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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

DANGELO RANDLE-TATUM, an individual, on behalf of himself and others similarly situated,

PLAINTIFF,

v.

HOPDODDY BURGER BAR, INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV21015

[Case Assigned for All Purposes to Hon. Yvette Palazuelos in Dept. 9]

**NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE 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, Emil Davtyan, Dangelo Randle-Tatum and Cassandra Polites of ILYM Group, Inc., Proposed Order and Judgment]*

Date: May 16, 2023
Time: 10:00 AM
Dept.: 9

Complaint Filed: June 4, 2021
Trial Date: None Set

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

PLEASE TAKE NOTICE that on May 16, 2023 at 10:00 AM in Department 9 of the above-entitled court, Plaintiff DANGELO RANDLE-TATUM ("Plaintiff") will, and hereby does, move the Court for an Order of Final Approval of the Class and Representative Action Settlement in this case. Specifically, Plaintiff moves the Court for an order:

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

2. Affirming Kingsley & Kingsley, APC and Davtyan Law Firm, Inc. as Class Counsel;

3. Affirming DANGELO RANDLE-TATUM as Named Plaintiff and awarding an enhancement award of $7,500.00;

4. Awarding ILYM Group, Inc. claims administration fees of 15,000.00 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 Settlement Agreement is fair, adequate, reasonable, and in the best interest of the 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, Emil Davtyan, Dangelo Randle-Tatum, Cassandra Polites of ILYM Group Inc., 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 20, 2023

KINGSLEY & KINGSLEY, APC

By: ______________________________

Kelsey M. Szamet
Attorneys for Plaintiff DANGELO RANDLE-TATUM and the proposed class

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiff DANGELO RANDLE-TATUM ("Plaintiff") submits this Motion for Final Approval of Class Settlement and moves the Court for an order:

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

2. Affirming Kingsley & Kingsley, APC and Davtyan Law Firm, Inc. as Class Counsel;

3. Affirming DANGELO RANDLE-TATUM as Named Plaintiff and awarding an enhancement award of $7,500.00;

4. Awarding ILYM Group, Inc. claims administration fees of 15,000.00 for its services as Settlement Administrator; and,

5. Entering judgment.

### II. FACTUAL BACKGROUND

A. Litigation Overview and Procedural History

Defendant is a fast-casual burger restaurant and bar with four locations in California.[1] (Declaration of Kelsey M. Szamet ("Szamet Decl.") ¶5.) Plaintiff, Settlement Class members, and PAGA Settlement Class members are current and former non-exempt employees employed by Defendant who earn hourly wages. (*Ibid*.)

On June 4, 2021, Plaintiff gave written notice by online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant, paid the filing fee, and received an e-filing confirmation. (Szamet Decl. ¶6.) That same day, Plaintiff filed a Complaint for Damages against Defendant in the Los Angeles Superior Court, Case No. 21STCV21015 entitled *DANGELO RANDLE-TATUM, an individual, on behalf of himself and others similarly situated, Plaintiff, v. HOPDODDY BURGER BAR, INC.; and DOES 1 thru 50, inclusive, Defendants* on

[1] https://www.hopdoddy.com

June 4, 2021. (Szamet Decl. ¶7.)

On September 16, 2021, pursuant to Labor Code § 2699.3(a)(2)(A), after the sixty-five-day waiting period to commence a representative action as though the LWDA had not chosen to investigate under PAGA lapsed, Plaintiff filed a First Amended Complaint to add a respective PAGA claim as a matter of right (see Labor Code section 2699.3(2)(c))[2]. (Szamet Decl. ¶8.)

The amended complaint alleges causes of action for: (1) Failure to Pay Wages and Overtime Pursuant to Labor Code §§ 510, 1194, and 1199; (2) Failure to Provide Rest Periods under Labor Code § 226.7; (3) Failure to Reimburse Expenses Pursuant to Labor Code §2802; (4) Waiting Time Penalties Pursuant to Labor Code § 203; (5) Unfair Competition Pursuant to Business & Professions Code § 17200; and (6) Penalties Pursuant to Labor Code § 2699, et seq. (Szamet Decl. ¶9.)

B. The Discovery Process and Mediation

After the matter was at issue, the Parties began to engage in extensive informal discovery to understand the nature of the allegations and the scope of potential liability. (Szamet Decl. ¶10) Defendant provided Plaintiff's counsel with pertinent data for the Class Members and PAGA Members so that the Parties could fully-investigate the claims at issue and understand their strengths and weaknesses. (Szamet Decl. ¶11.) Specifically, Defendant provided Plaintiff's Counsel with Plaintiff's personnel file, time records, payroll records, and relevant policies. (*Ibid.*)

On March 8, 2022, the Parties attended a full-day Zoom mediation with experienced mediator Steve Rottman. (Szamet Decl. ¶12.) The Parties reached a settlement that day, as provided herein, to settle all claims that were or could have been asserted in the operative complaint on a class and representative-wide basis. (Szamet Decl. ¶13.) As part of the settlement, the Parties agreed to permit Plaintiff to submit an amended PAGA notice to the LWDA and file a Second Amended Complaint, adding additional claims for meal breaks under Cal. Lab. Code section 226.7 and 512 and wage statements under Cal. Lab. Code section 226(a). (Szamet Decl. ¶14.) On March 24, 2022, Plaintiff submitted an amended PAGA notice to the LWDA and on May

[2] "Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part."

31, 2022, Plaintiff filed his Second Amended Complaint. (Szamet Decl. ¶15.)

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. ¶16.) 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. ¶17.) 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 in the Settlement Agreement and detailed herein. (*Id*.)

### C. Preliminary Approval

On December 19, 2022, the Court issued an Order preliminarily approving the settlement in this case, approving the proposed Class Notice, ordering that the Settlement Administrator send notice to the Settlement Class, and setting a date for the Final Approval and Fairness Hearing. (Szamet Decl. ¶18.)

## III. THE PRELIMINARILY APPROVED SETTLEMENT

### A. The Settlement Class

For purposes of Settlement, the settlement class is defined as: "all current and former non-exempt employees who were employed for Defendant in California at any time from June 4, 2017 through May 8, 2022." ("Class Members" or "Settlement Class") (Szamet Decl. ¶19.)

The Class Period is June 4, 2017 through May 8, 2022. (Szamet Decl. ¶20.)

Based on documents and other information produced by Defendant, there are approximately 35,675 work weeks at issue. (Szamet Decl. ¶21; Ex. 1 at § III, ¶32.)

The final Settlement Class contained 827 individuals. (Polites Decl. ¶12.)

B. Settlement Payments

As detailed fully in the Settlement, the Settlement provides for Defendant to pay a Gross Settlement Amount of $650,000.00, which includes without limitation the Class Counsel Award, Enhancement Payment, Individual Settlement Payments, PAGA Payment, and Settlement Administrator Costs. (Szamet Decl. ¶22; Ex. 1 at § I, ¶16.)

The Net Settlement Amount is the Gross Settlement Amount, less Court-approved Class Counsel Award, Enhancement Payment, PAGA Payment, and Settlement Administrator costs. (Szamet Decl. ¶23; Ex. 1 at § I, ¶20.) Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Settlement Class as follows:

| | | |
|---|---|---|
| Gross Settlement Amount: | $ | 650,000.00 |
| Enhancement/General Release Payment: | $ | 7,500.00 |
| Class Counsel's Fees (1/3): | $ | 216,666.67 |
| Class Counsel's Costs (*up to*): | $ | 15,000.00 |
| PAGA Payment: | $ | 35,000.00 *($26,250.00 to the LWDA; $8,750.00 to the PAGA Members)* |
| Settlement Administrator Costs : | $ | 13,700.00 |
| **Net Settlement Amount:** | **$** | 362,133.33 |

C. Individual Settlement Payments

The amount of each Participating Class Member's Individual Settlement 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 § III, ¶18; see also Ex. A to the Settlement at p. 4 [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, ¶10.)

Based on these calculations, the highest Individual Settlement Share is $2,529.45 and the average Individual Settlement Share is $437.89 per Class Member. (Polites Decl. ¶13.)

D. Class Notice

The Court approved the proposed Class Notice and directed the mailing of the Notice by first-class mail to Class Members in accordance with the proposed implementation schedule. (Szamet Decl. ¶24). The procedures for giving notice to the Class Members, as set forth in the Settlement Agreement and Plaintiffs' Motion for Preliminary Approval and approved by the Court, have been fully and properly carried out. (Polites Decl. ¶¶3-16.)

To date, ILYM Group, Inc. received one (1) request to be excluded ("opt-outs") from the proposed Settlement Agreement and zero (0) objections. (Polites Decl. ¶¶9-10.)

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 Settlement Agreement, every Class Member will receive a settlement check and 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 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 § III, ¶22.)

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

As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and arm's-length negotiations overseen by an experienced mediator. All settlement discussions were made by experienced and informed counsel, who believe that this settlement represents a favorable resolution for the Class Members. (Szamet Decl. ¶25.) The settlement negotiations have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-dealing or other type of misconduct by either side has taken place. (Szamet Decl. ¶26.)

Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. This included relevant written policies and procedures and time and payroll records of the Class Members. (Szamet Decl. ¶27.) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Szamet Decl. ¶28.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶29.) Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Class Member of over $457.50 is substantial, given the risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶30.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there was one (1) request to be excluded and no objectors. (Polites Decl. ¶¶9-10.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

B. <u>The Court Should Approve This Class Action Settlement Because it Satisfies Each of the *Kullar* Factors</u>

In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth several factors that should be analyzed in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

The proposed settlement satisfies each of these factors. Class Counsel conducted extensive informal discovery before entering into meaningful arms-length settlement negotiations in this matter. (*Id* at Szamet Decl. ¶¶9-10.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl. ¶31.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Settlement. (Szamet Decl. ¶32.)

1. <u>The Strength of Plaintiffs' Case</u>

a) The Risks Associated with the Wages/Overtime Claim

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

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

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

(*Id*. at p. 847.)

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

Throughout the relevant period, Plaintiff contends that he and other Class Members were subject to the control of Defendant without being compensated for those "hours worked." (Szamet Decl. ¶33.) Plaintiff maintains that Defendant required employees to respond to their managers and regularly check their schedules for updates and other changes while they were off -the-clock. (Szamet Decl. ¶34.) Despite being off the clock, Plaintiff contends that managers posted and sent messages on the phone applications to Plaintiff and Class Members and required employees to review and respond to these postings and messages. (Szamet Decl. ¶35.) Plaintiff contends that this was a daily requirement for the benefit of the employer, as creating and discussing work schedules was necessary to ensure that shifts were covered at all times. (Szamet Decl. ¶36.) Plaintiff contends that this was done with the knowledge and direction of Defendant, thus Plaintiff and Class Members are entitled to be compensated for this time worked. (Szamet Decl. ¶37.)

There are certainly risks associated with this claim, however. (Szamet Decl. ¶38.) First, "off the clock" claims can be difficult to prove because there are no time and pay records associated with the alleged unpaid time. (Szamet Decl. ¶39.) This can present significant hurdles to establishing classwide liability. (Szamet Decl. ¶40.) Defendant maintains that its policy and practice was to pay for all time worked throughout the Class Period, and Defendant contends that managers handled scheduling employees and communicating with employees regarding schedules while employees were at the restaurants and clocked in for work. Defendant maintains that managers did not require employees to access any phone application while off the clock and that employees had free and full access to programs used to access schedules and messages while at the restaurant and clocked in for work. Defendant will further contend that Plaintiff's allegations can only be proven through testimonial evidence and you would have to talk to each class member and determine whether they were in fact required to perform any work off the clock. (Szamet Decl. ¶41.) Defendant will argue that this could easily devolve into a series of mini-trials that would defeat the purpose of class certification altogether. (Szamet Decl. ¶42.) While Plaintiff disagree with this analysis and believes that the claim could be proven through survey evidence, Plaintiff certainly had to acknowledge that there are risks associated with establishing liability. (Szamet Decl. ¶43.) Because there was uncertainty associated with this claim, Plaintiffs ultimately believed that a discount was appropriate. (Szamet Decl. ¶44.)

b) The Risks Associated with the Meal Period Claim

California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage Order 9-2001, §11(A) and (C); *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. (*Ibid*.) Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. (*Ibid*.)

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code §226.7; IWC Wage Order 9-2001, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker*, *supra*, 53 Cal.4th 1004.

Plaintiff contends that Defendant violated California's meal break laws by not allowing Plaintiff and other similarly situated Class Members, to take daily meal breaks including second meal periods. (Szamet Decl. ¶45.) Indeed, due to the hectic nature of the job, Plaintiff alleged that he was frequently unable to take a meal break at all and, when he was able, meal breaks were generally less than 30 minutes. (Szamet Decl. ¶46.) Further, Plaintiff alleges that Defendant violated the meal period laws by not paying Plaintiff and other similarly situated Class Members one (1) hour of pay at the employees' regular rate of compensation for each workday that the compliant meal period was not provided. (Szamet Decl. ¶47.)

Defendant vehemently denies the alleged meal break claim. (Szamet Decl. ¶48.) Defendant maintains that it implemented compliant meal period policies and practices during the Class Period. Defendant contends that Plaintiff and all Class Members were provided with all required meal periods and that Defendant automatically paid meal period premiums based on time records in an abundance of caution regardless of whether the employee chose to waive his or her meal break. (Szamet Decl. ¶49.)

Plaintiff was aware that this would be a hotly contested issue and had to acknowledge that there was certainly some risk associated with this claim. (Szamet Decl. ¶50.)

c) The Risks Associated with the Rest Period Claim

Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour of compensation for each workday the employer fails to provide a rest period according to law. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11050, subd. 12(A).)

Plaintiff and the Class Members' rest period claims arise from an alleged common course of conduct wherein Defendant did not provide employees with the opportunity to take a second 10-minute rest break for shifts between 6-8 hours in compliance with California law. (Szamet Decl. ¶66.) The California Supreme Court has held: "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." (*Brinker Rest. Corp. v. Superior Court*, *supra*, 53 Cal.4th at 1029.) In an eight-hour work day, being denied the two paid rest breaks in a day is "essentially perform[ing] 20 minutes of 'free' work." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104.)

The Court also clarified what steps an employer has to take to "make available" rest breaks to its employees. Under *Brinker*,

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—it has violated the wage order and is liable. No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.

*(Brinker Rest. Corp. v. Superior Court*, *supra*, 53 Cal.4th at 1033 (emphasis added.).)

Employers must authorize and permit a net ten-minute paid rest period for every four hours, or major fraction thereof, of work for its employees. If an employer does not, then the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11050, subd. 12(B).)

Plaintiff contends that he and the Class Members consistently worked shifts of 6+ hours and were not authorized or permitted to take second rest breaks. (Szamet Decl. ¶51.) Therefore, for each rest period Plaintiff and the Class Members allege they were not provided with, Plaintiff contends that Defendant is liable for one (1) additional hour of pay at the employee's regular rate of compensation. (Lab. Code, § 226.7, subd. (b).) (Szamet Decl. ¶52.)

As with meal periods, Defendant argued that it maintained a facially compliant policy that "provided" all required rest periods, it never interfered with Plaintiff's or any Class Members' ability to take all compliant rest periods, and there was regularly downtime available to take all necessary rest breaks. (Szamet Decl. ¶53.) Plaintiff acknowledges that rest period claims can be difficult to prove on a classwide basis due to the lack of records. (Szamet Decl. ¶54.) This is especially true when an employer maintains a facially compliant rest period policy. (Szamet Decl. ¶55.) As such, Defendant maintained that this would devolve into a series of mini-trials where the trier of fact would be entitled to hear from each class member as to whether they were in fact provided the opportunity to take all required rest periods each day. (Szamet Decl. ¶56.) Of course, Defendant argued this would defeat class certification and make it nearly impossible to prove this claim on a classwide basis. (Szamet Decl. ¶57.) Based on this significant risk, Plaintiff believed it was appropriate to significantly discount this claim. (Szamet Decl. ¶58.)

d) The Risks Associated with the Reimbursement Claim

Labor Code section 2802 provides that an employer must "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . . ." (Lab. Code, § 2802, subd. (a).)

Plaintiff alleges that Defendant failed to reimburse him and all Class Members for use of their personal cell phones, necessary in executing Class Members' duties under Defendant's employ. (Szamet Decl. ¶59.) Plaintiff contends that Class Members used their cell phones daily to view their schedules and communicate with their managers while off the clock as discussed above. (Szamet Decl. ¶60.) Pursuant to Labor Code section 2802, Plaintiff maintains that Defendant is required to reimburse Plaintiff and the Class for a proportion of their cell phones, respective cell phone bills, and any/all purchased applications. (Szamet Decl. ¶61.)

Defendant denied this claim and argued that Plaintiff and all Class Members were not required to use their personal cellphones for work at all. (Szamet Decl. ¶62.) Defendant argued that it provided employees' schedules in store and there were computers readily available in store to view their schedules and communicate with supervisors, as needed. (Szamet Decl. ¶63.) If a class member chose to use his/her cellphone, it was an available option for convenience for the user, but not a requirement by Defendant. (Szamet Decl. ¶64.) Further, Defendant argued that even assuming Plaintiff were to prevail, the potential damages are extremely minimal since employees maintained personal cell phones anyway and only a very small fraction of their phone plan could potentially be attributed to Defendant. (Szamet Decl. ¶65.)

e) The Risks Associated with the Inaccurate Wage Statement Claim

Labor Code §226(a) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Sections 226(a)(9).

Plaintiff contends that he and all Class Members are issued wage statements that do not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of the Labor Code. (Szamet Decl. ¶66.) Further, Plaintiff alleged that he and the Class Members are issued wage statements that do not include meal and rest premiums as a result of the claims alleged above and when they do, they are not at the accurate rate. (Szamet Decl. ¶67.) Plaintiff maintains Defendant's failure to provide accurate itemized wages statements according to Labor Code § 226(a) was all done on a regular and consistent basis. (Szamet Decl. ¶68.)

Defendant contends that this is a derivative argument, and Plaintiffs did not plead a direct violation of section 226(a). (Szamet Decl. ¶69.) Thus, if Defendant were to succeed on the wage claim based on the arguments set forth above, then Plaintiff's section 226(a) claim would also fail. (Szamet Decl. ¶70.) Defendant also argued that under *Maldonado v. Epsilon Plastics, Inc*., 22 Cal.App.5th 1308 (2018),[3] the Court set out a simple rule for determining what falls under those certain circumstances: hours worked versus wages earned. (Szamet Decl. ¶71.) The court held that "only the absence of the hours worked will give rise to an inference of injury," and "the absence of accurate wages earned will be remedied by the violated wage and hour law itself."] Defendant would apply *Maldonado* to argue that a potential mistake on a wage statement cannot give rise to section 226(a) liability, only completely missing information that is required to be shown. (Szamet Decl. ¶72.) There was a great risk as to recovery on this claim because if Defendant prevailed on

[3] *Maldonado* has since been abrogated by *Naranjo v. Spectrum Security Services Inc*., (May 23, 2022) 13 Cal.5th 93, but was good law at the time of mediation in March 2022.

this argument, the claim would have had no value at all. (Szamet Decl. ¶73.)

f) The Risks Associated with the Waiting Time Penalties Claim

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

Here, many Class Members, including Plaintiff, are no longer employed by Defendant. (Szamet Decl. ¶74.) Plaintiff contends that Defendant has failed to pay employees wages immediately or within 72 hours of termination and/or resignation by not paying all wages and overtime owed. (Szamet Decl. ¶75.) Therefore, under California Law, Plaintiff contends that "waiting time" penalties would be triggered for each former employee in the class. (Szamet Decl. ¶76.) Labor Code section 203 reflects a public policy concern that favors the full and prompt payment of earned wages. (See, e.g., *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

Defendant maintains that it has always paid all wages due to employees at the separation of employment. (Szamet Decl. ¶77.) Defendant argues that a good-faith belief applies here and that its actions were not willful. (*Id.*) Plaintiff contends that meaning of "willful," as used in Section 203, is that an employer has intentionally failed or refused to perform an act which was required to be done per *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201, but this is a very hotly disputed issue and Defendant would certainly have vigorously fought this issue. (Szamet Decl. ¶78.) Because the issue is unsettled, Plaintiff contends that accepting a discount on the exposure for waiting time penalties is appropriate. (*Id.*)

g) The Risks Associated with the PAGA Claim

PAGA is found at Labor Code sections 2698, et seq. Labor Code section 2699.3 permits an "aggrieved employee" to bring a civil action for penalties on behalf of himself and other aggrieved employees, providing the administrative requirements are met.

Civil penalties recovered under PAGA are to be distributed 75% to the State of California's Labor and Workforce Development Agency ("LWDA") for the enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code, and 25% to the affected "aggrieved" employees (including Plaintiff and other California employees of Defendant subject to the payment of wages and wage statement violations alleged). (Lab. Code, § 2699, subd. (i).) As recently noted by the California Supreme Court,

> Because an aggrieved employee's action under the [PAGA] functions as a substitute for an action brought by the government itself, a judgment in that action binds all those, including nonparty aggrieved employees, who would be bound by a judgment in an action brought by the government. The act authorizes a representative action only for the purpose of seeking statutory penalties for Labor Code violations, and an action to recover civil penalties is fundamentally a law enforcement action designed to protect the public and not to benefit private parties.

*Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348 (internal citations and quotations omitted.)[4]

Under Labor Code section 2699.3, the aggrieved employee must first provide written notice by online filing with the LWDA and by certified mail to the employer describing the alleged Labor Code violations. (Lab. Code, § 2699.3, subd. (a)(1).) If the LWDA chooses to investigate the allegations itself, it must notify the employee and employer of its decision within 65 calendar days from the postmark date of the employee's notice letter. (Lab. Code, § 2699.3, subd. (a)(2)(B).) If the LWDA chooses not to investigate, it must notify the employee and employer within 60 calendar days of the employee's notice letter. (Lab. Code, § 2699.3, subd. (a)(2)(A).) Upon receipt of the LWDA's no-investigation letter or if the LWDA provides no response at all within 65 calendar days of the employee's notice, the administrative requirements are complete and the employee is permitted to file a private PAGA action. (Lab. Code, § 2699.3, subd.(a)(2)(A).)

Plaintiff gave the requisite notice on June 4, 2021, and the LWDA did not respond to Plaintiff's letter. (Szamet Decl. ¶79.) Plaintiff then filed a Class Action Complaint for the alleged violations enumerated in the letter. (Szamet Decl. ¶80.) The 65-day waiting period elapsed and

[4] The Parties are aware of the recent decision in *Moriana v. Viking River Cruises*, but that decision did not play a significant role at the time of settlement in this matter.

Plaintiff filed an amended Complaint adding a cause of action for penalties pursuant to Labor Code section 2699, et seq. (Szamet Decl. ¶81.) As such, Plaintiff has therefore exhausted his administrative requirements necessary to bring an action to recover civil penalties as specified in section 2699, subdivision (f)(2). (Szamet Decl. ¶82.)

1. Plaintiff Contends that He Need Not Demonstrate Injury to Prevail

Recovery of civil penalties pursuant to PAGA for violations of Labor Code sections 203, 226.7, 510, 512, 1194, 1199, and 2802 does not require any showing of injury by Plaintiff. PAGA allows "aggrieved employees" to recover civil penalties for violations of underlying Labor Code provisions. (Lab. Code, § 2699, subds. (a), (f).)

Labor Code section 2699, subdivision (f) states that

> For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:
> (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

No civil penalty is provided in Labor Code sections 203, 226.7, 510, 1194, 1199, and 2802 so PAGA authorizes a civil penalty for the violation of this section in the amounts dictated by section 2699, subdivision (f)(2), set forth above. Labor Code section 2699.3 provides that "[a] civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met . . . ." (listing administrative exhaustion requirements which Plaintiff has complied with) and Labor Code section 2699.5 specifically lists Labor Code provisions to which PAGA penalties can attach, among them being Labor Code sections 203, 226.7, 510, 1194, 1199, and 2802. (Lab. Code, § 2699.5.)

Plaintiff contends that he may therefore prevail on this PAGA claim without demonstrating any injury; the failure to comply with the Labor Code is sufficient to establish a violation and recover civil penalties. (Szamet Decl. ¶83.)

2. PAGA Penalties – Labor Code § 2698, *et seq.*

Labor Code section 2699, et seq. constitute the Labor Code Private Attorneys General Act ("PAGA") of 2004. PAGA authorizes individual aggrieved employees to bring claims of certain Labor Code violations on their own behalf and for other current or former employees similarly situated:

> "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Labor Code § 2699(a).

Plaintiff contends he is an "aggrieved employee," as defined by section 2699, subdivision (c), because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed. (Szamet Decl. ¶84.) Prior to bringing this action, he exhausted the administrative remedies set forth in Section 2699.3. (Szamet Decl. ¶85.)

PAGA's statutory penalties are available for violations of Labor Code sections 203, 226.7, 510, 1194, 1199, and 2802 (Labor Code section 2699.5). Labor Code section 2699, subdivision (f), provides that employers who have more than one employee are subject to civil penalties of "one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation." In addition, the statute provides that "[a]ny employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs." (Lab. Code § 2699, subd. (g)(1).)

The statute of limitations for the Labor Code section 2699 penalties is one year under California Code of Civil Procedure section 340, subdivision (a), which applies to any "action upon a statute for a penalty." Thus, Plaintiff contends that Defendant will be responsible for alleged penalties from June 4, 2020 (one year prior to June 4, 2021, when Plaintiff sent the notice letter to LWDA) to the present.

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. ¶86.) If the Court did eventually certify the class, trial of a case involving approximately 35,675 work weeks would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶87.) 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. ¶88.) An appeal would result in further delay for the 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. ¶89.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. (*Id.*) 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 Named Plaintiff and of several person(s) most knowledgeable regarding Defendant's 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.*)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of $650,000.00. (Szamet Decl. ¶90.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Szamet Decl. ¶91.) The Parties arrived at it after extensive investigation and the exchange of a significant amount of data and information, careful 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, and the assistance of an experienced wage and hour class action and PAGA mediator Steve Rottman. (*Id.*)

a) Plaintiff's Assessment of Defendant's Exposure

Plaintiff assessed full value of the wage/overtime claim, without any discount, at approximately $352,752. (Szamet Decl. ¶92.) This calculation assumed 30 minutes per week of off the clock time based on the allegations discussed above. (Szamet Decl. ¶93.) Defendant provided time and pay data for 660 employees. (Szamet Decl. ¶94.) Working with an expert and analyzing the data, which covered years 2017-2021, Class Counsel was able to determine the number of total shifts and workweeks at issue, average rates of pay, and pay periods at issue for the class. (Szamet Decl. ¶95.)

Using the same data set, Counsel assessed full value of the meal period claim, without any discount, at approximately $845,485. (Szamet Decl. ¶96.) This calculation assumes a 100% violation rate for all shifts over 6 hours in length. (Szamet Decl. ¶97.)

Class Counsel assessed full value of the rest period claim, without any discount, at approximately $845,485. (Szamet Decl. ¶98.) Just as with meal periods. this calculation assumes a 100% violation rate for all shifts over 6 hours in length. (Szamet Decl. ¶99.)

With regard to the reimbursement claim analysis, Plaintiff believed that it was reasonable to value assume damages of $25/month per employee for reimbursement of personal cell phone usage for work purposes. This brought the maximum potential damages for this claim to $281,203. (Szamet Decl. ¶100.)

Plaintiff valued the wage statement claim, without discount, at $573,750. (Szamet Decl. ¶101.) Plaintiff used $50 for the initial and $100 for each subsequent wage statement issued with a cap of $4,000. (Szamet Decl. ¶102.) Due to the risk discussed above that 226(a) liability wouldn't attach under *Maldonado*, Plaintiff determined that a steep discount of this claim was fair for settlement purposes. (Szamet Decl. ¶103.)

Plaintiff valued the waiting time claim at $1,137,740. (Szamet Decl. ¶104.) Considering the derivate nature of Labor Code § 203, the state of the law at the time under *Naranjo*, and the dispute over whether class members were owed any wages, Plaintiff determined that accepting a discount on this claim was appropriate. (Szamet Decl. ¶105.)

Finally, Plaintiff calculated the value of the PAGA claim at $615,400 for Class Members (using $100 per pay period). (Szamet Decl. ¶106.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Szamet Decl. ¶107.) A judge can award the statutory maximum of $100 for the initial violation and $200 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶108.) While there is a dearth of available authority, in

Plaintiff's view, were he to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Szamet Decl. ¶109.)

Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the Class Members' claims was approximately $4,651,815. (Szamet Decl. ¶110.) However, there are significant risks associated with the merits as discussed above. (Szamet Decl. ¶111.) Moreover, Plaintiff's assumptions for exposure purposes certainly may be overstated. (Szamet Decl. ¶112.) Indeed, if the assumptions associated with the off the clock wages were changed from 30 minutes per week to 10 minutes per week, the maximum exposure would decrease from $352,752 to $117,584. (Szamet Decl. ¶113.) Likewise, if the assumptions associated with the meal and rest breaks were reduced from a 100% violation rate to 25%, this would reduce the combined exposure from $1,690,970 to $422,742.50. (Szamet Decl. ¶114.) If the assumption associated with the reimbursement claim was reduced from $25/month to $5/month, the exposure decreases to $56,240.60. (Szamet Decl. ¶115.) At the time of settlement, *Naranjo* was undecided so it was reasonable to consider the risk associated with the derivative Labor Code 226(a) claim. (Szamet Decl. ¶116.) If Plaintiff lost that claim altogether as there was no standalone violation pled and it was reduced to $0, the total exposure is reduced further. (Szamet Decl. ¶117.) Finally, it is certainly possible that a Court could reduce the PAGA exposure greatly. (Szamet Decl. ¶118.) If a court were to award 20% of the maximum penalty exposure, that amount is reduced from $615,400 to $123,080. (Szamet Decl. ¶119.)

Taking all of these reductions together, the maximum exposure figure is reduced to $1,857,387. (Szamet Decl. ¶120.) Class Counsel believes this is a more realistic exposure estimated to measure the proposed settlement against. (Szamet Decl. ¶121.) Based on the appropriateness of the discounts articulated herein and the risks articulated above, Class Counsel believes the Gross Settlement Amount of $650,000.00 is fair and reasonable. (Szamet Decl. ¶122.)

5. <u>The Extent of Discovery Completed and Stage of the proceedings</u>

As outlined above, Class Counsel conducted a thorough investigation into the facts of the claims alleged. (Szamet Decl. ¶123.) The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (*Id.*) Plaintiff worked with an expert to evaluate the claim and the Parties relied upon the expert guidance of a well-regarded wage and hour mediator to come to the difficult compromise to settle the case based on the strengths and weaknesses of the claims. (Szamet Decl. ¶124.)

6. The Experience and Views of Counsel

Counsel's experience and success in similar class actions also weigh in favor of preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is very experienced in prosecuting complex employment litigation, and the firm has focused its practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet Decl. ¶¶125-126.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying declaration of Kelsey M. Szamet. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶127.)

7. The Presence of a Governmental Participant

There is no governmental participant in this action except arguably the LWDA. (Szamet Decl. ¶128.) The LWDA has been served with all documents and has not responded. (*Id.*)

8. The Proposed Plan of Allocation Is Fair and Reasonable

Plans of allocation are subject to the same standard of review as class action settlements; they must be "fair, adequate and reasonable." (See, e.g., *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Class Members pro rata based on the number of Compensable Work Weeks during which s/he worked in proportion to the aggregate number of workweeks worked by all Class Members. (Ex. 1 at § I, ¶7.) This allocation distributes Settlement funds proportionally to each class member's potential damages and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶129.)

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

To date, there is one (1) request to be excluded from the proposed Settlement Agreement and zero (0) objections. (Polites Decl. ¶¶9-10.) Such indicates that the reaction of Class Members on the whole is positive and weighs in favor of approval.

## V. ENHANCEMENT TO PLAINTIFF

Plaintiff's Counsel request an enhancement of $7,500.00 to the Named Plaintiff DANGELO RANDLE-TATUM for his work on behalf of the Settlement Class. (Szamet Decl. ¶173.) "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken v. Atlantic Richfiled Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court approved service awards of $300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in 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).

Mr. Randle-Tatum is an adequate class representative because he has diligently, adequately and fairly represented the Settlement Class and has not placed his interests above any member of the Settlement Class. (*see* Declaration of Dangelo Randle-Tatum ("Randle-Tatum Decl.") ¶¶3-14.)

Class Counsel requests an enhancement for Mr. Randle-Tatum's valiant effort and time expended in this matter. The time spent by Mr. Randle-Tatum 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 many Class Members; and responding promptly to Class Counsel's communications regarding settlement. (*Id.*) (Szamet

Decl. ¶174; Randle-Tatum Decl. ¶¶5-10.) As set forth in the Settlement Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶175; Ex. 1 at § III, ¶3.)

Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶176.) The enhancement takes into consideration the time, effort, and expense incurred by Mr. Randle-Tatum in coming forward to litigate this matter on behalf of all Class Members. (Szamet Decl. ¶177.) Additionally, the Named Plaintiff was at risk for paying for Defendant's legal fees and costs in the event that Defendant prevailed at trial. (Szamet Decl. ¶178.)

## 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. ¶183.)

## VII. CONCLUSION

Plaintiff respectfully submits that the proposed Settlement Agreement is fair, adequate, reasonable, and in the best interest of the Class Members. Therefore, Plaintiff respectfully requests that the Court (1) grant Final Approval of the Settlement 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 $15,000.00; and (4) award the Named Plaintiff an enhancement of $7,500.00; and (5) enter judgment.

DATED: April 20, 2023

KINGSLEY & KINGSLEY, APC

By: ______________________________

Kelsey M. Szamet
Attorneys for Plaintiff DANGELO RANDLE-TATUM 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 20, 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:

| | |
|---|---|
| Janet Grumer<br>Evelyn Wang<br>Tiffanie de la Riva<br>jgrumer@dwt.com<br>evelynwang@dwt.com<br>tiffaniedelariva@dwt.com<br>**Davis Wright Tremaine LLP**<br>865 South Figueroa Street, 24th Floor<br>Los Angeles, CA 90017-2566 | Emil Davtyan<br>emil@davtyanlaw.com<br>**Davtyan Law Firm, Inc.**<br>400 N. Brand Blvd, Suite 700<br>Glendale, CA 91203 |

**[XX] (BY ELECTRONIC MAIL THROUGH CASE ANYWHERE)** On interested parties set forth on the attached service list.

**[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]** **(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 20, 2023, at Los Angeles, California.

Taylor Gregg