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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

JOHN COOK, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

APPLE INC., a California corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No. 34-2021-00311177-CU-OE-GDS

(Assigned to the Hon. Lauri A. Damrell, Dept. 22)

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

Date: March 29, 2024
Time: 9:00 a.m.
Dept.: 22

Complaint Filed: November 17, 2021
FAC Filed: May 18, 2023
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE** that on March 29, 2024, at 9:00 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable Lauri A. Damrell, judge presiding, in Department 22 of
4 the above referenced Court, located at 720 Ninth Street, Sacramento, California 95814, Plaintiff John
5 Cook (“Plaintiff”) will and hereby does move the Court for an Order:

6 (1) granting final approval to the Joint Stipulation of Class and Representative Action
7 Settlement (“Agreement” or “Settlement Agreement”) in this action;

8 (2) approving distribution of the settlement funds to Settlement Class Members pursuant to
9 the terms of the Settlement Agreement;

10 (3) approving Plaintiff’s request for an award of the Class Representative Enhancement
11 Payment of \$10,000.00 to Plaintiff pursuant to the terms of the Settlement Agreement;

12 (4) approving Class Counsel’s request for an award of attorneys’ fees to Class Counsel for
13 35% of the \$495,000.00 Gross Settlement Amount, and reimbursement of litigation costs of
14 \$15,565.84, pursuant to the terms of the Settlement Agreement;

15 (5) approving Plaintiff’s request for payment of the settlement administration costs to
16 ILYM Group, Inc. in the amount of \$14,000.00 pursuant to the terms of the Settlement Agreement;

17 (6) approving Plaintiff’s request for payment of PAGA penalties in the amount of
18 \$20,000.00, with \$15,000.00 to be distributed to the California Labor and Workforce Development
19 Agency and \$5,000.00 to be distributed among Aggrieved Employees, with payment pursuant to the
20 terms of the Settlement Agreement; and

21 (7) entering final judgment as to all members of the Settlement Class in this action.

22 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides
23 for court approval of the settlement of a purported class action and allows the Court to grant final
24 certification of a class for settlement purposes. In light of the overwhelmingly positive response, as
25 shown by the lack of objections to the settlement and low number of opt-outs, there is no question
26 that the settlement is fair, reasonable and adequate and thus should be granted final approval.

27 This Motion will be based on the attached Memorandum of Points and Authorities and the
28 supporting Declarations of Larry W. Lee, Kristen M. Agnew, Nicholas Rosenthal, William L.

1 Marder, John Cook, and Nathalie Hernandez of ILYM Group, Inc. and upon the oral arguments of
2 counsel (should there be any) and on the complete records and file herein.

3 Pursuant to Local Rule 1.06(A), the court will make a tentative ruling on the merits of this
4 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for
5 the department may be downloaded off the court's website. If the party does not have online access,
6 they may call the dedicated phone number for the department as referenced in the local telephone
7 directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and
8 receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court
9 day before the hearing, no hearing will be held.

10
11 DATED: March 7, 2024

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

12
13 By: _____

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Kristen M. Agnew

Nicholas Rosenthal

William L. Marder

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16 Attorneys for Plaintiff, the Class, and Aggrieved
17 Employees
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1 **I. INTRODUCTION**

2 On May 18, 2023, Plaintiff John Cook (“Plaintiff”), on behalf of himself and all other
3 similarly situated current and former employees, filed a First Amended Complaint against Defendant
4 Apple Inc. (“Defendant”) in the Superior Court of California for the County of Sacramento. The
5 lawsuit alleged a cause of action predicated on Defendant’s alleged failure to provide accurate wage
6 statements identifying the total hours worked when an employee was paid overtime wages as
7 required by Labor Code § 226, as well as a cause of action under PAGA based upon this same
8 violation.

9 Plaintiff now seeks the Court’s final approval of the Joint Stipulation of Class and
10 Representative Action Settlement (“Agreement” or “Settlement Agreement”). The Settlement
11 Agreement provides for a \$495,000.00 fund to be created for the benefit of the Settlement Class,
12 from which attorneys’ fees, litigation costs, enhancement payment to the Plaintiff, payment of PAGA
13 penalties, and costs of settlement administration are to be paid. The entire net settlement fund after
14 these deductions will be paid to all Participating Settlement Class Members who did not opt-out of
15 the settlement, and none of the settlement fund will revert to Defendant under any circumstances.

16 The history of this litigation was previously detailed in Plaintiff’s Motion for Preliminary
17 Approval of Class Action Settlement. This Court preliminarily approved this settlement on
18 September 13, 2023, directing distribution of class notice and scheduling the hearing for final
19 approval of settlement (the “Preliminary Approval Order”).

20 As directed by the Court, the Settlement Administrator distributed the Class Notice to 759
21 Settlement Class Members. Declaration of Nathalie Hernandez on behalf of ILYM Group, Inc.
22 (“Admin. Decl.”) ¶ 7, Ex. A. To date, zero (0) Settlement Class Member opted out of the Settlement
23 Class, and there have been zero (0) objections filed. Admin. Decl. ¶¶ 11, 12. As such, there is a 100%
24 participation rate. Thus, an inference can be made that the Settlement Class supports the Court’s
25 Preliminary Approval Order finding that the Settlement Agreement is fair and reasonable.

26 In addition to the results of the notice process, the settlement is fair and reasonable for the
27 same reasons addressed in Plaintiff’s Motion for Preliminary Approval of Class Action Settlement:

- 28 ▪ The settlement provides a total settlement sum of \$495,000.00, which is **non-**

reversionary;

- The settlement is fair given that claiming Settlement Class Members will receive (*after deductions for fees, costs, etc.*) a substantial amount of money (on average, each Settlement Class Member will receive approximately \$342.44) (*See Admin. Decl. ¶ 14*);
- Settlement Class Members did not need to submit claim forms to participate in the settlement, but are being paid automatically;
- The allocation reflects that payment of claims will be paid to all Settlement Class Members in proportion to the number of applicable pay periods worked by each Class Member;
- Plaintiff conducted significant investigation in this case, including analyzing data produced by Defendant so that Plaintiff could fully evaluate the potential exposure of Defendant;
- A highly regarded administrator, ILYM Group, Inc., was retained for \$14,000.00; and
- California’s Labor and Workforce Development Agency (“LWDA”) will also be the beneficiary of this settlement as it will receive \$15,000.00, should this settlement be granted final approval.

Accordingly, the Court should grant Final Approval consistent with the Preliminary Approval Order.

II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT

The notice procedures required by the Preliminary Approval Order have been followed and satisfy all due process rights of Settlement Class Members. The Preliminary Approval Order contemplated that the Notice of Proposed Class Action Settlement (the “Class Notice”), as approved in the Preliminary Approval Order, be sent to all Settlement Class Members by first class mail, as specified in the Settlement Agreement. The Preliminary Approval Order contemplated, further, that ILYM Group, Inc. would serve as the Settlement Administrator.

As clearly stated in the Declaration of Nathalie Hernandez, notice was provided to Settlement Class Members, as required by the Preliminary Approval Order. On October 6, 2023, the Settlement

1 Administrator received a Settlement Class Member mailing list from Defendant’s counsel that
2 included 759 Settlement Class Members. Admin. Decl. ¶ 5. On October 19, 2023, each of the persons
3 identified on the mailing list were sent the Class Notice via first class mail. Admin. Decl. ¶ 7. As part
4 of the administration process, the Settlement Administrator has re-mailed Class Notices to 11
5 Settlement Class Members using newly updated addresses after performing a skip-trace. Admin.
6 Decl. ¶¶ 8, 9. As of the date of this filing, 6 Class Notices remain undeliverable. Admin. Decl. ¶ 10.
7 Further, the Class Notice provided Settlement Class Members with Class Counsel’s contact
8 information, where they could further seek information regarding the settlement, leave questions for
9 the Settlement Administrator, and update their address.

10 The provision of sending the notice to class members as described above meets the
11 requirements for the “best notice practicable” in this case as necessary to protect the due process
12 rights of class members. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985)
13 (provision of “best notice practicable” with description of the litigation and explanation of opt-out
14 rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) (individual notice
15 must be sent to class members who can be identified through reasonable means); *Mullane v. Central*
16 *Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (best practicable notice is that which is
17 “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of
18 the action and afford them an opportunity to present their objections”).

19 Here, the Settlement Class Members were provided with a mailing regarding the settlement
20 that explained the settlement and allowed Settlement Class Members to seek information, ask
21 questions, seek additional forms, and object, if so desired. As such, proper notice has been given to
22 the Settlement Class Members. Thus, the Court may proceed to determine the fairness and adequacy
23 of the settlement and enter its Order granting final approval, secure in the knowledge that all absent
24 Settlement Class Members have been given the opportunity to participate fully in the settlement,
25 exclusion, and the approval process.

26 //

27 //

28 //

1 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE AND REASONABLE, AND**
2 **THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

3 **A. Strength of Plaintiff’s Case and Likelihood of Certifying the Class**

4 In order to proceed as a class, there are two requirements which must be met —
5 ascertainability and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d 695, 704 (1967).
6 “The community of interest requirement embodies three factors: (1) predominant common questions
7 of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class
8 representatives who can adequately represent the class.” *Richmond v. Dart Industries*, 29 Cal. 3d
9 462, 470 (1981).

10 Under California law, there are two basic requirements which must exist to sustain a class
11 action: “[t]he first is existence of an ascertainable class, and the second is a well-defined community
12 of interest in the questions of law and fact involved.” *Vasquez v. Superior Court*, 4 Cal. 3d 800, 809
13 (1971).

14 **1. The Class is Ascertainable**

15 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382 “is
16 determined by examining (1) class definition, (2) the size of the class, and (3) the means available for
17 identifying the class members.” *Reyes v. San Diego County Board of Supervisors*, 196 Cal. App. 3d
18 1263, 1271 (1987). Here, the Settlement Class is defined as: “all current and former California
19 employees of Defendant, who worked at Defendant's call center, which is located at Apple’s
20 Sacramento Campus, who were paid overtime and/or double-time wages at any time from November
21 12, 2020, through January 1, 2022.” There are 759 individuals that comprise the Settlement Class.
22 Admin. Decl. ¶ 5. This is far more than the minimum required to certify a class. Within the context of
23 manageability, the issue is whether there exists sufficient means for identifying class members at the
24 remedial stage. *Reyes*, 196 Cal. App. 3d at 1274-75. Settlement Class Members have already been
25 identified by Defendant and notice was provided to all of the above Settlement Class Members.

26 **2. There is a Community of Interest**

27 The “community of interest” requirement embodies three separate factors: (1) predominant
28 common questions of law or fact; (2) class representatives whose claims are typical of the class; and

(3) class representatives who can adequately represent the class. *Richmond*, 29 Cal. 3d at 470; *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

a. There are Predominant Common Questions of Law and Fact

“The ultimate question in every case of this type [class actions] is whether...the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous and substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th 1096, 1104-05 (2003).

As more fully set forth in the Motion for Preliminary Approval, Plaintiff alleges that Defendant, as a matter of its corporate policy, practice, or procedure violated the Labor Code by its failure to provide accurate wage statements. Defendant denies that liability could be established on a class-wide basis and contends instead that liability and damages would need to be conducted on a case-by-case basis.

b. Plaintiff’s Claims are Typical of the Class Claims

The purported class representative’s claim must be “typical” but not necessarily identical to the claims of other class members; it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal. App. 3d 27, 45 (1983). Courts look to whether class members have similar injuries, “whether the action is based on conduct which is not unique to the named Plaintiff,” and whether other class members were injured by the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The purpose of the typicality requirement “is to assure that the interest of the named representative aligns with the interests of the class.” *Id.* at 508.

Plaintiff was employed by Defendant and was subjected to the same payroll policies as other Settlement Class Members. Specifically, during the pay periods where Plaintiff earned overtime wages, he was not provided with accurate wage statements that identified the correct total number of hours worked. In other words, Plaintiff was subjected to the same policies and practices as other Settlement Class Members. Thus, Plaintiff’s claims are typical to those of Settlement Class Members.

//

1 **c. Plaintiff Adequately Represented the Class**

2 The class representative, through qualified counsel, must be capable of “vigorously and
3 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
4 846 (1984). Here, Plaintiff does not have any interests adverse to the class, nor have any such issues
5 been raised or presented. Plaintiff has taken all necessary steps to represent the interests of the class,
6 including providing information and documents to counsel. For such reasons, Plaintiff has adequately
7 represented the class members and will continue to do so.

8 **B. Defendant’s Allegations and Unlikelihood of Class Certification**

9 Defendant asserts that individualized issues predominate in this case, including without
10 limitation, whether Defendant provided accurate wage statements in compliance with the law. In any
11 event, even assuming that a class could be certified, Defendant asserts that it has complied with all
12 laws. Based thereon, Defendant continues to maintain that it is not liable for the allegations made by
13 the Plaintiff.

14 **C. Risks, Expenses and Complexity of Further Litigation**

15 Plaintiff believes that a class can be certified; however, Plaintiff also believes in the fairness
16 of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not
17 prevailing on one or more of the causes of action or theories alleged in the operative Complaint, the
18 possibility of non-certification, and potential for appeals. These risks on class certification are
19 compounded by the California Supreme Court’s holding in *Duran v. U.S. Bank Nat’l Ass’n*, 59 Cal.
20 4th 1 (2014).

21 Defendant has maintained that there is no liability. As stated above, Defendant alleges that a
22 class could not have been certified. There is always a risk that the court will not grant certification of
23 the class, wherein the class will not be entitled to any damages. Based on the foregoing, there was a
24 substantial risk that Plaintiff would not have obtained the total amount of damages alleged, and a
25 substantial number of complex issues that would have necessitated significant expenditure of time
26 and expenses. Therefore, the risks, expenses, and complexity of further litigation warrant granting of
27 this Motion.

28 //

1 **D. The Terms of the Settlement, the Negotiation of the Settlement, and the Reception**
2 **of the Settlement by Class Members All Strongly Support the Conclusion that the**
3 **Settlement is Fair, Adequate and Reasonable**

4 Without reiterating the Parties' showing that the Settlement Agreement and the negotiation
5 process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary
6 Approval of Class Action Settlement, the Parties highlight the following facts. The Settlement
7 Agreement was the product of negotiation between highly able and experienced attorneys on both
8 sides who possessed the relevant data and extensive legal research which they had carefully
9 analyzed. Declaration of Nicholas Rosenthal Decl. ("Rosenthal Decl.") ¶ 4.

10 The results after mailing of the Class Notice support confirmation of the Court's preliminary
11 approval of the settlement with final approval of the settlement, as evidenced by the fact that to date,
12 zero (0) Settlement Class Member opted out of the class, and zero (0) objections to the settlement
13 were received. Admin. Decl. ¶¶ 11, 12. The Court may appropriately infer that the class action
14 settlement is fair, adequate, and reasonable, given that not a single class member has submitted an
15 objection. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

16 **E. Under Well-Established Legal Principles, the Court Should Grant Final Approval**
17 **of the Settlement**

18 **1. Standard of Review**

19 On a motion for final approval of a class action settlement under California Code of Civil
20 Procedure § 382 and California Rule of Court 3.769, a court's inquiry is whether the settlement is
21 "fair, adequate and reasonable." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th
22 Cir. 1982), *cert. denied subnom.*, *Byrd v. Civil Serv. Comm'n*, 459 U.S. 1217 (1983). A settlement is
23 fair, adequate, and reasonable, and therefore merits final approval, when "the interests of the class are
24 better served by the settlement than by further litigation." *See Manual for Complex Litigation, Fourth*
25 *§ 21.6 at 309 (Fed. Jud. Ctr., 4th ed. 2004) ("MCL")*. The law favors settlement, particularly in class
26 actions and other complex cases, where substantial resources can be conserved by avoiding the time,
27 cost, and rigors of formal litigation. *See Alba Conte & Herbert B. Newberg, 4 Newberg on Class*
28 *Actions § 11.41 (2008); Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Van*

1 *Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

2 Although the Court possesses “broad discretion” in determining that a proposed class action
3 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned
4 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the
5 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all
6 concerned. *See Officers for Justice*, 688 F.2d at 625. Accordingly, the Court should give due regard
7 to what is otherwise a “private consensual agreement” between the parties. *Id.*; *see also Church v.*
8 *Consolidated Freightways, Inc.*, 1993 WL 149840 (N.D. Cal. 1993); *In re Wash. Pub. Power Supply*
9 *Sys. Sec. Litig.*, 720 F. Supp. 1379 (D. Ariz. 1989), *aff’d sub nom.*; *City of Seattle*, 955 F.2d 1268;
10 MCL § 21.6 at 309 (“The judicial role in reviewing a proposed settlement is critical, but limited to
11 approving the proposed settlement, disapproving it, or imposing conditions on it. The judge cannot
12 rewrite the agreement”).

13 A court’s approval of a class action settlement will only be reversed for a clear abuse of
14 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996); *Officers for Justice*,
15 688 F.2d at 626 (“reverse only upon a strong showing that the district court’s decision was a clear
16 abuse of discretion”); *City of Seattle*, 955 F.2d at 1276; *Ackerman v. Kassar*, 1993 WL 326453 (9th
17 Cir. 1993); *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1238 (9th Cir. 1998).

18 As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.* :

19 It cannot be overemphasized that neither the trial court in approving the settlement nor this
20 Court in reviewing that approval have the right or duty to reach any ultimate conclusions
21 on the issues of fact and law which underlie the merits of the dispute. It is well settled that
22 in the judicial consideration of proposed settlements, ‘the [trial] judge does not try out or
23 attempt to decide the merits of the controversy,’ [citation] and the appellate court ‘need not
24 and should not reach any dispositive conclusions on the admittedly unsettled legal issue.

85 Cal. App. 4th 1135, 1146 (2000).

25 **2. The Settlement is Presumed to Be Fair**

26 The Court should begin its analysis with the presumption that the settlement is fair and should
27 be approved:

28 [A] presumption of fairness exists where: (1) the settlement is reached through arm’s-
length bargaining; (2) investigation and discovery are sufficient to allow counsel and the

1 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
2 percentage of objectors is small.

3 *Dunk*, 48 Cal. App. 4th at 1802; *accord*, *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D.
4 Cal. 1980); *In re Wash. Pub Power Supply*, 720 F. Supp. at 1387.

5 The settlement in the case at bar warrants approval and carries a presumption of fairness. As
6 previously noted in the application for preliminary approval, this current settlement was negotiated at
7 arm's length. Rosenthal Decl. ¶ 5.

8 Second, Class Counsel engaged in extensive factual investigation before settling, including
9 reviewing class data. Rosenthal Decl. ¶ 4. Further, Class Counsel is highly experienced in this type of
10 litigation. As shown in the supporting declarations, Class Counsel has significant experience in class
11 actions and employment wage and hour matters. Rosenthal Decl. ¶¶ 7, 8; Declaration of Larry W.
12 Lee ("Lee Decl.") ¶¶ 7-9; Declaration of Kristen M. Agnew ("Agnew Decl.") ¶¶ 7-12; Declaration of
13 William L. Marder ("Marder Decl.") ¶¶ 3-11.

14 **3. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor**
15 **Final Approval**

16 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court
17 also should weigh the immediacy and certainty of substantial settlement proceeds against the risks
18 inherent in continued litigation. *See also In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir.
19 1995) ("present value of the damages plaintiffs would likely recover if successful, appropriately
20 discounted for the risk of not prevailing, should be compared with the amount of the proposed
21 settlement") (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v.*
22 *Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979).

23 If Plaintiff pursued this case without settlement and failed to prevail, Plaintiff would have
24 been potentially responsible for Defendant's costs. As such, should individual current or former
25 employees of Defendant bring individual claims on the same causes of action, they would each face
26 the uncertainty of prevailing and the possibility of paying costs to Defendant. Accordingly, such
27 claims likely would not be brought by many of these current and former employees — thus, this
28 lawsuit achieves a true benefit for the class that they might not otherwise get or seek as individuals.

1 Here, given that a fair and reasonable settlement has been reached, neither Plaintiff nor any of the
2 Settlement Class Members will be required to pay for Defendant's litigation costs.

3 The risks of this case were weighed by Class Counsel and should be considered a significant
4 factor by the Court in its determination of final approval. Class Counsel obtained a substantial
5 settlement for the Settlement Class that resulted in a fair recovery, which at the same time provides
6 for finality and no risk of costs by the Settlement Class Members or the Class Representative.

7 The Settlement Agreement also affords the class prompt, fair relief, while avoiding
8 significant legal and factual battles that otherwise may have prevented the class from obtaining any
9 recovery at all. While Class Counsel believe the Settlement Class Members' claims are meritorious
10 and can be successfully litigated, they are experienced and fully understand the inherent risks and
11 uncertainty involved with such matters as the resolution of class certification, the outcome of a
12 potential trial, and the outcome of any appeals that would inevitably follow should the Class prevail
13 at trial. Class Counsel has also assessed the same risks in connection with the current settlement.
14 Because the settlement provides immediate and substantial relief, without the attendant risks and
15 delay of continued litigation — not to mention the threat of litigation fees and costs — Class Counsel
16 believe that the settlement warrants the Court's final approval.

17 **4. The Complexity, Expense, and Likely Duration of Continued Litigation**
18 **Against Defendant Favor Final Approval**

19 Another factor considered by courts in approving a settlement is the complexity, expense, and
20 likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at 157. In
21 applying this factor, the Court must weigh the benefits of the settlement against the expense and
22 delay involved in achieving an equivalent or more favorable result at trial. *Young v. Katz*, 447 F.2d
23 431, 433-34 (5th Cir. 1971).

24 As noted above, continued litigation could have led to appeals on a number of issues. On the
25 other hand, the settlement that was reached provides to all Settlement Class Members — regardless
26 of their means — fair relief in a prompt and efficient manner. Were the Court to deny final approval,
27 Settlement Class Members would be left without a remedy as a practical matter and courts across the
28 State would have to address the issues presented here in a piecemeal, costly, and time-consuming

1 manner. The settlement in this case is therefore consistent with the “overriding public interest in
2 settling and quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*,
3 529 F.2d at 950 (footnote omitted); *see also 4 Newberg* at § 11.41. Here, this case would have likely
4 involved years of litigation, as evidenced by the Parties’ litigation record.

5 **5. The Opinion of Experienced Counsel Favors Final Approval**

6 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best
7 interest of the Settlement Class Members as a whole. Lee Decl. ¶ 5; Agnew Decl. ¶ 5; Rosenthal
8 Decl. ¶ 5; Marder Decl. ¶ 2. Similarly, counsel for Defendant is in favor of this settlement. The
9 endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and adequate
10 is entitled to significant weight by the Court in its final approval determination. *See Officers for*
11 *Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18; *Boyd*, 485 F. Supp. at 617; *Linney*, 151 F.3d at 1242.

12 **IV. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT PAYMENT** 13 **SHOULD BE APPROVED**

14 Class Representative John Cook requests an enhancement of \$10,000.00. Plaintiff personally
15 met with Class Counsel on a number of occasions to discuss the case, including providing
16 substantive information regarding Defendant’s practices. Accordingly, Plaintiff provided invaluable
17 information, evidence, and documents that resulted in this settlement.

18 In addition to the invaluable services that he provided, Plaintiff took significant risks, both
19 professionally and monetarily, in acting as the Class Representative, seeking benefits on behalf of the
20 Settlement Class. Because the claims alleged by the Class Representative involved the payment of
21 costs to the prevailing party, Plaintiff could have possibly faced paying the costs of Defendant, had
22 Plaintiff not prevailed in this action. Moreover, Plaintiff understood that an individual case would
23 have resolved much faster than a class action and involved much less financial risk than a class
24 action. Despite this, however, Plaintiff agreed to pursue this case on behalf of the Settlement Class.

25 Also, given that future employers are much less likely to hire individuals who have filed
26 employment-related lawsuits, particularly cases of this nature, the Class Representative may face
27 significant risk in not being able to find suitable employment in the future, all as a result of filing of
28 this case against Defendant. Plaintiff took these risks upon himself to the benefit of the Settlement

1 Class. Settlement Class Members did not have to file individual lawsuits and bear the risks of
2 payment of costs if they did not prevail, nor did they have to face the potential for retaliation and
3 difficulty obtaining future employment had they filed a lawsuit. These are significant benefits that
4 weigh in favor of granting the requested enhancement. Moreover, this litigation has resulted in a
5 significantly valuable benefit to the Settlement Class, and Plaintiff took on substantial risks in
6 helping to get this financial benefit to the Settlement Class. As such, the enhancement should be
7 awarded to Plaintiff for his commitment, dedication, and risks taken for this litigation.

8 Courts have routinely granted approval of settlements containing such enhancements. *See*
9 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299-300 (N.D. Cal. 1995) (incentive award
10 of \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio
11 1990) (two incentive awards of \$55,000, and three incentive awards of \$35,000); *Brotherton v.*
12 *Cleveland*, 141 F. Supp. 2d 907, 913-14 (S.D. Ohio 2001) (granting a \$50,000 incentive award);
13 *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 251-52 (S.D. Ohio 1991)
14 (\$50,000 awarded to each class representative); *Glass v. UBS Fin. Servs.*, No. C-06-4068, 2007 U.S.
15 Dist. LEXIS 8476, at *51-52 (N.D. Cal. Jan. 27, 2007) (awarding \$25,000 incentive award in FLSA
16 overtime wages class action); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (affirming
17 \$25,000 Incentive award to class representative in ERISA case).

18 **V. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

19 Class Counsel seeks a fee award calculated as 35 percent of the total value of the settlement
20 for the successful prosecution and resolution of this action. Recently, the California Supreme Court
21 issued its ruling regarding the award of attorney's fees in wage and hour class action settlements.
22 Under California law, the award of attorneys' fees in common fund wage and hour class action
23 settlements should start with the percentage method. (*See Laffitte v. Robert Half Int'l* (2016) 1 Cal.
24 5th 480, 503 ("We join the overwhelming majority of federal and state courts in holding that when
25 class action litigation establishes a monetary fund for the benefit of the class members, and the trial
26 court in its equitable powers awards class counsel a fee out of that fund, the court may determine the
27 amount of a reasonable fee by choosing an appropriate percentage of the fund created").) Under the
28 percentage of the fund method, the Court's objective remains to "mimic the market" in fixing a

1 reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363 (J. Posner) (“When a fee
2 is set by a court rather than by contract, the object is to set it at a level that will approximate what the
3 market will set....The judge, in other words, is trying to mimic the market in legal services”).)

4 Here, the fee award representing 35% of the fund is consistent with other comprehensive
5 surveys of class action settlements and fee awards. (*See Fitzpatrick, An Empirical Study of Class*
6 *Action Settlements and Their Fee Award* (2010) 7 J. Empirical Leg. Stud. 811, 833 (analyzing 444
7 cases between 2006-2007 and concluding that “[m]ost fee awards were between 25 percent and 35
8 percent, with almost no awards more than 35 percent”); Eisenberg & Miller, *Attorney Fees in Class*
9 *Action Settlements: An Empirical Study: 1993-2008* (2010) 7 J. of Empirical Leg. Stud. 248, 262,
10 fn.16 (independent studies of class action litigation nationwide conclude that fees representing one-
11 third of the total recovery is consistent with market rates).)

12 Finally, “the response of the class members to attorneys’ fee notice, though not decisive, is
13 relevant to the...reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C. Cir.
14 1993) 1 F.3d 1261, 1272.) A positive response rate tends to suggest that the court’s “approximation
15 of the market” for fees is well supported. (*Id.* at p. 1269.) In this case, the Class Notice specifically
16 notified Class Members that Plaintiff’s Counsel would be seeking up to \$173,250.00 of the
17 settlement fund as attorneys’ fees. To date, no Class Member has objected to the settlement or the
18 request for attorneys’ fees. This strong favorable response also supports the requested fees.

19 When the primary method employed to determine fees is the percentage method, courts have
20 discretion to use the lodestar method to “cross-check” the amount of fees calculated by way of
21 percentage. The *Laffitte* Court emphasized, however, that “the lodestar calculation, when used in this
22 manner, does not override the trial court’s primary determination of the fee as a percentage of the
23 common fund and thus does not impose an absolute maximum or minimum on the potential fee
24 award.” (*Laffitte, supra*, 1 Cal. 5th at p. 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig.* (3d
25 Cir. 2005) 396 F.3d 294, pp. 306-307 (“[The lodestar cross-check does not trump the primary
26 reliance on the percentage of common fund method”).)

27 Nonetheless, the Supreme Court in *Laffitte* stated: “If the multiplier calculated by means of a
28

1 lodestar cross-check is extraordinarily high or low, the trial court should consider whether the
2 percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range,
3 but the court is not necessarily required to make such an adjustment.” (*Id.*) Thus, a lodestar cross-
4 check is aimed at astronomical multipliers. Indeed, cross-checks are not required; in many cases,
5 performing a cross-check “undermines” one of the primary reasons for using the percentage method:
6 aligning counsel’s incentives with the benefits delivered to the class and discouraging protracted
7 litigation. (*Id.* at p. 506 (finding trial courts “retain the discretion to forgo a lodestar cross-check”);
8 *Report of the Third Circuit Task Force, Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 258;
9 *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 29-30 (citing the recommendations of the
10 Third Circuit Task Force with approval and observing that “[t]he criticisms of the lodestar approach
11 set forth in this Report are now echoed by many authorities, who have been most vocal about the
12 manner in which it exacerbates the problem of ‘cheap settlements’ and burdens already overworked
13 trial judges.”).)

14
15 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or
16 even higher.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 255; *see also, e.g.,*
17 *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512 (applying a 2.52
18 multiplier on a cross-check in an antitrust class action); *Chavez, supra*, 162 Cal. App. 4th at p. 60
19 (applying a 2.5 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders* (1988) 203
20 Cal. App. 3d 78 (affirming a 2.34 multiplier without remand).) The intermediate court in *Laffitte*,
21 after finding that “2 to 4” is a reasonable range for multipliers on a cross-check, affirmed a 2.13
22 multiplier. (*Laffitte, supra*, 231 Cal. App. 4th at pp. 881-82.) The intermediate court opinion was
23 affirmed in full by the California Supreme Court in its new decision guiding lower courts on
24 assessing fees.

25 Moreover, the Ninth Circuit has cited with approval a comprehensive study of fees awarded
26 by the percentage method showing that the majority of multipliers awarded are “in the 1.5-3.0”
27 range. (*See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (affirming a multiplier
28 of 3.65 in an employment class action case and analyzing the multiplier awarded in over 30 cases).)

1 Federal district courts applying California law have likewise routinely approved cross-check
2 multipliers between 2 and 3 in employment cases. (*See, e.g., Willner v. Manpower Inc.* (N.D. Cal.
3 June 22, 2015) No. 11-CV-02846-JST, 2015 WL 3863625, at *7 (affirming a 2.10 multiplier on
4 settlement of California Labor Code violations); *Dyer v. Wells Fargo Bank, N.A.* (N.D. Cal. 2014)
5 303 F.R.D. 326, 334 (approving attorneys' fees that resulted in lodestar multiplier of 2.83); *Hopkins*
6 *v. Stryker Sales Corp.* (N.D. Cal. Feb. 6, 2013) No. 11-CV-02786-LHK, 2013 WL 496358, at *5
7 (approving a multiplier of 2.76 in settlement of Labor Code violations).) Other courts have found
8 even higher multipliers to be reasonable by comparison to other cases. (*See Craft v. County of San*
9 *Bernardino* (C.D. Cal. 2008) 624 F. Supp. 2d 1113, 1125-26 (approving a 5.2 multiplier on a cross-
10 check after surveying a large body of cases affirming a higher multiplier).)

11 With respect to Class Counsel's lodestar, to date, approximately 147.3 hours have been
12 expended by Class Counsel in this matter. (Lee Decl. ¶ 10, Ex. A; Agnew Decl. ¶ 13, Ex. A;
13 Rosenthal Decl. ¶ 9, Ex. A; Marder Decl. ¶ 12, Ex. A.) Mr. Lee requests an hourly rate of \$900.00
14 per hour. (Lee Decl. ¶ 10.) Ms. Agnew requests an hourly rate of \$800.00 per hour. (Agnew Decl. ¶
15 14.) Mr. Rosenthal requests an hourly rate of \$800.00 per hour. (Rosenthal Decl. ¶ 10.) Mr. Marder
16 requests an hourly rate of \$900.00 per hour. (Marder Decl. ¶ 12.) The courts are quite liberal in the
17 evidence required to prove an attorney's hours. Detailed time records are not required. An
18 attorney's testimony alone may suffice: "Testimony of an attorney as to the number of hours worked
19 on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of
20 detailed time records." (*Martino v. Denevi* (1986) 182 Cal. App. 3d 553, 559.)

22 Reasonable hours include, in addition to time spent during litigation, the time spent before the
23 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
24 preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.)
25 Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim.
26 (*Serrano v. Unruh* (1982) 32 Cal. 3d 621, 639 (1982) [*Serrano IV*].) Thus, Class Counsel requests
27 that the court find that these hours were reasonable in this litigation.

28 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and

1 experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084,
2 1095.) The court may consider other factors when determining a reasonable hourly rate, *e.g.*, the
3 attorney's skill and experience, the nature of the work performed, the relevant area of expertise and
4 the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal. App.
5 4th 629, 632-33.)

6 Class Counsel's skill and experience justify the requested rate. As shown in the supporting
7 declarations, Class Counsel have significant experience in the area of employment and wage and
8 hour class actions. Specifically, Class Counsel's practice focuses on representing employees in
9 employment matters, particularly wage and hour cases. (Lee Decl. ¶¶ 7-9; Agnew Decl. ¶¶ 7-12;
10 Rosenthal Decl. ¶¶ 7, 8; Marder Decl. ¶¶ 3-11.) As such, based on the hours and applicable rate,
11 Class Counsel's lodestar amount through finalization of this settlement (without a multiplier) will be
12 approximately \$120,450.00. (Lee Decl. ¶ 10; Agnew Decl. ¶ 14; Rosenthal Decl. ¶ 10; Marder Decl.
13 ¶ 12.) As such, a multiplier of **1.4** is required to reach \$173,250.00.

14 Indeed, this is a very low multiplier. (*Wershba v. Apple Computer, Inc.* (Ct. App. 2001) 91
15 Cal. App. 4th 224 (noting that courts using the lodestar method to calculate attorney fees awards in
16 class actions typically apply multipliers in the range of 2 to 4); *Boyd v. Bank of Am. Corp.* (C.D. Cal.
17 Nov. 18, 2014) 2014 U.S. Dist. LEXIS 162880 (awarding 33% of the common fund, based on a
18 multiplier of 2.58, in a wage and hour class action settlement); *Vandervort v. Balboa Capital Corp.*
19 (C.D. Cal. 2014) 8 F.Supp.3d 1200, 1210 (awarding 33% of the common fund, based on a multiplier
20 of 2.52).)

21 As such, the requested fee award is fair and reasonable, and should be awarded in its entirety.
22 Class Counsel risked not only a great deal of time, but also a great deal of expense to ensure the
23 successful litigation of this action on behalf of all Class Members. For such reasons, Class Counsel's
24 request for attorneys' fees in the amount of \$173,250.00 is fair, reasonable, and adequate.

25
26 **VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
27 **COSTS**

28 The request for reimbursement of costs in the amount of \$15,565.84 is fair and reasonable.

1 The costs are all litigation related costs. Rosenthal Decl. ¶ 11, Ex. B. Significantly, the costs sought
2 are significantly less than the \$25,000.00 permitted by the Settlement Agreement, such that the
3 remaining amount will be distributed to Participating Settlement Class Members. The authority for
4 the court to award this is the Parties' Settlement Agreement and Labor Code § 226 and 2699. As
5 such, this request should be approved.

6 **VII. THE SETTLEMENT ADMINISTRATOR'S FEES AND COSTS SHOULD BE**
7 **APPROVED**

8 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
9 Administrator are to be paid out of the class settlement funds. As shown on the Declaration of
10 Nathalie Hernandez, the settlement administration fees expended in this matter amount to a total of
11 \$14,000.00, which is an amount that was agreed upon by the Parties. Admin. Decl. ¶ 15. For such
12 reasons, it is requested that the Settlement Administrator's fees be approved.

13 **VIII. CONCLUSION**

14 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiff
15 respectfully submits that the standards for final approval have been met, and the terms of the
16 Settlement Agreement are fair, adequate, and reasonable.

17 Accordingly, Plaintiff respectfully requests that the Court enter an Order in the form proposed
18 and submitted:

- 19 1. Granting final approval to the proposed Settlement Agreement in this action;
- 20 2. Approving distribution of the settlement funds to the Participating Settlement Class
21 Members pursuant to the terms of the Settlement Agreement;
- 22 3. Approving Plaintiff's request for an award of the Class Representative Enhancement
23 Payment of \$10,000.00 to Plaintiff, with payment pursuant to the terms of the Settlement Agreement;
- 24 4. Approving Class Counsel's request for an award to Class Counsel for \$173,250.00 in
25 attorneys' fees and \$15,565.84 in costs, with payment pursuant to the terms of the Settlement
26 Agreement;
- 27 5. Approving Plaintiff's request for payment of the settlement administration costs to
28 ILYM Group, Inc. in the amount of \$14,000.00, with payment pursuant to the terms of the Settlement

1 Agreement;

2 6. Approving Plaintiff's request for payment of PAGA penalties in the amount of
3 \$20,000.00, with \$15,000.00 to be distributed to the LWDA and \$5,000.00 to be distributed among
4 Aggrieved Employees, with payment pursuant to the terms of the Settlement Agreement; and

5 7. Entering final judgment as to all members of the Settlement Class in this action.

6
7 DATED: March 7, 2024

DIVERSITY LAW GROUP, P.C.
POLARIS LAW GROUP

8
9 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

William L. Marder

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12 Attorneys for Plaintiff, the Class, and Aggrieved
13 Employees
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