneys and paralegals to be
27 consistent with the prevailing market rates in the private sector for attorneys and staff of
28
29
30

31 ⁵ A separate concurrently filed motion for attorneys' fees addresses the attorney fee request in
32 detail.

comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates. Therefore, as they are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

3. Class Counsel's Total Hours are Reasonable

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

Class Counsel expended approximately 473.40 documented hours on this case and there were numerous others undocumented. (Hawkins Decl. ¶¶ 11-28, Ex. 2). All tasks and work performed were reasonable and necessary to the prosecution of this case. The work performed was justified in light of the result achieved.

4. Costs of Litigation are Reasonable

Class Counsel seeks reimbursement of the litigation costs and expenses of \$16,465.30. These costs were reasonable and necessary to prosecute this case and the results achieved and are fair, and reasonable. (Hawkins Decl. ¶ 31; Ex. 3).

C. The Court Should Approve the PAGA Settlement

Pursuant to the Settlement Agreement, \$250,000.00 from the Class Settlement Amount shall be allocated to the resolution of the PAGA claim, of which 75% (\$187,500.00) will be paid directly to the LWDA, and the remaining 25% (\$62,500.00) will be paid to PAGA Members. (Settlement Agreement ¶ 5.4.)

This result was reached after good-faith negotiation between the parties. The amount was valued as follows: Based on information and evidence produced by Defendant during discovery, Class Counsel determined that the alleged aggrieved employees worked a combined total of approximately 70,000 "pay periods" during the PAGA statute of limitations period ("PAGA Period"). Statutory penalties would be calculated according to Labor Code 2699(f)(2): If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved

1 employee per pay period for each subsequent violation.

2 However, a number of courts have found that the “subsequent” penalty under PAGA applies
3 only after a court or the Labor Commissioner determines that the employer has violated the Labor Code.
4 *See Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL 2436998, at *5 (C.D. Cal. June
5 10, 2019) (“employers are not subject to heightened penalties . . . until a court or commissioner notifies
6 the employer that it is in violation of the Labor Code . . . [Plaintiff] has not offered evidence that the
7 Labor Commission or a court has notified them of PAGA violations [thus] PAGA’s heightened penalty
8 of \$200 for subsequent violations will not be calculated to determine the amount in controversy”);
9 *Steenhuyse v. UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v.*
10 *Morgan Stanley Smith Barney, LLC*, No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal.,
11 October 2, 2014) (“Under the Labor Code, if an employer does not have notice that they are committing
12 a violation, they are not subject to the heightened penalties.”); *Willis v. Xerox Bus. Servs., LLC*, No. No.
13 1:13-cv-01353-LJO-JLT, 2013 WL 6053831, at *6 (E.D. Cal. Nov. 15, 2013) (same); *Allen v. Utiliquest,*
14 *LLC*, No. C 13-00049 SBA, 2013 WL 4033673, at *8 (N.D. Cal. Aug. 1, 2013) (same); *Jimenez v.*
15 *Menzies Aviation, Inc.*, No. C 10-03477 SBA, 2013 WL 1411228, at *4 (N.D. Cal. Apr. 8, 2013) (same);
16 *Trang v. Turbine Engine Components Technologies Corp.*, No. CV 12-07658 DDP (RZx), 2012 WL
17 6618854 (C.D. Cal. Dec. 19, 2012) (“courts have held that employers are not subject to heightened
18 penalties for subsequent violations unless and until a court or commissioner notifies the employer that it
19 is in violation of the Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).
20 Under this line of cases, Defendant's exposure would be approximately \$25,000,000 = 250,000 violative
21 pay periods × \$100.

22 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
23 penalties “based on the facts and circumstances of a particular case” when “to do otherwise would result
24 in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab. Code § 2699(h). In
25 reducing PAGA penalties, courts have considered issues including whether the employees suffered
26 actual injury from the violations, whether the defendant was aware of the violations, and the employer’s
27 willingness to fix the violation. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 528 (2018)
28 (awarding PAGA penalties of only 0.2% of the maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d
29 1030, 1037 (N.D. Cal. 2016); *Fleming v. Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL
30 7563047, at *4 (C.D. Cal. Aug. 12, 2011).

31 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested PAGA
32 penalties in the amount of approximately \$70 million. The trial court instead awarded only \$150,000—

1 **or 0.21% of the maximum**—and stated that this reduction was warranted because imposing the
2 maximum penalty would be “unjust, arbitrary, and oppressive” based on Starbucks’s “good faith
3 attempts” to comply with meal period obligations and because the court found the violations were
4 minimal. *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal affirmed the lower court’s reduced
5 award of a \$150,000 penalty under PAGA. *Id.* at 529.

6 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding
7 \$500,000 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see also*
8 *Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming 30% reduction
9 under specified PAGA claim where the employer produced evidence that it took its obligations
10 seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7 (Cal. Ct. App. May
11 12, 2011) (reversing trial court decision denying any civil penalties where violations had been proven,
12 remanding for the trial court to exercise discretion to reduce, but not wholly deny, civil penalties); *Li v. A*
13 *Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 WL 2236752, at *17 (N.D. Cal. June 15,
14 2012) (denying PAGA penalties for violation of California Labor Code section 226 as redundant with
15 recovery on a class basis pursuant to California Labor Code section 226, directly); *Aguirre v. Genesis*
16 *Logistics*, No. SACV 12-00687 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013)
17 (reducing penalty for past PAGA violations from \$1.8 million to \$500,000, after rejecting numerous
18 other PAGA claims).

19 Plaintiffs therefore determined an appropriate range of settlement for PAGA penalties as a
20 percentage of the settlement range that was consistent with other hybrid class/PAGA settlements
21 approved by California courts.⁶ Where PAGA penalties are negotiated in good faith and “there is no
22

23 ⁶ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal.
24 June 29, 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties
25 with \$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012
26 WL 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000
27 PAGA penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05-4526 MHP,
28 2011 WL 672645 at *1 (N.D. Cal. Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000
29 PAGA penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC
30 10005196 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement
31 fund of \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties);
32 *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

1 indication that [the] amount was the result of self-interest at the expense of other Settlement Class
2 Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No.
3 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3, 2009); *see, e.g., Nordstrom Com.*
4 *Cases*, 186 Cal. App. 4th 576, 579 (2010) (“[T]rial court did not abuse its discretion in approving a
5 settlement which does not allocate any damages to the PAGA claims.”).

6 **D. The Requested Payment to the Settlement Administrator Is Reasonable and**
7 **Should Receive Final Approval**

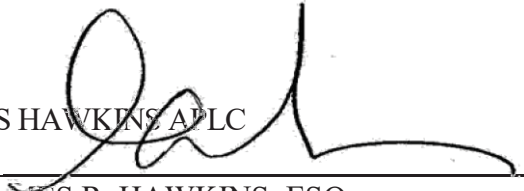
8 Plaintiff requests final approval of settlement administration costs in the amount of \$ 70,000.
9 (Hernandez Decl. ¶ 15.) ILYM has promptly and properly distributed the Class Notice to all Class
10 Members and completed its duties in accordance with the settlement terms and the Court’s preliminary
11 approval Order. (*See generally* Hernandez Decl.) Accordingly, the administration costs payment is fair
12 and reasonable and should be accorded final approval along with the rest of the Settlement terms.

13 **V. CONCLUSION**

14 The Parties have negotiated a fair Settlement of the wage and hour claims that likely would not
15 have been brought, let alone successfully resolved, but for the effort and resolve of the Plaintiff and her
16 counsel. The Class Members’ positive response indicates that the Settlement is fair and reasonable.
17 Accordingly, Plaintiff respectfully requests that this Court grant final approval of the Settlement
18 Agreement and enter judgment.

19
20
21 Dated: October 21, 2021

JAMES HAWKINS APLC

By: 

JAMES R. HAWKINS, ESQ.

GREGORY MAURO, ESQ.

MICHAEL CALVO, ESQ.

Attorneys for Plaintiff and for the Class

22
23
24
25
26
27
28
29
30
31
32

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).