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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

SALVADOR VENEGAS and SERGIO
LAINEZ, on behalf of themselves and on
behalf of all persons similarly situated,
and on behalf of the State of California, as
private attorney generals,

Plaintiff,

vs.

WWF OPERATING COMPANY, LLC, a
Limited Liability Company; DANONE
NORTH AMERICA PUBLIC BENEFIT
CORPORATION, a Corporation;
DANONE US, LLC, a Limited Liability
Company; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: **21STCV20991**

[Consolidated with Case No. 21PSCV00643
and Case No. 21PSCV01017]

NOTICE OF ENTRY OF JUDGMENT

Hearing Date: October 30, 2023

Hearing Time: 9:30 a.m.

[Hearing scheduled by Order dated June 29,
2023]

Judge: Hon. Maren E. Nelson

Dept: SSC-17

Action Filed: June 4, 2021

Trial Date: Not set

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

2 YOU ARE HEREBY NOTIFIED THAT on October 30, 2023, the Court entered the
3 Order Granting Motion for Final Approval in the above entitled action and on November 9,
4 2023, the Court entered Judgment in the above entitled action. A true and correct copy of
5 the Judgment is attached hereto as Exhibit #1. A true and correct copy of the Order
6 Granting Motion for Final Approval is attached hereto as Exhibit #2. The Order and the
7 Judgment are also served on the LWDA pursuant to the Proof of Service below.

8 Respectfully submitted,

9
10 Dated: November 21, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

11 By: /s/ Kyle Nordrehaug
12 Kyle R. Nordrehaug
13 Attorneys for Plaintiffs
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1 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

2 I, Kyle Nordrehaug, am employed in the County of San Diego, State of California. I am
3 over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La
4 Jolla, California 92037.

5 On November 21, 2023, I served the document(s) described as:

6 **1. Notice of Entry of Judgment**

7 XX : (BY ELECTRONIC SERVICE (via electronic service provider): I caused a copy of the
8 document(s) referenced above to be electronically transmitted to Case Anywhere, an
9 electronic filing/service provider at www.caseanywhere.com pursuant to the Court's Order
governing the matter mandating electronic service. The transmission was reported as
complete and without error to the following e-mail address(es):

10 Robert S. Blumberg
rblumberg@littler.com
11 Melanie Rollins
mrollins@littler.com
12 LITTLER MENDELSON P.C.
633 West 5th Street, 63rd Floor
13 Los Angeles, California 90071
Telephone: (213) 443-4300
14 Facsimile: (213) 443-4299

15 Attorneys for Defendants

16 X (ONLINE TO THE LWDA): I caused the above-described document to be delivered to the
17 Labor Workforce Development Agency via online process at the PAGA Filing website in
18 accordance with the procedure imposed by the LWDA.

19 X (State): I declare under penalty of perjury under the laws of the State of California that the
20 above is true and correct.

21 Executed on November 21, 2023 at La Jolla, California.

22 /s/ Kyle Nordrehaug
23 Kyle Nordrehaug
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FILED
Superior Court of California
County of Los Angeles

11/09/2023

David W. Slayton, Executive Officer / Clerk of Court

By: M. Mata Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

SALVADOR VENEGAS and SERGIO
LAINEZ, on behalf of themselves and on
behalf of all persons similarly situated,
and on behalf of the State of California, as
private attorney generals,

Plaintiff,

vs.

WWF OPERATING COMPANY, LLC, a
Limited Liability Company; DANONE
NORTH AMERICA PUBLIC BENEFIT
CORPORATION, a Corporation; DANONE
US, LLC, a Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

CASE NO.: **21STCV20991**
[Consolidated with Case No. 21PSCV00643
and Case No. 21PSCV01017]

PROPOSED FINAL JUDGMENT

Hearing Date: October 30, 2023
Hearing Time: 9:30 a.m.

Judge: Hon. Maren Nelson
Dept.: 17

Action Filed: June 4, 2021
Trial date: None Set

JUDGMENT

1 The unopposed motion of Plaintiffs Salvador Venegas and Plaintiff Sergio Lainez
2 (collectively “Plaintiffs”) for an order finally approving the Class Action Settlement Agreement
3 (“Agreement” or “Settlement”) with Defendants WWF Operating Company, LLC, Danone North
4 America Public Benefit Corporation and Danone US, LLC (“Defendants”), attorneys’ fees and
5 costs, service payment, and the expenses of the Administrator duly came on for hearing on
6 October 30, 2023 before the Honorable Maren Nelson. The Court granted the motion. The Court
7 having entered the Order granting Motion for Final Approval of Class Action Settlement on
8 October 30, 2023, and good cause appearing therefor,

9 **IT IS HEREBY ORDERED, ADJUDICATED ANCRECREED THAT:**

10 1. The certification of the Class for the purposes of settlement is confirmed. The
11 Class is hereby defined as follows:

12 All individuals who are or previously were employed by Defendants WWF
13 Operating Company, LLC, Danone North America Public Benefit Corporation and
14 Danone US, LLC in California who were classified as hourly, non-exempt
employees at any time during the Class Period.

15 The “Class Period” is June 4, 2017 through August 5, 2022.

16 2. All persons who meet the foregoing definition are members of the Class, except for
17 those individuals who filed a valid request for exclusion (“opt out”) from the Class. The one (1)
18 individual who requested exclusion from the Class was Freddy Bautista.

19 3. The Agreement was finally approved as fair, reasonable, adequate, and in the best
20 interest of the Class by the Order Granting Motion for Final Approval of Class Action Settlement
21 on October 30, 2023 and the findings in that Order are incorporated herein.

22 4. Notice of entry of this Final Approval Order and Judgment shall be given to all
23 Parties by Class Counsel on behalf of Plaintiffs and all Class Members. The Final Approval Order
24 and Judgment shall be posted on Class Counsel’s website as set forth in the Class Notice to the
25 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
26 to individual Class Members.

1 5. If the Agreement does not become final and effective in accordance with the terms
2 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
3 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
4 revert to their respective positions as of before entering into the Agreement, and expressly reserve
5 their respective rights regarding the prosecution and defense of this Action, including all available
6 defenses and affirmative defenses, and arguments that any claim in the Action could not be
7 certified as a class action and/or managed as a representative action.

8 6. Except as set forth in the Agreement, the Order Granting Motion for Final
9 Approval of Class Action Settlement, and this Judgment, Plaintiffs, and all members of the Class,
10 shall take nothing in the Action.

11 7. All Parties shall bear their own attorneys' fees and costs, except as otherwise
12 provided in the Agreement, the Order Granting Motion for Final Approval of Class Action
13 Settlement, and in this Judgment.

14 8. Effective on the date when Defendants fully fund the entire Gross Settlement
15 Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class
16 Payments, Plaintiffs, Participating Class Members, Aggrieved Employees and the LWDA will
17 release claims against all Released Parties as follows:

18 (a) All Participating Class Members, on behalf of themselves and their
19 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
20 and assigns, release Released Parties from all claims that were alleged, or reasonably could have
21 been alleged based upon the facts alleged, in the Operative Complaint which occurred during the
22 Class Period, including, any and all claims, actions, and causes of action, arising during the Class
23 Period, for: (1) failure to pay wages, including minimum wages, for all time worked pursuant to
24 California Labor Code sections 1194, 1197, and 1197.1 and the IWC Wage Orders; (2) failure to
25 pay overtime wages pursuant to California Labor Code sections 510, 1194, and 1198 and the IWC
26 Wage Orders; (3) failure to provide meal periods pursuant to California Labor Code sections 226.7
27 and 512 and the IWC Wage Orders, or to properly provide meal period premium payments; (4)
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1 failure to provide rest periods pursuant to California Labor Code sections 226.7 and 512 and the
2 IWC Wage Orders, or to provide rest period premium payments; (5) failure to pay all wages owed
3 at termination pursuant to California Labor Code sections 201-203 and the IWC Wage Orders; (6)
4 failure to pay all wages in a timely manner during employment pursuant to California Labor Code
5 section 204 and the IWC Wage Orders; (7) failure to furnish accurate itemized wage statements
6 pursuant to California Labor Code section 226(a) and the IWC Wage Orders; (8) failure to
7 reimburse all necessary business expenses pursuant to California Labor Code sections 2800 and
8 2802 and the IWC Wage Orders; and (9) violations of California Business & Professions Code
9 sections 17200, *et seq.* Except as set forth in this paragraph, Participating Class Members do not
10 release any other claims, including claims for vested benefits, wrongful termination, violation of
11 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
12 workers' compensation, or claims based on facts occurring outside the Class Period.

13 (b) All Aggrieved Employees and the State of California and LWDA are
14 deemed to release, on behalf of themselves and their respective former and present representatives,
15 agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all
16 PAGA claims pled or could have been pled based on the factual allegations contained in the
17 Operative Complaint and PAGA Notices sent by Plaintiffs that occurred during the PAGA Period,
18 including PAGA claims for violations of California Labor Code sections 201, 202, 203, 204,
19 226(a), 226.7, 227.3, 246 *et. seq.* 351, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1,
20 1198, 2800 and 2802, California Code of Regulations, Title 8, Section 11040, Subdivisions 5(A)-
21 (B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and
22 IWC Wage Orders 1-2001, 4-2001, and 16-2001. Except as set forth in this paragraph, the
23 Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims,
24 claims for wrongful termination, discrimination, unemployment insurance, disability and worker's
25 compensation, and claims outside of the PAGA Period.

26 (c) Plaintiffs and their respective former and present spouses, representatives,
27 agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge
28

1 Released Parties from all claims, transactions, or occurrences that occurred during the Class
2 Period, including, but not limited to: (a) all claims that were, or reasonably could have been,
3 alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that
4 were, or reasonably could have been, alleged based on facts contained in the Operative Complaint,
5 Plaintiff's PAGA Notice ("Plaintiffs' Release").

6 Plaintiffs' Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiffs'
7 Release, Plaintiffs expressly waive and relinquishes the provisions, rights, and benefits, if
8 any, of section 1542 of the California Civil Code, which reads:

9 A general release does not extend to claims that the creditor or releasing
10 party does not know or suspect to exist in his or her favor at the time of
11 executing the release, and that if known by him or her would have materially
affected his or her settlement with the debtor or Released Party.

12 9. For any Class Member whose Individual Class Payment check or Individual PAGA
13 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
14 funds represented by such checks to a Court-approved nonprofit organization or foundation
15 consistent with Code of Civil Procedure Section 384(b) ("*Cy Pres* Recipient"). The *Cy Pres*
16 Recipient is Children's Advocacy Institute.

17 10. The Court hereby enters judgment in the entire Action as of the filing date of this
18 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the
19 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction
20 over the interpretation, implementation, and enforcement of the Settlement and all orders entered
21 in connection therewith pursuant to California Code of Civil Procedure section 664.6.

22 11. This document shall constitute a judgment (and separate document constituting said
23 judgment) for purposes of California Rules of Court, Rule 3.769(h).

24 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

25
26 Dated: 11/09/2023

27 
28 HON. MAREN NELSON
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
JUDGMENT

FILED
Superior Court of California
County of Los Angeles

OCT 30 2023

David W. Slayton, Executive Officer/Clerk of Court

By: R. CORLETO, Deputy

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

SALVADOR VENEGAS and SERGIO
LAINEZ, on behalf of themselves and on
behalf of all persons similarly situated, and
on behalf of the State of California, as
private attorney generals,

Plaintiff,

v.

WWF OPERATING COMPANY, LLC, a
Limited Liability Company; DANONE
NORTH AMERICA PUBLIC BENEFIT
CORPORATION, a Corporation; DANONE
US, LLC, a Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 21STCV20991
[Consolidated with Case No. 21PSCV00643
and Case No. 21PSCV01017]


[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT

Date: October 30, 2023
Time: 9:00 a.m.
Dept.: SSC-17

1 **I. BACKGROUND**

2 Plaintiffs Salvador Venegas and Sergio Lainez sue their former employer,
3 Defendants WWF Operating Company, LLC, Danone North America Public Benefit
4 Corporation and Danone US, LLC (collectively, "Defendants"), for alleged wage and
5 hour violations. Plaintiffs seek to represent a class of Defendants' current and former
6 non-exempt employees.

7 On June 4, 2021, Plaintiff Venegas filed a class action complaint against
8 Defendants alleging causes of action for various Labor Code and Business and
9 Professions Code violations ("Venegas Action").

10 On June 2, 2021, Plaintiff Venegas served his PAGA Notice on Defendants and
11 the LWDA, and on August 9, 2021, Plaintiff Venegas filed a representative action
12 complaint against Defendants asserting a single cause of action for violation of the
13 Private Attorneys General Act (Labor Code §§ 2698. et seq.) ("PAGA"), Case No.
14 21PSCV00643 ("Venegas PAGA Action")

15 On December 13, 2021, Plaintiff Lainez filed a Representative Action Complaint
16 against Defendants, asserting a single cause of action for violation of PAGA, Case No.
17 21PSCV01017 ("Lainez PAGA Action"). On August 2, 2022, the Lainez PAGA
18 Action was consolidated with the lower numbered Venegas PAGA Action for all
19 purposes.

20 On November 29, 2022, in the Venegas Action, Plaintiffs filed the operative
21 First Amended Consolidated Class and Representative Action Complaint against
22 Defendants, asserting claims that Defendants: (1) violated California Business and
23 Professions Code § 17200 et seq.; (2) failed to pay minimum wages in violation of
24 California Labor Code §§ 1194, 1197, and 1197.1; (3) failed to pay overtime wages in
25 violation of California Labor Code § 510, et seq.; (4) failed to provide required meal

1 periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC
2 Wage Order; (5) failed to provide required rest periods in violation of California Labor
3 Code §§ 226.7 & 512 and the applicable IWC Wage Order; (6) failed to provide
4 accurate itemized wage statements in violation of California Labor Code § 226; (7)
5 failed to reimburse employees for required expenses in violation of California Labor
6 Code § 2802; (8) failed to provide wages when due in violation of California Labor
7 Code §§ 201, 202 and 203; and (9) violated PAGA, Cal. Labor Code §§ 2698, et seq.

8 On March 9, 2022, the parties participated in an all-day mediation presided over
9 by Tripper Ortman, which did not result in settlement. After engaging in discovery and
10 further negotiations, the parties agreed to settle the action based on a mediator's
11 proposal which was memorialized in the form of a Memorandum of Understanding.
12 The terms were finalized in the Class Action and PAGA Settlement Agreement, a copy
13 of which was filed with the Court on January 19, 2023.

14 On May 25, 2023, the Court issued a "checklist" to the parties regarding certain
15 deficiencies with the proposed settlement. In response, counsel filed further briefing on
16 June 6 and 22, 2023. Having considered the argument and representations of counsel in
17 writing and at hearing on June 29, 2023, the Court granted preliminarily approval of the
18 settlement. Notice was given to the Class Members as ordered (see Declaration of
19 Nicole Bench ("Bench Decl.")). Now before the Court is Plaintiff's motion for final
20 approval of the Settlement Agreement, including for payment of fees, costs, and a
21 service award to the named plaintiffs. For the reasons set forth below, the Court grants
22 final approval of the settlement.

23 //

24 //

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1 **II. THE TERMS OF THE SETTLEMENT**

2
3 **A. SETTLEMENT CLASS DEFINITION**

4 "Class" means all individuals who are or previously were employed by
5 Defendants WWF Operating Company, LLC, Danone North America Public Benefit
6 Corporation and Danone US, LLC in California who were classified as hourly, non-
7 exempt employees at any time during the Class Period. (§1.5)

8 "Class Period" means the period of time from June 4, 2017 through August 5,
9 2022. (§1.13)

10 "Aggrieved Employees" means all individuals who are or previously were
11 employed by Defendants WWF Operating Company, LLC, Danone North America
12 Public Benefit Corporation and Danone US, LLC in California who were classified as
13 hourly, non-exempt employees at any time during the PAGA Period. (§1.4)

14 "PAGA Period" means the period of time from June 4, 2020 through August 5,
15 2022. (§1.32)

16 "Participating Class Member" means a Class Member who does not submit a
17 valid and timely Request for Exclusion. (§1.36)

18
19 **B. THE MONETARY TERMS OF SETTLEMENT**

20 The essential monetary terms are as follows:

- 21 • The Gross Settlement Amount ("GSA") is **\$1,250,000** (§3.1). This includes
22 payment of a PAGA penalty of **\$25,000** to be paid 75% to the LWDA (\$18,750)
23 and 25% to the Aggrieved Employees (\$6,250) (§3.2.d).
 - 24 ○ Escalator Clause: Based on its records, Defendants have represented there
25 were approximately 337 Class Members who worked 56,287 workweeks

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during the Class Period up until March 9, 2022. Defendants, therefore, estimated that the number of workweeks through the Class Period is approximately 61,699. (¶4.1) Should the number of Workweeks in the Class Period increase by more than ten percent (10%) of the estimate stated in Paragraph 4.1 due to inaccurate information or a failure to disclose covered Class Members, Defendants will increase the Gross Settlement Amount by a proportionate additional amount for each additional workweek in excess of ten percent (10%). (¶9)

- At final approval, the settlement administrator represents that the total number of workweeks worked by the Participating Class Members during the class period is 63,515. (Bench Decl. ¶14.) This represents a 2.9% increase in the workweek total from the initial estimate. Accordingly, the escalator clause was not triggered.

- The Net Settlement Amount (“Net”) (\$720,334) estimated at preliminary approval is the GSA less:
 - Up to **\$416,666** (33 1/3%) for attorney fees (¶3.2.b);
 - Up to **\$53,000** for attorney costs (*Ibid.*);
 - Up to **\$20,000 total [\$10,000 each]** for service awards to the proposed class representatives (¶3.2.a); and
 - Up to **\$15,000** for settlement administration costs (¶3.2.c).
- Defendants will separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments (¶3.1).
- Assuming the Court approves all maximum requested deductions, approximately \$722,384 will be available for automatic distribution to participating class members. The average settlement share will be approximately \$2,012.21.

1 (\$722,384 Net ÷ 359 participating class members = \$2,012.21). In addition,
2 each Aggrieved Employee will receive a portion of the PAGA penalty, estimated
3 to be \$20.23 per Aggrieved Employee. (\$6,250 or 25% of \$25,000 PAGA
4 penalty ÷ 309 Aggrieved Employees = \$20.23).

- 5 • There is no Claim Requirement (§3.1).
- 6 • The settlement is not reversionary (§3.1).
- 7 • Individual Settlement Share Calculation: Each Participating Class Member's
8 Individual Class Payment will be calculated by (a) dividing the Net Settlement
9 Amount by the total number of Workweeks worked by all Participating Class
10 Members during the Class Period and (b) multiplying the result by each
11 Participating Class Member's Workweeks. (§3.2.e) Non-Participating Class
12 Members will not receive any Individual Class Payments. The Administrator
13 will retain amounts equal to their Individual Class Payments in the Net
14 Settlement Amount for distribution to Participating Class Members on a pro rata
15 basis. (§3.2.e.ii)
- 16 • PAGA Payment Calculation: The Administrator will calculate each Individual
17 PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25%
18 share of PAGA Penalties (\$6,250) by the total number of PAGA Period Pay
19 Periods worked by all Aggrieved Employees during the PAGA Period and (b)
20 multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods.
21 (§3.2.d.i)
- 22 • Tax Withholdings: Each Participating Class Member's Individual Class Payment
23 will be allocated as 25% to wages; 75% to non-wages, expense reimbursement,
24 interest and penalties (§3.2.e.i). The Administrator will report the Individual
25 PAGA Payments on IRS 1099 Forms. (§3.2.d.ii)

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- 1 • Funding of Settlement: Defendants shall fully fund the Gross Settlement
2 Amount, and also fund the amounts necessary to fully pay Defendants' share of
3 payroll taxes by transmitting the funds to the Administrator no later than thirty
4 (30) days after the Effective Date. (§4.3)
 - 5 • Distribution: Within fifteen (15) days after Defendants fund the Gross
6 Settlement Amount, the Administrator will mail checks for all Individual Class
7 Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the
8 Administration Expenses Payment, the Class Counsel Fees Payment, the Class
9 Counsel Litigation Expenses Payment, and the Class Representative Service
10 Payment. (§5.1)
 - 11 • Uncashed Settlement Payment Checks: The face of each check shall prominently
12 state the date (not less than 180 days after the date of mailing) when the check
13 will be voided. (§5.2) For any Class Member whose Individual Class Payment
14 check or Individual PAGA Payment check is uncashed and cancelled after the
15 void date, the Administrator shall transmit the funds represented by such checks
16 to a Court-approved nonprofit organization or foundation consistent with Code
17 of Civil Procedure Section 384(b) ("Cy Pres Recipient"). (§5.4) The parties
18 stipulated to designate The Children's Advocacy Institute as the cy pres
19 recipient. (See Stipulation Re: Cy Pres Beneficiary for Settlement filed June 9,
20 2023.)

21
22 **C. TERMS OF RELEASES**

- 23 • Releases of Claims: Effective on the date when Defendants fully fund the entire
24 Gross Settlement Amount and fund all employer payroll taxes owed on the
25 Wage Portion of the Individual Class Payments, Plaintiffs, Participating Class

Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows: (§6)

- Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged based upon the facts alleged, in the Operative Complaint which occurred during the Class Period, including, any and all claims, actions, and causes of action, arising during the Class Period, for: (1) failure to pay wages, including minimum wages, for all time worked pursuant to California Labor Code sections 1194, 1197, and 1197.1 and the IWC Wage Orders; (2) failure to pay overtime wages pursuant to California Labor Code sections 510, 1194, and 1198 and the IWC Wage Orders; (3) failure to provide meal periods pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage Orders, or to properly provide meal period premium payments; (4) failure to provide rest periods pursuant to California Labor Code sections 226.7 and 512 and the IWC Wage Orders, or to provide rest period premium payments; (5) failure to pay all wages owed at termination pursuant to California Labor Code sections 201-203 and the IWC Wage Orders; (6) failure to pay all wages in a timely manner during employment pursuant to California Labor Code section 204 and the IWC Wage Orders; (7) failure to furnish accurate itemized wage statements pursuant to California Labor Code section 226(a) and the IWC Wage Orders; (8) failure to reimburse all necessary business expenses pursuant to California Labor Code sections 2800 and 2802 and the IWC Wage Orders; and (9) violations of California Business & Professions Code sections 17200, et seq. Except as set forth in this Paragraph 6.2

1 of this Agreement, Participating Class Members do not release any other claims,
2 including claims for vested benefits, wrongful termination, violation of the Fair
3 Employment and Housing Act, unemployment insurance, disability, social
4 security, workers' compensation, or claims based on facts occurring outside the
5 Class Period. (§6.2)

- 6 • Release of PAGA Claims: All Aggrieved Employees and the State of California
7 and LWDA are deemed to release, on behalf of themselves and their respective
8 former and present representatives, agents, attorneys, heirs, administrators,
9 successors, and assigns, the Released Parties from all PAGA claims pled or
10 could have been pled based on the factual allegations contained in the Operative
11 Complaint and PAGA Notices sent by Plaintiffs that occurred during the PAGA
12 Period, including PAGA claims for violations of California Labor Code sections
13 201, 202, 203, 204, 226(a), 226.7, 227.3, 246 et. seq. 351, 510, 512(a), 551, 552,
14 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, California Code of
15 Regulations, Title 8, Section 11040, Subdivisions 5(A)-(B), California Code of
16 Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and IWC
17 Wage Orders 1-2001, 4-2001, and 16-2001. Except as set forth in this Paragraph
18 6.3 of this Agreement, the Released PAGA Claims do not include other PAGA
19 claims, underlying wage and hour claims, claims for wrongful termination,
20 discrimination, unemployment insurance, disability and worker's compensation,
21 and claims outside of the PAGA Period. (§6.3)

- 22 ○ "PAGA Notice" means Plaintiff Salvador Venegas' June 3, 2021 letter to
23 Defendants and the LWDA and Plaintiff Sergio Lainez's September 29,
24 2021 letter to Defendants and the LWDA providing notice pursuant to
25 Labor Code section 2699.3, subd.(a). (§1.34)

- 20231021
- 1 • “Released Parties” means: Defendants and each of their former and present
 - 2 directors, officers, shareholders, owners, attorneys, insurers, predecessors,
 - 3 successors, assigns and subsidiaries. (§1.41)
 - 4 • The named Plaintiffs will also provide a general release and a waiver of the
 - 5 protections of Cal. Civ. Code §1542. (§6.1)
 - 6 • The releases are effective on the date when Defendant fully funds the entire
 - 7 Gross Settlement Amount, which will occur no later than thirty (30) days after
 - 8 the Effective Date. (§4.3)
 - 9

10 **III. ANALYSIS OF SETTLEMENT AGREEMENT**

11 “Before final approval, the court must conduct an inquiry into the fairness of the

12 proposed settlement.” Cal. Rules of Court, rule 3.769(g). “If the court approves the

13 settlement agreement after the final approval hearing, the court must make and enter

14 judgment. The judgment must include a provision for the retention of the court's

15 jurisdiction over the parties to enforce the terms of the judgment. The court may not

16 enter an order dismissing the action at the same time as, or after, entry of judgment.”

17 Cal. Rules of Court, rule 3.769(h).

18 As discussed more fully in the Order conditionally approving the settlement, “[i]n

19 a class action lawsuit, the court undertakes the responsibility to assess fairness in order to

20 prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class

21 action. The purpose of the requirement [of court review] is the protection of those class

22 members, including the named plaintiffs, whose rights may not have been given due

23 regard by the negotiating parties.” See *Consumer Advocacy Group, Inc. v. Kintetsu*

24 *Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation marks

25 omitted]; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245

1 (“*Wershba*”), disapproved on another ground in *Hernandez v. Restoration Hardware*
2 (2018) 4 Cal.5th 260 [Court needs to “scrutinize the proposed settlement agreement to the
3 extent necessary to reach a reasoned judgment that the agreement is not the product of
4 fraud or overreaching by, or collusion between, the negotiating parties, and that the
5 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”] [internal
6 quotation marks omitted].

7 “The burden is on the proponent of the settlement to show that it is fair and
8 reasonable. However ‘a presumption of fairness exists where: (1) the settlement is
9 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
10 allow counsel and the court to act intelligently; (3) counsel is experienced in similar
11 litigation; and (4) the percentage of objectors is small.’” See *Wershba, supra*, 91
12 Cal.App.4th at pg. 245, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794,
13 1802. Notwithstanding an initial presumption of fairness, “the court should not give
14 rubber-stamp approval.” See *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
15 116, 130. “Rather, to protect the interests of absent class members, the court must
16 independently and objectively analyze the evidence and circumstances before it in order
17 to determine whether the settlement is in the best interests of those whose claims will be
18 extinguished.” *Ibid.*, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:41, p. 90. In
19 that determination, the court should consider factors such as “the strength of plaintiffs’
20 case, the risk, expense, complexity and likely duration of further litigation, the risk of
21 maintaining class action status through trial, the amount offered in settlement, the extent
22 of discovery completed and stage of the proceedings, the experience and views of
23 counsel, the presence of a governmental participant, and the reaction of the class
24 members to the proposed settlement.” *Id.* at 128. This “list of factors is not exclusive and
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the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba, supra*, 91 Cal.App.4th at pg. 245.)

A. A PRESUMPTION OF FAIRNESS EXISTS

The Court preliminarily found in its Order of June 29, 2023 that the presumption of fairness should be applied. No facts have come to the Court’s attention that would alter that preliminary conclusion. Accordingly, the settlement is entitled to a presumption of fairness as set forth in the preliminary approval order.

B. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The settlement was preliminarily found to be fair, adequate and reasonable. Notice has now been given to the Class and the LWDA. The notice process resulted in the following:

Number of class members: 360

Number of notices mailed: 360

Number of undeliverable notices: 3

Number of opt-outs: 1

Number of objections: 0

Number of participating class members: **359**

(Bench Decl. ¶¶5-14.)

The Court finds that the notice was given as directed and conforms to due process requirements. Given the reactions of the Class Members and the LWDA to the proposed settlement and for the reasons set for in the Preliminary Approval order, the settlement is found to be fair, adequate, and reasonable.

C. CLASS CERTIFICATION IS PROPER

For the reasons set forth in the preliminary approval order, certification of the Class for purposes of settlement is appropriate.

1 **D. ATTORNEY FEES AND COSTS**

2 Class Counsel requests **\$416,666** (33 1/3%) for attorney fees and **\$53,000** for
3 costs. (Memo ISO Attorneys' Fees at 4:14-16, 13:9-11.)

4 Courts have an independent responsibility to review an attorney fee provision and
5 award only what it determines is reasonable. *Garabedian v. Los Angeles Cellular*
6 *Telephone Company* (2004) 118 Cal.App.4th 123, 128. A percentage calculation is
7 permitted in common fund cases. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480,
8 503.

9 In the instant case, fees are sought pursuant to the percentage method, as cross-
10 checked by lodestar. (Memo ISO Attorneys' Fees at pp. 4-13.) The \$416,666 fee request
11 is approximately one-third of the Gross Settlement Amount.

12 A lodestar is calculated by multiplying the number of hours reasonably expended
13 by the reasonably hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084,
14 1095-1096 (*PLCM*). "Generally, '[t]he lodestar is calculated using the reasonable rate
15 for comparable legal services in *the local community* for noncontingent litigation of the
16 same type, multiplied by the reasonable number of hours spent on the case.' "
17 *Environmental Protection Information Center v. Dept. of Forestry & Fire Protection*
18 (2010) 190 Cal.App.4th 217, 248, quoting *Nichols v. City of Taft* (2007) 155
19 Cal.App.4th 1233, 1242-1243.

20 As to the reasonableness of the rate and hours charged, trial courts consider
21 factors such as "the nature of the litigation, its difficulty, the amount involved, the skill
22 required in its handling, the skill employed, the attention given, the success or failure,
23 and other circumstances." *PLCM, supra*, 22 Cal.4th at p. 1096. "The evidence should
24 allow the court to consider whether the case was overstaffed, how much time the
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attorneys spent on particular claims, and whether the hours were reasonably expended.”

Christian Research Institute v. Alnor (2008) 165 Cal.App.4th 1315, 1320.

Attorney Nordrehaug represents that his firm spent more than 649 hours on the case. With attorney fees at hourly rates ranging from \$450 to \$995, the lodestar for his firm is \$464,557.93. He attaches his firm’s billing records in support. (Declaration of Kyle Nordrehaug ISO Attorneys’ Fees ¶6, Exhibits 3 and 4 thereto.) Nordrehaug does not indicate whether his firm’s rates have been approved by other courts, but contends that the rates charged by his firm are in line with the prevailing rates of attorneys in the local legal community for similar work based upon the Laffey Matrix, which he attaches a copy of. (*Id.* at ¶6, Exhibit 5 thereto.) The Laffey matrix reference relied upon is of limited usefulness as it does not break down for area of practice or geography. *Cf.* *Stratton v. Beck*, 9 Cal. App. 5th 483, 496, (2017) (hourly rate of \$450 was proper where lawyer had decades of experience in labor matters and presented evidence of rates of \$500 to \$800 per hour—charged by similarly experienced labor lawyers in the Los Angeles area); *Davis v. Brown Shoe Co.* (E.D. Cal.) 2015 U.S. Dist. LEXIS 149010 (rates for experienced wage and hour lawyers in Los Angeles \$695-\$395 per hour); *Ruiz v. JCP Logistics, Inc.* (C.D. Cal. Aug. 12, 2016, No. SACV 13-1908-JLS (ANx)) 2016 U.S. Dist. LEXIS 189280, at *28-30.) (rejecting Laffey matrix and setting \$600 per hour for experienced wage and hour class action counsel). He also asserts that his firm’s rates are reasonable in comparison to counsel practicing complex and class litigation as detailed in the National Law Journal Billing Survey, though he does not attach a copy. (*Id.* at ¶6.)

Attorney Aiwazian represents that his firm spent 266.30 hours on the case. Using a blended hourly rate of \$650, the lodestar for his firm is \$173,095. Declaration of Edwin Aiwazian ISO Final ¶¶11-13.) He attaches his firm’s billing records in support,

though they do not specify which attorney performed each task. (*Id.* at Exhibit A.) He asserts that his firm has been awarded attorneys' fees compensating them at the rate of at least \$650 per hour by courts granting approval of settlements in other wage-and-hour class action and/or representative action cases, with examples. (*Id.* at ¶12.)

Counsel's combined lodestar of \$637,652.93 implies a multiplier of 0.65 to reach the requested fees. Here, the **\$416,666** fee request represents a reasonable percentage of the total funds paid by Defendant. Further, the notice expressly advised class members of the fee request, and no one objected. (Bench Decl. ¶12, Exhibit A thereto.) Accordingly, the Court awards fees in the amount of **\$416,666**. No finding is made as to the reasonableness of the claimed rates.

Fee Split: Class Counsel Fees Payment awarded shall be allocated seventy-five percent (75%) to Blumenthal Nordrehaug Bhowmik De Blouw LLP and twenty-five percent (25%) to Lawyers for Justice. (¶3.2.b) Class Counsel represents that each Plaintiff consented to the fee split in writing. (Supp. Decl. of Joanna Ghosh filed June 6, 2023, ¶8.)

Class Counsel requests **\$53,000** in costs. This equals the \$53,000 cap provided in the settlement agreement (¶3.2.b). The amount was disclosed to Class Members in the Notice, and no objections were received. (Bench Decl. ¶12, Exhibit A thereto.) Attorney Nordrehaug represents that his firm incurred \$61,860.91 in actual costs, while attorney Aiwazian represents that his firm incurred \$1,814, totaling \$63,674.91. (Nordrehaug Decl. ISO Attorneys' Fees, Exhibits 3 and 4; Aiwazian Decl. ISO Final, Exhibit B.) Costs include: Expert Fees (\$17,327.50), Mediation (\$10,000), and Court Reporting (\$7,651.52). (*Id.*)

Included in the costs are \$17,072 for LEXIS/NEXIS incurred by Mr. Nordrehaug's firms. This appears to be attorney overhead and not payable by the class.

1 In addition, there is an unexplained cost of \$5,000 for "Employment Research
2 Corporation" in Nordrehaug Decl., Exhibit 4 pg. 16. Counsel should be prepared to
3 explain this cost at oral argument.

4 For all of the foregoing reasons, costs of \$ ^{35,928} A are approved.

5 **E. SERVICE AWARDS TO CLASS REPRESENTATIVES**

6 Service awards are established in California and the Ninth Circuit in class
7 actions. See *Cellphone Termination Fee Case* (2010), 186 Cal.App.4th 1380, 1393-
8 1394 (noting the "scholarly debate about the propriety of individual awards to named
9 plaintiffs" and the "surprising dearth of California authority directly addressing this
10 question"); *In re Apple Device Litigation* (9th Cir. 2022) 50 F. 4th 769, 785; *Roes, 1-2 v.*
11 *SFBSC Mgmt., LLC* (9th Cir. 2019) 944 F.3d 1035, 1057 (reasonable incentive
12 awards are permitted to compensate class representatives for work on behalf of the class
13 and financial or reputational risk undertaken in bringing the action).

14 Their apparent purpose is to reimburse actual expenses or to compensate a plaintiff
15 where the market would not otherwise produce a plaintiff. *In Re Continental Securities*
16 *Litigation* (7th Cir. 1992) 962 F. 2d 566, 571-572. Under existing California and Ninth
17 Circuit authority they are permitted where there is a showing of the time and effort
18 expended by the individual and a reasoned explanation of financial or other risks
19 undertaken by the class representative. See *Clark v. American Residential Services LLC*
20 (2009) 175 Cal.App.4th 785, 806-807; see also *Cellphone Termination Cases* (2010) 186
21 Cal.App.4th 1380, 1394-1395 ["Criteria courts may consider in determining whether to
22 make an incentive award include: (1) the risk to the class representative in commencing
23 suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered
24 by the class representative; (3) the amount of time and effort spent by the class
25 representative; (4) the duration of the litigation and; (5) the personal benefit (or lack

thereof) enjoyed by the class representative as a result of the litigation. (Citations.)”]. Although no amount is set, in the Ninth Circuit many courts have found \$5,000 presumptively reasonable. See *Morrison v. Am. Nat’l Red Cross* (N.D.Cal. Jan. 8, 2021, No. 19-cv-02855-HSG) 2021 U.S.Dist.LEXIS 4043, at *24 (citing cases).

In determining the reasonableness of a requested incentive award, some courts have considered, among other factors, the proportionality between the incentive award requested and the average class member's recovery. *Id.* See also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412-413. (Service award that was approximately twice what was paid to class members was appropriate exercise of Court’s discretion). In addition, a service award is not additional consideration for a release of additional claims. See *Grady v. RCM Techs., Inc.* (C.D.Cal. May 2, 2023, No. 5:22-cv-00842 JLS-SHK) 2023 U.S.Dist.LEXIS 84145, at *24-32 and cases cited therein.

Class Representatives Salvador Venegas and Sergio Lainez request enhancement awards of **\$10,000 each**, totaling **\$20,000**. (Memo ISO Attorneys’ Fees at 13:22-24.) They urge that the awards are appropriate for the following reasons:

Plaintiff Venegas represents that his contributions to the action include: speaking with his attorneys about Defendant’s policies and procedures, providing them with documents and answering their questions, reviewing the complaint and other case documents, preparing for his deposition and being deposed by Defendant’s lawyers on June 2, 2022, staying in touch with his attorneys during the lawsuit and reviewing court filings, and communicating with his attorneys regarding the settlement terms. (Declaration of Salvador Venegas ISO Prelim ¶¶6-11.) He estimates spending 50-60 hours on the case. (*Id.* at ¶12.) He asserts that he knew there was a risk that future employers could find out about the lawsuit and downgrade him as a potential hire, though he has not shown that this has occurred. (*Id.* at ¶9.) He represents that under his

1 arrangements with counsel he took a risk that he could be personally responsible for all
2 or part of Danone's costs and fees (§9).

3 Plaintiff Lainez represents that his contributions to the action include: meeting
4 with his attorneys regarding the case, gathering documents from his employment,
5 reviewing them with his attorneys, answering their questions, identifying potential
6 witnesses, describing policies, practices, and procedures of Defendant, and reviewing the
7 settlement. He estimates spending 46 hours on the case. (Declaration of Sergio Lainez
8 ISO Prelim §§3-5.)

9 In light of the above-described contributions to this action, and in
10 acknowledgment of the benefits obtained on behalf of the class, a \$5,000 service award
11 to Plaintiff Lainez is reasonable and approved. Plaintiff Venegas spent considerably
12 more time on the matter, appears to have been more involved, and took a risk on costs
13 and fees that Lainez did not. A \$7,500 service award to plaintiff Venegas is approved.

14 **F. SETTLEMENT ADMINISTRATION COSTS**

15 The Settlement Administrator, ILYM Group, Inc., requests \$12,950 in
16 compensation for its work in administering this case. (Bench Decl. §18.) At the time of
17 preliminary approval, costs of settlement administration were capped at \$15,000 (§3.2.c).
18 Class Members were provided with notice of this amount and did not object. (Bench
19 Decl. §12, Exhibit A thereto.)

20 Accordingly, settlement administration costs are approved in the amount of
21 \$12,950.

22 23 **IV. CONCLUSION AND ORDER**

24 The Court hereby:

25 (1) Grants class certification for purposes of settlement;

- 1 (2) Grants final approval of the settlement as fair, adequate, and reasonable;
- 2 (3) Awards **\$416,666** in attorney fees to Class Counsel, Blumenthal Nordrehaug
- 3 Bhowmik De Blouw LLP and Lawyers for Justice, PC;
- 4 (4) Awards \$ _____ in litigation costs to Class Counsel;
- 5 (5) Approves payment of **\$18,750** (75% of \$25,000 PAGA penalty) to the LWDA;
- 6 (6) Awards **\$7,500** as a Class Representative Service Awards to Salvador Venegas
- 7 and a \$5,000 Service Award to Sergio Lainez;
- 8 (7) Awards **\$12,950** in settlement administration costs to ILYM Group, Inc.;
- 9 (8) Orders class counsel to lodge a proposed Judgment, consistent with this ruling
- 10 and containing the class definition, full release language, and the name of the
- 11 class member who opted out by 11/3/24;
- 12 (9) Orders class counsel to provide notice to the class members pursuant to
- 13 California Rules of Court, rule 3.771(b) and to the LWDA pursuant to Labor
- 14 Code §2699 (1)(3); and
- 15 (10) Sets a Non-Appeal Case Review re: Final Report re: Distribution of
- 16 Settlement Funds for
- 17 7/3/24, at 8:30 am
- 18 Final Report is to be filed by
- 19 6/26/24. If there is unpaid residue
- 20 or unclaimed or abandoned class member funds and/or interest thereon to be
- 21 distributed to The Children's Advocacy Institute, Plaintiffs' counsel shall also
- 22 submit an Amended Judgment pursuant to Cal. Code of Civ. Pro. § 384 and give
- 23 notice of the Judicial Council of California upon entry of the Amended

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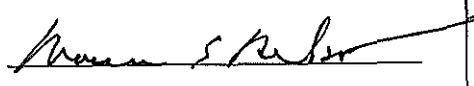
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Judgment, when entered, pursuant to Cal. Code of Civ. Pro. §384.5.

Dated: 10/30/23



MAREN E. NELSON

Judge of the Superior Court