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

YOHANNA SANCHEZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

SU CASA DE CAMBIO CESAR CHAVEZ,
INC., a California corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No.: 21STCV32728

CLASS ACTION

*[Assigned for all purposes to Judge Maren
Nelson, Dept. 17]*

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

*[Filed concurrently with: Declarations of
Justin F. Marquez, Yohanna Sanchez, and
Stephanie Molina (Settlement Administrator)
in Support of Plaintiff's Motion for Final
Approval of Class Action Settlement; and
[Proposed] Order Granting Motion]*

FINAL APPROVAL HEARING

Date: December 13, 2023

Time: 9:00 a.m.

Dept: 17

Complaint filed: September 3, 2021
FAC filed: February 25, 2022

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 13, 2023, at 9:00 a.m., in Department 17 of
3 the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, CA 90012,
4 pursuant to Code of Civil Procedure § 382 and California Rules of Court 3.769, *et seq.*, Plaintiff
5 Yohanna Sanchez (“Plaintiff”) will move the Court for an Order granting Final Approval of the
6 proposed class action and PAGA settlement between Plaintiff and Defendant Su Casa De Cambio
7 Cesar Chavez, Inc. (“Defendant”). Plaintiff further moves the Court for an Order:

- 8 1. Certifying a Class for settlement purposes;
- 9 2. Approving the settlement of \$353,500.00 as fair and reasonable and finding that
10 Class Members were given notice of the settlement, and advised of their right to
11 participate in the settlement, object to the settlement, or exclude themselves from
12 the settlement, in a reasonable manner;
- 13 3. Appointing Plaintiff Yohanna Sanchez as Class Representative for settlement
14 purposes, and approving payment of \$10,000.00 to Plaintiff for her services as the
15 Class Representative;
- 16 4. Appointing Plaintiff’s Counsel, Justin F. Marquez, Christina M. Le, and Arsiné
17 Grigoryan of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes
18 only;
- 19 5. Approving payment of settlement administrative expenses to ILYM Group, Inc. in
20 the amount of \$9,888.40;
- 21 6. Approving payment of \$117,833.33 in attorney’s fees, which is 33 1/3% of the
22 settlement amount, and costs of \$14,044.16 to date for litigating this action to Class
23 Counsel;
- 24 7. Approving the PAGA Payment in the amount of \$25,000.00.
- 25 8. Directing that the clerk of the Court enter the Court’s order as a Final Judgment;
26 and
- 27 9. Without affecting the finality of the Final Judgment, reserving continuing
28 jurisdiction over the parties for the purposes of implementing, enforcing and/or

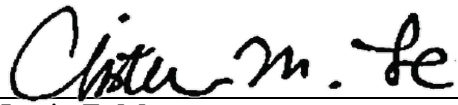
1 administering the Settlement or enforcing the terms of the judgment.

2 The Motion will be based upon this Notice, the attached Memorandum of Points and
3 Authorities, the Declarations of Justin F. Marquez, Yohanna Sanchez, and Stephanie Molina
4 (Settlement Administrator), filed concurrently herewith, the records and files in this action, and
5 any other further evidence or argument that the Court may properly receive at or before the hearing.

6
7 Respectfully submitted,

8 Dated: November 17, 2023

WILSHIRE LAW FIRM

9
10 By: 
11 Justin F. Marquez
Christina M. Le
Arsiné Grigoryan

12 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Yohanna Sanchez (“Plaintiff”) seeks Final Approval of a proposed \$353,500.00 non-reversionary, wage and hour class action and PAGA settlement with Defendant Su Casa De Cambio Cesar Chavez, Inc. (“Defendant,” and together with Plaintiff, the “Parties”).

The Class Action and PAGA Settlement and Class Notice (“Settlement” or “Settlement Agreement”), which this Court preliminarily approved on August 2, 2023, and is attached as Exhibit 1 to the Declaration of Justin F. Marquez, satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the settlement was reached through extensive, mediated arm’s-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage-and-hour litigation. The Settlement will provide substantial monetary payments to 124 Class Members. Upon the Court’s final approval of the Settlement, Participating Class Members will receive an **estimated average gross payment of \$ 1,425.28**. (Molina Decl., ¶ 15.) Among the Participating Class Members, the **estimated highest gross payment will be \$4,125.16**. (*Id.*) As of November 17, 2023, there are no objections to the Settlement and no request for exclusion. (*Id.* at ¶¶ 11, 12.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Plaintiff requests attorney’s fees in the amount of \$117,833.33, reimbursement of costs and expenses in the amount of \$14,044.16, an enhancement in the amount of \$10,000.00 for Plaintiff, Administrative Costs of \$9,888.40, and a PAGA Payment of \$25,000.00, with a 75% allocation to the California Labor Workforce Development Agency “LWDA”) in the amount of \$18,750.00 and a 25% allocation to PAGA Group Members in the amount of \$6,250.00, requests which are reasonable and thus should be approved by the Court.

Accordingly, Plaintiff respectfully requests the Court grant final approval of the Settlement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff’s Claims

This is a wage and hour class and Private Attorneys General Act (“PAGA”) (Cal. Lab.

1 Code §§ 2699, *et seq.*) representative action. Plaintiff and the putative class members worked
2 in California as hourly-paid, non-exempt employees for Defendant during the class period.
3 Defendant provides check cashing to the public at various locations throughout California.
4 (Declaration of Justin F. Marquez in Support of Plaintiff’s Motion for Final Approval of Class
5 Action Settlement [“Marquez Decl.”], ¶ 2.)

6 Plaintiff alleges that Defendant’s payroll, timekeeping, and wage and hour practices
7 resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours
8 worked off the clock by the putative class member. In addition, Plaintiff alleges that Defendant
9 failed to include all remuneration in the employees’ overtime rate and meal period premiums.
10 Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal
11 and rest periods. Based on these allegations, Plaintiff asserts claims against Defendant for
12 failure to pay minimum and straight time wages, failure to pay overtime wages, failure to
13 provide meal periods, failure to authorize and permit rest periods, failure to timely pay all final
14 wages at termination, failure to provide accurate itemized wage statements, and unfair business
15 practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

16 On September 3, 2021, Plaintiff filed a putative wage-and-hour class action complaint
17 against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay
18 overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest
19 periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate
20 itemized wage statements; and (7) violation of California’s Unfair Competition Law, California
21 Business and Professions Code §§ 17200, *et seq.* (*Id.* at ¶ 4.) On November 9, 2021, Plaintiff
22 filed her PAGA complaint. After the parties agreed to mediate this case, they also agreed to
23 Plaintiff filing a First Amended Complaint (“FAC”) to add her PAGA claim to this case. On
24 February 25, 2022, Plaintiff filed her FAC and subsequently dismissed her separately filed
25 PAGA matter. Defendant subsequently answered. (*Id.*)

26 On August 2, 2023, the Court granted Plaintiff’s Motion for Preliminary Approval of Class
27 Action and PAGA Settlement. (*Id.* at ¶ 5.)

1 Defendant denies the allegations in the Operative Complaint, denies any failure to
2 comply with the laws identified in in the Operative Complaint, and denies any and all liability
3 for the causes of action that are or reasonably could have been alleged based on the facts in the
4 Operative Complaint. (Settlement, § 2.1.)

5 **B. Discovery and Investigation**

6 Following the filing of the Complaint, the Parties exchanged documents and information
7 before mediating this action. Defendant produced a 20% sampling of timekeeping and pay
8 records for class members. Defendant also provided its wage and hour policies and practices
9 during the class period, and information regarding the total number of current and former
10 employees in its informal discovery responses. (*Id.* at ¶ 6.)

11 After reviewing the documents regarding Defendant’s wage and hour policies and
12 practices and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able
13 to evaluate the probability of class certification, success on the merits, and Defendant’s
14 maximum monetary exposure for all claims. (*Id.* at ¶ 7.) Class Counsel also investigated the
15 applicable law regarding the claims and defenses asserted in the Litigation. (*Id.*) Class Counsel
16 reviewed these records and utilized an expert to prepare a damages analysis prior to mediation.
17 (*Id.*)

18 Defendant denies the allegations in the Operative Complaint, denies any failure to
19 comply with the laws identified in the Operative Complaint, and denies any and all liability for
20 the causes of action that are or reasonably could have been alleged based on the facts in the
21 Operative Complaint.

22 **C. Settlement Negotiations**

23 On June 17, 2021, the Parties participated in private mediation with experienced class
24 action mediator, Brandon McKelvey, Esq. (*Id.* at ¶ 8.) The mediation was conducted via Zoom.
25 The settlement negotiations were at arm’s length and, although conducted in a professional
26 manner, were adversarial. The Parties went into the mediation willing to explore the potential
27 for a settlement of the dispute, but each side was also prepared to litigate their position through
28 trial and appeal if a settlement had not been reached. (*Id.*)

1 After extensive negotiations and discussions regarding the strengths and weaknesses of
2 Plaintiff's claims and Defendant's defenses, the Parties were able to reach a resolution, the
3 material terms of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 9; Ex. 1
4 [Class Action and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement
5 Agreement").])

6 Class Counsel has conducted a thorough investigation into the facts of this case. Based
7 on the foregoing discovery and their own independent investigation and evaluation, Class
8 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
9 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
10 of significant delay, the defenses that could be asserted by Defendant both to certification and
11 on the merits, trial risk, and appellate risk. (Marquez Decl., ¶ 16.)

12 Indeed, the \$353,500.00 Settlement represents **62% of the realistic maximum recovery**
13 **of \$567,469.20.** (*Id.* at ¶ 25.) Although Class Counsel estimated that Defendant's maximum
14 potential liability for all claims was approximately \$9.1 million, when the risk of prevailing at
15 certification and trial are factored into the equation, lass Counsel believes that Defendant's
16 realistic exposure was \$567,469.20, meaning the Settlement achieves a significant recovery.
17 (*Id.* at ¶¶ 16-29.) Considering the risk and uncertainty of prevailing at class certification and at
18 trial, this is an excellent result for the Class. Indeed, because of the proposed Settlement,
19 Participating Class Members will receive timely, guaranteed relief and will avoid the risk of an
20 unfavorable judgment. Although Defendant denies all of Plaintiff's claims and contends
21 Plaintiff would not succeed on the merits of his claims or in certifying those claims for class
22 treatment, Defendant nonetheless agreed to resolve this action through settlement to avoid the
23 expense, distraction, and uncertainty of protracted litigation.

24 **D. Key Terms of the Proposed Settlement**

25 The Parties used the Los Angeles County Superior Court's Form Class Action and
26 PAGA Settlement Agreement and Class Notice. A document showing edits the Parties made to
27 the template in redline is attached to the Declaration of Justin F. Marquez as Exhibit 2. The
28 Settlement's key terms include:

1 1. Settlement Class: For settlement purposes only, the Parties agree to the
2 certification of a class pursuant to California Code of Civil Procedure § 382 defined as: “means
3 all persons employed by Su Casa de Cambio Cesar Chavez, Inc. in California and classified as an
4 hourly paid, non-exempt employee who worked for Su Casa de Cambio Cesar Chavez, Inc.
5 during the Class Period.” (Settlement, § 1.5.)

6 2. Settlement Period: The Settlement Period means the period from March 9, 2017
7 through the date the Court grants Final Approval of the Settlement. (Settlement, § 1.12.)

8 3. Participating Class Members: Class Member who does not submit a
9 valid and timely Request for Exclusion from the Settlement. (Settlement, § 1.35.)

10 4. Participating PAGA Members: Participating PAGA Members means all aggrieved
11 employees who worked for Defendant during the PAGA Period, from March 11, 2020 through the
12 date the Court grants Final Approval of the Settlement. (Settlement, §§ 1.4, 1.31.)

13 5. Gross Settlement Amount: This amount is \$353,500.00, for all claims, including
14 wages, interest, the Class Counsel Award, Litigation costs, Settlement Administration Costs,
15 payment to the Labor and Workforce Development Agency (“LWDA”) for the alleged PAGA
16 penalties, all other penalties, and the Class Representative Service Award. (Settlement, §1.22.)

17 6. Uncashed Checks: If a settlement check is returned to the Settlement Administrator
18 as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing
19 address by performing a skip trace search and, if another address is identified, shall mail the check
20 to the newly identified address. Any settlement checks remaining uncashed after one hundred and
21 eighty (180) days shall be deemed unpaid residue pursuant Code of Civil Procedure Section 384(a).
22 Unpaid residue (uncashed or returned checks) shall be transmitted by the Settlement Administrator
23 to the California Controller’s Unclaimed Property Fund. (Settlement, § 4.4.3.)

24 7. Release as to All Settlement Class Members: Upon the Effective Date of this
25 Agreement, the class release will be for a release of “all claims that were alleged, or reasonably
26 could have been alleged, based on the Class Period facts stated in the Operative Complaint and
27 ascertained in the course of the Action including, but not limited to, any and all claims for (1)
28 failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197);

(2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198); (3) failure to provide meal periods and to pay premium payments (Cal. Lab. Code §§ 226.7, 512); (4) failure to authorize and permit rest periods and to pay premium payments (Cal. Lab. Code §§ 226.7); (5) failure to timely pay final wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); (7) failure to reimburse business-related expenses (Labor Code § 2802); (8) violation of California’s Unfair Competition Law (California Business and Professions Code §§17200, et seq.); and failure to maintain records (Labor Code § 1174.5). Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.” (Settlement, §§ 1.18, 6.2.)

8. PAGA Release by Plaintiff and Aggrieved Employees: Upon the Effective Date of this Agreement, Plaintiff, all Aggrieved Employees, and The State of California are deemed to release “all claims for PAGA civil penalties, which occurred during the PAGA Period, pursuant to Labor Code section 2698 et seq. alleged or that could have been alleged based on the allegations asserted in the Operative Complaint and PAGA Notice, including but not limited to claims for (1) failure to pay minimum and straight time wages (Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Cal. Lab. Code §§ 1194 and 1198); (3) failure to provide meal periods and to pay premium payments (Cal. Lab. Code §§ 226.7, 512); (4) failure to authorize and permit rest periods and to pay premium payments (Cal. Lab. Code §§226.7); (5) failure to timely pay final wages at termination (Cal. Lab. Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Cal. Lab. Code § 226); (7) failure to reimburse business-related expenses (Labor Code § 2802); and (8) failure to maintain records (Labor Code § 1174.5). (Settlement, §§ 1.1, 6.3.)

9. PAGA Allocation: The settlement includes \$25,000.00 allocated to Plaintiff’s claims under PAGA, with 75% of which (\$18,750.00) being paid to the LWDA and 25% of which (\$6,250.00) being paid to the Participating PAGA Members. (Settlement, § 3.2.5.) Class Counsel

submitted the proposed settlement to the LWDA before filing this Motion for Final Approval. (Marquez Decl., ¶ 10.)

10. Net Settlement Fund: The “Net Settlement Fund” or “Net Settlement Amount” is the amount that remains and that shall be paid to Settlement Class Members after the following amounts are subtracted: (1) attorneys’ fees and Litigation costs, (2) Administrative Costs, (3) enhancement to the Named Plaintiff, and (4) the penalties recoverable pursuant to the PAGA. (Settlement, § 4.4.)

11. Distribution Formula: Members of the Settlement Class not opting out will receive a lump sum payment as good and valuable consideration for the waiver and release of claims as set forth in Section 6 of the Settlement Agreement, above, in an amount determined by the Settlement Administrator in accordance with the provisions as outlined in Section 3 of the Settlement Agreement.

12. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 10% wages and 90% interest and penalties. (Settlement, § 3.2.4.1.) The tax allocation breakdown comports with Plaintiff’s *Kullar* analysis, as detailed in Justin F. Marquez’s Declaration. (Marquez Decl., ¶¶ 16-29; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

13. Class Representative Service Award: Subject to Court approval, Plaintiff shall be paid an enhancement award not to exceed \$10,000.00. This amount is for Plaintiff’s time and effort in bringing and presenting the action, and in exchange for a general release of all claims, known or unknown, pursuant to Civil Code Section 1542. If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis. (Settlement, § 3.2.1.)

14. Attorneys’ Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 33 1/3% (\$117,833.33) of the Gross Settlement Amount, plus out-of-pocket costs not to exceed \$16,000.00. (Settlement, § 3.2.2.) At this time, Class Counsel’s costs are approximately \$14,044.16. (Marquez Decl., ¶¶ 39, 47.)

1 15. Notice of Proposed Class Action Settlement: The Class Notice sets forth in plain
2 terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of
3 attorneys’ fees, costs, and service award being sought, and an explanation of how the settlement
4 allocations are calculated. (Settlement, Class Notice.) The Notice also includes an opt-out form
5 that class members can complete in the event they decide to not participate in the settlement. (*Id.*)
6 Class Members will be notified by first-class mail of the settlement. (Settlement, § 8.4.) ILYM
7 Group, Inc., the proposed Settlement Administrator, will undertake its best efforts to ensure that
8 the notice is provided to the current addresses of class members, including conducting a national
9 change of address search and re-mailing the notice to updated addresses. (*Id.*) (Marquez Decl., ¶
10 12; Ex. 3 [Settlement Administrator Bid]; Molina Decl., ¶¶ 2-11.)

11 E. Preliminary Settlement Approval, Class Notice, and Settlement
12 Administration.

13 This Court issued an Order Granting Plaintiff’s Motion for Final Approval of Class Action
14 and PAGA Settlement on August 2, 2023. (Marquez Decl., ¶ 5.)

15 Altogether, notices explaining class member rights were mailed out to all one hundred and
16 twenty-four (124) Class Members. (Molina Decl., ¶ 8.) To date, two (2) notice packets remain
17 undeliverable. (*Id.* at ¶ 11.) ***There are no objections to the settlement and one request for***
18 ***exclusion.*** (*Id.* at ¶¶ 12, 13.) If the Court approves the settlement, the 124 Participating Class
19 Members will receive an **estimated average gross payment of \$1,425.28** with the **estimated**
20 **highest gross payment will be \$4,125.16.** (*Id.* at ¶ 16.)

21 **III. THE SETTLEMENT MERITS FINAL APPROVAL**

22 The law favors the settlement of lawsuits, particularly in class actions and other complex
23 cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors
24 to be considered in evaluating a class action settlement include “the strength of plaintiffs’ case, the
25 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
26 action status through proceedings, the experience and views of counsel, the presence of a
27 government participant, and the reaction of the class members to the proposed settlement.” (*Kullar*
28 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is

1 fair and reasonable exists where, as here, the following four factors are present: “(1) the settlement
2 is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow
3 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
4 the percentage of objectors is small.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
5 224, 245.)

6 Whether a class action settlement should be approved is a question committed to the trial
7 court’s broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give
8 “[d]ue regard ...to what is otherwise a private consensual agreement between the parties.” (*Dunk*
9 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) “The inquiry ‘must be limited to the extent
10 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
11 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
12 whole, is fair, reasonable and adequate to all concerned.” (*Id.* [internal citations omitted].)

13 **A. The Settlement Reflects a Reasonable Compromise.**

14 The Settlement represents a significant percentage of the maximum damages that may have
15 been awarded to the class in this case if they had prevailed at trial. The Settlement, of course,
16 reflects a compromise. The amount of settlement benefits takes into account all the litigation risks
17 related to obtaining class certification, proving Defendant’s liability, and proving Class Members’
18 damages. In light of all the defenses asserted by Defendant which posed substantial litigation risks,
19 a compromise effectively awarding Participating Class Members a significant percentage of the
20 maximum value of their claims is eminently fair and reasonable.

21 Because of the Settlement, and through the efforts of Plaintiff and Class Counsel,
22 Participating Class Members will receive timely, guaranteed relief and will avoid the risk of an
23 unfavorable judgment.

24 To be sure, Plaintiff contends that Defendant ultimately has to pay less under the settlement
25 than it would have had to pay if Plaintiff had achieved a judgment on claims at trial. But an ideal
26 settlement requiring a defendant to pay the full amount of its potential damages is rarely achieved.
27 As the Ninth Circuit has observed, “the very essence of a settlement is compromise, ‘a yielding of
28 absolutes and an abandoning of highest hopes.’” (*Officers for Justice v. Civil Service Commission*

1 *of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 624.) Thus, a proposed
2 settlement “is not to be judged against a hypothetical or speculative measure of what might have
3 been achieved by the negotiators.” (*Id.* at p. 625.) A court’s “intrusion upon what is otherwise a
4 private consensual agreement negotiated between the parties to a lawsuit must be limited to the
5 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
6 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
7 whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

8 **B. The Settlement was Reached After Arms-Length Negotiations Following**
9 **Informal Discovery.**

10 The Settlement was reached following extensive negotiations following a full day of
11 mediation with experienced employment mediator, Brandon McKelvey, Esq. (Marquez Decl., ¶¶
12 8-9.) The settlement negotiations were at arm’s length and, although conducted in a professional
13 manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential
14 for a settlement of the dispute, but each side was also prepared to litigate their or its position
15 through trial and appeal if a settlement had not been reached. (*Id.*)

16 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
17 the claims set forth in the Litigation, such as class member timekeeping and payroll records,
18 Defendant’s policies and procedures concerning the payment of wages, the provision of meal and
19 rest breaks, issuance of wage statements, and providing all wages at separation, as well as
20 information regarding the number of putative class members and the mix of current versus former
21 employees, the wage rates in effect, and the amount of meal and rest period premium wages paid
22 to class members. (*Id.* at ¶¶ 6-7.) In conjunction with their extensive factual investigation, Class
23 Counsel investigated the applicable law regarding the claims and defenses asserted in the
24 Litigation. (*Id.*) Thus, Plaintiff and his counsel were able to act intelligently and effectively in
25 negotiating the proposed Settlement. (*Id.*)

26 **C. Plaintiff’s Counsel Has Substantial Class Action Experience.**

27 Class Counsel has considerable experience and has demonstrated competence with
28 litigating wage and hour class actions. (*Id.* at ¶¶ 48 -59.) Class Counsel has substantial experience

1 in all facets of litigation in state and federal court, including discovery, law and motion, trial,
2 appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf
3 of plaintiffs and have been lead counsel or otherwise exercised significant case handling
4 responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

5 Based on Class Counsel's experience as employment and class action attorneys, Class
6 Counsel is eminently qualified to evaluate the strength of Plaintiff's claims, the strength of
7 Defendant's defenses against certification, the strength of Defendant's defenses on the merits, and
8 the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the
9 best interests of class members in light of the significant risks of litigation is entitled to great
10 weight. (*See Kullar, supra*, 168 Cal.App.4th at 129 ["The court undoubtedly should give
11 considerable weight to the competency and integrity of counsel and the involvement of a neutral
12 mediator in assuring itself that a settlement agreement represents an arms-length transaction
13 entered without self-dealing or other potential misconduct"].)

14 **D. There Are No Objections to The Settlement.**

15 No Class Member has objected to the Settlement and no Class Member has requested
16 exclusion from the Settlement. (Molina Decl., ¶¶ 12, 13.) The overwhelmingly positive response
17 of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc.*
18 *Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few
19 objections and requests for exclusion support approval].)

20 Factors to be considered in evaluating a class action settlement include "the reaction of the
21 class members to the proposed settlement." (*Kullar, supra*, 168 Cal.App.4th at p. 128.) The
22 reaction here has been overwhelmingly positive. Courts have approved class action settlements in
23 lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist.
24 LEXIS 5976, 2001 WL 34089697, *8 [court found that the "class members overwhelmingly
25 support[ed] the settlement" where there were over 37,000 notices sent out, 2,745 class members
26 participated in the settlement, "only nine objections were submitted", and there were 86 timely
27 opt-outs and over 20 additional defective or untimely opt-outs, "these indicia of the approval of
28 the class of the terms of the settlement support a finding of fairness under Rule 23"], *citing Hanlon*

1 v. *Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by
2 objectors, “fact that the overwhelming majority of the class willingly approved the offer and stayed
3 in the class presents at least some objective positive commentary as to its fairness”, court did not
4 abuse its discretion in approving settlement].)

5 **E. The PAGA Settlement and Allocation is Fair, Just, and Reasonable.**

6 Plaintiff seeks preliminary approval of a proposed \$353,500.00 non-reversionary, wage,
7 and hour class and PAGA action settlement, which includes a \$25,000.00 allocation to the PAGA
8 claims, with Defendant. The Settlement will provide substantial monetary payments to
9 approximately 124 class members and 104 aggrieved employees. (Marquez Decl., ¶ 30; Molina
10 Decl., ¶ 5.)

11 The claims, including the PAGA claims, were investigated and evaluated by experienced
12 counsel. (*Id.* at ¶¶ 6-7, 48 - 49.) Based on Plaintiffs’ discovery and investigation, Class Counsel,
13 reached the conclusion that Defendant’s payroll, timekeeping, and wage and hour practices
14 resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours
15 worked off the clock by the putative class member. In addition, Plaintiff alleges that Defendant
16 failed to include all remuneration in the employees’ overtime rate and meal period premiums.
17 Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal
18 and rest periods and failed to reimburse employees for necessary business expenses. Based on
19 these allegations, Plaintiff asserts claims against Defendant for failure to pay minimum and straight
20 time wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and
21 permit rest periods, failure to timely pay all final wages at termination, failure to provide accurate
22 itemized wage statements, failure to reimburse for necessary business expenses, and unfair
23 business practices, and civil penalties under PAGA. Defendant denied these claims. (*Id.* at ¶2.)

24 After extensive negotiations and discussions regarding the strengths and weaknesses of
25 Plaintiff’s claims and Defendant’s defenses, the Parties reached this settlement of both Class and
26 PAGA claims with the assistance of experienced class action mediator, Brandon McKelvey, Esq.
27 on June 17, 2022. Although cordial and professional, the settlement negotiations in this action
28 were adversarial and non-collusive in nature. The settlement reached here is the product of

1 substantial effort by the parties and their counsel. The terms of the settlement are memorialized in
2 the settlement agreement. (*Id.* at ¶ 8-11.)

3 With respect to Plaintiff’s derivative claims for PAGA penalties, at the time of mediation,
4 Plaintiff evaluated, with the assistance of a consultant, 20% of the time and payroll records for the
5 aggrieved employees from the PAGA Period. Plaintiff determined that Defendant’s maximum
6 potential liability for PAGA penalties is \$277,800.00 for PAGA violations based on the Court
7 assessing a \$100 penalty for initial violations for all 2,778 pay periods (approximately 69
8 employees) within the 1-year statute. However, reducing this by at least 90% would bring us to a
9 more realistic figure of \$27,780.00 considering the difficulty of proving some of the underlying
10 claims, and the fact that the PAGA claims are discretionary. This amount may be further reduced
11 based on other issues impacting the PAGA claim. (*Id.* at ¶ 31.)

12 Class Counsel believed the \$25,000.00 allocation to the PAGA claim was appropriate given
13 Counsel’s evaluation of the PAGA claims, the procedural status of the claim, and the fact that the
14 amounts would serve PAGA’s statutory purpose. (*Id.* at ¶ 31.)

15 To date, the LWDA has given no indication that they (1) intend to investigate the alleged
16 claims or (2) that they object to the settlement. (*Id.* at ¶ 33.)

17 Because this matter also settles PAGA claims, the Court also must consider the criteria that
18 apply under that statute. Recently, the Court of Appeal’s decision in *Moniz v. Adecco USA, Inc.*
19 (2021) 72 Cal.App.5th 56 (*Moniz*), provided guidance on this issue of the evaluation of a PAGA
20 settlement or allocation. In *Moniz*, the court found that the “fair, reasonable, and adequate”
21 standard applicable to class actions applies to PAGA settlements. *Id.*, at 64. The Court also held
22 that the trial court must assess “the fairness of the settlement’s allocation of civil penalties between
23 the affected aggrieved employees[.]” *Id.*, at 64-65.

24 California law provides some general guidance concerning judicial approval of any
25 settlement. First, public policy generally favors settlement. *Neary v. Regents of University of*
26 *California* (1992) 3 Cal.4th 273. Nonetheless, the court should not approve an agreement contrary
27 to law or public policy. *Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney*
28 *v. Lin* (2003) 106 Cal.App.4th 1121, 1127. Moreover, “[t]he court cannot surrender its duty to see

1 that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter.”
2 *California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664. As a
3 result, courts have specifically noted that Neary does not always apply, because “[w]here the rights
4 of the public are implicated, the additional safeguard of judicial review, though more cumbersome
5 to the settlement process, serves a salutatory purpose.” *Consumer Advocacy Group, Inc. v.*
6 *Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 63.

7 Given the strengths and weaknesses of the Plaintiff’s PAGA claims as evaluated by
8 experienced counsel, the procedural history, the arms-length negotiation of the Class and PAGA
9 settlements with an experienced mediator, the fact that the LWDA has not objected to the
10 settlement, to date, after notice was given, and that the allocated amount of \$25,000.00 in PAGA
11 penalties serves the purpose of the PAGA statute, the Court should find that the PAGA settlement
12 allocation is fair, just and reasonable under *Moniz*.

13 The settlement includes \$25,000.00 allocated to Plaintiffs’ claims under PAGA, with 75%
14 of which (\$18,750.00) will be paid to the LWDA and 25% (\$6,250.00) being paid to the aggrieved
15 employees, as stated below from ¶3.2.5 of the Settlement Agreement, which also specifically
16 explains how the PAGA settlement will be allocated and paid:

17 3.2.5. To the LWDA and Aggrieved Employees:
18 PAGA Penalties in the amount of \$25,000.00 to be paid from the
19 Gross Settlement Amount, with 75% (\$18,750.00) allocated to the
20 LWDA PAGA Payment and 25% (\$6,250.00) allocated to the
21 Individual PAGA Payments.

22 3.2.5.1. The Administrator will calculate each
23 Individual PAGA Payment by (a) dividing the amount of the
24 Aggrieved Employees’ 25% share of PAGA Penalties \$6,250.00 by
25 the total number of PAGA Period Pay Periods worked by all
26 Aggrieved Employees during the PAGA Period and (b) multiplying
27 the result by each Aggrieved Employee’s PAGA Period Pay Periods.
28

1 Aggrieved Employees assume full responsibility and liability for any
2 taxes owed on their Individual PAGA Payment.

3 3.2.5.2. If the Court approves PAGA Penalties
4 of less than the amount requested, the Administrator will allocate the
5 remainder to the Net Settlement Amount. The Administrator will
6 report the Individual PAGA Payments on IRS 1099 Forms.

7 The 75% allocation of the PAGA settlement amount to the LWDA, with the remaining 25%
8 allocation to the aggrieved employees paid under the formula provided in ¶3.2.5 of the Settlement
9 Agreement and Amended Settlement Agreement, is a fair way to pay the amounts to the aggrieved
10 employees. Thus, this allocation is fair, just, and reasonable and provides the relief anticipated by
11 the PAGA statute.

12 **IV. THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED AMOUNTS OF**
13 **ATTORNEYS' FEES, COSTS AND AN ENHANCEMENT PAYMENT.**

14 Under the Settlement, subject to the Court's approval, Defendant has agreed not to oppose
15 Class Counsel's request for reasonable attorneys' fees in the amount of \$117,833.33, which is 33
16 1/3% of the Total Maximum Settlement Amount, and Litigation costs in an amount not to exceed
17 \$14,044.16 for litigating this Action, which shall be paid from the Total Maximum Settlement
18 Amount. In addition, Defendant will not oppose an application for the payment of Administrative
19 Costs in the amount of \$9,888.40 and a Class Representative Enhancement payment in the amount
20 of \$10,000.00, to be paid from the Settlement Amount. The proposed attorneys' fees and expenses
21 were disclosed to the Class Members in the Notice of Proposed Class Action Settlement.

22 "In general, questions whether a settlement was fair and reasonable, whether certification
23 of the class was proper, and whether the attorney fee award was proper are matters addressed to
24 the trial court's broad discretion." (*Wershba, supra*, 91 Cal.App.4th at pp. 234-235.) "Courts
25 recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier
26 method and the percentage of recovery method." (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.*
27 (9th Cir. 1977) 557 F.2d 759, 769.)

1 **A. Counsel Requests an Award of Fees Based on the “Common Fund” Method.**

2 California courts have long awarded attorneys’ fees as a percentage of the benefit created
3 by counsel in pursuing claims on behalf of a class. The California Supreme Court held that “when
4 a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff
5 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff
6 or plaintiffs may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d
7 25, 34 [quoting *D’Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1.]

8 Class Counsel intends to seek an award of attorneys’ fees on the “percentage of recovery/
9 common fund” theory. The purpose of the common fund/percentage approach is to “spread
10 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
11 bear the entire burden alone.” (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)
12 In *Quinn v. State of California* (1995) 15 Cal. 3d 162, 167, the California Supreme Court stated:
13 “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others
14 derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.”
15 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California
16 Supreme Court recognized that the common fund doctrine has been applied “consistently in
17 California when an action brought by one party creates a fund in which other persons are entitled
18 to share.”

19 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
20 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
21 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
22 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
23 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
24 method—including relative ease of calculation, alignment of incentives between counsel and the
25 class, a better approximation of market conditions in a contingency case, and the encouragement
26 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
27 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
28 (*Id.* [internal citations omitted].)

Several courts have expressed frustration with the alternative “lodestar” approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote: “This court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit analysis, the answer would be a resounding, ‘No!’” (*In re Activision Securities Litigation* (N.D. Cal 1989) 723 F. Supp. 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id.* at pp. 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney’s fees. (*See, e.g., In re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 [approving attorney’s fee of 33 1/3%].)

1. The Standard Fee Award in Class Actions Has Resolved Itself As One-Third Of The Recovery In Common Fund Cases.

According to a leading treatise on class actions, “No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (*See Conte & Newberg, Newberg on Class Actions* (3rd Ed.) § 14.03.) Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with *thirty to forty percent commonly awarded in cases where the settlement is relatively small*. (*See Id.*; *see also, Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under \$10 million].)

The settled-for 33 1/3% fee award is consistent with the average fee award in class actions. Indeed, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in

1 class actions average around one-third of the recovery.”].) Thus, Plaintiff’s fee request is in line
2 with the prevailing guidelines established in California case law and academic literature, and is
3 consistent with awards in California. Accordingly, Plaintiff requests that the Court approve the
4 attorneys’ fees as negotiated by the Parties and requested herein.

5 **2. This Matter Involves A “Fee-Shifting” Provision of the Labor Code.**

6 Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

7 [A]ny employee receiving less than the legal minimum wage or the legal overtime
8 compensation applicable to the employee is entitled to recover in a civil action the
9 unpaid balance of the full amount of this minimum wage or overtime compensation,
10 including interest thereon, reasonable attorney’s fees, and costs of suit.

11 (Lab. Code § 1194.)

12 As this litigation culminated in a settlement that provided for a recovery of unpaid wages,
13 including unpaid minimum wages and overtime compensation, Plaintiff is entitled to recover
14 reasonable attorneys’ fees and costs under the California Labor Code.

15 Class Counsel is also entitled to a fee award under California’s private attorney general
16 statute, Code of Civil Procedure § 1021.5. “The award of attorneys fees is proper under Section
17 1021.5 if ‘(1) plaintiffs’ action ‘has resulted in the enforcement of an important right affecting the
18 public interest,’ (2) ‘a significant benefit, whether pecuniary or nonpecuniary, has been conferred
19 on the general public or a large class of persons’ and (3) ‘the necessity and financial burden of
20 private enforcement are such as to make the award appropriate.’” (*Press v. Lucky Stores* (1983)
21 34 Cal.3d 311, 317-318.) The fundamental objective of the statute is “to encourage suits enforcing
22 public policies by providing substantial attorneys’ fees to successful litigants in such cases.”
23 (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

24 This action resulted in the enforcement of an important right affecting the public interest,
25 as Plaintiff sought to enforce Settlement Class Members’ rights to recover statutory wages arising
26 from Defendant’s failure to pay all wages and failure to provide meal and rest breaks. (*See Murphy*
27 *v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that “health and safety
28 concerns” are what motivated the Industrial Welfare Commission to adopt mandatory meal and
29 rest periods].)

1 This action also conferred a significant benefit on a large class of persons. Notice was sent
2 to 124 individuals, and no Class Member objected to the Settlement and no individual requested
3 exclusion. The Settlement provides a significant monetary benefit, in that it permits all persons
4 who worked for Defendant during the applicable class period to obtain significant compensation
5 for unpaid wages and missed meal and rest periods.

6 Finally, the necessity and financial burden of private enforcement render an award
7 appropriate. Without the incentive of an attorneys' fee award, Plaintiff could not have afforded to
8 hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff's
9 potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th
10 1033, 1044 ["As to the necessity and financial burden of private enforcement, an award is
11 appropriate where the cost of the legal victory transcends the claimants' personal interest; in other
12 words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual
13 stake in the matter."].)

14 **3. The Experience, Reputation and Ability of Class Counsel Support the**
15 **Fee Award.**

16 As demonstrated by their past experience in pursuing class actions on behalf of consumers
17 and employees, Class Counsel possesses considerable expertise in litigating class action matters.
18 Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting
19 in a multitude of beneficial results to class members in California. (Marquez Decl., ¶¶ 45 - 57; *see*
20 *also Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB-DFM,
21 2021 WL 3673845 [approving Plaintiff's counsel's request for attorney's fees after finding it was
22 "reasonable, given the qualifications of the attorneys who worked on this matter."]; *Mark Brulee,*
23 *et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018
24 WL 6616659 ["Class Counsel's declarations show that the attorneys are experienced and
25 successful litigators."].) Because it is reasonable to compensate class counsel commensurate with
26 their skill, reputation and experience, a fee award of 33 1/3% of the Maximum Settlement Amount,
27 a percentage considered within the norm in class action practice, is certainly justified here.

1 Class Counsel's experience in wage and hour class actions was integral in evaluating the
2 strengths and weaknesses of the case against Defendant and the reasonableness of the settlement.
3 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
4 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
5 action litigation. Based on these and other factors, Class Counsel has frequently received fee
6 awards amounting to 33 1/3% of the recovery for the class. Therefore, the requested fee award is
7 reasonable and fair.

8 **B. While the Lodestar Method is Not Necessary in Common Fund Cases, Courts**
9 **May Perform a Cross-Check to Award Fees.**

10 "Despite its primacy, the lodestar method is not necessarily utilized in common fund cases."
11 (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the
12 lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-
13 risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: "(1) 'increases the workload
14 of an already overtaxed judicial system,' (2) is 'insufficiently objective and produce[s] results that
15 are far from homogenous,' (3) 'creates a sense of mathematical precision that is unwarranted in
16 terms of the realities of the practice of law,' (4) 'is subject to manipulation by judges who prefer
17 to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the
18 plaintiffs or of an overall dollar amount,' (5) 'encourages lawyers to expend excessive hours, and
19 . . . engage in duplicative and unjustified work,' (6) 'creates a disincentive for the early settlement
20 of cases,' (7) deprives trial courts of 'flexibility to reward or deter lawyers so that desirable
21 objectives, such as early settlement, will be fostered,' (8) 'works to the particular disadvantage of
22 the public interest bar,' and (9) results in 'confusion and lack of predictability.'" (*Id.*)

23 Although California supports the common fund doctrine, the lodestar method can be used
24 to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can
25 be monetized with a reasonable degree of certainty, to "cross-check" or adjust the lodestar in
26 comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and
27 within the range of fees freely negotiated in the legal marketplace in comparable litigation."(*In re*
28 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

1 Applying the lodestar method requires a two-step process. The first step is to multiply the
2 number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a
3 multiplier to the lodestar to take into account various factors. “The purpose of such adjustment is
4 to fix a fee at the fair market value for the particular action. In effect, the court determines,
5 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal
6 skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate
7 for such services.” (*Id.* at pp. 556-57.) “Under certain circumstances, a lodestar calculation may
8 be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id.* at p. 557.)

9 Wilshire Law Firm’s current lodestar is \$126,215 based on at least 164.5 hours of reported
10 work performed by Class Counsel. (Marquez Decl., ¶¶ 39 - 47.) Accordingly, the requested fee
11 of \$117,833.33 is reasonable and fair as it is very close to the lodestar, which is greater than the
12 requested fees. Additionally, there are additional hours devoted by Class Counsel to this litigation
13 that are not reflected in Class Counsel’s request for attorney’s fees, such as future time that will
14 need to be devoted to ensuring the settlement checks are administered. (Marquez Decl., ¶ 42.)

15 **1. Class Counsel’s Rates Have Been Approved by Several Courts.**

16 Class Counsel provides a declaration to support their lodestar hourly rates. “Affidavits of
17 the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate
18 determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are
19 satisfactory evidence of the prevailing market rate.” (*United Steelworkers of America v. Phelps*
20 *Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of
21 their hourly rates in other wage and hour class action settlements. These rates are not opposed or
22 challenged.

23 **2. The Lawsuit Provided a Public Benefit.**

24 Class Counsel’s choice to litigate this matter provided a public benefit to 531 California
25 employees. Indeed, California Labor Code section 90.5(a) states:

26 It is the policy of this state to vigorously enforce minimum labor standards in order
27 to ensure employees are not required or permitted to work under substandard unlawful
28 conditions...and to protect employers who comply with the law from those who
attempt to gain a competitive advantage at the expense of their workers by failing to
comply with minimum labor standards.

Moreover, the California Supreme Court stated that “Labor Code section 1194 confirms “a clear public policy ... that is specifically directed at the enforcement of California's minimum wage and overtime laws for the benefit of workers.” [citation omitted].” (*Sav-on Drug Stores, Inc. v. Super. Ct.* (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous attorney hours attendant to the litigation of Plaintiff’s claims, this factor supports Class Counsel’s fee request and encourages the private enforcement of legal rights for the general good.

C. Costs Are Reasonable.

Class Counsel requests reimbursement of \$14,044.16 in expenses. (Marquez Decl., ¶¶ 39, 47.) Defendant has agreed that it will not oppose any cost award request up to \$16,000. (Settlement, § 3.2.2.) The categories of costs are set forth in the accompanying Declaration of Justin Marquez, and these costs are easily seen to be both reasonable and necessary.

D. The Class Representative Payment to Plaintiff is Reasonable.

Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59.)

Service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws. This strong policy is codified in California Labor Code section 90.5, which provides, “it is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions....”).

Under the Settlement Agreement, subject to the Court’s approval, Defendant agreed not to oppose an enhancement to Plaintiff in the amount of \$10,000. (Settlement, § 3.2.1.) This amount is also in exchange for Plaintiff’s general release of all claims against Defendant. Plaintiff has submitted a declaration demonstrating that he devoted a great deal of time and work assisting

1 counsel in the case, including numerous phone calls to discuss the case, case strategy, mediation,
2 and settlement. (*See generally*, Declaration of Plaintiff Yohanna Sanchez [“Sanchez Decl.”]
3 (showing at least 40 hours of estimated time devoted to this case).)

4 When compared with the amounts awarded in typical class action cases, the amount
5 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
6 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
7 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
8 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
9 53 UCLA L. Rev. 1303, 1308 (2006).) That same study found that named plaintiffs in employment
10 discrimination class actions received an average award of \$69,850 and a median award of \$31,081,
11 while named plaintiffs in other employment class actions received an average award of \$12,121
12 and a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards
13 in employment cases reflected the “courts’ wish to make representative plaintiffs whole by
14 compensating them for the high costs of their service to the class, including risks of stigmatization
15 or retaliation on the job.” (*Id.* at p. 1308.)

16 Another factor that supports the awarding of service awards is whether the class
17 representative’s service resulted in notoriety or other personal difficulties. (*See, e.g., Schaffer*
18 *v. Litton Loan Servicing, LP* (C.D. Cal. 2012) 2012 WL 10274679, at *18.) The California
19 Supreme Court has recognized that “retaliation against employees for asserting statutory rights
20 under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect
21 employees. (*Gentry v. Superior Court* (2007) 42 Cal.4th 443, 460-61.) In this context, class
22 representatives should be rewarded for assuming the risk of retaliation for the sake of class
23 members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

24 Here, Plaintiff has lent her name to this case and thus subjected herself to public
25 attention. She has also risked her reputation in the community and with regard to future
26 employment opportunities as a result of stepping forward publicly in a class action. When a
27 class representative shoulders some degree of personal risk in joining the litigation, such as
28 workplace retaliation or financial liability, an incentive award is especially important. (*See*

1 *Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977; *Weeks v. Kellogg Co.* (C.D. Cal. 2013)
2 2013 WL 6531177, *36.) Plaintiff has been subject to the rigors of litigation and has had to
3 devote her own time and expenses in participating in the case. (*See, generally*, Sanchez Decl.;
4 *see also* Marquez Decl., ¶ 34-38.)

5 **E. Administrative Costs Should be Approved.**

6 ILYM Group, Inc., the Settlement Administrator, estimates that it will incur a total of
7 \$9,888.40 in costs associated with the administration of this Settlement. (Molina Decl., ¶ 17.)
8 These expenses are reasonable, based upon the size of the class and the additional tasks associated
9 with claim and exclusion tracking and Class Member payment processing.

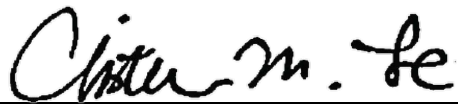
10 **V. CONCLUSION**

11 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final
12 approval of the proposed settlement.

13
14 Respectfully submitted,

15 Dated: November 17, 2023

16 **WILSHIRE LAW FIRM**

17 By: 
18 Justin F. Marquez
19 Christina M. Le
20 Arsine Grigoryan
21 Attorneys for Plaintiff
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PROOF OF SERVICE

Sanchez v. Su Casa de Cambio Cesar Chavez, Inc.
21STCV32728

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Sandy S. Sespene, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is ssespene@wilshirelawfirm.com.

On **November 17, 2023**, I served the foregoing **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

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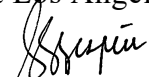
Attorneys for Defendant, Su Casa de Cambio Cesar Chavez, Inc.

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on November 17, 2023, at Los Angeles, California.



Sandy S. Sespene