

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiff and the proposed class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

WENDY CERON VENTURA, an individual,
on behalf of herself and others similarly
situated,

PLAINTIFF,

v.

MEDICAL LINEN SERVICE, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21-CIV-03233

[Case Assigned for All Purposes to Hon. Robert
D. Foiles in Dept. 21]

**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, Wendy Ceron Ventura and
Lluvia Islas of ILYM Group, Inc.; [Proposed]
Order and Judgment Thereon]*

Date: May 5, 2023

Time: 2:00 P.M.

Dept.: 21

Complaint Filed: June 10, 2021
FAC Filed: August 16, 2021
Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 5, 2023 at 2:00 P.M.in Department 21 of the above-entitled court, Plaintiff Wendy Ceron Ventura (“Plaintiff”) will, and hereby does, move the Court for an Order Granting Final Approval of the Class Settlement in this case. Plaintiff moves the Court for an order:

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

2. Affirming Kingsley & Kingsley, APC as Class Counsel;

3. Affirming Wendy Ceron Ventura as Class Representative and awarding an enhancement award of \$5,000.00;

4. Awarding ILYM Group, Inc. claims administration fees of \$16,000.00 for its services as Settlement Administrator; and,

5. Entering judgment.

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

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Kelsey M. Szamet, Wendy Ceron Ventura, Lluvia Islas, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: April 13, 2023

KINGSLEY & KINGSLEY, APC

By: _____

Kelsey M. Szamet
Attorneys for Plaintiff WENDY CERON
VENTURA and the proposed class

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND.....	1
A.	Litigation Overview and Procedural History	1
B.	The Discovery Process.....	2
C.	Preliminary Approval.....	3
III.	THE PRELIMINARILY APPROVED SETTLEMENT.....	3
A.	The Settlement Class.....	3
B.	Settlement Payments.....	3
C.	Individual Settlement Payments	4
D.	Class Notice	4
E.	Check Mailed Settlement – No Reversion.....	4
IV.	THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT	5
A.	The Settlement is Entitled to a Presumption of Fairness	5
B.	The Court Should Approve This Class Action Settlement Because it Satisfies Each of the <i>Kullar</i> Factors	6
1.	The Strength of Plaintiffs’ Case.....	6
a)	The Risks Associated with the Wages/Overtime Claim	6
b)	The Risks Associated with the Meal Break Claim	8
c)	The Risks Associated with the Minimum Wages Claim	10
d)	The Risks Associated with the Waiting Time Penalties Claim	10
e)	The Risks Associated with the PAGA Claim	11
2.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	12
3.	The Risk of Maintaining Class Action Status through Trial.....	12
4.	The Amount Offered in Settlement.....	13
a)	Plaintiff’s Assessment of Defendant’s Maximum Exposure	13
b)	Solvency Risks.....	14

1	5.	The Extent of Discovery Completed and Stage of the proceedings	14
2	6.	The Experience and Views of Counsel	14
3	7.	The Presence of a Governmental Participant.....	15
4	8.	The Proposed Plan of Allocation Is Fair and Reasonable.....	15
5	9.	The Reaction of the Class Members to the Proposed Settlement	15
6	V.	ENHANCEMENT TO PLAINTIFF	15
7	VI.	SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY.	16
8	VII.	CONCLUSION.....	17

TABLE OF AUTHORITIES

Federal Cases

<i>Ingram v. The Coca-Cola Company,</i>	
200 F.R.D. 685 (N.D. Ga 2001).....	19
<i>Officers for Justice v. Civil Service Commission,</i>	
(9th Cir. 1982) 688 F.2d 615	19
<i>Van Vranken v. Atlantic Richfield Co.,</i>	
901 F. Supp. 294 (N.D. Cal. 1995)	19

State Cases

<i>Benton v. Telecom Network Specialists, Inc.,</i>	
(2013) 220 Cal.App.4th 701	11
<i>Bradley v. Networkers International LLC,</i>	
(2012) 211 Cal.App.4th 1129	11
<i>Brinker Rest. Corp. v. Superior Court,</i>	
(2012) 53 Cal.4th 1004	10
<i>Carrington v. Starbucks Corporation,</i>	
(2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647.....	15
<i>Diaz v. Grill Concepts Services, Inc.,</i>	
(2018) 23 Cal.App.5th 859	14
<i>Dunk v. Ford Motor Co.,</i>	
(1996) 48 Cal.App.4th 1794	6
<i>Faulkinbury v. Boyd & Associates, Inc.,</i>	
(2013) 216 Cal.App.4th 220	11
<i>Kullar v. Foot Locker Retail, Inc.,</i>	
(2008) 168 Cal.App.4th 116	7
<i>Nordstrom Commissions Cases,</i>	
186 Cal.App.4th 576 (2010)	16

State Statutes

Business & Professions Code § 17200	2
Civil Code § 1542	20
Code of Civil Procedure § 382.....	5
Code of Civil Procedure § 1781(f).....	5
Labor Code § 203.....	2, 14, 17
Labor Code § 203(a)	13
Labor Code § 218.....	8
Labor Code § 218.5.....	8
Labor Code § 221.....	2
Labor Code § 222.....	8
Labor Code § 223.....	8
Labor Code § 224.....	8
Labor Code § 226.7.....	2, 14
Labor Code § 510.....	1
Labor Code § 510(a)	8
Labor Code § 512.....	9, 10
Labor Code § 1194.....	1, 2, 8, 13, 14
Labor Code § 1194.2.....	1, 2, 8, 13
Labor Code § 1197.....	2, 8, 13
Labor Code § 1197.1.....	2, 13
Labor Code § 1199.....	1
Labor Code § 2698.....	15
Labor Code § 2699.....	2

State Regulations

Code of Regulations, Title 8, § 13520	14
---	----

Other Authorities

Glass v. UBS Financial Services, Inc.,

2007 WL 227862 (N.D. Cal. Jan. 26, 2007)	19
--	----

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Wendy Ceron Ventura (“Plaintiff”) submits this Motion for Final Approval of the
4 Class Settlement in this case and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Joint Stipulation
6 of Class Action Settlement and Release of Claims (“Agreement”), a copy of which is attached to
7 the concurrently-filed 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. claims administration fees of \$16,000.00 for its services
11 as Settlement Administrator;

12 4. Affirm named Plaintiff Wendy Ceron Ventura as Class Representative and award
13 a cumulative Class Representative payment of \$5,000.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

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

17 Medical Linen Service, Inc. provides linen and uniform services for a variety of needs
18 including, but not limited to, restaurants, country clubs, health care facilities, hotels, and special
19 events. (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶5.) Plaintiff and Settlement Class
20 Members were employed by Defendant and performed work in San Mateo County as non-exempt,
21 hourly employees. (Szamet Decl. ¶6.)

22 On June 10, 2021, Plaintiff filed a Class Action Complaint in the Action. On August 16,
23 2021, Plaintiff filed a First Amended Complaint (“FAC”), adding the PAGA claim based on the
24 facts alleged in the PAGA Letter. (Szamet Decl. ¶7.)

25 The operative Complaint alleges claims for: (1) Failure to Pay Wages and/or Overtime
26 Under Labor Code §§ 510, 1194, 1194.2, and 1199; (2) Failure to Provide Meal Breaks Pursuant
27 to Labor Code §§ 226.7 and 512; (3) Minimum Wage Deficits in Violation of Labor Code §§ 1194,
28 1194.2, 1197, 1197.1, and IWC Minimum Wage Order No. 5; (4) Violation of Labor Code § 221;

(5) Waiting Time Penalties Pursuant to Labor Code § 203; (6) Violation of Business & Professions Code § 17200; and (7) Penalties Pursuant to Labor Code § 2699, et seq. (Szamet Decl. ¶8.)

B. The Discovery Process

After the matter was at issue, the Parties began to engage in informal discovery to understand the nature of the allegations and the scope of potential liability. (Szamet Decl. ¶9.) Defendant provided Plaintiff's counsel with pertinent data for the Class Members so that the Parties could fully- investigate the claims at issue and understand their strengths and weaknesses. (Szamet Decl. ¶10.)

On March 29, 2020, the Parties attended a full-day mediation with experienced mediator Steven J. Rottman, Esq. (Szamet Decl. ¶11.) With the assistance of the mediator, and subject to confirmatory discovery, the Parties reached a settlement, as provided herein, to settle Plaintiff's claims on a class-wide and representative basis. (*Id.*)

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

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl. ¶13.) Although Defendant denies any liability, Defendant is agreeing to this Settlement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

1 C. Preliminary Approval

2 On August 17, 2022, the Court issued an Order preliminarily approving the settlement in
3 this case, approving the proposed Class Notice, ordering that the Settlement Administrator send
4 notice to the Settlement Class, and setting a date for the Final Approval and Fairness Hearing.
5 (Szamet Decl. ¶14.)

6 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

7 A. The Settlement Class

8 For purposes of settlement, the Class is defined as: “all persons who are employed or have
9 been employed as an hourly employee by Defendant in the State of California during the Covered
10 Period.” (“Class Members” or “Settlement Class Members”) (Szamet Decl. ¶15.)

11 The Covered Period is the period from June 10, 2017 to April 28, 2022. (Szamet Decl. ¶16;
12 Ex. 1 at § I, ¶6.) As of March 29, 2022 (the date of mediation), and based on documents and other
13 information produced by Defendant, there are approximately 500 Settlement Class Members.
14 (Szamet Decl. ¶17; Ex. 1 at § III, ¶30.)

15
16 The final Settlement Class contained 490 individuals. (Islas Decl. ¶13.)

17 B. Settlement Payments

18 As detailed fully in the Settlement, the Settlement provides for Defendant to pay a Gross
19 Settlement Amount of \$500,000.00, which includes the sum of the Individual Settlement Amounts,
20 the Class Representative service award, the Class Counsel Award, PAGA Payment, and the
21 Settlement Administration Costs. (Szamet Decl. ¶18; Ex. 1 at § I, ¶19.)

22 The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award,
23 Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs.
24 (Szamet Decl. ¶19; Ex. 1 at § I, ¶22.)

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

27	Gross Settlement Fund:	\$500,000.00
28	Attorneys’ Fees (1/3):	\$166,666.67
	Requested Case Costs:	\$17,000.00

Claims Administration:	\$16,000.00
PAGA Penalties:	\$10,000.00
	(\$7,500.00 to the LWDA; \$2,500.00 to remain in the Net Settlement Amount)
Named Plaintiff Enhancement:	<u>\$5,000.00</u>
Net Settlement Amount:	\$287,833.33

C. Individual Settlement Payments

The amount of each Participating Settlement Class Member's Individual Settlement Amount is an individualized amount that is based on the number of Compensable Work Weeks worked by the Participating Settlement Class Member during the Covered Period. (Ex. 1 at § I, ¶20; see also Ex. A to the Settlement at pp. 4 and 5 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Settlement. (Ibid.) The Settlement provides for a specific and detailed work week dispute process. (See Ex. 1 at § III, ¶9.)

Based on these calculations, the average potential recovery is \$587.41 per Settlement Class Member. (Islas Decl. ¶14.)

D. 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. ¶20). 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 fully and properly carried out. (Islas Decl. ¶7.)

To date, ILYM Group, Inc. received no requests to be excluded ("opt-outs") from the proposed Agreement and no objections. (Islas Decl. ¶¶11-12.)

E. Check 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 180 days shall be turned over by the Settlement Administrator, with information for each

1 Settlement Class Member who failed to timely cash his/her settlement check, to the State of
2 California Controller's Office Unclaimed Property Fund. (Ex. 1 at ¶21.)

3 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

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

10 A. The Settlement is Entitled to a Presumption of Fairness

11 "A presumption of fairness exists where: (1) the settlement is reached through arm's length
12 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
13 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
14 small." (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case
15 meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

16 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
17 arm's-length negotiations overseen by an experienced mediator. All settlement discussions were
18 made by experienced and informed counsel, who believe that this settlement represents a favorable
19 resolution for the Settlement Class Members. (Szamet Decl. ¶21.) The settlement negotiations
20 have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-
21 dealing or other type of misconduct by either side has taken place. (Szamet Decl. ¶22.)

22 Second, the Parties engaged in the exchange of informal discovery that permitted Class
23 Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation.
24 Defendant produced a sampling of time and pay records, relevant written policies and procedures,
25 and data points such as the class size and workweeks at issue. (Szamet Decl. ¶23.) Receipt of
26 appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated
27 with each claim alleged in the lawsuit. (Szamet Decl. ¶24.)

28 Third, Class Counsel have significant experience in cases of this type, including several

1 years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶25.) Class
2 Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel
3 believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and
4 that the average recovery for each Settlement Class Member of \$587.41 is substantial, given the
5 risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶26.)

6 Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were no
7 requests to be excluded and no objectors. (Islas Decl. ¶¶11-12.) As all of the *Dunk* factors are
8 satisfied, this settlement is entitled to a presumption of fairness.

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

11 In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth
12 several factors that the Court should analyze in determining whether to approve a class action
13 settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
14 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
15 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
16 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
17 participant; and (8) the reaction of the class members to the proposed settlement. The proposed
18 settlement satisfies each of these factors. (Szamet Decl. ¶27.) Class Counsel conducted extensive
19 informal discovery before entering into meaningful settlement negotiations in this matter. (Szamet
20 Decl. ¶28.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and
21 the risks associated with ongoing litigation. (Szamet Decl. ¶29.) Class Counsel is experienced in
22 handling wage and hour class actions and, after weighing all of the following factors, supports this
23 Settlement. (Szamet Decl. ¶30.)

24 1. The Strength of Plaintiffs' Case

25 a) The Risks Associated with the Wages/Overtime Claim

26 Plaintiff contends that Defendant has had a common policy of not paying Plaintiff and
27 Class Members for all hours worked in violation of established law guaranteeing a minimum wage
28 and wages owed under contract or statute and prohibitions on making deductions reducing the

1 agreed upon wage. (See Lab. Code §§ 218, 218.5, 222, 223, 224, 1194, 1194.2, & 1197.) (Szamet
2 Decl. ¶46.) California workers are statutorily entitled to overtime compensation, unless they are
3 properly classified as falling within one of the narrow exemption categories. Under California law,
4 “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any
5 one workweek...shall be compensated at the rate of no less than one and one-half times the regular
6 rate of pay for an employee.” (Lab. Code, § 510, subd. (a).)

7 Plaintiff contends that she and the Class Members were forced to work on a regular and
8 consistent basis without receiving compensation for all hours worked at the appropriate rate of
9 pay. (Szamet Decl. ¶31.) Specifically, Plaintiff alleges that Defendant has had a consistent policy
10 of failing to pay wages and/or overtime for all hours worked at the proper rate to Plaintiff and all
11 Class Members for following reasons:

12 a. First, Plaintiff contends that Defendant maintained a common policy and practice
13 of automatically deducting thirty (30) minutes of time for a meal period regardless of whether one
14 was taken. As a result, Defendant had a policy and practice of automatically deducting thirty (30)
15 minutes of time worked from the Class Members. This “auto-deduct” policy and practice resulted
16 in Defendant’s failing to pay Plaintiff and all members of the Class all wages at the appropriate
17 rate for all hours worked each day.

18 b. Second, Plaintiff alleges that Defendant’s time rounding policy is unlawful because
19 it does not properly compensate employees for all hours actually worked. Plaintiff contends that
20 expert review of the time records indicates that Defendant’s policy was not “neutral” and favors
21 the employer to the detriment of employees. As a result, Plaintiff contends that she and the Class
22 Members were forced to work on a regular and consistent basis without receiving compensation
23 for all hours worked at the proper rate. (Szamet Decl. ¶32.)

24 In response, Defendant contends that its timekeeping policies and practices were and are
25 lawful under California law and that they properly compensated Plaintiff and all Class Members
26 for all time that they spent working for Defendant. Defendant maintains that, to the extent that
27 Plaintiff or any Class Member performed work while off the clock, they did so without Defendant’s
28 knowledge or consent.

1 While Plaintiff is confident that certification of the wage and overtime claims is
2 appropriate, at the same time, it cannot be ignored that there are significant risks associated with
3 moving forward and attempting to certify the wage and overtime claim. (Szamet Decl. ¶33.) Most
4 importantly, though the Court may find that Plaintiff's wage and overtime claim is certifiable, the
5 monetary damages are small because Plaintiff acknowledges that dispute as to rounding with be
6 relatively small in terms of a total monetary amount as it is limited to a few minutes of time per
7 shift. (Szamet Decl. ¶34.) If litigation continued, it is anticipated extensive discovery would be
8 necessary to support Plaintiff's contention, including through further written discovery and
9 depositions of Defendant's person(s) most knowledgeable. (Szamet Decl. ¶35.) As such, Plaintiff
10 could not attribute full value to this claim in the negotiations. (*Id.*)

11 b) The Risks Associated with the Meal Break Claim

12 Under California Labor Code section 512 and IWC Wage Order No. 16, no employer shall
13 employ any person for a work period of more than five hours without providing a meal period of
14 not less than thirty minutes. The first meal period must be permitted to commence no later than
15 after five hours of work, or the start of the sixth hour of work (5.0 hours on the clock). (Brinker
16 Rest. Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1049.) The California Supreme Court
17 succinctly described Section 512's mandate: "Employers must afford employees uninterrupted
18 half-hour periods in which they are relieved of any duty or employer control and are free to come
19 and go as they please." (Brinker Rest. Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1037.)

20 It is well settled that if an employer fails to maintain a uniform policy that authorizes and
21 permits the meal periods or rest breaks called for under the law (as specified in the applicable
22 Wage Order), "it has violated the wage order and is liable." (See Brinker, 53 Cal.4th at p. 1033.)
23 Following Brinker, California courts have confirmed that liability for meal and rest period
24 violations arises when an employer adopts a uniform policy that fails to comply with the Labor
25 Code. (See Faulkinbury v. Boyd & Associates, Inc. (2013) 216 Cal.App.4th 220, 235, ["In
26 Faulkinbury, we concluded that even if [defendant]'s on-duty meal break policy was
27 unlawful,[defendant] would be liable only when it actually failed to provide a required off-duty
28 meal break. Brinker leads us now to conclude [defendant] would be liable upon a determination

1 that [defendant]’s uniform on-duty meal break policy was unlawful.” (emphasis added)]; accord
2 Bradley v. Networkers International LLC (2012) 211 Cal.App.4th 1129; Benton v. Telecom
3 Network Specialists, Inc. (2013) 220 Cal.App.4th 701, 725–726 [finding that the employer would
4 become liable upon a showing that it failed to maintain a policy authorizing required breaks, which
5 does not require an individual technician to provide he or she actually missed breaks as a result of
6 the employer’s policies. Rather, “the Wage Order . . . imposes an affirmative obligation on every
7 employer to authorize and provide legally-required meal and rest breaks; if it fails to do so, it has
8 violated the law and is liable.”].)

9 Plaintiff contends that Defendant failed to maintain a policy informing Plaintiff and the
10 Class Members of these rights. (Szamet Decl. ¶36.) Plaintiff alleges that Defendant failed to
11 authorize Plaintiff and all Class Members to take meal periods for shifts less than 6 or 6.5 hours
12 even though Plaintiff and the Class Members consistently worked shifts over five (5) hours.
13 (Szamet Decl. ¶37.) Plaintiff contends Defendant failed to provide Plaintiff and the Class Members
14 with lawful meal periods of not less than thirty (30) minutes within the first (5) hours of work as
15 required by the Labor Code. (Szamet Decl. ¶38.) Further, as discussed above, Plaintiff alleged that
16 Defendant automatically deducted thirty (30) minutes from Plaintiff and the Class Members’ time
17 records regardless of whether a lawful meal period was taken. (Szamet Decl. ¶39.)

18 In response, Defendant contends that Defendant provided Plaintiff and all Class Members
19 with an opportunity to take all legally compliant meal periods. Defendant maintains that, to the
20 extent that an employee did not take a legally compliant meal period, it was a result of that
21 employee’s choice to not do so. (Szamet Decl. ¶40.)

22 While Plaintiff is confident that certification of the meal period class is appropriate, at the
23 same time, it cannot be ignored that there are significant risks associated with moving forward and
24 attempting to certify the meal period claim. (Szamet Decl. ¶41.) Most importantly, Plaintiff must
25 acknowledge that the Court might find that Defendant did in fact maintain an accurate written meal
26 period policy. (Szamet Decl. ¶42.) In addition, there was risk that at certification (and trial),
27 Defendant would introduce evidence that employees were regularly advised of the timing of meal
28 periods and did in fact take them. (Szamet Decl. ¶43.) With this analysis in mind, there is

1 significant risk that the Court could have determined that the written meal period policy does
2 comply with California law, and in that scenario, the likelihood that Plaintiff would have been able
3 to certify a meal period class was low if the inquiry devolved into a series of mini-trials to
4 determine whether each individual was in fact provided the opportunity to take a valid meal period
5 on any given day. (Szamet Decl. ¶44.) Indeed, the extent to which Defendant actually “provided”
6 employees with lawful breaks according to its policy would be highly disputed were the case to
7 have continued, and a discount from the maximum settlement value of this claim was appropriate.
8 (Szamet Decl. ¶45.)

9 c) The Risks Associated with the Minimum Wages Claim

10 Pursuant to Labor Code §§ 1194, 1194.2, 1197, and 1197.1, it is unlawful for an employer
11 to permit a California employee to work without paying wages at the proper minimum wage for
12 all time worked, as set forth by the applicable IWC Minimum Wage Order and Wage Order No.
13 5.

14 Plaintiff contends that she and the Class Members consistently performed work for
15 Defendant at or near the California minimum wage rate. (Szamet Decl. ¶46.) Assuming Plaintiff
16 is able to prove the meal period auto-deduct claim allegations and the rounding allegations,
17 Plaintiff contends that she would be able to establish that Defendant deducted Plaintiff’s and the
18 Class Members’ earned wages, causing the total hourly compensation paid to Plaintiff and the
19 Class Members to continually fall below California’s minimum wage. (Szamet Decl. ¶47.)

20 In response, Defendant contends that Plaintiff and all Class Members were properly
21 compensated for all time spent working. To the extent that Plaintiff or any Class Member worked
22 off the clock, they did so without Defendant’s knowledge or consent. Defendant maintains that its
23 timekeeping policies and practices were and are lawful under California law.

24 d) The Risks Associated with the Waiting Time Penalties Claim

25 This claim alleges that Defendant failed to pay all wages due and owing upon termination
26 or resignation. Labor Code § 203(a) provides:

27 If an employer willfully fails to pay ... any wages of an employee who is discharged
28 or who quits, the wages of the employee shall continue as a penalty from the due
date thereof at the same rate until paid or until an action therefor is commenced;
but the wages shall not continue for more than 30 days.

1 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
2 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
3 8, § 13520; see also *Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”
4 simply means that “the employer intentionally failed or refused to perform an act which was
5 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
6 wrong toward the other party”).

7 Plaintiff contends that Defendant failed to properly pay overtime for any work in excess of
8 eight (8) hours per day and/or any work in excess of forty (40) hours per week. (Szamet Decl.
9 ¶48.) The risk analysis for the section 203 claim flows from the risk analysis for the underlying
10 wage claims discussed above. (Szamet Decl. ¶49.)

11 Plaintiff also alleged that Defendant owes waiting time penalties by not paying former
12 alleged employees all wages owed and all premium payments for non-compliant meal or rest
13 periods. Labor Code § 226.7. See *Naranjo, et al. v. Spectrum Security Services, Inc.* (2022) [meal
14 and rest period premiums (or “extra pay” or “premium pay”) constitute “wages” and must be
15 accurately reflected on an employee’s wage statement and accurately paid to the employee during
16 the employee’s final pay out.]

17 If Defendant could prove, as it contends, that class members were properly paid for all
18 hours worked, there would be no recovery of wages and no waiting time penalties that flow
19 therefrom. (Szamet Decl. ¶50.)

20 e) The Risks Associated with the PAGA Claim

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

26 Plaintiff discounted the PAGA claim for multiple reasons. First, the aggrieved employees’
27 PAGA claims are derivative of all the foregoing class claims. (Szamet Decl. ¶51.) Second, a court
28 has discretion to award less than the maximum penalty. (Szamet Decl. ¶52.) Labor Code §

2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). See e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the Settlement Class is arguably compensated for these violations in the proposed Settlement, and thus any PAGA recovery for these same violations could be construed as duplicative. (Szamet Decl. ¶53.) As such, the Settlement’s contemplated PAGA payment of \$10,000.00 is appropriate. (Szamet Decl. ¶54.) See *Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement now. (Szamet Decl. ¶55.) If the Court did eventually certify the class, trial of a case involving approximately 500 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶56.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶57.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶59.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant’s meal policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

1 4. The Amount Offered in Settlement

2 It was very difficult for the Parties to reach this Settlement of \$500,000.00. (Szamet Decl.
3 ¶60.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
4 (Szamet Decl. ¶61.) The Parties arrived at it after extensive investigation and discovery, careful
5 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
6 likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance
7 of an experienced mediator, Steven J. Rottman, Esq. Plaintiff also worked with an expert to
8 evaluate the time and pay record sample and put together a comprehensive damage model of the
9 exposure based on the allegations (*Id.*)

10 a) Plaintiff's Assessment of Defendant's Maximum Exposure

11 Plaintiff assessed full value of the rounding claim, without any discount, at approximately
12 \$163,060. (Szamet Decl. ¶62.) This amount comes from expert review of the data sample which
13 concludes that there were 5,666.4 net underpaid hours due to rounding. (Szamet Decl. ¶63.)

14 The full value of the Meal Period claim, without any discount, was assessed at
15 approximately \$1,368,288. (Szamet Decl. ¶64.) This amount is comprised of alleged meal period
16 violations in the data for missed, late, what appear to be automatically-deducted meal periods of
17 exactly 30 minutes, and second meal period violations. (Szamet Decl. ¶65.)

18 Plaintiff valued the Waiting Time Claim at \$1,325,313. (Szamet Decl. ¶66.) Considering
19 the derivative nature of Labor Code §203 and the dispute over whether class members were owed
20 any wages, Plaintiff determined that accepting a discount on this claim was appropriate. (Szamet
21 Decl. ¶67.)

22 Finally, Plaintiff calculated the value of the PAGA claim at \$346,900. (Szamet Decl. ¶68.)
23 The assumes \$100 for the initial violation for each of the 3,469 pay periods at issue during the
24 statutory PAGA period. (Szamet Decl. ¶69.)

25 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
26 Settlement Class Members' claims was approximately \$3,203,561. (Szamet Decl. ¶70.)

27 ///

28 ///

1 b) Solvency Risks

2 One of the main issues addressed at mediation was Defendant’s financial status. (Szamet
3 Decl. ¶71.) As a result of the pandemic, Defendant argued that its business operations and income
4 were severely impacted which affected its ability to pay a sizeable settlement or, ultimately, a
5 judgment. (Szamet Decl. ¶72.) Prior to executing the Settlement Agreement, Class Counsel
6 reviewed Defendant’s financial information and worked with a forensic CPA to confirm the impact
7 that the pandemic had on its business. (Szamet Decl. ¶73.)

8 As a result of the potential solvency issue and all of the forgoing risks on the merits, Class
9 Counsel believes the Gross Settlement Amount of \$500,000.00 is fair and reasonable. (Szamet
10 Decl. ¶74.)

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

12 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
13 claims alleged. (Szamet Decl. ¶75.) The agreement to settle did not occur until Class Counsel
14 exchanged and possessed sufficient information to make an informed judgement regarding the
15 likelihood of success on the merits and the results that could be obtained through further litigation.
16 (*Id.*)

17 6. The Experience and Views of Counsel

18 Kingsley & Kingsley is very experienced in prosecuting and defending employment
19 litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition
20 violations. (Szamet Decl. ¶¶76-77.) The firm is well versed in class action litigation and has
21 diligently and aggressively pursued this action. (*Ibid.*) Kingsley & Kingsley, APC currently serves
22 as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern
23 California. (*Ibid.*) A list of representative cases that Kingsley & Kingsley, APC has handled is
24 included in the accompanying declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶76-77.) After
25 factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair
26 and reasonable. (Szamet Decl. ¶78.)

27 ///

28 ///

1 7. The Presence of a Governmental Participant

2 There is no governmental participant in this action except, arguably, the LWDA. (Szamet
3 Decl. ¶79.)

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

5 Plans of allocation are subject to the same standard of review as class action settlements;
6 they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service*
7 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
8 compensates Settlement Class Members pro rata based on the number of Compensable Work
9 Weeks worked by the Settlement Class Member during the Covered Period. The lump sum
10 payment to each Settlement Class Member not excluding him/ herself will be determined on an
11 individualized basis based upon the Compensable Work Weeks worked by the Settlement Class
12 Member. (Ex. 1 at § I, ¶20.) This allocation distributes Settlement funds proportionally to each
13 class member’s potential damages and should therefore be approved as fair, adequate, and
14 reasonable. (Szamet Decl. ¶80.)

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

16 To date, there are no request to be excluded from the proposed Agreement and no
17 objections. (Islas Decl. ¶¶11-12.) Such indicates that the reaction of Settlement Class Members on
18 the whole is positive and weighs in favor of approval.

19 **V. ENHANCEMENT TO PLAINTIFF**

20 Plaintiff’s Counsel request an enhancement of \$5,000.00 to the Class Representative
21 Wendy Ceron Ventura for her work on behalf of the Settlement Class. (Szamet Decl. ¶123.)
22 “Courts routinely approve incentive awards to compensate named plaintiffs for the services they
23 provide and the risks they incurred during the course of the class action litigation.” *Ingram v. The*
24 *Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations
25 omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).
26 In *Coca-Cola*, the Court approved service awards of \$300,000 to each named plaintiff in
27 recognition of the services they provided to the class by responding to discovery, participating in
28 the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*,

200 F.R.D. at 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,00 enhancement to each named plaintiff).

Ms. Ceron Ventura is an adequate class representative because she has diligently, adequately and fairly represented the Settlement Class and has not placed her interests above any member of the Settlement Class. (*see Declaration of Wendy Ceron Ventura* (“Ceron Ventura Decl.”) ¶¶11-12.) The time spent by Wendy Ceron Ventura is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendant; compiling relevant documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with Settlement Class Members as needed; remaining available for a full-day of mediation; and responding promptly to Class Counsel’s communications regarding settlement. (Szamet Decl. ¶124.) Thus, in addition to the sums paid to Settlement Class Members, Plaintiff requests a proposed litigation enhancement in the amount of \$5,000.00, to be paid from the Gross Settlement Amount. (Ex. 1 at § III, ¶22.) As set forth in the Settlement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶125; Ex. 1 at § III, ¶2.)

Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶126.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id.*) Plaintiff will provide a detailed declaration with the Final Approval Motion detailing her participation and further justification for the enhancement. (*Id.*)

VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff’s Motion for Final Approval of Class Action Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA

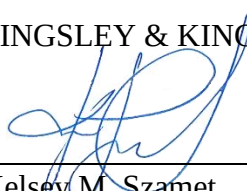
confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit “6.” (Szamet Decl. ¶132.)

VII. CONCLUSION

Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests that the Court (1) grant Final Approval of the Agreement and all of its terms; (2) award attorneys’ fees and costs in the amount detailed in the concurrently filed Motion for Attorneys’ Fees and Costs; (3) award ILYM Group, Inc. claims administration fees of \$16,000.00; and (4) award the Class Representative an enhancement of \$5,000.00; and (5) enter judgment.

DATED: April 13, 2023

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet
Attorneys for Plaintiff WENDY CERON
VENTURA 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 April 13, 2023, 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:

Alexander Hernaez
ahernaez@foxrothschild.com
Cody Stroman
codystroman@foxrothschild.com
Andrew Russell
arussell@foxrothschild.com
Steven Wong
swong@foxrothschild.com
FOX ROTHSCILD LLP
345 California Street, Suite 2200
San Francisco, CA 94104

[] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[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 TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[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 April 13, 2023, at Encino, California.



Leslie Sanchez

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