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Attorneys for Plaintiff EVA ROCKWELL  
on behalf of herself and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SHASTA**

EVA ROCKWELL on behalf of herself  
and all others similarly situated

Plaintiff,

vs.

CALIFORNIA MENTOR FAMILY  
HOME AGENCY, LLC., a California  
corporation, and DOES 1 through 50,  
inclusive,

Defendant.

Case No. CVCV21-0197240  
Assigned For All Purposes To:  
Judge: Hon. Tamara L. Wood  
Dept.: 8

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR FINAL APPROVAL OF  
CLASS ACTION AND PAGA  
SETTLEMENT; [PROPOSED] ORDER**

[Declarations of James R. Hawkins, Nathalie  
Beltran, Eva Rockwell, filed concurrently herewith]

Date: February 5, 2024  
Time: 8:30 a.m.  
Dept.: 8

**PLEASE TAKE NOTICE THAT** on February 5, 2024 at 8:30 a.m. in Department 8 of the  
above-entitled court located at 1500 Court Street, Shasta, California 96001, Plaintiff Eva  
Rockwell ("Plaintiff") will and hereby does move the Court for an Order for final approval of: (1)  
the Stipulation of Settlement; (2) the Maximum Settlement Amount of Six Hundred Seventy Five

1 Thousand Dollars (\$675,000); (3) all Individual Settlement Payments to Class Members; (4) a  
2 Plaintiff's Class Representative Service Award in the amount of Seven Thousand Five Hundred  
3 Dollars (\$7,500) to named Plaintiff Eva Rockwell; (5) Seventy Five Thousand Dollars (\$75,000) in  
4 PAGA penalties; (6) costs of administering the Settlement paid to the Settlement Administrator,  
5 ILYM Group, Inc., in the amount of Fifteen Thousand Dollars (\$15,000); (7) an award of Two  
6 Hundred Twenty-Five Thousand Dollars (\$225,000) (one-third of the Maximum Settlement  
7 Amount) in Class Counsel Fees Payment to Class Counsel, James Hawkins, APLC, and; (8) Class  
8 Counsel Litigation Expenses Payment of Seven Thousand One Hundred Ninety Dollars and Eighty-  
9 Eight Cents (\$7,179.88).

10 This Motion is made pursuant to California Rules of Court Rule 3.769, which requires court  
11 approval of the settlement of a putative class action. Further, this Motion will be based on the  
12 following: Memorandum of Points and Authorities set forth herein; the Stipulation of Settlement  
13 ("Settlement Agreement") attached to the Declaration of James R. Hawkins as Exhibit 1; the  
14 Declarations of James R. Hawkins, Plaintiff Eva Rockwell, and Nathalie Beltran in support of  
15 Plaintiff's Motion for Final Approval of Class Action and PAGA Settlement; and any supplements  
16 thereto and such evidence or oral argument as may be presented at the hearing, and on the complete  
17 records and file herein.

18  
19 **DATED: January 10, 2024**

**JAMES HAWKINS APLC**

20  
21 By:   
22 James R. Hawkins  
23 Isandra Fernandez  
24 Lance Dacre  
25 Kacey E. Cook  
26 Attorneys for Plaintiffs  
27 Eva Rockwell

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1 claim to be mailed a payment. Moreover, out of the 808 class members there is one (1) request for  
2 exclusion, zero (0) disputes, and one (1) objection to the settlement. (Beltran Decl. ¶¶ 11-13).

3 Additionally, in the event the Court approves the requested fees, costs and enhancements,  
4 the estimated average gross payment will be approximately \$411.51, with the estimated highest  
5 gross payment being \$1,956.67, and the estimated lowest gross payment being \$13.92. (Beltran  
6 Decl. ¶ 14).

7 In sum, the proposed Settlement, which is the product of diligent advocacy and arms-  
8 length negotiations by Class Counsel, provides significant benefits to the Class and has been well  
9 received as a favorable outcome. The Settlement of this action is fair, reasonable, and adequate,  
10 and in the best interest of the Class. Accordingly, final approval of the Settlement should be  
11 granted.

## 12 **II. LITIGATION AND SETTLEMENT**

### 13 **A. Pleadings**

14 On May 5, 2021, Plaintiff Eva Rockwell initiated this action in the Superior Court for the  
15 County of Shasta on behalf of herself and all others similarly situated, styled *Eva Rockwell v.*  
16 *California Mentor Family Home Agency, LLC et al.*, (Shasta County Case No.  
17 SCRDCVCV21-0197240-001.) The Complaint asserts causes of action for; (1) failure to pay  
18 lawful wages including overtime wages; (2) failure to provide lawful meal periods or  
19 compensation in lieu thereof; (3) failure to provide lawful rest periods or compensation in lieu  
20 thereof; (4) failure to indemnify employee expenses; (5) failure to pay timely wages; (6) knowing  
21 and intentional failure to comply with itemized employee wage statement provisions; (7) failure  
22 to pay correct sick pay; and (8) violations of the unfair competition law (Bus. & Prof. Code §  
23 17200 *et seq.*) (the “Action”) (See Declaration of James R. Hawkins “Hawkins Decl.” ¶ 2.)

24 Also on May 5, 2021, Plaintiff provided notice to the Labor and Workforce Development  
25 Agency (“LWDA”) of her intent to pursue Defendant for all civil penalties arising from  
26 Defendant’s alleged failure to, inter alia, pay all wages earned including failure to provide

proper rest periods and meal breaks, failure to reimburse employee expenses, failure to pay correct sick pay, and failure to provide accurate wage statements to Plaintiff and other similarly situated aggrieved employees (Hawkins Decl. ¶ 3). On May 9, 2023, Plaintiff filed a First Amended Complaint, which included one additional cause of action for violations of the Private Attorney General Act (Labor Code § 2699 *et seq.*) (“PAGA”) (Hawkins Decl., ¶ 4.). The First Amended Complaint is the operative complaint in this matter (*Id.*)

**B. Discovery and Mediation**

Through informal and informal discovery, Plaintiff and California Mentor have exchanged extensive documents and information related to the claims asserted (Hawkins Decl. ¶ 7.) Defendant has produced thousands of pages of information, including timecard records and wage reports of putative Class members (*Id.*) Defendant also provided Plaintiff with class data and random samples of time records, wage statements, information regarding the number of non-exempt employees during the relevant time period. (Hawkins Decl. ¶ 8.)

After conducting formal and informal discovery, exchanging relevant information and engaging in numerous discussions regarding the claims alleged, on December 20, 2022, the parties participated in a private mediation with mediator Tripper Ortman, an experienced wage and hour class action mediator (Hawkins Decl. ¶ 9.) During the course of the mediation, the Parties exchanged further information and documentation concerning Plaintiffs’ claims and California Mentor’s defenses thereto, and aggressively advocated for their respective positions; however, they did not reach a settlement (*Id.*)

After the mediation, the parties continued in settlement negotiations, with the assistance of the mediator (Hawkins Decl. ¶ 10.) On or about December 22, 2022, the Parties reached a settlement in principle of this Action for a maximum settlement amount of \$675,000. (*Id.*) Thereafter, the Parties exchanged multiple drafts of the proposed settlement agreement and class notice documents and engaged in communications regarding the settlement terms (*Id.*) The final

1 terms and provisions of the settlement agreement were approved and executed by all the parties  
2 on or about April, 2023. (Hawkins Decl. ¶ 11; Exhibit 1- Settlement Agreement.)

3 **C. The Preliminarily Approved Settlement**

4 On June 29, 2023, Plaintiff filed the Motion for Preliminary Approval of Class Action and  
5 PAGA Settlement (“Preliminary Approval Motion”) and on August 29, 2023, filed a Supplement  
6 to the Preliminary Approval Motion. On September 6, 2023, the Court entered the Order granting  
7 preliminary approval and preliminarily appointed Class Counsel (James R. Hawkins, Isandra  
8 Fernandez and Lance Dacre of James Hawkins APLC), the Class Representative (Eva Rockwell),  
9 and the Settlement Administrator (ILYM Group, Inc. or “ILYM”). The Court also approved the  
10 proposed Court Notice of Pendency of Class Action and Proposed Settlement and Notice of  
11 Settlement Award (the “Notice Packet”). Now that administration has been completed, subject to  
12 the Court’s final approval, the fees and expenses will be paid from the Maximum Settlement  
13 Amount (MSA) of Six Hundred Seventy-Five Thousand Dollars (\$675,000) as follows:

14 1. Subject to Court approval, the law firm of James Hawkins, APLC shall be paid Two  
15 Hundred Twenty-Five Thousand Dollars (\$225,000) and Class Counsel Attorneys’ Expenses and  
16 Costs of not more than Seven Thousand One Hundred Ninety Dollars and Eighty- Eight Cents  
17 (\$7,179.88). (Decl. of Beltran, ¶ 14) (Settlement Agreement, p. 3, ¶ 5 (C) (4).).

18 2. Subject to Court approval, a Plaintiff’s Class Representative Service Award of not more  
19 than Seven Thousand Five Hundred Dollard (\$7,500) to the named Plaintiff, for her time and  
20 effort pursuing the Action on behalf of the Class (Settlement Agreement 3, ¶ 5 (C) (3).).

21 3. Subject to Court approval, Administrator’s Expenses shall be deducted from the MSA in  
22 the amount of Fifteen Thousand Dollars \$15,000 (Beltran Decl. ¶ 14) and were estimated at  
23 \$15,000 (Settlement Agreement p. 3, ¶ 5 (C) (2).).

24 4. Subject to Court approval the total amount of PAGA civil penalties to be paid from the  
25 Maximum Settlement Amount is \$75,000, of which 25% (\$18,750.00) will be allocated to the  
26 Aggrieved Employees (“PAGA Amount”) and 75% (\$56,250.00) to LWDA (the “LWDA” or  
27 “LWDA Payment”) in settlement of PAGA claims (Settlement Agreement, p. 3, ¶ 5 (C) (5)).

1        5. Subject to Court Approval, the Settlement Administrator shall first deduct from the  
2        Maximum Settlement Amount the amounts approved by the Court for Class Counsel's  
3        Attorneys' Fees, Class Counsel's Costs and Expenses, Plaintiff's Class Representative Service  
4        Award, the Settlement Administrator's fees and expenses for administration, and the total  
5        amount designated as PAGA civil penalties. The remaining amount shall be known as the "Net  
6        Settlement Fund"("NSF") (Settlement Agreement, p. 4, ¶ 4 (A)).

7        6. Each Individual Settlement Payment shall be allocated as follows (1) for payments out of  
8        the NSF, thirty percent (30%) as wages, thirty percent (30%) as reimbursement, thirty percent  
9        (30%) as penalties, and ten percent (10%) as interest; and (2) for payments out of the PAGA  
10       Amount, one hundred percent (100%) as penalties. The Settlement Administrator will be  
11       responsible for issuing to participating Settlement Class members an IRS Form W-2 for amounts  
12       deemed "wages" and an IRS Form 1099 for the portions allocated as penalties and interest  
13       (Settlement Agreement, p. 4, ¶ 4 (E)).

14        **D.        Dissemination of Notice Packet**

15        On September 19, 2023 Counsel for Defendant provided ILYM with a mailing list  
16        containing the name, last known address, Social Security Number, and pertinent employment  
17        information during the Class Period for the Class Members. The Class List contained data for  
18        808 unique Class Members (Beltran Decl. ¶ 5) October 10, 2023, after updating the mailing  
19        addresses through the NCOA, Notice Packets were mailed via First Class Mail to all 808 Class  
20        Members contained in the Class List (Beltran Decl. ¶¶ 6, 7). One Hundred One (101) Notice  
21        Packets were returned by the post office. For the ninety-three (93) Notice Packets returned  
22        without a forwarding address, ILYM performed an advanced address search (i.e. skip trace) on all  
23        of these addresses. As a result, seventy-five (75) updated addresses were obtained and the Notice  
24        Packets re-mailed via U.S. First Class Mail. Eight (8) Notices were re-mailed to forwarding  
25        addresses provided by the United States Postal Service or at the request of the Class Member.  
26        Eighteen (18) Notice Packets were undeliverable as no updated address was available via skip  
27        trace. ILYM received only one request for exclusion, and one objection. (Beltran Decl. ¶ 10)



1 disputes Plaintiff's rest break claim and contends that Class Members were allowed to take ten-  
2 minute rest periods and regularly took such breaks (*Id.*)

3 Defendant adamantly denies Plaintiff's allegations and maintain that Plaintiff and Class  
4 Members were provided with the opportunity to take all meal and rest periods to which they were  
5 entitled. Defendant disputed that any of the claims had merit based upon its written policies  
6 (Hawkins Decl. ¶ 14). Defendant also disputes the propriety of certification in this case and  
7 contend that its policies and practices concerning the claims asserted in this lawsuit are compliant  
8 with California law. Defendant has also denied and continue to deny that the lawsuit is  
9 appropriate for class treatment for any purpose other than for settlement (*Id.*).

10 As thoroughly discussed in Plaintiff's Motion for Preliminary Approval, Plaintiff's  
11 counsel estimated the maximum potential liability between \$333,806.25 and \$667,612.5 that may  
12 be owed to the putative class, assuming Plaintiff and the Class were able to obtain an order  
13 certifying the class and were also able to fully prove all their claims (Hawkins Decl. ¶ 15).

14 Through her counsel, Plaintiff took into consideration the significant risk that class  
15 certification could be denied on the central claims, or that a merits decision on the central claims  
16 would not favor the Class (Hawkins Decl. ¶ 16). Plaintiff considered the expense and length  
17 continued proceedings necessary to continue the Action against Defendant through trial and any  
18 possible appeals along with Defendant's financial position (*Id.*). Thus, the settlement for  
19 Settlement Class Members is fair, reasonable, and adequate, given the inherent risk of litigation,  
20 the risk relative to class certification and the costs of pursuing such litigation (*Id.*)

### 21 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

22 The law favors settlement, particularly in class actions and other complex cases in which  
23 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.  
24 *City of Seattle* 955 F.2d at 1276; *Potter v Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.  
25 592, 602-603.; 4 NEWBERG §11.41. When faced with a motion for final approval of a class  
26 action settlement under *Code of Civil Procedure* §382, a court inquires whether the settlement is

1 “fair, adequate, and reasonable.” See *e.g.*, *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,  
2 (2010) 186 Cal. App. 4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168  
3 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801

4 **A. This Court Preliminarily Found This Settlement to be Fair, Adequate and**  
5 **Reasonable and Nothing Has Changed to Disturb That**

6 Before granting Final approval of a class action settlement, courts must determine that the  
7 proposed settlement is fair, reasonable, and adequate — and not a product of fraud, overreaching,  
8 or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor Co.*, supra, 48  
9 Cal.App.4th at 1801. Courts must presume that a settlement is fair, reasonable, and adequate, and  
10 thus appropriate for Final approval when the following three factors are satisfied: (1) the Parties  
11 reached settlement via arms-length negotiations; (2) counsel conducted sufficient investigation  
12 and discovery to allow herself and the court to act intelligently; and (3) counsel is experienced in  
13 similar litigation *Id.* at 1802. See also *7-Eleven Owners for Fair Franchising v. Southland Corp.*,  
14 (2000) 85 Cal. App. 4th 1135, 1146. Further, as discussed below, although not determinative,  
15 courts consider the percentage of objectors in determining whether a presumption of fairness  
16 exists. (*Id.*) There is no question that these factors are satisfied here. The Parties conducted a  
17 sufficient amount of discovery and participated in a private mediation and numerous conferences  
18 of counsel that ultimately led to an arms-length settlement that provides for substantial recovery.  
19 Moreover, out of 808 Class Members presumed to have received Notice Packet there was only  
20 one request for exclusion from, and one objection to, the Settlement (Beltran Decl. ¶¶ 11, 12)

21 **1. The Settlement Resulted From Non-Collusive, Arms-Length Negotiations**

22 There certainly is no collusion between the parties. The involvement of a neutral third-  
23 party mediator is a factor that favors approval and evidences the presumptive fairness of the arms-  
24 length negotiations. Indeed, courts should give considerable weight to the competency and  
25 integrity of counsel and the involvement of a neutral mediator in assuring herself that a  
26 settlement agreement represents an arms-length transaction entered without self-dealing or other

1 potential misconduct *Kullar v. Foot Locker, supra*, 168 Cal. App. 4th at 129. Here, the Parties  
2 engaged in a mediation session with a knowledgeable wage and hour mediator Tripper  
3 Ortman(Hawkins Decl. ¶¶ 9,10.)

4 2. **The Settlement is Supported by Substantial Investigative and Discovery**  
5 **Efforts**

6 As discussed in the preliminary approval papers, supporting declaration and herein, Class  
7 Counsel analyzed a significant amount of information that Defendant produced in response to  
8 formal and informal discovery requests and requests in preparation for mediation (Hawkins Decl.  
9 ¶¶ 7-9). The Parties have conducted significant investigation of the facts and law during the  
10 prosecution of the Action. Class Counsel’s research enabled them to pinpoint the relevant issues  
11 and claims and to assess potential liability and damages. These efforts resulted in the parties  
12 having a clear view of the strengths and weaknesses of their respective cases and achieving a  
13 resolution on favorable terms, as was evidenced during mediation and negotiations leading to  
14 Settlement (Hawkins Decl. ¶¶ 7-10)

15 3. **Class Counsel is Experienced in Similar Litigation**

16 The endorsement of qualified and well-informed counsel of the settlement as fair is  
17 entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the  
18 preliminary approval papers and set forth in the declaration of Class Counsel, Class Counsel have  
19 represented, mediated, and settled other employee class actions in wage and hour litigation and  
20 have knowledge of the strengths and weaknesses of the claims against Defendant and the benefits  
21 of the proposed settlement under the circumstances of the case. (Hawkins Decl. ¶¶ 22-25). Class  
22 Counsel contends that the Settlement is fair, adequate, reasonable, and in the best interests of the  
23 Class as a whole.

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A court may appropriately infer that a class action settlement is fair, adequate, and reasonable even when class members object to it. Indeed, a court may approve a class action settlement as fair, adequate, and reasonable even over the objections of a significant percentage of class members. *See Boyd v. Betchel Corp.* (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General Motors* (5th Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1394. In our case, there were no objections to the Settlement and no disputes. The Court should construe this as a further indication of Class Members' support for the Settlement as fair, adequate, and reasonable.

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As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to

1 recognize their willingness to act as a private attorney general." *Cellphone Termination Fee*  
2 *Cases*, (2010) 186 Cal. App. 4th 1380, 1394 (approving an incentive award of \$10,000).

3 The Class Representative Service Award is intended to compensate named Plaintiff Eva  
4 Rockwell as the Class Representative for her willingness to accept the responsibility of  
5 representing the interests of all Class Members. The purpose is to provide an incentive payment,  
6 taking into consideration the risks, time, and effort expended by her in coming forward to provide  
7 invaluable information and to litigate this matter on behalf of all Class Members. The Class  
8 Representative Service Award is also in consideration for executing a general release of all their  
9 claims against Defendant (Hawkins Decl. ¶ 18; Declaration of Eva Rockwell ("Rockwell Decl.")  
10 ¶ 8- 11).

11 Plaintiff also risked potential judgment against her if this case had been unsuccessful. In  
12 class action losses, class representatives are deemed the losing party that is liable for the  
13 prevailing party's costs *Earley v. Superior Court*, (2000) 79 Cal. App. 4th 1420, 1433-1434.  
14 Finally, Plaintiff also risked this lawsuit having a negative impact on future employment  
15 opportunities, as prospective employers may be less inclined to hire an employee who has served  
16 as a class representative (Hawkins Decl. ¶ 19.) *See, e.g. Staton v. Boeing*, 327 F.3d 938, 977 (9th  
17 Cir. 2003). As such, Plaintiff respectfully requests that this Court approve the Class  
18 Representative Service Award in the amount of \$7,500.

19 **V. CLASS COUNSEL'S REQUEST FOR FEES IS REASONABLE**

20 Subject to court approval, this settlement amount of \$675,000 includes Class Counsel's  
21 attorneys' fees of \$225,000 Plaintiff and class members are entitled to recover their attorneys'  
22 fees and costs. (Labor Code §2802; Code Civ. Proc. §1021.5(a); *Earley v. Super. Ct.*, (2000) 79  
23 Cal.App.4th 1420. A fee award is justified when class benefits are obtained via settlement. *Maria*  
24 *P. v. Riles*, (1987) 43 Cal.3d 1281, 1290-91; *Westside Cty. for Indep. Living, Inc. v. Obledo*,  
25 (1983) 33 Cal.3d 348, 352-53.

1 Fee awards may be based on (1) the percentage-of-the-benefit method; or (2) the lodestar  
2 plus multiplier method. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254;  
3 *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27. Both methods are proper in  
4 California, with courts often only using a lodestar-multiplier method as a check against the  
5 reasonableness of a percentage fee award. (*See, e.g., Serrano v. Priest (Serano III)*, (1977) 20  
6 Cal.3d 25, 48-49 fn. 23; *People ex rel. Dept. of Transportation v. Yuki*, 31 (1995) Cal. App. 4<sup>th</sup>  
7 1754, 1769-1772; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, (1985)172 Cal. App. 3d  
8 914, 954.)

9 **A. Class Counsels’ Requested Fees Are Reasonable Under the**  
10 **Lodestar/Multiplier Method**

11 When fees are allocated by percentage method, courts have discretion to “cross-check” the  
12 fees awarded through the lodestar method. However, the Supreme Court in *Laffitte v. Robert Half*  
13 *Internat. Inc.*, 1 Cal. 5th at 505, “emphasize[d] [that] the lodestar calculation, when used in this  
14 manner, does not override the trial court’s primary determination of the fee as a percentage of the  
15 common fund and thus does not impose an absolute maximum or minimum on the potential fee  
16 award.” Thus, a lodestar cross-check is aimed at astronomical multipliers, such as the  
17 staggeringly high 45 multiplier requested by counsel in *Cendant*.

18 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4  
19 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001). In  
20 determining the outcome of a fee award in a class action matter, one of the main benchmarks to  
21 consider is the result for the class. The Supreme Court has said that in an award of attorney’s fees  
22 the “most critical factor is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424,  
23 436 (1983). The “benefit obtained for the class” is considered the “foremost” consideration in  
24 determining the appropriate fee in a common fund case. *In Re Bluetooth*, 654 F.3d at 942.

25 The lodestar-multiplier method begins with a calculation of time spent and reasonable  
26 hourly compensation of each attorney and paralegal who worked on the case. Then to compensate

counsel for risk, quality, and result, courts commonly apply a "multiplier" to the lodestar in awarding attorneys' fees. California courts often increase the base lodestar with a multiplier after considering: (1) the continuing obligation of plaintiff's counsel to devote time and effort to the litigation; (2) the extent to which the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee agreement, both from the point of view of eventual success on the merits and securing an award; (4) the experience, reputation, and ability of the attorneys who performed the services, and the skill they displayed in litigation; (5) the amount involved and the results obtained on behalf of the class by plaintiff's counsel; and (6) the reaction of the class members. *See, e.g. Serrano, supra*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co., supra*, 48 Cal. App. 4th at 1810 n.21. However, no rigid formula applies, and each factor should be considered only "where appropriate." *See Dept. of Transp. v. Yuki*, (1995) 31 Cal. App. 4th 1754, 1771; *See also Serrano, supra*, 20 Cal.3d at 49.

1. **Time and Effort**

Class Counsel, who are experienced wage and hour class action attorneys, have put a significant number of hours in this case. Class Counsel had to conduct substantial investigation, research numerous issues, review and analyze policies, independently analyze time records, and wage statements, as well as dedicate substantial time to analyze data, time records and payroll records and discuss with class members (Hawkins Decl. ¶¶ 7-9, 20-26). Those efforts, along with negotiating the settlement, attempting to obtain preliminary approval, preparing and filing the final approval papers, required a significant amount of time and labor (*Id.*) Since on or about January 19, 2021 prior to the inception of the filing of this lawsuit on May 4, 2021, the total amount of attorney time and paralegal time estimated to have been expended, and also estimated to be expended in finalizing this matter, is 287 hours Class Counsels' base lodestar total equates to attorney fees of \$208,200 (Hawkins Decl. ¶¶ 27, 28).

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1 settling this case prior to trial rather than continuing to litigate issues that remain somewhat  
2 unsettled, counsel obtained exceptional results for the class at far less expense to the parties, the  
3 counsel and to this Court. Accordingly, a positive multiplier of Class Counsel's lodestar is further  
4 warranted. "Considering that our Supreme Court has placed an extraordinarily high value on  
5 settlement, it would seem counsel should be rewarded, not punished, for helping to achieve that  
6 goal." *Lealao, supra*, 82 Cal. App. 4th at 52. Multipliers of two to four are commonplace in  
7 California class actions and can range even higher. *Wershba, supra*, 91 Cal. App. 4th at 255; *In re*  
8 *California Indirect Purchases* (October 22, 1998) WL1031494 at \* 10, fn 5. As of the date of  
9 filing, the Class Counsel Fees Payment is currently equivalent to the current lodestar of \$208,000  
10 with a reasonable multiplier of approximately 1.08 and is therefore reasonable under *Laffitte* and  
11 the cases noted above. All work and tasks performed by Class Counsel were reasonable and  
12 necessary to the prosecution of this case.

13 **B. Class Counsel's Requested Fees Are Reasonable Under the Percentage of the**  
14 **Benefit Method.**

15 **1. Attorney's Fees Should be Based Upon the Total Benefit to the Class.**

16 Under California law, courts have the discretion to award fees under the percentage  
17 method when fees are drawn from an ascertainable fund. *See Laffitte v. Robert Half Int'l*, 1 Cal.  
18 5th 480, 503 (2016) ("*Laffitte II*") ("We join the overwhelming majority of federal and state  
19 courts in holding that when class action litigation establishes a monetary fund for the benefit of  
20 the class members, and the trial court in its equitable powers awards class counsel a fee out of that  
21 fund, the court may determine the amount of a reasonable fee by choosing an appropriate  
22 percentage of the fund created."). The common fund method "better approximates the workings  
23 of the marketplace than the lodestar approach" in setting the price of contingent fees. *See Lealao*  
24 *v. Beneficial Cal. Inc.* 82 Cal. App. 4th 19, 48 (2000) ("*Lealao*"). The percentage method  
25 "provide[s] incentives roughly comparable to those negotiated in the private bargaining that takes  
26 place in the legal marketplace." (*Id.*)

1 The primary benefit of the percentage method is that it focuses on the benefit conferred on  
2 the class as a result of the efforts of Class Counsel. Awarding Class Counsel fees based on a  
3 percentage of the recovery has the advantages of eliminating the incentive for attorneys to  
4 increase hours unnecessarily, encouraging early settlement of disputes, and preserving judicial  
5 resources otherwise used to monitor attorneys' billable hours. See *In re Activision Sec. Litig.*,  
6 (N.D. Cal. 1989) 723 F. Supp. 1373, 1378-79; *MANUAL FOR COMPLEX LITIGATION* 4th ed.  
7 §14.121 (2004) ("in practice, the lodestar method is difficult to apply, time consuming to  
8 administer, inconsistent in result. . . capable of manipulation,... [and] creates inherent incentive to  
9 prolong the litigation"); See also *In re Quantum Health Resources, Inc.* (C.D.Cal. 1997) 962  
10 F.Supp. 1254, 1256 (noting that lodestar "creates an incentive to keep litigation going in order to  
11 maximize the number of hours included in the court's lodestar calculation").

12 The percentage of the fund method survives in California class action cases. *Laffitte v*  
13 *Robert Half Intern, Inc.* (2016) 1 Ca. 4th 480, 506. [See also. *Chavez v. Netflix, Inc.*, (2008) 162  
14 Cal. App. 4th 43 at 65, 66; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.*,  
15 (2005) 127 Cal. App. 4th 387, 397 [the common fund doctrine is "frequently applied in class  
16 actions when the efforts of the attorney for the named class representatives produce monetary  
17 benefits for the entire class"]; *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. 4th at 254.

18 **2. The Contingent Nature of Class Counsel's Representation Supports the**  
19 **Requested Fees Based on One-Third of the MSA.**

20 Further, the contingent nature of Class Counsel's representation also warrants the  
21 requested attorney fees based on the percentage of the common fund. The risks in taking on any  
22 class action are enormous especially in regards to wage-and-hour class actions because the wage  
23 laws are still developing and a change in the law could wipe out a plaintiff's recovery. Litigating a  
24 class action through trial takes years and requires the investment of hundreds of thousands of  
25 dollars. Attorneys willing to undertake this risk deserve appropriate compensation. As elaborated  
26 by the California Supreme Court in *Graham v. Daimler Chrysler Corp.*, (2008) 34 Cal. 4th 553,  
27 579-580, counsel should be awarded a fee enhancer for taking on contingent cases because a

1 "contingent fee compensates the lawyer not only for the legal services he renders but for the loan  
2 of those services. The implicit interest rate on such a loan is higher because the risk of default (the  
3 loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of  
4 conventional loans."

5 As the California Supreme Court specifically explained:

6 A contingent fee must be higher than a fee for the same legal services paid as they  
7 are performed. The contingent fee compensates the lawyer not only for the legal  
8 services he renders but for the loan of those services. The implicit interest rate on  
9 such a loan is higher because the risk of default (the loss of the case, which cancels  
10 the debt of the client to the lawyer) is much higher than that of conventional loans.  
A lawyer who both bears the risk of not being paid and provides legal services is  
not receiving the fair market value of his work if he is paid only for the second of  
these functions. If he is paid no more, competent counsel will be reluctant to  
accept fee award cases.

11 *Id.* at 580. (citing *Ketchum v. Moses*, (2001) 24 Cal. 4th 1122, 1132-33).

12 In the legal marketplace, an attorney whose compensation is entirely dependent on success  
13 – who takes a significant risk – should and does expect a significantly higher fee than an attorney  
14 who is paid a market rate as the case goes along, win or lose. *See, e.g., Rader v. Thrasher*, (1962)  
15 57 Cal. 2d 244, 253 (“[a] contingent fee contract, since it involves a gamble on the result, may  
16 properly provide for a larger compensation than would otherwise be reasonable” (citation  
17 omitted); *Salton Bay Marina v. Imperial Irrig. Dist.*, (1985) 172 Cal. App. 3d 914, 955  
18 (contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee  
19 award).

20 Class Counsel represented the class members in this matter and has borne the entire risk  
21 and costs of litigation on a pure contingency basis. To date, Class Counsel has not received any  
22 compensation and expended litigation costs on behalf of the class. Class action contingency cases  
23 are inherently risky. Upon retention, Class Counsel makes a commitment to litigate the case  
24 through trial. These types of cases can take years, hundreds of hours of work and cost an  
25 enormous amount of money; these risks are known upon retention. The risks involved coupled  
26 with the contingency basis of this case further support Class Counsel’s request for attorneys’ fees  
27 and costs (Hawkins Decl. ¶ 29)

1                               **3. Additional Factors re: Contingency Market Rate Justify the Requested**  
2                               **Fee Award**

3               Further, important public policies underlie a court's determination of a motion for  
4 attorneys' fees in class actions. Employees who are wronged by an employer's violation of state  
5 and federal labor laws should have access to counsel with the ability and resources necessary to  
6 litigate complex cases. *See e.g., Say-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal. 4th  
7 319, 340 (enforcement of labor laws and class action device both matters of public policy); Our  
8 legal system places unique reliance on private litigants to enforce substantive provisions of  
9 employment law through class actions. *See e.g. Gentry v. Superior Court*, 42 Cal. 4th 443, 450-6  
10 (2007) (confirming the public importance of private enforcement of overtime laws through class  
11 actions); *Lealao*, 82 Cal. App. 4th (legal system relies on private litigants to enforce substantive  
12 provisions of law through class and derivative actions; attorneys providing the essential  
13 enforcement services must be provided incentives roughly comparable to those negotiated in the  
14 private bargaining that takes place in the legal marketplace).

15               As the California Court of Appeal recognized in *Thayer v. Wells Fargo Bank, supra*, 92  
16 Cal. App. 4th at 839: "Adequate fee awards are perhaps the most effective means of achieving  
17 [the] salutary goal [of encouraging `private attorney general actions and] [c]ourts should not be  
18 indifferent to the realities of the legal marketplace or unduly parsimonious in the calculation of  
19 such fees." *See also Lealao*, 82 Cal.App.4th at 53 (cautioning against fee awards that are too  
20 small and therefore "chill the private enforcement essential to vindication of many rights..."). At a  
21 minimum, attorneys providing these substantial benefits should be paid an award equal to the  
22 amount negotiated in private bargaining that take place in the legal marketplace. *Deposit*  
23 *Guaranty Nat. Bank, Jackson, Miss. v. Roper*, (1980) 445 U.S. 326, 338; *Lealao*, 82 Cal. App. 4<sup>th</sup>  
24 at 49-50.

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1 The Ninth Circuit agreed with class counsel and determined that the district court's award of a fee  
2 based solely upon the claims against the settlement fund was an abuse of its discretion.

3 Ninth Circuit courts have applied *Williams* in a variety of contexts, including claims made  
4 settlements without a minimum or maximum recovery. *See, e.g., Browning v. Yahoo! Inc.*, (N.D.  
5 Cal. Nov. 16, 2007) WL 4105971 at \*13–14(claims-made settlement with no minimum or  
6 maximum recovery); *Young v. Polo Retail*, (N.D. Cal. Mar. 28, 2007) WL 951821 at\*14-24  
7 (same); *Lopez v. Youngblood*, (E.D. Cal. Sept. 1, 2011) WL 10483569 at \*32–43 (reversionary  
8 common fund with maximum recovery only). *Hopson v. Hanesbrands Inc.*, (N.D. Cal. Apr. 3,  
9 2009) 09 WL 928133 at \*11; *Glass v. UBS Financial Services*, (N.D. Cal. Jan. 26, 2007) WL  
10 221862 at \*16) (same). In sum, Class Counsels' request for an award of attorney's fees in the  
11 amount of one-third of the maximum settlement amount is reasonable.

12 **VI. CLASS COUNSEL'S REQUESTED COSTS ARE REASONABLE**

13 Class Counsel has not only expended substantial time in diligently prosecuting this  
14 Action, but they have also expended considerable resources during litigation with no guarantee  
15 that their costs would be reimbursed. The Settlement provides for reasonable actual costs of up to  
16 \$20,000.00 (Settlement Agreement, p. 3, ¶ 5 (C) (4).) The attorney cost amount actually incurred  
17 is \$7,179.88, thus Class Counsel respectfully requests that the Court approve the incurred amount  
18 as per the Settlement Agreement (Hawkins Decl. ¶ 25, Exh. 2.)

19 **VII. THE SETTLEMENT ADMINISTRATOR'S REQUESTED EXPENSES**  
20 **ARE REASONABLE**

21 ILYM was retained to administer the notice and claims process. IYLM's duties included,  
22 among other things: calculating individual Settlement payments, distributing funds, and tax-  
23 reporting following final approval; (a) printing and mailing the Notice of Pendency of Class  
24 Action and Proposed Settlement and Notice of Settlement Award ("Notice Packet"); (b) receiving  
25 undeliverable Notices; (c) receiving any requests for exclusion; (d) and answering questions from  
26 Class Members. If the Court grants final approval of the Settlement, ILYM will be responsible  
27 among other things, for: (f) mailing settlement checks: (g) and for such other tasks the Parties

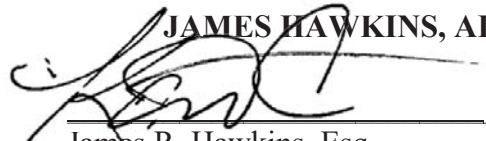
1 mutually agree or the Court orders ILYM to perform (Beltran Decl. ¶ 3). Plaintiff requested that,  
2 as per the Settlement Agreement, the Settlement Administrator be awarded costs of  
3 administering the settlement in an amount not to exceed \$15,000 (Settlement Agreement, p.3, ¶ 5  
4 (C) (2).) As per ILYM, the costs of administering the settlement are \$15,000 and should be  
5 awarded (Beltran Decl. ¶ 15).

6 **VIII. CONCLUSION**

7 For all of the foregoing reasons, Plaintiff requests that the Court (1) grant final approval of  
8 this Settlement and approve distribution to the Settlement Class Members, (2) approve payment  
9 of \$75,000 in payment of PAGA penalties, (3) approve Settlement Administrator costs in the  
10 amount of \$15,000. (4) approve the request for a \$7,500 Class Representative Service Award to  
11 the named Plaintiff Eva Rockwell, and (5) approve Class Counsel's request for an award of  
12 \$225,000 in attorneys' fees and \$7,179.88 in costs. Finally, Plaintiff requests that the Court enter  
13 the [Proposed] Order Granting Final Approval of Class Action and PAGA Settlement, filed  
14 concurrently herewith.

15 Respectfully submitted,

16  
17 Dated: January 10, 2024

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19 \_\_\_\_\_  
20 James R. Hawkins, Esq.  
21 Isandra Y. Fernandez, Esq.  
22 Kacey E. Cook, Esq.  
23 Attorneys for Plaintiff  
24 Eva Rockwell