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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN MATEO**

11 WILLIAM M. RIEDL an individual, on behalf  
12 of himself and on behalf of all persons  
13 similarly situated,

14 Plaintiff,

15 v.

16 OWL, INC. dba OWL TRANSPORTATION,  
17 a Florida corporation doing business in  
18 California and DOES 1-50, inclusive

19 Defendants.

Case No. 21-CIV-02704

[Action Filed: May 11, 2021]

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
FINAL APPROVAL OF CLASS ACTION  
AND PAGA SETTLEMENT**

Date: October 30, 2023

Time: 3:00 p.m.

Judge: Honorable Raymond Swope

Dept.: 23

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1 I. INTRODUCTION

2 Plaintiff WILLIAM M. RIEDL (hereinafter “Plaintiff”) seeks final approval of the  
3 Stipulation of Settlement of Class and PAGA Action Claims and Release of Claims  
4 (“Agreement”)<sup>1</sup>, which if approved, would provide valuable monetary relief for 130 Settlement  
5 Class Members employed by OWL INC. dba OWL TRANSPORTATION (hereinafter  
6 “Defendant”).

7 In an order dated October 30, 2023, this Court preliminarily approved the Settlement  
8 Agreement (“Agreement”) and preliminarily certified the Class. See Declaration of Attorney Matt  
9 Blum (“Blum Dec.”), ¶ 47, also see a copy of the Agreement attached as **Exhibit A** to Blum Dec.  
10 Beginning on January 2, 2024, the Settlement Administrator delivered notice of the proposed  
11 settlement to the Class. Declaration of Nathalie Beltran, employee at ILYM Group, Inc. (“ILYM  
12 Dec.”), ¶ 7.

13 ***As of the filing of this Motion, the Class has greeted news of the Settlement with 99.23%***  
14 ***approval.*** There is currently one opt-out and one objection<sup>2</sup> to the Settlement. ILYM Dec., ¶¶ 8-13.  
15 The high approval by the Settlement Class evidences the clear fairness and reasonableness of the  
16 Settlement. Blum Dec., ¶ 48.

17 An objective evaluation of the proposed settlement of Two Hundred and Eighty-Five  
18 Thousand Dollars and Zero Cents (\$285,000.00) (“Gross Settlement Amount”) confirms that the  
19 relief negotiated on behalf of the Settlement Class is fair, reasonable, and valuable. The Settlement  
20 is a product of informed, adversarial, and non-collusive negotiations, between experienced counsel,  
21 and presided over by Jill Sperber, Esq., a respected and experienced mediator of wage and hour  
22 class and representative actions. After deducting any Court-approved attorneys’ fees and expenses,  
23 class representative service awards, claims administration expenses, and the payments to the Labor  
24 & Workforce Development Agency (“LWDA”), the net settlement amount shall be distributed to  
25 the Settlement Class based on the number of Workweeks they worked while employed by

26 <sup>1</sup> The Agreement is attached as Ex “A” to the Declaration of Matt Blum (“Blum Dec.”) at ¶ 3. All citations to the  
27 Agreement incorporate by this reference a citation to the BLUM Dec., ¶ 3. Further, unless indicated otherwise,  
capitalized terms used herein have the same meaning as those defined by the Agreement.

28 <sup>2</sup> The one objection form was received on March 2, 2024. The objection did not specify a reason for objection but  
merely included paystubs. It is unclear if the class member is objecting or disputing workweeks. ILYM attempted to  
call the class member several times for clarification but was unsuccessful. ILYM Dec ¶ 12.

1 Defendant during the Class Period. Blum Dec., ¶ 49.

2 This Settlement provides substantial recovery to Class Members. Plaintiff estimates that the  
3 Settlement, if approved, would result in a Net Settlement Amount of approximately **\$139,530.00**.  
4 ILYM Dec at ¶14 for full calculation. This will result in an average Individual Settlement Payment of  
5 **\$1,073.31**, with the estimated highest gross payment being \$6,060.61. *Ibid.* Those employees who  
6 also qualify as aggrieved employees within the PAGA Class will receive an estimated additional  
7 average gross payment of \$48.14, with the estimated highest gross payment being \$137.02. *Ibid.*

8 The relief offered by the Settlement is immediate and is particularly impressive when viewed  
9 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*).  
10 Indeed, by settling now rather than proceeding to trial, the Settlement Class will not have to wait  
11 (possibly years) for relief, nor will they have to bear the risks associated with prolonged and  
12 uncertain litigation. Blum Dec., ¶ 50.

13 As discussed below, the proposed Settlement satisfies all criteria for final settlement approval  
14 under California law and falls well within the range of reasonableness. Accordingly, the Class  
15 Representative and Class Counsel respectfully request this Court grant final approval of the  
16 Agreement and entry of the proposed Final Approval Order and Judgment. Blum Dec., ¶ 51.

## 17 **II. OVERVIEW OF THE LITIGATION**

### 18 **A. Summary of Claims**

19 Generally, Plaintiff claims that Defendant failed to pay for all time worked, failed to  
20 provide compliant meal and rest periods, failed to furnish accurate itemized wage statements,  
21 failed to properly calculate overtime, and failed to pay all wages upon separation. Evidence  
22 obtained in discovery including employee timecards supported Plaintiff's allegation(s) that  
23 Defendant improperly engaged in the practice of rounding their employees' clock-ins and clock-  
24 outs to the nearest fifteen-minute intervals. Further, wage statements and timecards demonstrated  
25 that the Defendant engaged in unlawfully deducting employee wages in one-hour intervals, likely  
26 in an effort to create phantom meal periods, and that they did so without obtaining the signed  
27 consent of their employees. Next, timecards, wage statements and the company handbook showed  
28 that the Defendant simply failed to include a \$4.18 fringe benefit payment issued to many of their

1 employees as part of the regular rate of pay with respect to their calculation for employee  
2 overtime. Next, an analysis of class timecard data demonstrated patterns of short meal periods,  
3 late meal period, no meal periods, and class members being forced to work through meal periods.  
4 Collectively, the above violations resulted in inaccurate wages statements under Cal. Labor Code  
5 § 226(1) (2)(4) and (5). Blum Dec., ¶ 5.

6 On the other hand, Defendant denies liability for each of Plaintiff's claims. Further,  
7 Defendant asserts that it fully complied with all applicable employment laws and raised several  
8 other significant defenses to Plaintiff's claims. Defendant presented evidence of facially  
9 compliant meal and rest break policies, along with evidence of employees' freedom from  
10 employer control over timing of meal and rest breaks. See *Brinker Restaurant Corp. v. Superior*  
11 *Court* (2012) 53 Cal.4th 1004, 1040 [employer satisfies its obligations to provide a compliant  
12 meal and rest period by relinquishing control over activities and permitting a reasonable  
13 opportunity to take breaks, whether or not employee takes them, timely or otherwise.] Defendants  
14 also presented evidence of compliant wage statements, which accurately calculated overtime pay,  
15 as well as evidence of timely paid wages due upon separation of employment. Defendants also  
16 presented additional evidence that its minimum hourly rates, (\$18), were higher than minimum  
17 wage. Blum Dec., ¶ 6.

18 With respect to the claim that fringe benefits were required to be included in the employees'  
19 regular rate of pay, Defendants also presented evidence that they were a government contractor,  
20 arguing that claims related to inclusion of fringe benefit pay in the regular rate of pay were  
21 preempted by the Service Contract Act of 1965 at 41 U.S.C. section 351, et seq. and its  
22 accompanying regulations, which expressly state that fringe benefit payments meant to  
23 compensate employee for otherwise non-compensable employer-provided health insurance rather  
24 than work performed "are excludable from the regular rate in applying overtime provisions." 29  
25 C.F.R. section 4.177(e); see also *Phelps v. Parsons Tech Support* (S.D. IN October 29, 2010)  
26 2010 U.S. District LEXIS 116197, \*7-8 [holding fringe benefit payment properly excluded from  
27 contractor's employees' regular rate of pay for purposes of calculating overtime.] Additionally, a  
28 separate Nationwide class action against Defendants for overtime pay from 2014-2022 was

1 approved in the Middle District of Florida in August 2022, Case No. 6:17-cv-01092-CEM-DAB,  
2 *Perez v. Owl, Inc.* on 8/16/2022.<sup>3</sup> 26 class members are participating in that settlement.<sup>4</sup> Blum  
3 Dec., ¶ 7.

4 Defendants also noted that Plaintiff was barred from bringing individual or class claims for  
5 penalties for alleged violations of Labor Code sections 204 and 210 (alleged failure to timely pay  
6 wages), both because Plaintiff's election to pursue PAGA remedies for a violation of Labor Code  
7 section 210 bars an individual claim, and because there is no private right of action for a violation  
8 of Labor Code section 204. See Labor Code section 210(c) [Plaintiff's election to pursue a violation  
9 of this statute through PAGA bars an individual claim], *Johnson v. Hewlett Packard Co.* (N.D.  
10 Cal. August 12, 2011) 809 F. Supp. 2d 1114, 1136. Blum Dec., ¶ 8.

11 Finally, Defendant presented evidence that its California Operation is small, employing  
12 between 20-30 employees at any one time, and that the claims presented by the action were not  
13 covered by insurance. The terms of the settlement allow Owl to make 12 monthly payments to  
14 fund the settlement fund, which will be fully funded by February 27, 2024, consistent with the  
15 anticipated timing of the final settlement in this action. Blum Dec., ¶ 9.

16 On May 14, 2021, Plaintiff served the Labor and Workforce Development Agency  
17 ("LWDA") with a PAGA Notice, setting forth the facts and theories supporting Defendant's  
18 alleged violations of various provisions of the California Labor Code and applicable Industrial  
19 Welfare Commissions ("IWC") Wage Orders. Plaintiff proceeded to file a class action complaint  
20 on May 11, 2021 ("The Action"). Shortly thereafter, Plaintiff submitted an amended notice of  
21 PAGA claims to the LWDA. Plaintiff then filed a First Amended Complaint which included all  
22 operative class and PAGA claims on July 28, 2021. Blum Dec., ¶ 10.

23 The Action alleged nine causes of action against Defendant for: (1) Violation of California  
24 Labor Code §§ 510 and 1198 (Unpaid Overtime); (2) Violation of California Labor Code §§ 226.7  
25 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of California Labor Code § 226.7  
26

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27 <sup>3</sup> The Federal District Court approved the settlement of a nationwide class of 645 employee opt-ins for a total  
28 payment of \$350,000 inclusive of attorney fees and costs.

<sup>4</sup> Those class members are participating in this settlement as well as some claims arising from the California Labor  
Code sections were not at issue in the federal case.

(Unpaid Rest Period Premiums); (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code §§ 226 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-Compliant Wages Statements); (8) Violation of California Business & Professions Code §§ 17200; and (9) Labor Code Private Attorney General Act under Cal. Labor Code § 2698, *et seq.* Blum Dec., ¶ 11.

Plaintiff propounded written discovery in this action on November 22, 2022. After receiving discovery responses, the Parties agreed to mediate this action. To prepare for mediation, the Parties agreed to informally produce additional documents and data points subject to the mediation privilege, including but not limited to, the Class Members' time data and certain payroll data points. As discussed *infra*, Plaintiff's counsel retained the forensic consultants at Berger Consulting Group ("BCG") to analyze Defendant's time and payroll data. Blum Dec., ¶ 12.

On November 7, 2022, the Parties participated in mediation presided over by Jill Sperber, Esq., an experienced mediator of wage and hour class actions. The mediation concluded without a settlement. However, in the weeks that followed, Sperber made a mediator's proposal. Both Parties agreed to the mediator's proposal which was subsequently memorialized in the form of a preliminary settlement agreement. Thereafter, the Parties drafted and negotiated a long-form settlement agreement, which is the subject of the instant motion and herein attached as Exhibit A to the Declaration of Attorney Matt Blum. Blum Dec., ¶ 13.

#### **B. Class Counsel Thoroughly Investigated the Factual and Legal Issues**

Months before filing the Action, Class Counsel began its pre-filing investigation into the Plaintiff's complaints. Class Counsel's investigation started with several lengthy interviews with Plaintiff. As part of the interview process, the Plaintiff produced documents related to his employment, including portions of Defendant's handbooks, compensation policies and time and payroll records. At the conclusion of the interviews, Class Counsel determined that Plaintiff's complaints justified further inquiry. Blum Dec., ¶ 14.

Class Counsel subsequently requested Plaintiff's employee files from Defendant. In response, Defendant produced responsive documents, including but not limited, copies of

1 Plaintiff's hiring documents and payroll and time records. Class Counsel reviewed and analyzed  
2 the documents and determined the documents appeared to substantiate Plaintiff's claim that  
3 Defendant's failed to, among other things, provide accurate wage statements, failure to properly  
4 incorporate fringe benefits payments into the overtime rate calculation, and a failure to provide  
5 compliant meal and rest periods. Blum Dec., ¶ 15.

6 To prepare for mediation, Defendant produced additional time and payroll records for the  
7 Class Members, aggregate workweek and pay period data for the Class Members, aggregate meal  
8 premiums paid to the Class Members, average hourly rate for the Class Members, and copies of  
9 applicable handbooks, policies, and agreements. In total, Class Counsel reviewed hundreds of  
10 documents. Blum Dec., ¶ 16.

11 Class Counsel then retained the statisticians and economists at Berger Consulting Group  
12 "BCG" to evaluate the Class Members' payroll and time data. BCG provides data analysis and  
13 damage modeling consulting services, specializing in wage and hour class actions. BCG's team  
14 of financial and data analysts are credentialed and experienced experts in their fields and have  
15 provided their expertise on thousands of cases. Blum Dec., ¶ 17.

16 BCG analyzed Defendant's time and payroll data to assist in the development of various  
17 damage models. Among other things, BCG determined the approximate number of unpaid wages,  
18 amount of unpaid overtime wages, number of workweeks, pay periods, average length of shifts  
19 and average number of hours worked per week. BCG also estimated the number of missed, late,  
20 or truncated meal and rest periods, the amount of unpaid wages, the amount of unpaid overtime,  
21 and the amount of missed meal and rest periods during the Class Period. Blum Dec., ¶ 18.

22 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1)  
23 determining Plaintiff's suitability as a putative class representative through interviews,  
24 background investigations, and analysis of his employment files; (2) evaluating all of Plaintiff's  
25 potential claims; (3) researching similar wage and hour class actions as to the claims brought, the  
26 nature of the positions, and the type of employer; (4) analyzing the Settlement Class's time and  
27 payroll records; (5) analyzing Defendant's labor policies and practices; (6) researching  
28 settlements in similar cases as well as outstanding issues which could affect settlement approval;

(7) evaluating Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, such as to make an independent assessment of the reasonableness of the terms to which the Parties have agreed. Blum Dec., ¶ 19.

Class Counsel only agreed to enter the Settlement following this thorough investigation and evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendant, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should preliminarily approve the Settlement. Blum Dec., ¶ 20.

### **III. THE SETTLEMENT BEFORE THE COURT**

In on October 30, 2023, this Court ruled that the proposed Settlement, including a Gross Settlement Amount of \$285,000.00 met the standards for preliminary approval. Blum Dec., ¶ 47. Pre-trial settlement of complex class actions is a judicially favored remedy. (*Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution.").) Class action settlement approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. (C.R.C. 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").)

Although Rule of Court Rule 3.769 does not provide detail as to the scope of review of the proposed settlement, final approval is warranted if the settlement falls within a "reasonable range." (*See North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90; Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002).) Reasonableness and fairness are presumed where: (1) the settlement is reached through

1 “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow counsel and the  
2 court to act intelligently;” (3) counsel is “experienced in similar litigation. . . .” (*Dunk v. Ford*  
3 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The presumption of fairness is consistent with  
4 California’s public policy goal of favoring settlements. (*Stambaugh v. Super. Ct* (1976) 62  
5 Cal.App.3d 231, 236 (“the law wisely favors settlements”); *Cellphone Termination Fee Cases*  
6 (2009) 180 Cal.App.4th 1110, 1118 (“public policy generally favors the compromise of complex  
7 class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85  
8 Cal.App.4th 1135, 1151 (“voluntary conciliation and settlement are the preferred means of dispute  
9 resolution ... [t]his is especially true in complex class action litigation”).)

10 Additionally, in reviewing the fairness of a class action settlement, due regard should be  
11 given to what is “otherwise a private consensual agreement between the parties.” (*Cellphone*  
12 *Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1389.) The inquiry “must be limited to the  
13 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
14 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a  
15 whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

16 1. The Parties Reached the Settlement Through Arm’s-Length Bargaining Led  
17 by Experienced Counsel.

18 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a  
19 proposed settlement’s fairness.” (*State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 482.)

20 The Parties participated in mediation the highly respected mediator Jill Sperber. Mediator  
21 Sperber managed the Parties’ expectations and provided a useful, neutral analysis of the issues  
22 and risks to both sides. (*In re Apple Computer, Inc. Derivative Litig*, No. C 06-4128 JF (HRL),  
23 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs  
24 considerably against any inference of a collusive settlement); *D’Amato v. Deutsche Bank* (2d. Cir.  
25 2001) 236 F.3d 78, 85 (a “mediator’s involvement in pre-certification settlement negotiations  
26 helps to ensure that the proceedings were free of collusion and undue pressure.”).)

27 Once the Parties agreed to the Mediator’s proposal, the Parties engaged in negotiations  
28 regarding the written terms of the class action settlement. The Agreement is the final product of

1 the mediated negotiations. Objectively, the Settlement terms are fair, adequate and represent a  
2 reasonable compromise of the claims at issue. Blum Dec., ¶ 21.

3 2. Class Counsel’s Thorough Investigation Provided an Objective Measurement  
4 of the Settlement’s Reasonableness.

5 As set forth in greater detail above, Class Counsel conducted a very thorough investigation  
6 into the factual and legal issues in dispute. In addition to informal discovery, document review,  
7 data analysis and legal research, Class Counsel also researched similar wage and hour actions.  
8 Although no two cases are identical, this research provided Class Counsel with a marker to inform  
9 settlement discussions and, ultimately, to measure this settlement against. The investigation  
10 allowed Class Counsel to realistically assess the value of Plaintiff’s claims and intelligently  
11 engage defense counsel in settlement discussions that culminated in the proposed settlement now  
12 before the Court. Blum Dec., ¶ 22.

13 3. The Settlement Falls Within the Recognized Range of Reasonableness.

14 The Gross Settlement Amount of \$285,000.00 is within the range of reasonableness. To  
15 determine whether a settlement is fair and reasonable, the court should “consider enough  
16 information about the nature and magnitude of the claims being settled, as well as the impediments  
17 to recovery, to make an independent assessment of the reasonableness of the terms to which the  
18 parties have agreed.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.) In  
19 making this determination, the court is “not to try the case” but rather “satisfy itself that the class  
20 action settlement is within the ‘ballpark of reasonableness.’ ” (*Id.*). For this analysis, courts do  
21 “not require any such explicit statement of value; [they] require a record which allows an  
22 understanding of the amount that is in controversy and the realistic range of outcomes of the  
23 litigation. ” (*Munoz v. BCI Coca-Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409 (internal  
24 citation omitted).) The reasonableness of a settlement is not dependent upon its actual value  
25 approaching the potential recovery plaintiffs might have received if they had succeeded at trial.<sup>5</sup>

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26  
27 <sup>5</sup> Federal district courts recognize that there is an inherent “range of reasonableness” in determining whether to  
28 approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant  
risks and costs necessarily inherent in taking any litigation to completion.” *Newman v. Stein* (2d. Cir. 2002) 464 F.2d  
689, 693; see *In re Omnivision Tech, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036; see also *Nat’l Rural Telecomm. Coop.*  
*v. Directv. Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 527 (“well settled law that a proposed settlement may be acceptable

1 Indeed, “[t]he determination whether a settlement is reasonable does not involve the use of a  
2 ‘mathematical equation yielding a particularized sum.’ ” (*Frank v. Eastman Kodak Co.*  
3 (W.D.N.Y. 2005) 228 FRD. 174, 186 (*quoting In re Michael Milken and Assoc. Sec. Litig.*  
4 (S.D.N.Y. 1993) 150 F.R.D. 57, 66).)

5 a. The Gross Settlement Amount Meets the Recognized Range of  
6 Reasonableness.

7 The Gross Settlement Amount of \$285,000.00 is fair and reasonable considering the nature  
8 and magnitude of the claims being settled and the various potential impediments to recovery. Prior  
9 to mediation, Class Counsel retained BCG to develop economic damage models measuring  
10 Defendant’s liability exposure while accounting for the uncertainties of continued litigation.

11 The various models were informed by Class Counsel’s investigation, including the analysis  
12 of a significant sample of time and payroll data. Class Counsel projected Defendant’s liability  
13 soaking wet exposure for *class claims* (excluding PAGA Penalties) was approximately  
14 \$2,508,083 inclusive of *all* damages, interest and waiting time penalties (“Maximum Class  
15 Damages”) if successful at trial. Without the inclusion of penalties and interest, the total Class  
16 Damages was estimated at \$1,564,822.00. Plaintiff’s experts further calculated a total of  
17 \$1,557,700 in *potential* PAGA penalties. Blum Dec., ¶ 23

18 That being said, a careful review of Defendant’s arguments and the governing caselaw  
19 resulted in class-counsel reducing Defendant’s total expected exposure, inclusive of interest,  
20 waiting time penalties and PAGA penalties, to **\$976,918.05**, of which the \$285,000.00 settlement  
21 represents a 29.1% recovery. The following summarizes Defendant’s liability exposure. Blum  
22 Dec., ¶ 23.

23 (1) Exposer for Failure to Pay Wages (Min. Wage and Overtime)

24 Plaintiff has asserted that Defendant failed to pay all wages based on 1) An improper

25 even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*  
26 (S.D.N.Y 2004) 225 F.R.D. 436, 460 (“settlement amount’s ratio to the maximum potential recovery need not be the  
27 sole, or even dominant, consideration when assessing settlements fairness”); *In re IKON Office Solutions, Inc Sec Litig.*  
28 (E.D. Pa. 2000) 194 F.R.D. 166, 184 (“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 Justice v. Civil Serv. Comm.* (9<sup>th</sup> Cir. 1982) 688 F.2d 615,  
628 (it is “the complete package, taken as a whole rather than the individual component parts, that must be  
examined for overall fairness”).

1 rounding policy; and 2) Unlawful deductions of wages. The total exposure for these claims is  
2 \$375,189<sup>6</sup>. For purposes of negotiation, Plaintiffs reduced the exposure by 50% to \$187,594.50  
3 based on recent case law suggesting a court might uphold the rounding policy<sup>7</sup>. Furthermore, Owl  
4 could defeat certification by successfully arguing it is Plaintiffs' burden to prove employees were  
5 actually working during the rounded "windows", which would require individual inquiry. This is  
6 especially problematic when factual disputes exist as to the nature of the rounded (deleted) time.  
7 Blum Dec., ¶ 24.

8 (2) Exposure for Regular Rate Violations

9 Under California law, overtime work must be paid at a rate of "no less than one-and-onehalf  
10 times the regular rate of pay" for that employee. Cal. Lab. Code § 510(a); California IWC Wage  
11 Order No. 7 § 3(A)(1). Significantly, an employee's "regular rate of pay" for purposes of Labor  
12 Code section 510 and the IWC wage orders is not the same as the employee's straight time rate  
13 (i.e., his or her normal hourly wage rate). The regular rate of pay, which can change from pay  
14 period to pay period, includes adjustments to the straight time rate, reflecting, among other things,  
15 non-discretionary bonuses and awards, shift differentials and the per-hour value of any non-hourly  
16 compensation the employee has earned. *Alvarado v. Dart Container Corp. of California* (2018) 4  
17 Cal.5th 542, 552–54. For overtime work, "an employee must receive a 50 percent premium on  
18 top of his or her regular rate of pay[.]" *Id.* at 553 (emphasis added). The Divisions of Labor  
19 Standards Enforcement ("DLSE") Enforcement Policies and Interpretations Manual addresses  
20 how to calculate the "regular rate" of pay. For purposes of applying the overtime pay  
21 requirements, an employer must factor the per-hour value of all non-discretionary compensation,  
22 like bonuses and awards, into an employee's regular rate of pay for the relevant pay period. See  
23 *Alvarado v. Dart Container Corp. of California*, 4 Cal.5th 542, 559(2018). Once the RROP is

24 \_\_\_\_\_  
25 <sup>6</sup> \$101,797 for deductions, \$194,079 for off-the-clock work as a result of rounding, and \$79,313 for derivative  
overtime claims.

26 <sup>7</sup> See *Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal.App.5th 1239, 1255, reversed on other grounds, 11 Cal.5th  
27 858 (upholding nearest quarter-hour rounding with grace period policy; "a system can be fair or neutral even where  
a small majority loses compensation"); *Donohue v. AMN Servs., LLC* (2018) 29 Cal.App.5th 1068, 1085, reversed on  
28 other grounds, 11 Cal.5th 58 (granting summary judgment for employer); *Utne v. Home Depot U.S.A., Inc.* (N.D. Cal.,  
Dec. 4, 2017) 2017 WL 5991863 at \*3 (granting summary judgment for employer; noting "rounding contemplates  
the possibility that in any given time period some employees will have net overcompensation and some will have  
net under compensation").

1 determined, the employer must pay overtime hours at 1.5 times the RROP. Whether California  
2 Labor Code section 510 requires overtime wages to be calculated as 1.5 times an employee's  
3 RROP—and not less—is not a legal question on which there is substantial ground for difference  
4 of opinion. See *Alvarado*, 4 Cal.5th at 553 ("an employee must receive a 50 percent premium on  
5 top of his or her regular rate of pay".) In the present case, Defendant simply failed to include the  
6 \$4.18 fringe benefit as part of the regular rate of pay with respect to their calculation for employee  
7 overtime. When this figure is extrapolated out over the entire class period, the damages come to  
8 \$91,523.00. The failure to issue this payment further triggers PAGA penalties for failing to pay  
9 timely wages, waiting time penalties associated with a failure to timely pay wages, and PAGA  
10 penalties for inaccurate wage statements. *Blum Dec.*, ¶ 25.

11 In response, Defendant primarily raised an argument of preemption, citing the Service  
12 Contracts Act, which specifically sets forth how fringe benefits are to be provided and paid to a  
13 federal contractor's employees, and states that fringe benefits payments are not to be considered  
14 as part of the regular pay rate for purposes of calculating overtime: 29 CFR sections 4.180 and  
15 4.182. *Blum Dec.*, ¶ 26.

16 In response, Plaintiff argued that California courts have held that state laws providing a  
17 higher-level of protection to workers supersedes federal law. (see, e.g., *Tidewater Marine*  
18 *Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 566-568; *Morillion v. Royal Packing Co.* (2000)  
19 22 Cal.4th 575, 592; *Skyline Homes, Inc. v. Department of Industrial Relations* (1985) 165  
20 Cal.App.3d 239, 250-251.) With the California law here offering greater pay to employees than  
21 the FLSA, the argument was that it would supersede the Service Contracts Act. *Blum Dec.*, ¶ 27.

22 Similar regular rate calculation conflicts between the FLSA and California law have  
23 recently been addressed. In *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542,  
24 the California Supreme Court looked at a conflict between the California Labor Code and the  
25 FLSA with respect to the calculation of regular rate of pay on overtime premiums. At issue in  
26 *Alvarado* was how to calculate the per-hour value of a lump sum bonus of \$15 per day for purposes  
27 of regular rate payment under California law. At issue was DOL regulation 29 C.F.R. 778.110(b),  
28 which calls for an employer to divide the weekly bonus amount by the *total hours* actually worked

1 by the employee in the week. This is how the employer calculated Alvarado's regular rate.  
2 However, this approach directly conflicted with California law, which requires that the per-hour  
3 value of a lump sum bonus be calculated by dividing the lump sum by the number of *non-*  
4 *overtime* hours worked in the week. In analyzing several of the cases cited above, the California  
5 Supreme Court held that that the employer had erred in following the FLSA guideline as opposed  
6 to the more protective California law. Blum Dec., ¶ 28.

7 While *Alvarado* seemed to be on-point, issues of preemption for a different statutory  
8 scheme presented potential risk were this case to be decided by summary judgment. Given this  
9 risk, Plaintiff's counsel felt that it was appropriate to discount this exposure by 50%, which would  
10 result in approximately \$45,761.00 that was not properly included in employee overtime  
11 calculations. Blum Dec., ¶ 29.

12 (3) Exposure for Meal Period Violations

13 Plaintiff also alleges that Defendant failed to provide compliant meal periods. Specifically,  
14 Plaintiff alleges that as a result of their rigorous work schedules, Plaintiff, Class Members, and  
15 Aggrieved Employees were not able to take timely and duty-free meal periods. Consequently,  
16 Plaintiff alleges that he is owed meal period premiums for meal period violations that occurred  
17 during the Class Period. Defendant argued, among other things, that it provided all their  
18 employees, i.e., Class Members and Aggrieved Employees, with the opportunity to take compliant  
19 meal periods. Defendant presented evidence of facially compliant meal and rest break policies,  
20 along with evidence of employees' freedom from employer control over timing of meal and rest  
21 breaks. Blum Dec., ¶ 30. Based on the facially compliant policies and the need for anecdotal  
22 testimony at trial, Plaintiff's counsel felt that it was appropriate to reduce the total exposure  
23 (\$500,542) related to all meal break violations by 50%, which would equal \$250,271.00. Blum  
24 Dec., ¶ 30.

25 (4) Exposure for Rest Period Violations

26 Plaintiff also alleged that Defendant failed to provide compliant rest periods. On many  
27 occasions, Plaintiff was placed on a tight transportation schedule that simply did not afford him  
28 the ability to take a rest break. As a result, Plaintiff's rest periods were often on-premises, on-  
duty, and/or on call, and often interrupted. Again, Defendant denied liability and asserted that it

maintained legally compliant rest period policies and practices throughout the Class Period. Defendant also argued that because Wage Order 15 applied, employees were exempt from rest period requirements, which would completely eliminate liability for Plaintiff's rest period violations. Moreover, Plaintiff recognizes the evidentiary burdens establishing this claim. Establishing Plaintiff's rest period claim would rely, almost entirely, on Class Member testimony, making it a riskier claim at class certification and liability stages. Certification likely would have required depositions of Class Members who provided declarations, and Defendant surely would have obtained opposing declarations stating either rest breaks were taken, or rest breaks were voluntarily waived. *See, e.g., Ordonez v. Radio Shack, Inc.* (C.D. Cal. Jan. 17, 2013) 2013 WL 210223, at \*11 ("Because of the competing testimony before the Court, plaintiff's evidence that defendant may have an illegal, written rest break policy is insufficient for this Court to find that common issues predominate."); *Villa v. United Site Servs. of California, Inc.* (N.D. Cal. Nov. 13, 2012) 2012 WL 5503550, at \*8 ("Indeed, Plaintiff's own evidence confirms that the written policy does not generate uniform practices."). As a result of these potential issues, Plaintiff's counsel felt that it was appropriate to discount the total rest break exposure (\$627,789.00) violations by 80%, which would equal \$125,557.80. Blum Dec., ¶ 31.

(5) Exposure for Wage Statement Violations – Derivative

Plaintiff also alleged that Defendant failed to furnish its employees with accurate itemized wage statements. Specifically, Plaintiff alleges that as a result of Defendant's failure to provide proper overtime pay, as well as meal periods as required by the California Labor Code, Plaintiff and other Class Members are entitled to derivative wage statement penalties. (*See Naranjo v. Spectrum Security Services* (2022) 13 Cal. 5th 93 (concluding that meal premiums are "wages" entitling employees to derivative wage statement penalties). Further, Defendant argued that even if it failed to furnish accurate wage statements, Plaintiff could not establish the injury requirement on a class-wide basis. Per the expert report, wage statement penalties carried a maximum of \$147,550, but were completely dependent on prevailing on one of the prior causes of action. To recover, Plaintiffs must prove the underlying violations and prove Owl intentionally and willfully withheld such wages. *Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) 2012 U.S. Dist. LEXIS

1 189530 \*20. Further, the good faith defense to willfulness is clearly established under California  
2 law. *In Re Nordstrom Comm'n Cases* (2010) 186 Cal. App. 4th 576, 584 ("There is no willful  
3 failure to pay wages if the employer and employee have a good faith dispute as to whether and  
4 when the wages were due."). Owl would also assert that to the extent this claim depends on unpaid  
5 rest and meal period premiums, it has no value. In light of the proof required to establish this  
6 violation, the good faith defense, and the obstacles to certification, and success at trial, the realistic  
7 exposure was reduced by 75% to \$36,887.50. Blum Dec., ¶ 32.

8 (6) Exposure for Waiting Time Penalties – Derivative

9 An employer must pay all wages due to an involuntarily terminated employee at the time  
10 of termination, or within 72 hours to one voluntarily terminating. Labor Code § 203. If an  
11 employer willfully fails to timely pay all wages to separated employees, the wages continue at the  
12 same rate for up to 30 days. The statute of limitations is three years. Labor Code § 203(b).

13 Owl's maximum exposure on this claim was estimated at \$700,301.00. To prevail,  
14 Plaintiffs must prove the underlying claims, and to prove the failure to pay final wages was  
15 "willful." To extent this claim depends on the failure to pay rest and meal period premium wages,  
16 it also fails. *Naranjo, supra*. This claim is also subject to Owl's good faith defense, precluding  
17 imposition of waiting time penalties under Labor Code § 203. *In Re Nordstrom Comm'n Cases*,  
18 *supra*. In light of the foregoing, proving the underlying claims, Owl's good faith defense, and the  
19 difficulties of obtaining certification, the realistic exposure on this claim was reduced by 75% to  
20 \$175,075.25. Blum Dec., ¶33

21 (7) Defendant's PAGA Exposure

22 Class Counsel's damage models also estimated Defendant's exposure for PAGA penalties.  
23 At the time of mediation, Plaintiff estimated Defendant's PAGA exposure at \$1,557,700.00. Blum  
24 Dec., ¶ 23. The proposed PAGA allocation of the Gross Settlement Amount is fair, just, and  
25 reasonable. *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 77. Where settlements  
26 "negotiate a good faith amount" for PAGA penalties and "there is no indication that this amount  
27 was the result of self-interest at the expense of class members," such amounts are generally  
28 considered reasonable. *Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at

\*9 (N.D. Cal. Apr. 3, 2009). Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at \*1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at \*6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 2012 WL 12882124, at \*5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Under PAGA, Courts have considerable discretion to reduce the penalty award. In *Fleming v. Covidien*, 2011 U.S. Dist. LEXIS 154590 (C.D. Cal. 2011), a federal court reduced PAGA penalties from \$2,800,000 to \$500,000, a reduction of 82.2%, because the court found maximum penalties "unjust" because the employees had suffered no injuries. Some trial courts have actually awarded no civil penalties, even when Labor Code violations are established. *See In re Nordstrom Com. Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming an award of \$0 in PAGA penalties in a wage and hour class action); *In re Taco Bell Wage & Hour Actions*, 2016 U.S. Dist. LEXIS 48557, \*40-43 (E.D. Cal. Apr. 6, 2016) (PAGA penalties denied after trial).

*Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018), illustrates the risk of PAGA claims. In *Carrington*, while the plaintiff prevailed on his PAGA claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the employer's good faith attempt at complying with the law. *Id.* at 517. Upon review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Again, the *Carrington* decision was after Plaintiff actually prevailed at trial, and even then, the PAGA penalties were reduced by 90%.

Plaintiffs further considered the court may deem a PAGA trial unmanageable given the need to interview Class Members as to rest and meal period violations. Based on the risks of not proving the underlying claims, and the discretionary nature of PAGA penalties, Plaintiffs' realistic exposure was discounted for purposes of Settlement by 90% to \$155,770. Blum Dec., ¶ 34.

#### **b. Inherent Risks of Continued Litigation Support Final Approval**

"It can be difficult to ascertain with precision the likelihood of success at trial. The Court cannot and need not determine the merits of the contested facts and legal issues at this stage, [Citation], and to the extent courts assess this factor, it is to 'determine whether the decision to

1 settle is a good value for a relatively weak case or a sell-out of an extraordinary strong case.”  
2 (*Misra v. Decision One Mortg. Co.* (C.D. Cal. 2009) 2009 WL 4581276, at \*7.)

3 With respect to the most immediate challenge, i.e., class certification, the risks attendant to  
4 the certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart*  
5 *Associates, Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated, reversed, and  
6 remanded a \$110 million judgement against an employer for, *inter alia*, inaccurately paying  
7 overtime, and directed the trial court to enter judgement in favor of the employer. *See also*  
8 *O’Conner v. Uber Technologies, Inc.* (9th Cir. 2018) 904 F.3d 1087 (decertification of wage and  
9 hour misclassification action); *see also Duran v. U.S. Bank National Association* (2014) 59  
10 Cal.4th 1, 31 (reversing a trial verdict in favor plaintiffs in a wage and hour class action)); *Tien v.*  
11 *Tenet Healthcare Corp.* (2012) 209 Cal.App.4th 1077, 1088 (“[T]he reason, if any, that  
12 employees might not take their breaks were predominantly individualized questions of fact not  
13 susceptible to class treatment.”); *A.S.A. Cab Ltd.* (2009) 176 Cal.App.4th 1333, 1341 (affirming  
14 denial of certification because employees’ declarations attesting to having taken meal and rest  
15 breaks demonstrated that individualized inquiries were required to show harm); *Campbell v. Best*  
16 *Buy Stores, L.P.*, (C.D. Cal. 2013) 2013 WL 5302217 at \*11-13 (following *Brinker* and denying  
17 certification of proposed off-the-clock and rest and meal break classes due to lack of uniform  
18 policy); *Brown v. Fed Express Corp.* (C.D. Cal. 2008) 249 F.R.D. 580, 587-88 (denying  
19 certification of driver meal and rest period claims based on the predominance of individual issues).  
20 Collectively, the examples cited above illustrate the uncertain nature of class litigation.  
21 Consequently, the uncertainty of obtaining certification through a contested motion is a significant  
22 risk factor favoring settlement.

23 “The Settlement eliminates these and other risks of continued litigation, including the very  
24 real risk of no recovery after several years of litigation.” (*In re Nvidia Derivs. Litig.* (N.D. Cal.  
25 2008) 2008 WL 5382544, at \*3.) Indeed, potential appeals aside, litigating a complex case  
26 through trial is inherently perilous regardless of the strengths of merits of the claims: “[N]othing  
27 is assured when litigating against commercial giants with vast litigative resources, particular in  
28 such complex litigation as this, which would strain the cognitive capacities of any jury. Defense

1 judgments were hardly beyond the realm of possibility. Accordingly, this factor weighs in favor  
2 of preliminary approval.” (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1140,  
3 *opinion modified* (June 18, 1990).)

4 Finally, continuing to litigate this action would require continued and extensive resources  
5 coupled with significant Court time to proceed through trial and post-trial motions; which can  
6 often take years. Furthermore, wage and hour litigation is complex and expensive, as it often  
7 necessitates extensive expert testimony, particularly with regards to damages. But even if  
8 Plaintiff is successful at trial, Plaintiff is acutely aware that a judgment does not end the litigation.  
9 Plaintiff fully expects that Defendant would appeal any favorable judgment. As demonstrated by  
10 *Magadia, supra*, 999 F.3d 668, the risk of an appeal and subsequent reversal is real. “Avoiding  
11 such a trial and the subsequent appeals in this complex case strongly militates in favor of  
12 settlement rather than further protracted and uncertain litigation.” (*Nat’l Rural Telecomms. Coop*  
13 *v. DirecTV* (C.D. Cal. 2004) 221 F.R.D. 523, 527.) Thus, “unless the settlement is clearly  
14 inadequate, its acceptance and approval are preferable to lengthy and expensive litigation with  
15 uncertain results.” (*Id.* at 526.) Blum Dec., ¶ 35.

16 **A. The Class Has Been Notified of the Settlement and Only One Objection Has Been**  
17 **Made**

18 In an order dated October 30, 2023, this Court preliminarily approved the Agreement and  
19 preliminarily certified the Class. Declaration of Matt Blum (“Blum Dec.”), ¶ 47. Beginning on  
20 January 2, 2024, the Settlement Administrator delivered notice of the proposed settlement to the  
21 Class. Declaration of Nathalie Beltran, employee at ILYM Group, Inc. (“ILYM Dec.”), ¶ 7.

22 ***As of the filing of this Motion, the Class has greeted news of the Settlement with 99.23%***  
23 ***approval.*** There is currently one opt-out and one objection<sup>8</sup> to the Settlement. ILYM Dec., ¶¶ 8-  
24 13. The high approval by the Settlement Class evidences the clear fairness and reasonableness of  
25 the Settlement. Blum Dec., ¶ 48.

26 **B. The Court Should Approve the Class Representative Payment**

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28 <sup>8</sup> The one objection form was received on March 2, 2024. The objection did not specify a reason for objection but merely included paystubs. It is unclear if the class member is objecting or disputing workweeks. ILYM attempted to call the class member several times for clarification but was unsuccessful. ILYM Dec ¶ 12.

1 Enhancement payments “are fairly typical in class action cases.” (*Cellphone Termination*  
2 *Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 (affirming incentive awards of \$10,000);  
3 *Rodriguez v. West Publishing Corp.* (9<sup>th</sup> Cir. 2009) 563 F.3d 948, 958, *citing* 4 Newberg on Class  
4 Actions (4th ed. 2002) § 1 1:38, and Eisenberg & Miller, *Incentive Awards to Class Action*  
5 *Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006).) Enhancement payments “are  
6 intended to compensate class representatives for work done on behalf of the class, to make up for  
7 financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their  
8 willingness to act as a private attorney general.” (*Rodriguez*, 563 F.3d at 958-59.) “[T]he rationale  
9 for making enhancement or incentive awards to named plaintiffs is that they should be  
10 compensated for the expense or risk they have incurred in conferring a benefit on other members  
11 of the class.” (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785.)

12 The Settlement provides for a Class Representative Payment of \$10,000 for Plaintiff.  
13 Agreement at III(L)(9). The service award is fair and reasonable compensation for the Plaintiff’s  
14 efforts bringing the action, assisting Class Counsel with the litigation and settlement, regularly  
15 conferring with Class Counsel on the status of his case and the strategies for prosecuting the  
16 claims, reviewing the proposed Settlement to ensure that its terms are fair and provide adequate  
17 relief for the Settlement Class, and agreeing to provide Defendant a general release of all claims  
18 arising out of his employment. Blum Dec., ¶ 38.

19 The efforts of class representative William Riedl are set forth in his concurrently filed  
20 declaration in support of a final award and enhancement payment. Riedl remained involved in the  
21 case from the outset, assisted counsel in a multitude of ways, and was instrumental in helping the  
22 case reach a resolution. See Declaration of William Riedl in support of Final Approval, ¶¶ 2-12.

### 23 **C. The Court Should Approve the Attorneys’ Fees and Litigation Costs**

24 The purpose of a payment of Attorneys’ Fees and Litigation Costs in class action litigation  
25 is to reward counsel who took the risk of non-payment and invested in a case that achieved a  
26 substantial positive result for the class. California courts routinely award attorneys’ fees equaling  
27 one-third or more of the potential value of the common fund, the amount requested under this  
28 settlement. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (“Empirical studies

show that regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.”); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, *J. of Empirical Legal Studies*, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide have come to a similar conclusion that a one-third fee is consistent with market rates).)

Class Counsel took this matter on a contingency fee basis and invested significant time and expense successfully prosecuting Plaintiff’s claims. Considering the positive outcome for the Class Members, and in light of the supporting authority, the proposed Attorneys’ Fees and Litigation Costs are fair and reasonable. Where class counsel seeks 33.3% percent of the gross settlement (**\$95,000.00**), attorney Matt Blum alone has incurred \$110,660.00 in hourly legal costs to date. See Blum Dec., ¶ 39 and corresponding hourly time sheet attached as **Exhibit B** to Blum Dec. In addition, co-counsel Jean-Claude Lapuyade of the JCL Law Firm, APC incurred an additional \$8,250.00 to date. See Lapuyade Dec., at ¶3. Thus, at this point in time and prior to potentially incurring additional fees following this hearing, class-counsel has incurred **\$118,910.00**. This far exceeds the \$95,000.00 sought from this Court.

Further, while the Court preliminarily approved up to \$25,000.00 in legal costs, the case was litigated for just \$16,220.00. Blum Dec and corresponding cost report attached as final page to **Exhibit B** to Blum Dec. The efficient litigation of the case resulted in an additional \$8,780.00 to be allocated to the class and the LWDA. Blum Dec at ¶39.

#### **D. Final Certification for Settlement Purposes Is Appropriate**

Plaintiff contends, and Defendant does not dispute, that final certification of the class is appropriate.

##### **1. The Standard for Class Certification**

Class actions are statutorily authorized “when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” (*Cal.Civ.Proc. Code* § 382; *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1332.) Class certification is appropriate when there is an “ascertainable class and a well-defined community of interest among class members.” (*Sav-On Drug Stores, Inc.* (2014) 34

Cal.4th 319, 326.) Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. (*Bufile v. Dollar Financial Group, Inc.* (2008) 162 Cal.App.4th 1193, 1207; *Sav-On*, 34 Cal.4th at 333.)

2. The Proposed Settlement Class is Ascertainable and there is a Well-Defined Community of Interest Among the Participating Class Members.

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members.” (*Lee*, 166 Cal.App.4th at 1334.) Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. (*Id.*)

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. (*Cal. Civ. Proc. Code* § 382.)

In April 2012, the Supreme Court expounded on the element of predominance: The “ultimate question” the element of predominance presents is whether “the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Brinker*, 53 Cal. 4th at 1021-1022 (citations omitted).) Because all Class Members are Defendant’s current and former employees, the class is readily ascertainable from Defendant’s regular business records, i.e., payroll records. Blum Dec., ¶ 40.

The statutes relating to each of Plaintiff’s claims apply with equal force and effect to the entire Settlement Class. Factually, Defendant’s policies and practices apply class-wide and Defendant’s liability can be determined by facts common to all members of the class. The wage and hour issues are both numerous and substantial, and a class action is the most advantageous method of dealing with the claims of the Settlement Class. Blum Dec., ¶ 41.

Plaintiff’s wage and hour claims are typical of the proposed Settlement Class because they arise from the same factual basis and are based on the same legal theories applicable to the other

1 Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests of the  
2 Settlement Class. Plaintiff alleges that she was injured by the same company-wide practices to  
3 which the proposed Class Members were subject to and seek the same relief. Plaintiff has already  
4 demonstrated his ability to advocate for the interests of the Class Member by initiating this  
5 litigation, undertaking extensive class discovery, and evaluating the proposed settlement to assure  
6 that it is fair. Blum Dec., ¶ 42.

7 Additionally, Plaintiff is represented by competent Class Counsel who have extensive  
8 experience in litigating wage and hour class action cases. Class Counsel successfully briefed,  
9 argued, certified, and gained state court settlement approval of the same class-wide causes of  
10 action that are at issue in this case. Class Counsel's wage and hour class action experience  
11 establishes that they are well qualified to represent the interests of this Class. Blum Dec., ¶ 43-46.

12 A class action is superior to a multitude of individual lawsuits. Given the size and amount  
13 of each individual claim, the Class Members likely have little incentive to litigate their claims on  
14 an individual basis because the out-of-pocket expense and personal commitment necessary to  
15 litigate each claim outweighs any potential recovery. In sum, class treatment is superior to  
16 individual, case-by-case adjudication.

## 17 **VII. CONCLUSION**

18 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness  
19 established in California law and should therefore be finally approved as fair, reasonable, and  
20 adequate. Plaintiff respectfully requests entry of the Final Approval Order and Judgment submitted  
21 herewith.

22 DATED: June 11, 2024

**THE LAW OFFICE OF MATT BLUM**

24 By   
25 Matt Blum, Esq.  
26 Attorney for Plaintiff  
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