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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MARCOS TAFOLLA, an individual, on
behalf of himself and others similarly
situated,

PLAINTIFF,

v.

DAYLIGHT TRANSPORT, LLC; and DOES
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV16822

[Case Assigned for All Purposes to Hon. Elihu
M. Berle in Dept. 6]

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

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Kelsey M. Szamet, and Marcos Tafolla,
Proposed Order and Judgment]*

Date: December 13, 2024
Time: 9:00 AM
Dept.: 6

Complaint Filed: May 3, 2021
Trial Date: None Set

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on December 13, 2024, at 9:00 AM in Department 6 of the
3 above-entitled court, Plaintiff Marcos Tafolla (“Plaintiff”) will, and hereby does, move the Court
4 for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for
5 an order:

6 1. Granting final approval of the settlement in the case pursuant to the Class Action
7 and PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-
8 filed Declaration of Kelsey M. Szamet as Exhibit “1”;

9 2. Affirming Kingsley Szamet & Ly as Class Counsel;

10 3. Affirming Marcos Tafolla as Class Representative and awarding an enhancement
11 award of \$7,500.00.

12 4. Awarding ILYM Group, Inc. settlement administration fees of \$17,000.00 for its
13 services as Administrator; and,

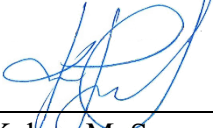
14 5. Entering judgment.

15 This Motion will be made pursuant to Code of Civil Procedure section 382 and California
16 Rule of Court, rule 3.769 on the grounds that the proposed Agreement is fair, adequate,
17 reasonable, and in the best interest of the Settlement Class Members and the parties.

18 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
19 and Authorities, the Declarations of Kelsey M. Szamet, Marcos Tafolla, all other papers and
20 records on file in this action, and on such oral and documentary evidence as may be presented at
21 the hearing on this Motion.

22 DATED: October 10, 2024

KINGSLEY SZAMET & LY

23
24 By: 

25 Kelsey M. Szamet
26 Attorneys for Plaintiff MARCOS TAFOLLA and
27 the proposed class
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Marcos Tafolla (“Plaintiff”) submits this Motion for Final Approval of Class
4 Settlement and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Class Action and
6 PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-filed
7 Declaration of Kelsey M. Szamet as Exhibit “1”;

8 2. Award attorneys’ fees and costs as detailed in the concurrently-filed Motion for
9 Attorneys’ Fees and Costs;

10 3. Award ILYM Group, Inc. settlement administration fees of \$17,000.00 for its
11 services as Administrator;

12 4. Affirm named Plaintiff Marcos Tafolla as Class Representative and award a
13 cumulative Class Representative payment of \$7,500.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

16 **A. Litigation Overview and Procedural History**

17 Daylight Transport, LLC (“Defendant”) operates throughout California, specializing in
18 providing transportation and logistics services. (Declaration of Kelsey M. Szamet (“Szamet
19 Decl.”) ¶5.) Plaintiff worked as a warehouse worker for Defendant from approximately January
20 2020 to February 2021. (Szamet Decl. ¶6.) Plaintiff and the Proposed Class worked as non-exempt
21 employees who earned hourly wages. (Szamet Decl. ¶7.)

22 On May 3, 2021, Plaintiff MARCOS TAFOLLA filed a Class Action Complaint entitled
23 *MARCOS TAFOLLA, on behalf of himself and others similarly situated, PLAINTIFF v.*
24 *DAYLIGHT TRANSPORT, LLC; and DOES 1 thru 50; DEFENDANTS*, in the Los Angeles County
25 Superior Court, case number 21STCV16822. (Szamet Decl. ¶8.) In the Complaint, Plaintiff alleged
26 five causes of action for: (1) Failure to Pay Wages and/or Overtime under Labor Code §§ 510,
27 1194, 1194.2, and 1199; (2) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and
28 512; (3) Failure to Provide Accurate Itemized Wage Statements Pursuant to Labor Code §§ 226(a);

(4) Penalties Pursuant to Labor Code § 203; and (5) Violation of Business & Professions Code § 17200, et seq. (Szamet Decl. ¶9.) (Agreement, Ex. 1 at (“Ex. 1”) § 2 ¶2.1.).

Also on May 3, 2021, per Labor Code § 2699, et seq., the Private Attorneys General Act (“PAGA”), Plaintiff sent a letter to the Labor Workforce Development Agency (“LWDA”) regarding his intent to seek civil penalties for the Labor Code violations above. (Szamet Decl. ¶ 10; Exhibit “2”.) A true and correct copy of the initial PAGA letter is attached hereto as Exhibit “2”.

On July 7, 2021, Plaintiff filed a First Amended Class and Representative Action Complaint adding an additional cause of action for penalties pursuant to Labor Code section 2699, et seq. (Szamet Decl. ¶11.) (hereafter the “Lawsuit” or “Operative Action”)

B. Mediation

Through this formal discovery, Plaintiff obtained employment records, paystubs, time records, employment handbooks, and arbitration agreements. (Szamet Decl. ¶12.) As such, the Parties engaged in extensive formal and informal discovery that allowed the Parties to fully investigate the claims at issue and understand their strengths and weakness. (Szamet Decl. ¶13.) Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

After the meaningful exchange of information, the Parties agreed to attend private mediation with experienced wage and hour class action mediator Jeffrey Krivis, Esq. on April 5, 2022. (Szamet Decl. ¶14.) To effectuate the mediation, Defendant produced a data sample including a 77 person sample of time and pay records out of class of 654 (at the time of mediation). (Szamet Decl. ¶ 15.) There were 29,685 shifts in the data analyzed. (Szamet Decl. ¶ 16.) Plaintiff worked with an expert to review and analyze these records. (*Id.*) Though the matter did not settle that day, the mediator worked with the Parties in follow up and made a mediator’s proposal. (Szamet Decl. ¶17.) It was not accepted and the Parties moved forward with litigation and formal discovery. (Szamet Decl. ¶18.)

///

1 C. The Discovery Process

2 On May 12, 2022, Plaintiff served his First Set of Specially Prepared Interrogatories and
3 his First Set of Requests for Production to Defendant. (Szamet Decl. ¶ 19.) The discovery sought
4 the identities of all putative class members, time and pay records for all class members, applicable
5 wage and hour policies, among other things. (*Id.*) Defendant served its responses to Plaintiff's First
6 Set of Specially Prepared Interrogatories and Plaintiff's First Set of Requests for Production of
7 Documents on August 12, 2022. (Szamet Decl. ¶20.) Defendant's Supplemental Responses to
8 Plaintiff's First Set of Specially Prepared Interrogatories and First Set of Requests for Production
9 of Documents was served on January 8, 2023. (*Id.*)

10 On December 13, 2022, Plaintiff served his Second Set of Specially Prepared
11 Interrogatories and Requests for Production to Defendant. (Szamet Decl. ¶21.) Defendant served
12 responses to Plaintiff's Second Set of discovery on January 17, 2023, and provided supplemental
13 responses on January 26, 2023. (Szamet Decl. ¶22.)

14 On June 22, 2023, the Parties agreed upon the form of a notice pursuant to *Belaire-West*
15 *Landscape, Inc. v. Superior Court* (2007) 149 Cal.App.4th 554 (the "*Belaire Notice*") giving
16 putative class members in the above-entitled action notice and the opportunity to opt out of having
17 their names, addresses, email and telephone information ("contact information") disclosed to
18 Plaintiff's counsel. (Szamet Decl. ¶23.) The Parties requested approval of the Belaire-West notice,
19 and the Court approved the *Belaire* notice on June 23, 2023. (Szamet Decl. ¶24.) The *Belaire*
20 notice was disseminated on July 31, 2023. (Szamet Decl. ¶25.)

21 D. Motion for Decertification

22 On December 9, 2022, Defendant filed a motion to deny class certification, arguing that
23 Plaintiff's wage claims on behalf of Defendant's California employees are defective as a matter
24 of law because most of the putative class members are subject to binding arbitration agreements.
25 (Szamet Decl. ¶26.) Because Plaintiff is not, Defendant maintained that Plaintiff is neither a
26 typical nor adequate class representative for those who signed the agreement. (Szamet Decl.
27 ¶27.) On March 13, 2023, the Court issued a Minute Order denying Defendant's Motion.
28 (Szamet Decl. ¶28.) Ultimately, the Court found that the issue is not ripe yet, but indicated that

1 Defendant's arguments could be raised in opposition to Plaintiff's certification motion. (Szamet
2 Decl. ¶29.)

3 E. Resolution

4 After the completion of additional formal discovery and the filing of Defendant's Motion
5 for Decertification, the Parties decided to refocus their efforts on resolution. (Szamet Decl. ¶30.)
6 Through extensive and meaningful direct negotiations, the Parties were able to reach the
7 proposed Settlement. (Szamet Decl. ¶31.)

8 Defendant denies any liability or wrongdoing of any kind associated with the claims
9 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further
10 contends that, for any purpose other than settlement, Plaintiff's claims are not appropriate for
11 class or representative action treatment. (Szamet Decl. ¶ 32.) Defendant contends, among other
12 things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage
13 Commission Orders. (*Id.*)

14 Based on their own independent investigation and evaluation, Class Counsel is of the
15 opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best
16 interest of the settlement classes in light of all known facts and circumstances, including the risk
17 of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
18 representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl. ¶
19 33.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to
20 avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally,
21 and forever settle, compromise and discharge all disputes and claims arising from or relating to
22 the Action on the terms set forth here. (*Id.*)

23 F. Preliminary Approval

24 On August 13, 2024, the Court issued an Order preliminarily approving the settlement in
25 this case, approving the proposed Class Notice, ordering that the Administrator send notice to the
26 Class, and setting a date for the Final Approval and Fairness Hearing. (Szamet Decl. ¶34.)

27 ///

1 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

2 A. The Settlement Class

3 For purposes of Agreement, the settlement class is defined as: “all persons who are
4 employed or have been employed as an hourly employee by DAYLIGHT TRANSPORT, LLC, in
5 the State of California since four (4) years prior to the filing of this action to the present.” (“Class”
6 or “Class Members” or “Settlement Class Members”) (Szamet Decl. ¶ 35; Agreement, Ex. 1 at §
7 1, ¶1.5.) The Class Period is from May 3, 2017, through December 31, 2023. (Szamet Decl. ¶ 36;
8 Ex. 1 at § 1, ¶1.12.) Based on documents and other information produced by Defendant, there are
9 approximately 760 Settlement Class Members. (Szamet Decl. ¶37; Ex. 1 at § 4, ¶4.1.)

10 The final Class contained 755 individuals. (Exhibit 7.¹)

11 B. The Aggrieved Employees

12 For purposes of the Agreement, the Aggrieved Employees are defined as: “all persons
13 who are employed or have been employed as an hourly employee by DAYLIGHT
14 TRANSPORT, LLC, in the State of California who worked one or more pay periods during the
15 PAGA Period.” (“Aggrieved Employees”) (Szamet Decl. ¶38; Settlement, Ex. 1 at § 1, ¶1.4.)
16 The PAGA Period is May 3, 2020, through December 31, 2023. (Szamet Decl. ¶39; Ex. 1 at § 1,
17 ¶1.33.) Based on documents and other information produced by Defendant, there are
18 approximately 486 Aggrieved Employees. (Szamet Decl. ¶40; Ex. 1 at § 4, ¶4.1.)

19 C. Gross Settlement Amount

20 As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross
21 Settlement Amount of \$425,000.00, which includes the sum of the Individual Class Payments,
22 Individual PAGA Payments, the Class Representative Service Payment, the Class Counsel Fees
23 and Class Counsel Expenses, LWDA PAGA Payment, and the Administrator’s Expenses. (Szamet
24 Decl. ¶41; Ex. 1 at § 1, ¶1.22.)

25 The Net Settlement Amount is the Gross Settlement Amount, less Individual PAGA

26 _____
27 ¹ Pursuant to the Court’s Signed Order Granting Preliminary Approval of the Class
28 Action Settlement, the settlement administrator’s declaration regarding administration of the
class notice is to be filed no later than December 2, 2024. Plaintiff has included the most
current weekly report from the administrator provided on October 10, 2024, as Exhibit “7” to
the Declaration of Kelsey M. Szamet.

Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (Szamet Decl. ¶42; Ex. 1 at § 1, ¶1.28.)

Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Class as follows:

Gross Settlement Amount:	\$	425,000.00
Less Class Representative Service Payment:	\$	7,500.00
Less Class Counsel's Fees (1/3):	\$	141,666.67
Less Class Counsel's Costs:	\$	20,153.84 ²
Less LWDA PAGA Payment:	\$	20,000.00
		(\$15,000.00 to the LWDA; \$5,000.00 to remain in the Net Settlement Amount)
Less Administrator Expenses:	\$	<u>17,000.00</u>
Net Settlement Amount:	\$	223,679.49

D. Individual Settlement Payments

The amount of each Participating Class Member's Individual Class Payment is an individualized amount that is based on the number of compensable workweeks worked by the Participating Class Member during the Class Period. (Ex. 1 at § 1, ¶1.23; see also Ex. A to the Agreement at pp. 1 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (See Ex. 1 at § 1, ¶3.2.4; Id. at Ex. A to the Agreement [Class Notice].) The Agreement provides for a specific and detailed dispute process. (See Ex. 1 at § 7, ¶7.6.)

The Individual PAGA Payment is an individualized amount that is based on the number of compensable PAGA Period Pay Periods worked by each Aggrieved Employee during the PAGA Period. (Ex. 1 at § 1, ¶1.24.) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (See Ex. 1 at § 1, ¶3.2.5.1.) The Agreement

² The Agreement provided for counsel to receive cost reimbursement up to \$25,000.00. However, counsel's final costs come to \$20,153.84, which includes the anticipated cost of \$600 for filing the instant motion. (Szamet Decl. ¶42, Ex. 6). The extra \$4,846.16 will remain in the net settlement fund, causing the net distribution to the Class Members to be slightly higher than the \$218,833.33 contemplated in the settlement agreement (*Id.*, Ex. 1 §3, ¶3.2.1)

provides for a specific and detailed dispute process. (See Ex. 1 at § 7, ¶7.6.)

E. Class Notice

The Court approved the proposed Class Notice and directed the mailing of the Notice by first-class mail to Settlement Class Members in accordance with the proposed implementation schedule. (Szamet Decl. ¶43) The procedures for giving notice to the Settlement Class Members, as set forth in the Agreement and Plaintiffs’ Motion for Preliminary Approval and approved by the Court, have been properly carried out to date. (Szamet Decl. ¶44.)

To date, ILYM Group, Inc. received three (3) requests to be excluded (“opt-outs”) from the proposed Agreement and zero (0) objections so far. (Ex. 7.)

F. Checks Mailed Settlement – No Reversion

The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement without the possibility of reversion of settlement funds to Defendant. Under the Agreement, every Settlement Class Member will receive a settlement check and Settlement Class Members do not need to submit a claim in order to receive a settlement check. Any funds that remain uncashed after the void date shall be turned over by the Administrator, with information for each Settlement Class Member who failed to timely cash his/her settlement check, to the State of California Controller’s Office Unclaimed Property Fund. (Ex. 1 at § 4, ¶4.4.3.)

IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT

Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the Class in such manner as the court directs” In deciding whether to grant final approval to a proposed class action settlement under Code of Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair, adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

A. The Settlement is Entitled to a Presumption of Fairness

“A presumption of fairness exists where: (1) the settlement is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is

1 small.” (*Dunk*, *supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case
2 meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

3 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
4 arm’s-length negotiations. (Szamet Decl. ¶45.) All settlement discussions were made by
5 experienced and informed counsel, who believe that this settlement represents a favorable
6 resolution for the Settlement Class Members. (Szamet Decl. ¶46.) The settlement negotiations
7 have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-
8 dealing or other type of misconduct by either side has taken place. (Szamet Decl. ¶47.)

9 Second, the Parties engaged in formal and informal discovery that permitted Class Counsel
10 to fairly evaluate the strength of the case and the risks associated with ongoing litigation.. This
11 included employment records paystubs, time records, employment handbooks, and arbitration
12 agreements from the Settlement Class Members. (Szamet Decl. ¶48.) Receipt of appropriate
13 discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each
14 claim alleged in the lawsuit. (Szamet Decl. ¶49.)

15 Third, Class Counsel have significant experience in cases of this type, including several
16 years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶50.) Class
17 Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel
18 believes that the settlement is fair, reasonable, adequate, and in the best interests of the class, given
19 the risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶51.)

20 Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there are two
21 (2) requests to be excluded and no objections to date. (Ex. 7.) As all of the *Dunk* factors are
22 satisfied, this settlement is entitled to a presumption of fairness.

23 B. The Court Should Approve This Class Action Settlement Because it Satisfies Each
24 of the *Kullar* Factors

25 The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, set forth
26 several factors that the Court should analyze in determining whether to approve a class action
27 settlement. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
28 complexity and likely duration of further litigation; (3) the risk of maintaining class action status

1 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
2 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
3 participant; and (8) the reaction of the class members to the proposed settlement.

4 The proposed settlement satisfies each of these factors. (Szamet Decl. ¶ 52.) Class Counsel
5 conducted extensive formal and informal discovery before entering into meaningful settlement
6 negotiations in this matter. (*Id.* at Szamet Decl. ¶¶ 19-25.) This discovery permitted Class Counsel
7 to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet
8 Decl. ¶ 53.) Class Counsel is experienced in handling wage and hour class actions and, after
9 weighing all of the following factors, supports this Agreement. (Szamet Decl. ¶ 54.)

10 ///

11 1. The Strength of Plaintiffs' Case

12 a) The Risks Associated with the Minimum Wage/Overtime Claim

13 California employees are entitled to compensation for all hours worked, which means “the
14 time during which an employee is subject to the control of an employer, and includes all the time
15 the employee is suffered or permitted to work, whether or not required to do so.” (Title 8 Cal. Code
16 of Regs., § 11050(2)(K); *See Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 845, as modified
17 on denial of reh’g (Aug. 29, 2018).) Time is compensable if an employee is “subject to the control
18 of an employer” even if not working, or if an employee “is suffered or permitted to work” even if
19 not “under the employer’s control, provided the employer has or should have knowledge of the
20 employee’s work.” (*Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038, 1046, reh'g denied (May 13, 2020)
21 (citations omitted.) An employer controls an employee if the employer directs an employee and
22 the employee is unable to use their time how they wish. (*Id.* at p. 1047.) Other factors courts may
23 consider include whether the activity is required, “the location of the activity, the degree of the
24 employer’s control, whether the activity primarily benefits the employee or employer, and whether
25 the activity is enforced through disciplinary measures.” (*Id.* at p. 1056; *Cf. Gibbs v. TWC*
26 *Administration, LLC* (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at *9
27 (denying Defendant’s motion for summary judgment when plaintiff-employees conducted off-the
28 clock pre-shift activity in preparation to start work right when they clocked in).)

1 In *Troester*, employees spent four to ten minutes completing tasks to close up the store,
2 such as setting the alarm and locking the door. (*Troester*, 5 Cal.5th 829 at p. 843.) The Court held
3 that California law prohibits employers from requiring employees to work off the clock, even for
4 minutes, without compensation. (Id. at p. 848.) The Court explained:

5 An employer that requires its employees to work minutes off the clock on a regular
6 basis or as a regular feature of the job may not evade the obligation to compensate
7 the employee for that time by invoking the de minimis doctrine. As the facts here
8 demonstrate, a few extra minutes of work each day can add up. . . . What Starbucks
9 calls “de minimis” is not de minimis at all to many ordinary people who work for
10 hourly wages.

11 (*Id.* at p. 847.)

12 Additionally, California workers are statutorily entitled to overtime compensation, unless
13 they are properly classified as falling within one of the narrow exemption categories. Under
14 California law, “[a]ny work in excess of eight hours in one workday and any work in excess of 40
15 hours in any one workweek...shall be compensated at the rate of no less than one and one-half
16 times the regular rate of pay for an employee.” (Lab. Code, § 510, subd. (a).) Furthermore, “[a]ny
17 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
18 regular rate of pay for an employee.” (Lab. Code, § 510, subd. (a).)

19 Plaintiff contends that he, like all Class Members, were required to work “off the clock” to
20 complete temperature checks without being compensated for this time in compliance with
21 California law. (Szamet Decl. ¶ 55.) Plaintiff alleges that he and all Class Members were required
22 to report to the job site and complete temperature checks before the scheduled start of each shift.
23 (Szamet Decl. ¶ 56.) Plaintiff contends that Defendant required Plaintiff and the Class Members
24 to undergo these temperature checks before the scheduled start of each shift daily, without
25 compensation for this time worked at the appropriate rate of pay. (Szamet Decl. ¶ 57.)

26 Plaintiff contends that this was a daily requirement for the benefit of the employer, as
27 temperature health screening procedures were necessary to ensure the safety and protection of
28 employees’ health at all times. (Szamet Decl. ¶ 58.) As such, Plaintiff argued that he and Class
Members were entitled to be compensated for this time worked and Defendant is liable for unpaid
wages and/or overtime at the appropriate rate. (Szamet Decl. ¶ 59.) Defendant vehemently denies
the minimum wage/overtime claim is appropriate for class certification. (Szamet Decl. ¶ 60.) First,

1 Defendant argued that any temperature checks were limited to the one facility where Plaintiff
2 worked and only in place for a limited number of months after the initial March 2020 statewide
3 covid outbreak. (Szamet Decl. ¶ 61.) Therefore, it argued that Plaintiff was not a typical
4 representative of the entire Class and at most perhaps Plaintiff could attempt to certify a small
5 subclass of employees who underwent temperature checks at his facility for a period of a few
6 months. (Szamet Decl. ¶ 62.) In addition, Defendant argued that any temperature checks merely
7 took a few seconds to complete as employees entered the one facility and were not compensable
8 time. (Szamet Decl. ¶ 63.) Ultimately, Plaintiff felt confident he could certify this claim, but had
9 to acknowledge that exposure may be extremely limited if the Court only certified a small, single-
10 location subclass for a limited time period thereby reducing the potential value of the claim
11 significantly. (Szamet Decl. ¶ 64.) Plaintiff took this significant risk into consideration in
12 determining that settlement of this claim was reasonable. (Szamet Decl. ¶ 65.)

13 Plaintiff also alleged that Defendant paid hazard pay and safety pay that it did not properly
14 blend for the purposes of determining the correct overtime rate. (Szamet Decl. ¶ 66.) Plaintiff felt
15 confident that this claim was certifiable, but acknowledges the potential damages are limited as
16 this additional compensation was paid only during a limited window as part of Defendant's covid
17 protocols. (Szamet Decl. ¶ 67.)

18 b) The Risks Associated with the Meal Break Claim

19 California law requires employers to provide employees a duty-free, uninterrupted thirty
20 (30) minute meal period when an employee works more than five (5) hours in a workday, and it
21 must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage
22 Order 9-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
23 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30)
24 minute meal period when an employee works more than (10) hours in a workday, and it must be
25 provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under
26 the following circumstances: (1) if an employee's total work period in a day is over five (5) hours
27 but no more than six (6) hours, the required meal period may be waived by mutual consent of the
28 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours

1 but no more than twelve (12) hours, the required second meal period may be waived by mutual
2 consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

3 Employers covered by Industrial Welfare Commission (“IWC”) Wage Order 9-2001 have
4 an obligation to both (1) relieve their employees for at least one meal period for shifts over five
5 hours (see above), and (2) to record having done so. If the employer fails to properly record a valid
6 meal period, it is presumed that no meal period was provided. IWC Wage Order 9-2001, §7(A)(3)
7 (“Meal periods . . . shall also be recorded”); *Brinker*, supra, 53 Cal.4th 1004, 1052-1053, citing
8 §7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
9 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
10 provided”). Employers must pay employees an additional hour of wages at the employees’ regular
11 rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first
12 meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab.
13 Code §226.7; IWC Wage Order 9-2001, §11(B) (“If an employer fails to provide an employee a
14 meal period in accordance with the applicable provisions of this order, the employer shall pay the
15 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday
16 that the meal period is not provided”); *Brinker*, supra, 53 Cal.4th 1004.

17 Plaintiff alleged that Defendant violated California’s meal break laws by not allowing
18 Plaintiff and other members of the Class to take compliant daily meal breaks that were timely, at
19 least 30 minutes, and free of the employer’s control. (Szamet Decl. ¶ 68.) Notable however is that
20 expert analysis of the data revealed that 93% of shifts over five hours show that a meal period was
21 taken during shifts over 5 hours and only 0.2% of those meal periods were taken after the 5th hour
22 (495 meal periods out of 245,408) and only 0.10% were less than 30 full minutes. (Szamet Decl.
23 ¶ 69.) Plaintiff acknowledges that this purported “violation rate” is quite low. (Szamet Decl. ¶ 70.)
24 Thus, the data did not support a strong meal break claim for missed, short, late or missed meals.
25 (Szamet Decl. ¶ 71.)

26 In addition to the data analysis, this can be an extremely tough claim to prove on a
27 classwide basis because Defendant will argue that it meets the *Brinker* “provide” standard, facially
28 compliant meal breaks are consistently reflected in the records. (Szamet Decl. ¶ 72.) Defendant

1 would argue that because the records largely show complaint breaks were taken, it would become
2 an individualized inquiry that would require questioning of each and every Class Member as to
3 each and every meal non-compliant period in the records as to whether in fact it was “provided”
4 in compliance with the law. (Szamet Decl. ¶ 73.) Such an expansive inquiry, Defendant would
5 argue, necessarily defeats class certification. (Szamet Decl. ¶ 74.) It could likewise devolve into a
6 battle of declarations with each party securing class member declarations that supported their
7 arguments. (Szamet Decl. ¶ 75.) Based on the data analysis and the risks above, Plaintiff ultimately
8 determined that accepting a dramatic discount on the meal claim for settlement purposes was
9 appropriate. (Szamet Decl. ¶ 76.)

10 Plaintiff also alleged a *Ferra* violation for failing to pay meal period premiums at the
11 appropriate rate based on a failure to blend hazard pay and safety bonus for the purpose of
12 determining the correct regular rate for meal period premium payment. (Szamet Decl. ¶ 77.) As
13 with the regular rate claim above, Plaintiff felt confident that this claim was certifiable, but
14 acknowledges the potential damages are limited as this additional compensation was paid only
15 during a limited window as part of Defendant’s covid protocols. (Szamet Decl. ¶ 78.)

16 c) The Risks Associated with the Inaccurate Wage Statement Claim

17 California Labor Code §226(a) requires Defendant to provide its employees with an
18 accurate, itemized written wage statement that shows, in relevant part, the start and end date of the
19 pay period and all applicable hourly rates and the corresponding number of hours worked. An
20 employee “suffering injury,” like Plaintiff and Class Members, can recover penalties for an
21 employer’s “knowing and intentional failure” to comply with Labor Code §226(a). See Labor
22 Code § 226(e)(1). Under the statute, an employee is deemed to “suffer injury” if the employer does
23 not provide accurate and complete information required by Labor Code § 226(a) and the employee
24 cannot “promptly and easily determine” from the wage statement alone the amount of gross wages
25 or net wages paid to the employee or other information specified by Labor Code § 226(a). See
26 Labor Code § 226(e)(2)(B).

27 Plaintiff alleged a derivative claim that Defendant issued wage statements that allegedly
28 violate Labor Code §§ 226(a)(2) and (9). (Szamet Decl. ¶ 79.) Labor Code § 226(a) specifically

1 requires that the employer shall, semimonthly or at the time of each payment of wages, furnish
2 each of his or her employees, an accurate itemized statement in writing showing all applicable
3 hourly rates in effect during the pay period and the corresponding number of hours worked at each
4 hourly rate by the employee. Plaintiff alleges that he and Class Members are issued wage
5 statements that do not accurately show the applicable overtime rate and the number of hours
6 worked at the corresponding rate based on Defendant's alleged failure to blend discussed above.
7 (Szamet Decl. ¶ 80.) However, Plaintiff has to recognize that this is a derivative claim. (Szamet
8 Decl. ¶ 81.) Plaintiff does not argue that Defendant failed to show required information on the
9 paystubs it issued to Class Members, only that the paystubs do not accurately show the
10 information. (Szamet Decl. ¶ 82.) While Plaintiff believes this claim is easily certifiable, Plaintiff
11 has to acknowledge that this is a more difficult argument to prevail on when it comes to assessing
12 liability and a resulting discount for settlement purposes is appropriate.

13 d) The Risks Associated with the Waiting Time Penalty Claim

14 Labor Code section 203 provides that if an employer fails to provide wages at the time of
15 an employee's termination or within 72 hours of his/her resignation, then such employee's wages
16 shall continue as a penalty for up to thirty (30) days. "If an employer willfully fails to pay . . . any
17 wages of an employee who is discharged or who quits, the wages of the employee shall continue
18 as a penalty from the due date thereof at the same rate until paid . . . but the wages shall not continue
19 for more than 30 days." (Lab. Code, § 203, subd. (a).)

20 Here, some Class Members, including Plaintiff, are no longer employed by Defendant.
21 (Szamet Decl. ¶83.) Plaintiff contends that Defendant has failed to pay employees wages
22 immediately or within 72 hours of termination and/or resignation by not paying all meal period
23 premiums owed and wages. (Szamet Decl. ¶84.) Therefore, under California Law, Plaintiff
24 contends that "waiting time" penalties would be triggered for each former employee in the class.
25 (Szamet Decl. ¶85.) Labor Code section 203 reflects a public policy concern that favors the full
26 and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders & Co.* (1981) 125
27 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

28 Defendant maintains that it has paid all wages due to employees at the separation of

1 employment. Defendant argues that a good-faith belief applies here and that if it inadvertently did
2 not pay final wages to an individual, its actions were not willful. (Szamet Decl. ¶ 86.) Plaintiff
3 responds that the well-settled meaning of “willful,” as used in Labor Code section 203, is that an
4 employer has intentionally failed or refused to perform an act which was required to be done.
5 (Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201.) (Szamet Decl. ¶ 87.) Plaintiff
6 contends that Defendant knew wages were owed but failed to pay them. (Szamet Decl. ¶ 88.)
7 Therefore, Plaintiff contends that waiting time penalties apply here and each former employee
8 would be entitled to thirty (30) days of wages.

9 The risk analysis for the section 203 claim flows from the risk analysis for the underlying
10 wage claims discussed above. (Szamet Decl. ¶ 89.) If Defendant could prove, as it contends, that
11 wages were not unlawfully deduct and all meal periods were provided as it contends, there would
12 be no waiting time penalties that flow therefrom. (Szamet Decl. ¶ 90.) Based on the risk articulated
13 above, Class Counsel believed a discount was also appropriate here for settlement purposes.
14 (Szamet Decl. ¶ 91.)

15 e) The Risks Associated with the PAGA Claim

16 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, et seq., permits
17 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
18 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
19 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
20 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

21 Plaintiff discounted the PAGA claim for settlement purposes for multiple reasons. (Szamet
22 Decl. ¶92.) First, the aggrieved employees’ PAGA claims are derivative of all the foregoing class
23 claims. (*Id.*) Second, a court has discretion to award less than the maximum penalty. (*Id.*) Labor
24 Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty amount
25 specified by this part if, based on the facts and circumstances of the particular case, to do otherwise
26 would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). See e.g.,
27 *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669
28 (affirming award of 10% of maximum PAGA penalty). Finally, the Class is compensated for these

1 violations in the proposed Agreement, and thus any PAGA recovery for these same violations
2 would be duplicative. (*Id.*) As such, the Agreement's contemplated PAGA payment of \$20,000.00
3 is appropriate. (Szamet Decl. ¶93.) *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589
4 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

5 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

6 There is significant expense associated with the class certification process, which the
7 Parties can avoid by entering into the contemplated Agreement now. (Szamet Decl. ¶94.) If the
8 Court did eventually certify a meal or wage class, trial of a case involving approximately 755
9 Settlement Class Members would require the retention of expensive expert witnesses, the accrual
10 of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶95.)
11 Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any
12 outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶96.) An appeal
13 would result in further delay for the Settlement Class Members who are waiting for a resolution in
14 this matter. (*Id.*)

15 3. The Risk of Maintaining Class Action Status through Trial

16 This case has not been certified to be tried as a class action. (Szamet Decl. ¶97.) While
17 Plaintiff believes there is strong evidence to support certification of several possible subclasses,
18 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
19 decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need
20 to conduct multiple depositions, including of the Class Representative and of several person(s)
21 most knowledgeable regarding Defendant's meal and wage policies. (*Id.*) There is a risk for both
22 sides as to what these depositions will reveal and whether they will support class certification to
23 the extent expected. (*Id.*)

24 4. The Amount Offered in Settlement

25 It was very difficult for the Parties to reach this Settlement of \$425,000.00. (Szamet Decl.
26 ¶98.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
27 (Szamet Decl. ¶99.) The Parties arrived at it after extensive investigation and discovery; careful
28 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably

likely to be awarded to the class were the trier of fact to find Defendant liable; the assistance of an experienced mediator, Jeffrey Krivis, Esq.; expert analysis of the data; and through their own meaningful meet and confer efforts in connection with direct negotiations. (*Id.*)

a) Plaintiff's Assessment of Defendant's Maximum Exposure
i. Damages

Plaintiff assessed full value of the minimum wage/overtime claim, without any discount, at approximately \$605,893. (Szamet Decl. ¶100.) This calculation assumed that Settlement Class Members worked 5 minutes of unpaid off the clock work per shift (281, 369 shifts extrapolated to the class) and that 50% of the time it resulted in unpaid overtime wages. (Szamet Decl. ¶101.) This resulted in 23,447 minutes of unpaid overtime/wages alleged to have been worked off the clock. (Szamet Decl. ¶102.) Defendant argued this amount was overstated because any temperature checks were a mere minute or two, were limited to one facility and only occurred for a few months of the liability period after the statewide lockdown in March 2020. (Szamet Decl. ¶103.) Plaintiff assessed the unpaid overtime due to the alleged failure to blend hazard pay and safety bonus into the regular rate for the purposes of determining the correct overtime rate at \$30,638. (Szamet Decl. ¶104.)

Plaintiff assessed the full value of the meal period claim, without any discount, at approximately \$399,537. (Szamet Decl. ¶105.) This amount assumed all shifts that did not show a complaint meal period within the first 5 hours of work (missed, late, short) were automatically violations. (Szamet Decl. ¶106.) For the reasons above, Plaintiff determined that accepting a discount of the full amount was appropriate. (Szamet Decl. ¶107.) Plaintiff assessed the unpaid wages/overtime due to the alleged failure to blend hazard pay and safety bonus into the regular rate for the purposes of determining the correct meal period premium amount at \$1,891. (Szamet Decl. ¶108.) Together, Plaintiff valued the maximum potential exposure for core damages at \$1,037,959.00. (Szamet Decl. ¶109.)

ii. Penalties

Plaintiff valued the Section 226(a) wage statement claim, without discount, at \$1,221,150. (Szamet Decl. ¶110.) This analysis is based on \$50 for the initial pay period and \$100 thereafter

1 for 484 employees during the wage statement liability period. (Szamet Decl. ¶111.) Based on the
2 derivative nature of this claim and the risks as to recovery discussed above, Plaintiff determined
3 that a steep discount of this claim was fair for settlement purposes. (Szamet Decl. ¶112.)

4 Plaintiff valued the Section 203 waiting time penalty claim, tied to the wage/overtime
5 claim, at \$1,529,215. (Szamet Decl. ¶113.) This analysis is based on 313 employees during the
6 waiting time penalty liability period. (Szamet Decl. ¶114.) Considering the derivate nature of
7 Labor Code §203 and the dispute over whether class members were owed any wages, Plaintiff
8 determined that accepting a discount on this claim was appropriate. (Szamet Decl. ¶115.)

9 Finally, Plaintiff calculated the value of the PAGA claim at \$1,245,300 for Aggrieved
10 Employees. (Szamet Decl. ¶116.) This is based upon \$100 per pay period for all 12,453 pay
11 periods during the PAGA liability period. (*Id.*) However, based on its confidence around
12 certification, Plaintiff acknowledges the more realistic exposure for the pay periods affected by
13 the alleged failure to blend, assessed at \$100/200 pay period, is \$144,700. (Szamet Decl. ¶117.)
14 The main risk taken into account with PAGA is the discretionary nature of the penalty award.
15 (Szamet Decl. ¶118.) A judge can award the statutory maximum of \$100 for the initial violation
16 and \$200 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶119.) While there
17 is a dearth of available authority, in Plaintiff's view, were he to succeed on any of the underlying
18 Labor Code violations, it is not likely that a Judge would also award a large amount of penalties
19 of top of any damages recovered. (Szamet Decl. ¶120.)

20 Per Plaintiff's assessment, the maximum potential value of all the penalty claims was
21 approximately \$3,995,665. (Szamet Decl. ¶121.) Adding the damages and maximum penalties
22 together the result is \$5,033,624. (Szamet Decl. ¶122.) However, when considering the regular
23 rate exposure of \$30,638 plus the *Ferra* exposure of \$1,891, and the most realistic PAGA exposure
24 tied to those claims of \$144,700, the amount is reduced dramatically to \$177,229. (Szamet Decl.
25 ¶123.) Weighing this more conservative analysis against the maximum exposure and considering
26 the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount of
27 \$425,000.00 is fair and reasonable. (Szamet Decl. ¶124.)
28

1 5. The Extent of Discovery Completed and Stage of the proceedings

2 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
3 claims alleged. (Szamet Decl. ¶125.) The agreement to settle did not occur until Class Counsel
4 exchanged and possessed sufficient information to make an informed judgement regarding the
5 likelihood of success on the merits and the results that could be obtained through further litigation.
6 (*Id.*)

7 6. The Experience and Views of Counsel

8 Kingsley Szamet & Ly is very experienced in prosecuting employment litigation, and the
9 firm has focused its practice since 2000 on complex wage, hour, and working condition violations.
10 (Szamet Decl. ¶¶126-128.) The firm is well versed in class action litigation and has diligently and
11 aggressively pursued this action. (*Ibid.*) Kingsley Szamet & Ly currently serves as Class Counsel
12 for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid.*)
13 A list of representative cases that Kingsley Szamet & Ly has handled is included in the
14 accompanying declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶126-127.) After factoring in the
15 risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable.
16 (Szamet Decl. ¶128.)

17 7. The Presence of a Governmental Participant

18 There is no governmental participant in this action except arguably the LWDA. (Szamet
19 Decl. ¶129.)

20 8. The Proposed Plan of Allocation Is Fair and Reasonable

21 Plans of allocation are subject to the same standard of review as class action settlements;
22 they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service*
23 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
24 compensates Participating Class Members pro rata based on the number of compensable
25 Workweeks worked by the Settlement Class Member during the Class Period. (Ex. 1 at § 3, ¶3.2.4.)
26 This allocation distributes Agreement funds proportionally to each class member’s potential
27 damages and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶130.)
28

1 9. The Reaction of the Class Members to the Proposed Settlement

2 To date, there are three (3) requests to be excluded from the proposed Agreement and zero
3 (0) objections. (Ex. 7.) Such indicates that the reaction of Settlement Class Members on the whole
4 is positive and weighs in favor of approval.

5 ///

6 **V. ENHANCEMENT TO PLAINTIFF**

7 Plaintiff's Counsel request an enhancement of \$7,500.00 to the Class Representative
8 Marcos Tafolla for his work on behalf of the Class. (Szamet Decl. ¶171.) "Courts routinely
9 approve incentive awards to compensate named plaintiffs for the services they provide and the
10 risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola*
11 *Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see*
12 *also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-*
13 *Cola*, the Court approved service awards of \$300,000 to each named plaintiff in recognition of the
14 services they provided to the class by responding to discovery, participating in the mediation
15 process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at
16 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to
17 plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862,
18 at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,00 enhancement to each named plaintiff).

19 Mr. Tafolla is an adequate class representative because he has diligently, adequately and
20 fairly represented the Class and has not placed his interests above any member of the Class. (*see*
21 Declaration of Marcos Tafolla ("Tafolla Decl.") ¶¶4-11.)

22 Here, Class Counsel requests an enhancement for Mr. Tafolla's valiant effort and time
23 expended in this matter. The time spent by Marcos Tafolla is significant and includes researching
24 and retaining competent counsel; providing information to Class Counsel regarding the nature of
25 the work at Defendant; compiling relevant documents; working closely with Class Counsel to
26 develop the theories of liability and martial relevant evidence; regularly discussing the status of
27 the case with Class Counsel; discussing the case via telephone with many Settlement Class
28 Members; making himself available for a full-day of mediation; and responding promptly to Class

1 Counsel's communications regarding settlement.. (Szamet Decl. ¶172; Tafolla Decl. ¶¶6-8.) As
2 set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant
3 to Civil Code Section 1542. (Szamet Decl. ¶173; Ex. 1 at § 5, ¶5.1.1.)

4 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶174.)
5 The enhancement takes into consideration the time, effort, and expense incurred by Mr. Tafolla in
6 coming forward to litigate this matter on behalf of all Settlement Class Members. (Szamet Decl.
7 ¶175.) Additionally, the Class Representative was at risk for paying for Defendant's legal fees
8 and costs in the event that Defendant prevailed at trial. (Szamet Decl. ¶176.)

9 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

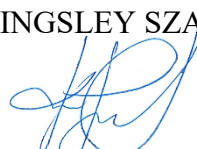
10 As indicated on the Proof of Service, Plaintiff's Motion for Final Approval of Class Action
11 Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development
12 Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of
13 submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA
14 confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "8." (Szamet
15 Decl. ¶182.)

16 **VII. CONCLUSION**

17 Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable,
18 and in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests
19 that the Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys'
20 fees and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and
21 Costs; (3) award ILYM Group, Inc. claims administration fees of \$17,000.00; and (4) award the
22 Class Representative an enhancement of \$7,500.00; and (5) enter judgment.

23
24 DATED: October 10, 2024

KINGSLEY SZAMET & LY

25
26 By: 

27 Kelsey M. Szamet
28 Attorneys for Plaintiff MARCOS TAFOLLA and
the proposed class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On October 11, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

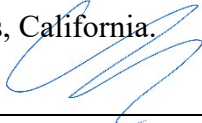
Robert R. Vorhees
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David A. Garcia
david.garcia@ogletree.com
Susan M. Susebach
susan.susebach@ogletreedeakins.com
Ogletree, Deakins, Nash, Smoak, & Stewart, P.C.
Park Tower, 695 Town Center Drive, Fifteenth Floor
Costa Mesa, CA 92626

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL THROUGH CASE ANYWHERE: On interested parties set forth on the attached service list

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 11, 2024, at Woodland Hills, California.



Michelle Tanzer