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Attorneys for Plaintiffs
HENRY PEREZ and HENRY JOHNNY PEREZ III

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET

HENRY PEREZ, HENRY JOHNNY
PEREZ III, individually, and on behalf of
other members of the general public
similarly situated and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

vs.

MONRO, INC., an unknown business entity;
MONRO HOLDINGS, LLC, an unknown
business entity; MNRO HOLDINGS, LLC, a
Delaware limited liability company; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 21STCV09582

*Assigned for All Purposes to: Hon. Elihu M.
Berle, Dept. 6*

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

Date: March 4, 2024

Time: 9:00 a.m.

Dept.: 6

Complaint filed: March 11, 2021

Trial Date: None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on March 4, 2023, at 9:00 a.m., or as soon thereafter as this matter may be heard, in Department 6 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, named Plaintiffs Henry Perez, Jr. and Henry Johnny Perez III (collectively “Plaintiffs”) will apply to this Court for an order granting final approval of the proposed Class Action and PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”) between Plaintiffs and Defendants Monro, Inc. and MNRO Holdings, LLC (erroneously sued as “Monro Holdings, LLC”) (collectively “Defendants”). As part of that approval, Plaintiffs will request that the Court:

1. Grant final approval of the Settlement attached to the Declaration of Heather Davis, Esq., on the grounds that the proposed settlement is fair, adequate, and reasonable because:

- a. The non-reversionary Net Settlement Amount of \$1,043,022.23 will be paid out to the Participating Class Members;
- b. Proper Notice is being provided to all Class Members pursuant to the terms of the Settlement;
- c. Proper notice of the Settlement was provided to the California Labor and Workforce Development Agency (“LWDA”) in accord with Labor Code 2699 *et. seq.*;
- d. As of the filing of this motion, there have been no objections to the Settlement; and
- e. As of the filing of this motion, no Class Members have requested to be excluded from the Settlement, leaving 1,908 Participating Class Members;

2. Award attorneys’ fees in the amount of \$651,613.54 (35% of the Gross Settlement Amount) to Protection Law Group, LLP, and Lawyers *for* Justice, P.C. (“Class Counsel”);

3. Award costs in the amount of \$28,137.11 to Class Counsel for actual litigation costs and expenses incurred;

4. Award payment of \$24,000.00 to the Settlement Administrator, ILYM Group, Inc., for the costs of Settlement Administration;

1 5. Award a Class Representative Service Payment of \$7,500.00 to each named
2 Plaintiff (totaling \$15,000);

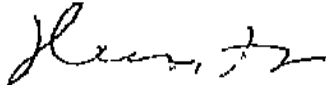
3 6. Approve payment of \$100,000.00 for penalties pursuant to the California Labor
4 Code Section 2698 *et. seq.* the Private Attorneys General Act of 2004 (“PAGA”) and the
5 distribution of seventy-five percent of these penalties (\$75,000.00) to the LWDA and twenty-five
6 percent (\$25,000.00) to employees who worked within the PAGA Period (“Aggrieved
7 Employees”); and

8 7. Order the funding and distribution of the Gross Settlement Amount in the manner
9 set forth in the Settlement.

10 The motion is based upon this Notice; the attached memorandum of points and authorities;
11 the Declaration of Heather Davis, Esq. and exhibits thereto; the Declaration of Edwin Aiwarzian
12 and exhibits thereto; the Declaration of Henry Perez Jr.; the Declaration of Henry Perez III; the
13 Declaration of Nathalie Hernandez of ILYM Group, Inc. and exhibits thereto; the pleadings and
14 other records on file with the Court in this matter, and any other further evidence or argument that
15 the Court may properly receive at or before the hearing.

16
17 DATED: December 8, 2023

PROTECTION LAW GROUP, LLP

18
19 By: 

20 Heather Davis
21 Amir Nayebdadash
22 *Attorneys for Plaintiffs*
23 HENRY PEREZ and HENRY JOHNNY
24 PEREZ III
25
26
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs HENRY PEREZ, JR. and HENRY JOHNNY PEREZ III (collectively “Plaintiffs”) seek final approval of a class action and PAGA settlement with Defendants MONRO, INC. and MNRO HOLDINGS, LLC (erroneously sued as “Monro Holdings, LLC”) (collectively “Defendants”). The settlement provides for: (1) a non-reversionary Gross Settlement Amount of \$1,861,752.98, exclusive of any employer-side payroll taxes; (2) attorneys’ fees in the amount of \$651,613.54; (3) actual litigation costs and expenses incurred by Class Counsel in the amount of \$28,137.11; (4) Settlement Administration Costs of \$24,000.00; (5) payment of \$100,000.00 in PAGA penalties – 75% (\$75,000.00) of which will be paid to the LWDA and 25% (\$25,000.00) of which will be paid to Class Members employed during the PAGA Period; (6) Class Representative Service Payment in the amount of \$7,500.00 to each named Plaintiff (total of \$15,000). The result is a Net Settlement Amount of \$1,043,022.23 that will be distributed to the following Settlement Class of 1,908¹ individuals who worked for Defendants at any time between May 19, 2019, to April 1, 2023. Participating Class Members will receive an average Individual Settlement Payment of \$546.65 and a high payment of \$2,065.76. *See* Declaration of Nathalie Hernandez of ILYM Group, Inc. (“ILYM Decl.”) ¶ 15.

At Preliminary Approval, the Court established a presumption of fairness after extensively analyzing the terms of the Settlement and underlying settlement efforts. This presumption of fairness is confirmed here following notice of the proposed settlement to the class. Out of 1,908 Settlement Class Members, to date, there have been **no** requests for exclusion and **zero** objections to the terms of the settlement. This lack of objections or exclusions is evidence, in addition in addition to the factors extensively analyzed at Preliminary Approval, that demonstrates the Settlement is a fair result. Accordingly, the Court should grant final approval of the proposed Settlement.

¹ As of the date of filing this motion, no Class Member has requested to be excluded. The deadline for Class Members to request exclusion from, or object to the Settlement does not expire until January 8, 2024. Plaintiffs will file a declaration from the Settlement Administrator confirming the number of opt-outs, if any, on or before February 23, 2024 (10 days prior to the Final Fairness hearing) per the Court’s Order.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendants operate automotive services and tire dealers which provide services throughout California. Defendants employed Plaintiff HENRY PEREZ (“Plaintiff Perez”) to work as an hourly-paid, non-exempt employee from approximately October 2019 to approximately September 2020. Defendants employed Plaintiff HENRY JOHNNY PEREZ III (“Plaintiff Perez III”) to work as an hourly-paid, non-exempt employee from approximately September 2019 to approximately July 2020. Declaration of Heather Davis in Support of Motion for Final Approval (“Davis Decl.”) ¶ 12; *see also* Declaration of Henry Perez in Support of Motion for Final Approval (“Perez Decl.”) ¶ 2; Declaration of Henry Johnny Perez III in Support of Motion for Final Approval (“Perez III Decl.”) ¶ 2.

On March 11, 2021, Plaintiff Perez filed a class action complaint with the Los Angeles County Superior Court, Case No. 21STCV09582 (“Class Action”), against Defendants alleging the following ten (10) causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Non-Compliant Wage Statements; (8) Failure to Keep Requisite Payroll Records; (9) Unreimbursed Business Expenses; and (10) Violation of California Business & Professions Code § 17200, *et seq.* Davis Decl. ¶ 13.

On July 8, 2021, Plaintiff Perez III provided notice to the LWDA and Defendants of their intent to seek civil penalties pursuant to the Private Attorneys General Act (the “PAGA”) for violations of California wage and hour laws. On July 9, 2021, Plaintiff Perez provided notice to the LWDA and Defendants of his intent to seek civil penalties pursuant to the PAGA for violations of California wage and hour laws. After more than sixty-five (65) days since the mailings for Plaintiffs’ PAGA Notice Letters and the LWDA not having indicated that it intended to investigate the violations discussed in the PAGA Notice Letters, on September 13, 2021, Plaintiffs filed a Representative Action Complaint with the Los Angeles County Superior Court, Case No. 21LBCV00478, alleging a single cause of action under PAGA (the “PAGA Action”). Davis Decl. ¶¶ 14-16.

Thereafter, on December 9, 2021, Defendant MNRO Holdings, LLC propounded extensive discovery on Plaintiff Perez including Special Interrogatories, Set One; Form

Interrogatories – Employment Law, Set One; and Request for Production of Documents, Set One, in the Class Action. On January 17, 2022, Plaintiff Perez served responses and documents responsive to Defendant MNRO Holdings, LLC’s Special Interrogatories, Set One; Form Interrogatories – Employment Law, Set One; and Request for Production of Documents, Set One. On April 4, 2022, Plaintiff Perez served supplemental responses to Defendant MNRO Holdings, LLC’s Special Interrogatories, Set One; Form Interrogatories – Employment Law, Set One; and Request for Production of Documents, Set One, in the Class Action. Davis Decl. ¶¶ 17-19.

On February 24, 2022, Plaintiff Perez propounded Special Interrogatories, Set One; Form Interrogatories – General, Set One; and Demand for Production of Documents, Set One, on Defendants in the Class Action. Plaintiff Perez also served notices of deposition for Defendants’ Person Most Qualified in the Class Action. On May 3, 2022, Defendants provided responses to Plaintiff Perez’s propounded Special Interrogatories, Set One; Form Interrogatories – General, Set One; and Demand for Production of Documents, Set One, in the Class Action. Davis Decl. ¶¶ 20, 22.

After extensive meet and confer on the discovery issues, the Parties met and conferred regarding attending private mediation and agreed to staying formal discovery. The Parties agreed to attend global mediation for the Class Action and the PAGA Action with the Hon. S. James Otero (Ret.), a mediator with substantial experience handling wage and hour matters. Davis Decl. ¶ 23.

In advance of mediation, Defendants provided Plaintiffs’ Counsel with extensive informal discovery including all relevant policies and handbooks in place during the Class Period, which included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of wages and other relevant areas of investigation, a randomly selected 20% sampling of time and payroll data for the putative class, and figures and information regarding the class size and composition. The randomly-selected 20% sampling included records for putative class members who were employed throughout different time periods during the Class Period, that is representative of the Class. With this data for the Class, Plaintiffs’ Counsel and their retained expert were able to perform a comprehensive damages analysis and estimate Defendants’

1 potential violations, liability, and exposure, including, and not limited to, analyzing time and pay
2 data, considering potential meal period violations, potential rest period violations, potential
3 synthetic meal period recordings, unpaid and rest period premiums, rounding, overtime and
4 premium payments, etc. This discovery and investigation allowed Plaintiffs' Counsel to perform
5 a comprehensive damages analysis and estimate Defendants' potential liability. Davis Decl. ¶ 24.

6 While the Parties were preparing for mediation, the Parties met and conferred regarding
7 the filing of a First Amended Complaint to add Plaintiff Perez III as a plaintiff/class representative
8 and add his PAGA representative claims, as well as adding Plaintiff Perez's representative PAGA
9 cause of action to the Class Action. As such, on November 18, 2022, Plaintiffs filed a Joint
10 Stipulation for Leave to File a First Amended Class Action Complaint in the Class Action.
11 Thereafter, Plaintiffs filed their First Amended Class Action Complaint for Damages and
12 Enforcement Under the PAGA in the Class Action. After Plaintiffs filed their First Amended
13 Class Action Complaint, pursuant to the Court's leave, on November 29, 2022, Plaintiffs filed a
14 Request for dismissal of the PAGA Action without prejudice and the Parties continued preparing
15 for mediation. Davis Decl. ¶ 25.

16 After extensive review of the mediation documents and other information, on December
17 16, 2022, the Parties attended a full day mediation. At the mediation, the Parties engaged in
18 intensive settlement discussions during which they debated their respective positions and
19 exchanged views regarding the strengths and weaknesses of the alleged claims, but despite the
20 help of the mediator were unable to reach an agreement. Following the December 16, 2022,
21 mediation, the Parties continued settlement discussions through the mediator and agreed to attend
22 a second day of mediation with the Hon. S. James Otero (Ret.) for January 31, 2023. On January
23 31, 2023, the Parties attended their second day of mediation but still were unable to reach an
24 agreement Davis Decl. ¶¶ 26-28.

25 Following the second mediation, the Parties continued settlement discussions through the
26 mediator and were eventually able to reach an agreement to settle the matter on a class and
27 representative basis for a Gross Settlement Amount of \$1,750,000.00. On February 9, 2023, the
28 Parties executed a Memorandum of Understanding ("MOU") which memorialized the key

1 settlement terms. Thereafter, the Parties worked diligently to negotiate and memorialize the terms
2 of a long form settlement agreement using the LASC Model Template. On April 21, 2023, after
3 extensive discussions and multiple revisions to the agreement, the Parties entered into a fully
4 executed Class Action and PAGA Settlement Agreement. Davis Decl. ¶¶ 30-31.

5 On May 24, 2023, Plaintiff filed for preliminary approval of the Agreement. At the
6 September 14, 2023, hearing on Plaintiff's Motion for Preliminary Approval, the Court found on
7 a preliminary basis that the settlement was fair, reasonable, and adequate. ¶ 32. After submitting
8 the Notice and the Court's Order granting Preliminary Approval to the Settlement Administrator,
9 Defendants' Counsel submitted the Class data to the Settlement Administrator. The Settlement
10 Administrator's preliminary calculations evidenced a higher Workweek count worked by the
11 Class during the Class Period which Defendants through their counsel confirmed. There were
12 approximately 101,485 Workweeks at issue during the Class Period (for an increase of
13 approximately 16.39%). In light of the increased number of Workweeks and pursuant to
14 paragraph 8.1 of the Settlement Agreement (the escalation clause), there was an increase to the
15 Gross Settlement Amount by 6.39% from \$1,750,000.00, to \$1,861,752.98. Davis Decl. ¶ 33.

16 On October 19, 2023, the Parties executed and filed a Joint Stipulation re: Amendment of
17 Order Granting Plaintiffs' Motion for Preliminary Approval and Increasing the Gross Settlement
18 Amount. ¶ 34, Ex. 2. On October 24, 2023, the Court entered an Amended Order granting
19 preliminary approval of the Settlement and ordering distribution of notice to the Class. ¶ 35.

20 21 **III. THE ADMINISTRATION PROCESS AND PLAN OF DISTRIBUTION**

22 The Court approved Settlement Administrator for this matter is ILYM Group, Inc.
23 ("Settlement Administrator"). Davis Decl. ¶ 45. On October 26, 2023, Class Counsel provided
24 the Settlement Administrator with the Court-approved text for the Class Notice. The Class Notice
25 included the formula for determining the estimated sum to be paid to each individual from the
26 Net Settlement and stated each Class Members' estimated Individual Settlement Payment. Davis
27 Decl. ¶ 46. On September 29, 2023, counsel for Defendants provided the Settlement
28

1 Administrator with the Class Mailing List. The Class List contained 1,908 individuals with a total
2 of 101,485 Workweeks, which exceeds the 87,197 maximum Workweeks per the Settlement
3 Agreement by 8,720 Workweeks, for a 6.39% (\$111,752.98) increase to the Gross Settlement
4 Amount. *See* ILYM Decl. ¶ 5.

5 To date, there has been no objections to the Settlement and no requests for exclusion, and
6 no disputes. The deadline for Class Members to submit workweek disputes, request exclusion
7 from, or object to the Settlement expires on January 8, 2024. ILYM Decl. ¶¶ 12, 13. Plaintiffs
8 will submit a declaration from the Settlement Administrator detailing the final results of the
9 Notice Procedure no later than February 23, 2024 (10 days before the Final Fairness hearing) per
10 the Court's Order.

11 According to the terms of the Settlement Agreement, within thirty (30) calendar days of
12 the Effective Date of the Settlement (as defined in the Settlement Agreement), Defendants will
13 deposit the Gross Settlement Amount and all applicable employer-side payroll taxes into a
14 Qualified Settlement Fund ("QSF") to be established by the Settlement Administrator. Within
15 fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will
16 issue payments for: (1) Individual Class Payments for all Participating Class Members; (2)
17 Individual PAGA Payments to all Aggrieved Employees; (3) the LWDA PAGA Payment; (4)
18 Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (5) the Class
19 Representative Service Payments to Plaintiffs; and (6) Settlement Administration Costs. *See*
20 Settlement Agreement ¶¶ 4.3, 4.4.

21 Any Settlement checks paid to Settlement Class Members remaining uncashed after 180
22 days will be transferred to the California State Controller's Office pursuant to California Civil
23 Code § 1500 and held in trust for such Settlement Class Members. As such, no "unpaid residue"
24 under CCP § 384 will result from the settlement. *See* Settlement Agreement ¶ 4.4.3.

25 **IV. STANDARD OF REVIEW FOR FINAL APPROVAL**

26 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.* 48
27 Cal.App.4th 1794 (1996) California courts look to federal authority for guidance with class action
28 settlements. *Id.* at 1801, n.7. "In general, questions whether a settlement was fair and reasonable,

1 whether certification of the class was proper, and whether the attorney fee award was proper are
2 matters addressed to the trial court's broad discretion." *Wershba v. Apple Computer, Inc.*, 91
3 Cal.App.4th 224, 234-35 (2001) (disapproved of on other grounds).

4 Accordingly, a court's decision to approve a class action settlement may be reversed only
5 upon a strong showing of "clear abuse of discretion." *Hanlon v. Chrysler Corp.*, 150 F.3d
6 1011,1026 (9th Cir. 1998). To determine whether the settlement is fair, courts consider relevant
7 factors such as the strength of Plaintiff's case, the risk of further litigation, the risk of maintaining
8 class action status, the amount offered in settlement, the extent of discovery completed, the
9 experience and views of counsel, and the reaction of the class members among others. *Dunk*, 48
10 Cal.App.4th at 1801. These factors are not exclusive and "the court is free to engage in a balancing
11 and weighing of the factors depending on the circumstances of each case." *Wershba*, 91
12 Cal.App.4th at 245 (disapproved on other grounds).

13 In considering the class settlement, the court need not reach any ultimate conclusions on
14 the issues of fact and law which underlie the merits of the dispute. *7-Eleven Owners for Fair*
15 *Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). The inquiry is not whether
16 the settlement agreement is the best one that class members could have possibly obtained, but
17 whether the settlement taken as a whole is "fair, adequate, and reasonable." *See Chavez v. Netflix,*
18 *Inc.* 162 Cal.App.4th 43, 55 (2008). A settlement need not obtain 100 percent of the damages
19 sought in order to be fair and reasonable. *Wershba*, 91 Cal.App.4th at 251 (disapproved of on
20 other grounds). Even if the relief afforded by the proposed settlement is substantially narrower
21 than it would be if the lawsuit was to be successfully litigated, that is no bar to a class settlement
22 because the public interest may indeed be served by a voluntary settlement in which each side
23 gives ground in the interest of avoiding prolonged litigation. *Id.* The burden is on the proponent
24 of the settlement to show that it is fair and reasonable. *Id.* at 245 (disapproved of on other
25 grounds). However, a presumption of fairness exists where: (1) the settlement is reached through
26 arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
27 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
28 objectors is small. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

1 **V. THE SETTLEMENT IS PRESUMED FAIR**

2 Because this Court preliminarily approved the Settlement, it necessarily determined the
3 Settlement appeared to be fair and reasonable. Plaintiffs’ Motion for Preliminary Approval
4 established the presumption of fairness. The same factors that allowed the Court to previously
5 approve the settlement apply here and are reinforced in these moving papers including: (1) the
6 Settlement was reached through arm’s-length bargaining; (2) investigation and discovery were
7 sufficient to allow counsel and the court to act intelligently; and (3) Class Counsel are experienced
8 in similar litigation. Additionally, the reaction of the Class Members, also supports the
9 reasonableness of the Settlement. *See* Davis Decl. ¶¶ 32, 41, 44.

10 **A. The Settlement Was Reached Through Arm’s Length Bargaining**

11 This Settlement was reached following two days of mediation with the Hon. S. James
12 Otero (Ret.), a mediator with substantial experience involving wage and hour class actions and
13 PAGA actions. The mediations occurred only after substantial informal discovery and extensive
14 analysis of the claims at issue. These negotiations were at arm’s length, non-collusive, and,
15 although conducted in a professional manner, were adversarial. Davis Decl. ¶¶ 37, 38.

16 **B. There was Sufficient Investigation and Discovery by Experienced Counsel**

17 Class Counsel conducted significant investigation into the claims alleged by Plaintiffs
18 before reaching a settlement in this matter. Class Counsel met with Plaintiffs, conducted legal
19 research regarding the applicable Labor Code Sections, and thoroughly researched Defendants’
20 employment policies and practices. Prior to mediation, the Parties engaged in extensive formal
21 and informal discovery. Prior to mediation Defendants produced a sampling of time and payroll
22 records, written policies including their employee handbook, and other relevant documents and
23 information regarding the putative class. This allowed Plaintiffs to conduct a class-wide analysis
24 of Defendants’ potential damages, and to intelligently and effectively analyze the strengths and
25 weaknesses of the case and Defendants’ potential exposure. The Parties extensively briefed these
26 issues, provided this analysis to the mediator, and debated their respective positions. With the
27 mediators’ help the Parties were eventually able to reach an agreement to settle this matter based
28 on their analysis and understanding of the case. Davis Decl. ¶¶ 39, 40.

 Moreover, the settlement negotiations were conducted by highly capable and experienced

counsel. Class Counsel's experience and the extensive investigation allowed Plaintiffs to enter this Settlement aware of the risks associated with the case and permitted Class Counsel to negotiate an informed, reasonable, and intelligent Settlement. Davis Decl. ¶¶ 2-11; Aiwazian Decl. ¶¶ 12-16. After substantial discovery and investigation, it is Class Counsel's opinion that the settlement is in the best interest of the Class because it provides for a guaranteed result over a reasonably short period of time as opposed to waiting years for the same, or possibly a worse, result and will result in significant savings in costs. The substantial economic uncertainty of businesses during the COVID-19 pandemic only highlights the value of such a guaranteed result. Davis Decl. ¶¶ 42, 44.

C. There Have Been No Objections Or Requests For Exclusion

California courts have consistently found that a small number of objectors indicates the Class's support for a settlement and strongly favors final approval. *See Wershba*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors). Here, as of the filing of this Motion, not a single member of the Settlement Class has objected to the Settlement, requested to be excluded or submitted a dispute. ILYM Decl. ¶¶ 12, 13. Class members have until January 8, 2024, to object to or request exclusion from the settlement. Plaintiffs will file a declaration from the Settlement Administrator detailing the final, updated results of the Notice Procedure no later than February 23, 2024. Davis Decl. ¶ 52. However, the lack of objections or requests for exclusion to date speak volumes about the fairness, reasonableness, and adequacy of this Settlement.

VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED

A. The Standard For Attorneys' Fees In A Class Action

Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement created. *See Dunk*, 48 Cal.App.4th at 1808. The ultimate goal is the award of a "reasonable" fee to compensate counsel for their efforts, irrespective of the method of calculation. *See Apple Computer, Inc. v. Super. Ct.*, 126 Cal.App.4th 1253, 1270 (2005). Trial courts have wide latitude in assessing the value of attorneys' fees and their decisions will not be disturbed on appeal absent a manifest abuse of discretion. *See Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). California law

provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. *Id.* at 47, 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights . . ." *Id.* at 53. Therefore, fees in a class action should approximate the terms of a contingent-fee contract negotiated by an attorney and client in comparable litigation. *Id.* at 47. The percentage-of-the-benefit approach is preferred in such cases because "it better approximates the workings of the marketplace than the lodestar approach." *Id.*

B. A Fee Award Based on a Percentage of the Gross Settlement Amount is Appropriate

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value made available to class members by the settlement. *See Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977); The California Supreme Court has urged trial courts to follow federal authority in this area. *See Green v. Obledo*, 29 Cal.3d 126, 146 (1981). The purpose of this equitable doctrine is to spread litigation costs among all beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent*, 557 F.2d at 769.

Courts have consistently recognized that class litigation is necessary to protect the rights of individuals whose injuries and/or damages are too small to economically justify individual representation. Accordingly, in determining a reasonable common fund fee award, courts award fees to serve as an economic incentive for lawyers to engage in class litigation that will permit increased access to the judicial system for meritorious claims and deter wrongdoing. *See, R. Pearle, California Attorney Fee Awards* (CEB, 1993) §7A, p. 5-7; *Vincent*, 557 F.2d at 769.

Furthermore, a common fund award is not dependent on a determination of the actual amount claimed out of the fund by those entitled—it is the creation of the fund that is the crucial fact. *See Winslow v. Harold G. Ferguson Corp.*, 25 Cal.2d 274, 284 (1944); *Wershba*, 91 Cal.App.4th at 247 (holding that reasonable attorneys' fees are based on the total value of the settlement obtained by the efforts of counsel) (disapproved on other grounds).

Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case. *Newberg on Class Actions*, 4th Ed. 2002, §14:6. According to

1 *Newberg*, “. . . no general rule could be articulated as to what is a reasonable percentage of a
2 common fund. Usually 50% of the fund is the upper limit on a reasonable fee award . . . though
3 somewhat larger percentages are not unprecedented.” *Id.* *Newberg* further notes that achievement
4 of a substantial recovery with modest hours expended should not be penalized, but should be
5 rewarded for considerations of time saved by superior services performed. *Id.*

6 The amount of attorney fees provided by the Settlement Agreement, *i.e.* 35% of the Gross
7 Settlement Amount, is well-within the range of reasonableness in light of the facts and
8 circumstances surrounding this case. Class Counsel risked substantial economic loss when they
9 took this case on a contingency basis, knowing that there would likely be a long battle with two
10 aggressive defense firms. As a result of Class Counsel taking on this risk and the efforts of Class
11 Counsel, the Settlement Class Members will now be able to recover for these claims that would
12 otherwise have gone unaddressed. The requested fee therefore makes sense because (1) it is
13 consistent with the private marketplace where contingent-fee attorneys are customarily
14 compensated on such a basis; (2) it aligns the interests of Class Counsel and absent Class
15 Members in achieving the maximum possible resolution of the case; (3) it encourages the most
16 efficient resolution of the litigation by providing an incentive for early, yet fair and reasonable
17 settlement and (4) reflects the work performed, risks incurred, results obtained, and experience of
18 Class Counsel in handling similar matters. As such, Class Counsel has obtained a fair recovery
19 for the Class which justifies a fee award based on the percentage of the common fund. *See Davis*
20 *Decl.* ¶¶ 54-80.

21 **C. The Fee is Reasonable Based on the Dunkel Factors**

22 In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir.
23 1991), the court identified twelve factors to be considered in determining whether fee awards are
24 reasonable in a common fund case.² The court also noted that, “the analysis in a common fund

25 ² These factors include (1) the time and labor required, (2) the novelty and difficulty of the questions
26 involved, (3) the skill requisite to perform the legal services properly, (4) the preclusion of other
27 employment by the attorney due to the acceptance of the case, (5) the customary fee, (6) whether the fee is
28 fixed or contingent, (7) time limitation imposed by the client or the circumstances, (8) the amount involved
and results obtained, (9) the experience, reputation and ability of the attorney, (10) the undesirability of the
case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar
cases.

1 case focuses not on the plaintiff's position as 'prevailing parties,' but on a showing that the fund
2 conferring a benefit on the class resulted from their efforts" and thus in common fund cases "the
3 monetary results achieved predominate over all other criteria." *Id.* at 774. Plaintiffs will address
4 some of the factors that are particularly relevant here.

5 ***1. Time and Labor Required***

6 Class Counsel have aggressively litigated this Action from the initial pleadings to the
7 settlement of this Action. Class Counsel actively participated in this litigation, including attending
8 client meetings and attending status conferences with the Court. As a result of Class Counsel's
9 aggressive efforts Defendants agreed to settle this Action. The ongoing work performed by Class
10 Counsel has been extensive, complex and ultimately successful in achieving a fair settlement for
11 the Class. In order to reach a settlement, Class Counsel conducted extensive research in order to
12 accurately and successfully analyze the complex issues presented in this case and in order to
13 determine if they could be litigated on a class and representative basis. Class Counsel conducted
14 extensive formal and informal discovery, researched defenses raised by Defendants, investigated
15 Defendants' policies, practices, and procedures, analyzed hundreds of pages documents and
16 extensive time and payroll data, participated in case strategy and analysis, drafted, reviewed, and
17 revised pleadings, prepared for and attended mediation, participated in settlement negotiations,
18 and drafted and revised the settlement agreement among other services. Extensive investigation
19 was conducted both before filing this lawsuit and prior to mediations.

20 This case consumed more than 862.50 hours in total. Davis Decl. ¶ 69, Ex. 3; Aiwazian
21 Decl. ¶ 10, Ex. A. However, a settlement was finally achieved, despite all obstacles, because of
22 Class Counsel used their complex wage-and-hour litigation experience and skills to obtain the
23 Settlement.

24 ***2. The Skill Required to Perform Legal Services***

25 This matter also required substantial skill to litigate and Class Counsel were required to
26 overcome numerous barriers in order to reach a settlement. Defendants denied liability, felt very
27 strongly about their ability to prevail, challenged the theories of Class Counsel, and mounted
28 several defenses that posed significant problems moving forward. Despite this, Class Counsel
were able to use their substantial experience in complex wage and hour litigation to convince

1 Defendants to attend mediation and discuss a potential settlement rather than proceed with further
2 litigation. Class Counsel's skill and experience also allowed them to review and analyze a large
3 amount of time and payroll data, a complex process that took considerable time and energy in
4 order to determine Defendants' underlying practices and potential damages. This settlement,
5 against experienced defense counsel and despite strong potential defenses, was possible because
6 of Class Counsel's skill and experience. Davis Decl. ¶¶ 65-71.

7 ***3. The Value, Amount, and Results Achieved***

8 The Settlement represents a fair resolution of this case given the risks inherent in litigating
9 it through trial and possible appeals. Counsel obtained a non-reversionary Gross Settlement
10 Amount of \$1,861,752.98, exclusive of employer-side payroll taxes. Although Class Counsel
11 predict that Plaintiffs would prevail on all causes of action at trial, a number of risks reduced the
12 case's value. For instance, as discussed extensively in Plaintiffs' Motion for Preliminary
13 Approval, Defendants claimed there were substantial problems with Plaintiffs' claims.
14 Defendants contended that their policies were legally-compliant, and raised issues with Plaintiffs'
15 meal break, rest break and off-the-clock claims regarding the necessity of individualized proof.
16 Defendants contended these issues would prevent Plaintiffs from successfully recovering on these
17 claims which were a major focus of the litigation. However, despite these challenges, Defendants
18 agreed to pay a non-reversionary Gross Settlement Amount of \$1,861,752.98, meaning that on
19 average the Participating Class Members will receive a payment of approximately \$546.65, and
20 the highest payment will be approximately \$2,065.76. This is an outstanding result that in many
21 instances exceeds the awards obtained in similar wage and hour settlements. *See* Davis Decl. ¶
22 80.

23 ***4. Whether the Fee is Fixed or Contingent***

24 Whether the representation was provided on a contingency basis, as it was in this case, is
25 an important factor:

26 **A contingent fee must be higher than a fee for the same legal services paid as**
27 **they are performed.** The contingent fee compensates the lawyer not only for the
28 legal services he renders but for the loan of those services. A lawyer who both bears
the risk of not being paid and provides legal services is not receiving the fair market
value of his work if he is paid only for the second of these functions. *Cates v.*
Chiang, 213 Cal.App.4th 791, 823 (2013).

1 The fact that this case was litigated on a contingent basis also strongly supports the award
2 of attorneys' fees requested by Plaintiffs. If Class Counsel had been unsuccessful, they would not
3 receive any fee or recover any portion of the substantial expenses spent litigating this matter.
4 Class Counsel has borne all of the risks and costs of litigation and will not receive any
5 compensation until recovery is obtained in this case. These are the types of risks Class Counsel
6 face because of their decision to litigate this matter on a contingency basis. The contingent risk is
7 a relevant factor when considering the reasonableness of the requested fees. Davis Decl. ¶¶ 76-80.

8 **D. The Fee is Reasonable Under a Lodestar Analysis**

9 While the percentage-of-the-benefit approach is endorsed as the better approximation of
10 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
11 method to "cross-check" the results of the other. This said, Courts have cautioned that the primary
12 basis of the fee award in common fund cases remains the percentage of the fund method and have
13 cautioned that this that class counsel should not necessarily receive a lesser fee achieving a speedy
14 and timely result for class members in need of immediate relief. *See e.g. Vizcaino v. Microsoft*
15 *Corp.*, 290 F. 3d. 1043, 1050 fn.1 (2002). Indeed, courts have noted that "it is widely recognized
16 that the lodestar method creates incentives for counsel to expend more hours than may be necessary
17 on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward
18 early settlement." *Id.* (quoting *Camden I Condominium Ass'n*, 946 F.2d at 773-74.)

19 Here, the lodestar is calculated based on reasonable hours at reasonable prevailing hourly
20 rates for the attorneys who worked on this matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131-
21 32 (2001). Counsel are entitled to compensation for every hour reasonably spent on the matter.
22 *See Id.* at 1133. Further, this amount may be enhanced and courts in California routinely apply
23 multipliers between 1 and 4 to a party's requested lodestar amount based on some of the same
24 factors identified above. *See Cates*, Cal.App.4th at 822.

25 **1. Counsel Spent a Reasonable Amount of Time**

26 Reasonableness of hours is assessed by "the entire course of the litigation, including
27 pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v.*
28 *Las Virgenes Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, this
case was highly contested and required a significant amount of time and labor. Defendants raised

1 significant defenses and denied liability. Class Counsel invested significant time and labor into
2 this matter even before the lawsuit was filed to investigate Defendants' policies, practices,
3 business model, and merits-based issues. Class Counsel undertook significant efforts and did
4 substantial research and investigation both prior to and after the filing of the Action. Class
5 Counsel also undertook significant preparation in order to resolve this Action prior to mediation.
6 Class Counsel gathered and analyzed data from thousands of pages of documents which took
7 substantial time to review and analyze. After an agreement was reached in principle, Class
8 Counsel spent significant time negotiating terms of the settlement to obtain the best possible
9 outcome for the Class. Class Counsel conservatively worked a total of 862.50 hours on the Action.
10 *See* Davis Decl. ¶ 69, Ex. 3; Aiwazian Decl. ¶ 10, Ex. A. Accordingly, Class Counsel spent a
11 reasonable amount of time on the Action. Class Counsel diligently took all steps necessary to
12 ensure this Action was litigated effectively and efficiently. Accordingly, the time spent on the
13 Action was reasonable.

14 ***2. Class Counsel's Hourly Rate is Reasonable***

15 Both California and federal courts recognize that attorneys should be compensated for
16 providing representation on a contingency basis and for taking on the risks associated with said
17 representation, as well as being provided with financial incentives to enforce important rights and
18 protections like those at issue in this Action. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding
19 attorneys' fees, the aim is to mirror "the established practice in the private legal market of
20 rewarding attorneys for taking the risk of nonpayment by paying them a premium over their
21 normal hourly rates for winning contingency cases." *See Id.*

22 As previously discussed, Class Counsel have been actively involved in the Action from
23 the filing of the initial complaint to completing these final approval papers. Class Counsel
24 invested time and bore the risk that there could have been no recovery. Ultimately, Class Counsel
25 was successful in reaching a settlement of \$1,861,752.98 on behalf of the Class. To date, the
26 lodestar for Class Counsel is approximately \$625,885.00. *See* Davis Decl. ¶¶ 69-71; Aiwazian
27 Decl. ¶¶ 10-11.

28 ***3. The Use of a Multiplier is Reasonable and Appropriate***

The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal.3d

1 at 49. In California, “[m]ultipliers can range from two to four or even higher” and are routinely
2 applied in the range requested by Class Counsel. *Chavez*, 162 Cal.App.4th at 66 (upholding 2.5
3 multiplier); *Vizcaino*, 290 F.3d at 1051 n.6 (noting multipliers of 1-4 are commonly applied).
4 Factors considered include: (1) the difficulty of the questions involved; (2) the skill displayed; (3)
5 the extent to which the litigation precluded other employment; and (4) the contingent nature of
6 the fee award and the associated risk. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001).

7 In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases
8 is necessary to fully compensate counsel for the loan of legal services and encourage competent
9 counsel to take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-33. As the court noted, “A lawyer
10 who both bears the risk of not being paid and provides legal services is not receiving the fair
11 market value of his work if he is paid only for the second of these functions. If he is paid no more,
12 competent counsel will be reluctant to accept fee award cases.” *Id.* at 1133. Similarly, in *Greene*
13 *v. Dillingham Construction*, 101 Cal.App.4th 418, 426 (2002), the Court of Appeal held that the
14 trial court erred by refusing to consider contingent risk as a factor in the decision to apply a
15 multiplier. The court recognized that “[t]he adjustment to the lodestar figure, e.g., to provide a
16 fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not
17 succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor
18 fortuitous. Rather, it is intended to approximate market-level compensation for such services,
19 which typically includes a premium for the risk of nonpayment or delay in payment of attorney
20 fees.” *Id.*

21 Here, the use of a multiplier of approximately 0.04 is appropriate. While significant, this
22 multiplier is appropriate in these particular circumstances in light of (1) the outstanding results
23 obtained on behalf of the Class Members, the PAGA Members, and the State of California; (2)
24 the difficult questions involved and skill displayed by Class Counsel in obtaining this outstanding
25 result; and (3) the contingent risk assumed by Class Counsel. Davis Decl. ¶¶ 72-74.

26 First, as noted above the Settlement represents an outstanding result at the conclusion of
27 hotly contested litigation. The Settlement provides Class Members an average payment of
28 approximately \$546.65 and a high payment of \$2,065.76. As previously noted, these amounts

1 exceed many of the payments achieved in similar litigation. Second, this matter also involved
2 difficult questions and required substantial skill by Class Counsel in order to obtain a settlement
3 for the Class. Furthermore, Class Counsel assumed considerable risk in agreeing to litigate this
4 case on a contingent basis. This risk is particularly relevant in light of the complex questions
5 related to certification of the proposed claims and substantial hurdles that were required to be
6 overcome. Given the complex nature of these claims many attorneys would have been unprepared
7 to litigate these claims and unable obtain the substantial settlement reached by Class Counsel.
8 This risk is also notable given the broad economic uncertainty many companies face during these
9 challenging times. Davis Decl. ¶¶ 75-76.

10 As recognized by the California Supreme Court in *Ketchum*, these risks illustrate that if
11 multipliers are not awarded to class counsel in the cases that are successfully settled class counsel
12 will not be fully compensated because the lodestar in and of itself cannot account for contingent
13 risk associated with the litigation. Further a decision to withhold a multiplier not only fails to
14 compensate attorneys for this associated risk, but actively penalizes class counsel who obtain a
15 timely and efficient result. Such would be the case here.

16 Accordingly, given the contingent risk incurred by Class Counsel, the difficulty of the
17 questions involved, the benefit conferred on the Class, and the skill displayed by Class Counsel,
18 the application of a multiplier is appropriate. For these reasons, Plaintiff respectfully requests the
19 Court award the requested attorneys' fees of \$651,613.54 (35% of the Gross Settlement Amount).

20 **VII. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

21 Class Counsel request the reimbursement of the costs incurred litigating this case in the
22 amount of \$28,137.11. *See* Davis Decl. ¶ 81. Ex. 4. These costs include filing fees, all costs
23 associated with attending hearings, mediation fees, fees for expert analysis of Defendants' time
24 and payroll records, and \$391.96 in anticipated future costs associated with the filing of this
25 motion, filing the final report and other costs necessary to fully resolve this matter. *See* Davis
26 Decl. ¶ 81, Ex. 4; Aiwazian Decl. ¶ 17, Ex. B. These costs are less than the \$30,000.00
27 contemplated under the settlement, meaning an additional \$1,862.89 will be distributed to
28 Participating Class Members. Davis Decl. ¶ 81.

VIII. THE REQUESTED SERVICE PAYMENTS ARE FAIR AND REASONABLE

Named Plaintiffs in class action lawsuits are eligible for reasonable enhancements as compensation “for the expense or risk they have incurred in conferring a benefit on other members of the class.” *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles*, 186 Cal.App.4th 399, 412 (2010). The criteria courts may consider in determining whether to make an enhancement payment include: (1) risks faced by the representative; (2) personal difficulties encountered; (3) the time and effort spent on the case; (4) the duration of the litigation; and (5) the personal benefit to the representatives. *See Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995); *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015 (finding service award of \$15,000 to be “fair and reasonable”).

The requested named Plaintiffs’ Class Representative Service Payments in the amount of \$7,500.00 to each named Plaintiffs Henry Perez, Jr. and Henry Johnny Perez III is fair and appropriate based on the substantial amount of effort Plaintiffs invested into bringing this suit and assisting Counsel on this Action. Davis Decl. ¶¶ 82-87. Throughout the litigation, Plaintiffs spent substantial time and effort searching for relevant documents, speaking with Class Counsel, and providing the facts and evidence necessary to prove the allegations. Plaintiffs actively attempted to obtain information that would benefit the Settlement Class. Prior to signing the Settlement Agreement, Plaintiffs reviewed the Settlement Agreement, asked questions, and discussed the settlement with Class Counsel. The information and documentation provided by Plaintiffs was instrumental in establishing the wage and hour violations alleged in this Action, and the recovery provided for in the Settlement Agreement would have been impossible to obtain without their participation. These services unquestionably merit the requested Class Representative Service Payment. Davis Decl. ¶ 83.

At the same time, Plaintiffs faced many risks in adding themselves as class representatives in this matter. Plaintiffs face actual risks with their future employment, as putting themselves on public record in an employment lawsuit could also very well affect their likelihood for future employment. Plaintiffs also placed themselves at substantial risk because if Defendants were to prevail in this Action, they could be liable for Defendants’ attorney fees under California Labor

Code § 218.5. Davis Decl. ¶ 85. Despite this, Plaintiffs still chose to bring this litigation on behalf of others and have put those interests ahead of their own.

As a result of Named Plaintiffs' service, 1,908 class members have the opportunity to participate in a settlement, reimbursing them for wage violations they may have never known about on their own or been willing to pursue on their own. If these Class Members would have each tried to pursue their legal remedies on their own, that would have resulted in each having to expend a significant amount of their own monetary resources and time, which were obviated by Plaintiffs putting themselves on the line on behalf of these other Class Members. Davis Decl. ¶ 86; Aiwasian Decl. ¶ 18.

In the final analysis, the Settlement would not have been possible without the aid of Plaintiffs, who put their own time and effort into this litigation, sacrificed the value of their own individual claims, and placed themselves at risk for the sake of the class members. Service Payments of \$7,500.00 to Named Plaintiffs Henry Perez, Henry Johnny Perez III – less than 1% of the Gross Settlement Amount – is an extremely small amount of money to recognize Plaintiffs' active participation in this lawsuit. *See In re Online DVD Rental*, 779 F.3d 934, 947-48 (9th Cir. 2014) (approving incentive award 417 times larger than individual payments).

VII. PAYMENT TO THE SETTLEMENT ADMINISTRATOR

The Settlement Agreement calls for the award of \$24,000.00 to the Settlement Administrator, ILYM Group, Inc., for the costs associated with administration of the settlement. The Settlement Administrator is a necessary third-party who has performed substantial services on behalf of the Class, and this payment of \$24,000.00 should be approved by the Court. Davis Decl. ¶ 90; ILYM Decl. ¶ 16.

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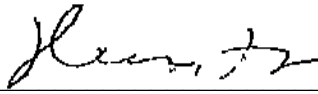
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1 **IX. CONCLUSION**

2 For the foregoing reasons, Plaintiffs respectfully request that the Court grant the Motion for
3 Final Approval and enter Judgment in this case pursuant to the terms of the Settlement.

4 DATED: December 8, 2023

PROTECTION LAW GROUP, LLP

6 By: 

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