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

EULALIA TRINIDAD, individually, and on
behalf of other members of the general public
similarly situated; and MARKO
ASAULYUK, individually, and on behalf of
other aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiffs,

vs.

GROUNDWORK COFFEE LLC, an
unknown business entity; GROUNDWORK
COFFEE, LLC, a Delaware limited liability
company; GROUNDWORK COFFEE
HOLDINGS, LLC, a Delaware limited
liability company; GROUNDWORK
COFFEE ROASTERS, LLC, a Delaware
limited liability company; EDWARD COLA,
individually; STEVEN LEVAN, individually;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 19STCV09758

Honorable Stuart M. Rice
Department SSC-1

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENT,
CLASS COUNSEL FEES PAYMENT,
CLASS COUNSEL LITIGATION
EXPENSES PAYMENT, AND CLASS
REPRESENTATIVES SERVICE
PAYMENTS; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Declaration of Class Counsel
(Joanna Ghosh); Declaration of Class
Representatives (Eulalia Trinidad and Mark
Asaulyuk); Declaration of Settlement
Administrator (Nick Castro); and [Proposed]
Final Approval Order and Judgment filed
concurrently herein]

Date: May 24, 2024
Time: 10:30 a.m.
Department: SSC-1

Complaint Filed: March 22, 2019
FAC Filed: November 13, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 24, 2024, at 10:30 a.m., in Department SSC-1 of
2 the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012,
3 Plaintiffs Eulalia Trinidad and Marko Asaulyuk (together, “Plaintiffs” or “Class Representatives”)
4 will and hereby do move for an order granting final approval of:

5 1. The First Amended Class Action and PAGA Settlement Agreement and Class
6 Notice (“Settlement,” “Agreement,” or “Settlement Agreement”) on the grounds that the
7 Settlement is fair, adequate, and reasonable because:

- 8 • A Net Settlement Amount of approximately **\$242,720.04** will be fully distributed to all
9 members of the Settlement Class who do not submit a timely and valid Request for
10 Exclusion (“Participating Class Members”);
11 • **No Objections or Requests for Exclusion** were submitted to the settlement
12 administrator, ILYM Group, Inc. (“ILYM” or “Administrator”);

13 2. Payment in the amount of **\$166,666.67** to Lawyers for Justice, PC (“Class
14 Counsel”), representing one-third (1/3) of the Gross Settlement Amount, for the Class Counsel
15 Fees Payment, which is reasonable and justified on a percentage-basis;

16 3. Payment in the amount of **\$17,963.29** to Class Counsel for Class Counsel Litigation
17 Expenses Payment;

18 4. Payment in the amount of **\$12,650.00** to the Administrator for Administration
19 Costs;

20 5. Payment in the amount of **\$5,000.00** each to Plaintiffs Eulalia Trinidad and Mark
21 Asaulyuk as Class Representative Service Payments, for a total of \$10,000.00, for their time and
22 effort in representing the Class; and

23 6. Allocation of the penalties under the Private Attorneys General Act of 2004,
24 California Labor Code section 2698, *et seq.*, in the amount of \$50,000.00 (“PAGA Penalties”), of
25 which seventy-five percent (75%), or **\$37,500.00**, will be paid to the California Labor and
26 Workforce Development Agency (“LWDA”) (“LWDA Payment”) and twenty-five percent (25%),
27 or **\$12,500.00**, will be distributed to Aggrieved Employees on a *pro rata* basis, based on PAGA
28 Pay Periods during the PAGA Period (“Individual PAGA Payment”).

1 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of
2 Court, which require approval by the Court of a class action settlement and permit the Court to
3 extend the page limit for memoranda.

4 This motion is based upon the following Memorandum of Points and Authorities; the
5 Declarations of Class Counsel (Joanna Ghosh), Class Representatives (Eulalia Trinidad and Marko
6 Asauluk), Settlement Administrator (Nick Castro of ILYM Group, Inc.) in support thereof; the
7 pleadings and other records on file with the Court in this matter; and such evidence and oral
8 argument as may be presented at the hearing on this Motion.

9
10 Dated: May 2, 2024

LAWYERS for JUSTICE, PC

11
12 By: _____


Yasmin Hosseini
Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Eulalia Trinidad and Marko Asauluk (together, “Plaintiffs” or “Class Representatives”) seek final approval of: (1) the Gross Settlement Amount of \$500,000.00¹; (2) attorneys’ fees in the amount of \$166,666.67 which is one-third (1/3) of the Gross Settlement Amount², and reimbursement of litigation costs and expenses in the amount of \$17,963.29 to Lawyers for Justice, PC (“Class Counsel”); (3) Administration Costs in the amount of \$12,650.00 to ILYM Group, Inc. (“ILYM” or “Administrator”); (4) Class Representatives Service Payments in the amount of \$5,000.00 each to Plaintiffs Eulalia Trinidad and Marko Asauluk, for a combined amount of \$10,000.00; and (5) allocation of \$50,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA Penalties”).

Plaintiffs seek relief on behalf of the following Class:

All current and former hourly or non-exempt employees of Defendants in California at any time during the Class Period (“Class” or “Class Members”).³

This matter involved ongoing investigations, formal and informal discovery, review and analysis of a large volume of documents and data prior to and during two (2) mediations conducted by the Hon. Michael Latin (Ret.), and settlement negotiations thereafter. This matter has required 512.00 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys’ fees, which represents one-third (1/3) of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys’ fees are also supported under the lodestar cross-check method.⁴

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¹ First Amended Class Action and PAGA Settlement Agreement and Class Notice (“Settlement Agreement”), ¶ 3.1.

² *Id.*, ¶ 3.2.2.

³ *Id.*, ¶ 1.4. “Class Period” is defined as the period from March 22, 2015 to the date 60,000 Workweeks is reached (as determined by the Administrator), which was determined to be September 23, 2023. *See id.*, ¶ 1.10.

⁴ Applying a reasonable rate of \$850 to 512.00 hours of work performed by Lawyers for Justice, PC would place a base lodestar value of \$435,200.00 on Class Counsel’s services, and Class Counsel seeks an attorneys’ fees award of \$166,666.67.

1 Plaintiffs move for final approval of the Class Representatives Service Payments in the
2 amount of \$5,000.00 each to Plaintiffs Eulalia Trinidad and Marko Asaulyuk, to compensate
3 Plaintiffs for the time and effort that they expended spearheading the lawsuits on behalf of the
4 Class, Aggrieved Employees, and the State of California. Plaintiffs also move for final approval
5 of the payment to the Administrator in the amount of \$12,650.00 for Administration Costs.
6 Plaintiffs also move for final approval of the allocation of \$50,000.00 for the PAGA Penalties, of
7 which seventy-five percent (75%), i.e., \$37,500.00, will be paid to the California Labor Workforce
8 and Development Agency (“LWDA”) for its portion of the PAGA Allocation (“LWDA
9 Payment”), and twenty-five percent (25%), i.e., \$12,500.00, will be distributed to all current and
10 former hourly or non-exempt employees of Defendants in California at any time during the PAGA
11 Period (“Aggrieved Employees”).

12 The requests for Class Counsel Fees Payment and Class Counsel Litigation Expenses
13 Payment, Class Representative Service Payments, Administration Costs, and the allocation for
14 PAGA Penalties were fully disclosed in the Court Approved Notice of Class Action Settlement
15 and Hearing Date for Final Court Approval (“Class Notice”) that was mailed to the Class Members.
16 Most importantly, as of the date of this Motion, *not a single Class Member has objected to any*
17 *aspect of the Class Settlement, including the requested Class Counsel Fees Payment and Class*
18 *Counsel Litigation Expenses Payment, Class Representatives Service Payments, Administration*
19 *Costs or the allocation for PAGA Penalties.*

20 The Settlement is fair, adequate, and reasonable, and is the product of arm’s-length, good-
21 faith negotiations by experienced counsel presided over by a highly-regarded mediator who is
22 experienced in mediating wage-and-hour class action lawsuits. Accordingly, the Court should
23 grant final approval of the Settlement, and award Class Counsel Fees Payment and Class Counsel
24 Litigation Expenses Payment, Class Representatives Service Payments, Administration Costs, and
25 the allocation for PAGA Penalties in the amounts as fully disclosed to the Class and as requested
26 herein.

27 In order to efficiently present the Court with adequate information to determine whether to
28 grant final approval of the Settlement and award Class Counsel Fees Payment and Class Counsel

Litigation Expenses Payment, Class Representative Service Payments, Administration Costs, and the allocation for PAGA Penalties, Plaintiffs also move for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants Groundwork Coffee LLC, Groundwork Coffee Holdings, LLC, Groundwork Coffee Roasters, LLC, Edward Cola, and Steven Levan (collectively, “Defendants”) operate several cafes and two roasteries, where they roast coffee sourced from various coffee farms around the world. In addition to retailing their coffee products in their own cafes, Groundwork supplies its coffees to restaurants, hotels, cafes, and grocery stores in a growing number of states across the country. Plaintiffs Eulalia Trinidad and Marko Asauluk are former employees of Defendants.

On March 22, 2019, Plaintiff Trinidad filed a Class Action Complaint for Damages, in the Los Angeles County Superior Court (“Court”) (“Trinidad Action”).

On May 3, 2019, Defendant Groundwork Coffee LLC filed an Answer to Plaintiff Trinidad’s Complaint.

On November 12, 2021, Plaintiff Asauluk submitted notice to the California Labor & Workforce Development Agency (“LWDA”) and Defendants of his intent to pursue civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. (“Asauluk PAGA Notice”).

On January 7, 2022, Plaintiff Asauluk filed a Complaint for Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., in the Los Angeles County Superior Court (“Court”) (“Asauluk Action”).

On February 2, 2022, Defendants filed an Answer to Plaintiff Marko Asauluk’s Complaint.

Plaintiffs’ core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, the Class Members, and the Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages

during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members and Aggrieved Employees, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than settlement.

The Parties have actively litigated the Action since the Trinidad Action was commenced on March 22, 2019. On November 2, 2020, the Parties participated in a formal, full-day mediation conducted by Hon. Michael Latin (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters, and a second all-day mediation presided over by Honorable Michael Latin (Ret.) on October 26, 2021. Although the parties did not reach a resolution during the mediations, the Parties engaged in extensive settlement negotiations, which led to this Agreement to settle the Litigation.

On October 17, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents ("Motion for Preliminary Approval"). On October 30, 2023, the Court issued a Checklist for Preliminary Approval of Class Action Settlement.

On November 13, Plaintiffs filed a First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, *Et Seq.* in the Action. (the "Operative Complaint") and supplemental documents in response to the Checklist.

On November 21, 2023, the Court issued a Minute Order stating no further briefing is needed at this time.

On December 7, 2023, the Hearing on the Motion for Preliminary Approval occurred, and the Court issued a minute order granting the motion. On December 19, 2023, the Court issued an

Order Granting Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”), thereby preliminarily approving the terms of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiffs now move for final approval of Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representatives Service Payments, Administration Costs, and the allocation for PAGA Penalties.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendants have agreed to pay a Gross Settlement Amount of \$500,000.00 by making a deposit of Two Hundred and Fifty Thousand Dollars (\$250,000.00) into a Settlement Fund Account to be established by the Administrator within thirty (30) calendar days of Final Approval (“Payment 1”).⁵ Within six (6) months after Payment 1, Defendants will deposit One Hundred and Twenty-Five Thousand Dollars (\$125,000.00) plus an amount sufficient to pay Employer’s Taxes into the Settlement Fund Account (“Payment 2”). Within six (6) months after Payment 2, Defendants will deposit One Hundred and Twenty-Five Thousand Dollars (\$125,000.00) into the Settlement Fund Account (“Payment 3”).⁶ Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, consisting of attorneys’ fees in the amount of \$166,666.67 and reimbursement of litigation costs and expenses in the amount of \$17,963.29, to Class Counsel; (2) Class Representatives Service Payments in the amount of \$5,0000.00 each to Plaintiffs Eulalia Trinidad and Marko Asauljuk, for a combined amount of \$10,000.00; (3) Administration Costs in the amount of \$12,650.00 to ILYM; and (4) PAGA Penalties in the amount of \$50,000.00.⁷ The Net Settlement Amount, which is estimated to be

⁵ Settlement Agreement, ¶ 4.2.1.

⁶ *Id.*, ¶ 4.2.3.

⁷ *Id.*, ¶¶ 3.2.1, 3.2.2, 3.2.3 & 3.2.4.

1 \$242,720.04, will be distributed in accordance with the Settlement Agreement and there is no
2 reversion to Defendants.⁸

3 The Administrator will determine each Participating Class Member's *pro rata* share of the
4 Net Settlement Amount ("Individual Settlement Share"), according to the following methodology:
5 After Final Approval of the Settlement, the Administrator will divide the final Net Settlement
6 Amount by the Workweeks of all Participating Class Members to yield the "Final Workweek
7 Value," and multiply each Participating Class Member's individual Workweeks by the Final
8 Workweek Value to yield his or her Individual Settlement Share.⁹

9 The Administrator will determine each Aggrieved Employee's *pro rata* share of 25% the
10 PAGA Penalties ("Individual PAGA Payment"), according to the following methodology: the
11 Administrator will divide the 25% portion of the PAGA Penalties attributed to Aggrieved
12 Employees by the PAGA Pay Periods worked by all Aggrieved Employees during the PAGA
13 Period to yield the PAGA Pay Period Value and the multiply the PAGA Pay Period Value by the
14 number of PAGA Pay Periods worked by each individual Aggrieved Employee during the PAGA
15 Period.¹⁰

16 Class Members had sixty (60) calendar days from the initial mailing of the Class Notice
17 ("Response Deadline") to submit a Request for Exclusion, Objection and/or dispute of the
18 Workweeks.¹¹ The Response Deadline was March 18, 2024.¹² ***As of the date of this Motion, the***
19 ***Administrator has not received any written objections to the Class Settlement ("Objection") or***
20 ***requests to be excluded from the Class Settlement ("Requests for Exclusion") from Class***
21 ***Members.***¹³

22 Each Individual Settlement Share will be allocated as follows: twenty percent (20%) as
23 wages, which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as

24 ⁸ This amount is higher than the amount stated in Paragraph 14 of the accompanying Declaration of Nick Castro Regarding Notice
25 and Settlement Administration ("ILYM Declaration" or ILYM Decl.") because the Administrator's calculation assumes that Class
26 Counsel will obtain litigation costs and expenses in the maximum amount of \$25,000.00, which is allocated under the Settlement.
27 However, Class Counsel seeks the amount of only \$17,963.29 for reimbursement of litigation costs and expenses, and the difference
28 of \$7,036.71 will remain part of the Net Settlement Amount.

⁹ Settlement Agreement, ¶ 3.2.5

¹⁰ *Id.*, ¶¶ 3.2.6.

¹¹ *Id.*, ¶¶ 1.45 & 7.6.

¹² ILYM Decl., ¶¶ 11, 12, & 13.

¹³ *Id.*, ¶¶ 11 & 12.

penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099.¹⁴ Participating Class Members will be issued payment of their Individual Settlement Share subject to reduction for the employee's share of taxes and withholdings with respect to the wage portion of each Individual Settlement Share (the net payment is referred to as an "Individual Settlement Payment").¹⁵ Defendants will pay the Employer Taxes in addition to the Gross Settlement Amount.¹⁶ Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties and will be reported on an IRS Form-1099 (if applicable) by the Administrator.¹⁷

Individual Settlement Payment and Individual PAGA Payment checks will be negotiable for one-hundred eighty (180) calendar days from the date the checks are issued, and thereafter, shall be canceled.¹⁸ The funds associated with such cancelled checks will be transmitted to the State of California's Controller's Office Unclaimed Property Division, in accordance with California Code of Civil Procedure section 384.¹⁹ Participating Class Members whose Individual Settlement Payment checks are cancelled shall, nevertheless, be bound by the Class Settlement and Aggrieved Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound by the PAGA Settlement.²⁰

IV. THE SETTLEMENT ADMINISTRATION PROCESS

The Court-appointed Administrator, ILYM Group, Inc. has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's Preliminary Approval Order.

On January 2, 2024, Defendants' counsel provided ILYM the Class Data containing each Class Member's and Aggrieved Employee's last-known full name, mailing address, Social Security Number, and number of Workweeks and/or PAGA Pay Periods, ("Class Data").²¹ The Class Data contained data for six hundred and eighty (680) individuals of which six hundred and eighty (680) were Class Members who worked 60,000 Workweeks and three hundred and thirty-

¹⁴ Settlement Agreement, ¶ 3.2.7.

¹⁵ Settlement Agreement, ¶¶ 1.23 & 3.2.7.

¹⁶ *Id.*, ¶¶ 3.1

¹⁷ *Id.*, ¶ 3.2.7.

¹⁸ *Id.*, ¶ 4.3.1.

¹⁹ *Id.*, ¶ 4.3.3.

²⁰ *Ibid.*

²¹ ILYM Decl., ¶ 5.

seven (337) were Aggrieved Employees who worked 20,398.72 PAGA Pay Periods.²² The mailing addresses contained in the Class Data were processed and updated utilizing the National Change of Address Database (“NCOA”) maintained by the U.S. Postal Service.²³ The NCOA contains requested changes of address filed with the U.S. Postal Service. In the event that any individual had filed a U.S. Postal Service change of address request, the address listed with the NCOA would be utilized in connection with the mailing of the Class Notice.²⁴

On January 18, 2024, ILYM mailed the Class Notice via U.S. First Class Mail to all six hundred and eighty (680) individuals identified as Class Members and three hundred and thirty-seven (337) individuals identified as Aggrieved Employees in the Class Data.²⁵

A total of eighty-seven (87) Class Notices were returned to ILYM.²⁶ Of these, two (2) were returned with a forwarding address and ILYM promptly re-mailed the Class Notice to the provided forwarding address.²⁷ If a Class Member’s Class Notice was returned by the USPS as undeliverable and without a forwarding address, ILYM performed an advanced address search (i.e. skip trace) on all of these addresses by using Accurant, a reputable research tool owned by Lexis-Nexis.²⁸ ILYM used the Class Member’s name and previous address to locate a current address.²⁹ Through the advanced address searches, ILYM was able to locate sixty (54) updated addresses and ILYM promptly mailed a Class Notice to those updated addresses.³⁰ Ultimately, there are thirty-one (31) Class Notices that remain undeliverable.³¹

As of the date of this Motion, the Administrator has not received any Objections.³² As of the date of this Motion, the Administrator has not received any Requests for Exclusion from Class Members.³³

To date, there are six hundred eighty (680) Class Members who did not submit a timely

²² Ibid.

²³ *Id.*, ¶ 6.

²⁴ Ibid.

²⁵ ILYM Decl., ¶ 7.

²⁶ *Id.*, ¶ 8.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ *Id.*, ¶ 9.

³¹ *Id.*, ¶ 10.

³² *Id.*, ¶ 12.

³³ *Id.*, ¶ 11.

and valid Request for Exclusion (“Participating Class Members”), and who will be paid their portion of the Net Settlement Amount.³⁴ Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately \$242,720.04 will be distributed to Participating Class Members in accordance with the terms of the Settlement.³⁵ The highest Individual Settlement Payment is currently estimated to be \$1,743.50 and the average Individual Settlement Payment is currently estimated to be \$346.59.³⁶ The highest Individual PAGA Payment is currently estimated to be \$123.43 and the average Individual PAGA Payment is currently estimated to be \$37.09.³⁷

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION AND PAGA SETTLEMENT.

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. To determine whether the settlement is fair and reasonable, courts consider relevant factors such as:

the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. “The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. “Due regard should be given to what is otherwise a private consensual agreement between the parties.” *Dunk, supra*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: “(1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)

³⁴ *Id.*, ¶ 14.

³⁵ *Ibid.*

³⁶ ILYM Decl., ¶ 15. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the ILYM Declaration because the Net Settlement Amount is larger due to Class Counsel’s request for reimbursement of litigation costs and expenses in an amount that is less than \$25,000 (the difference between the amount sought and the amount authorized under the Settlement, \$57,036.71, will be part of the Net Settlement Amount). See n.8, *supra*.

³⁷ *Id.*, ¶ 16.

counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk, supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is “fair, adequate, and reasonable.” *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the cases were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id.*

A. The Settlement Resulted from Arm’s-Length Negotiations Based Upon Extensive Investigation and Informal Discovery.

The Parties actively litigated the case since the Trinidad Action commenced on March 22, 2019. Class Counsel conducted significant investigation and formal and informal discovery into the facts of the cases, to assess the veracity, strength, and scope of the claims, and was preparing for class certification and trial prior to reaching the Settlement.³⁸

The Parties conducted significant formal and informal discovery and investigation into the facts of the cases, and also formally and informally exchanged a large volume of information, documents, and data throughout the course of the litigation and in connection with the mediations and settlement negotiations.³⁹ The volume of data and documents that Class Counsel reviewed and analyzed by Class Counsel included, and were not limited to: employment records of Plaintiffs, a detailed sampling of Class Members’ time and pay data, Defendants’ Employee Handbook, earning statements, job description, company policy acknowledgements (Handbook Acknowledgement and Agreement), internal memoranda, operations and employment practices,

³⁸ Ghosh Decl., ¶ 6.

³⁹ *Id.* ¶¶ 6 & 7.

forms, procedures, and policies (including but not limited to Code of Conduct, Audio Video Monitoring, Meal Break Waiver Choice), among other information and documents.⁴⁰ Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.⁴¹ Class Counsel developed liability, damages, and penalties valuation models in the course of litigation and in connection with the mediations and settlement negotiations, and met and conferred with Defendants' counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, case management, discovery, and the production of information, documents, and data in the course of litigation and the mediations and settlement negotiations.⁴² Class Counsel reviewed and analyzed information, documents, and data obtained from Plaintiffs, Defendants, and other sources.⁴³ Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising the pleadings, motion-related papers, mediation brief, and settlement-related papers; and preparing for and attending court proceedings, settlement negotiations, and the mediations, among other tasks.⁴⁴

After conducting formal and informal discovery and investigation into the facts of the cases, the Parties participated in two (2) mediation sessions conducted by Hon. Michael Latin (Ret.), a well-regarded mediator experienced in mediating complex labor and employment matters.⁴⁵ In the course of the mediations and settlement negotiations, the Parties exchanged class information, documents, and data, and discussed all aspects of the cases, including and not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and trial, the law relating to class certification, off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.⁴⁶ During all settlement discussions, the Parties conducted their negotiations at arm's length in an adversarial position.⁴⁷

⁴⁰ *Id.* ¶ 6.

⁴¹ Ghosh Decl., ¶ 6.

⁴² *Ibid.*

⁴³ *Id.*, ¶¶ 6 & 7.

⁴⁴ *Id.*, ¶ 6.

⁴⁵ *Id.*, ¶ 8.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

Arriving at a settlement that was acceptable to the Parties was not easy.⁴⁸ Defendants and their counsel felt very strongly about Defendants ability to prevail on the merits and to avoid class certification.⁴⁹ Defendants and their counsel felt strongly about Defendants' ability to avoid class certification and representative adjudication and prevail on the merits, while Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.⁵⁰ After conducting significant formal and informal discovery and investigations, settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the cases were well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the Parties that would attend further litigation.⁵¹

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the cases might have concluded at certification, trial, and/or appeals. Class Counsel analyzed a large volume of information, documents, and data obtained from Defendants, Plaintiffs, and other sources, and performed research regarding applicable law, which is evolving as it relates to certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-hour enforcement, Plaintiffs' claims, and Defendants' defenses thereto, as well as facts discovered.⁵² The Settlement was based on this large volume of facts, evidence, and investigation.⁵³ Additionally, Class Counsel have extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.⁵⁴

B. The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.

The Settlement, which provides for a Gross Settlement Amount of \$500,000.00, represents a fair, adequate, and reasonable resolution of the cases, given the risks inherent in litigating class and representative claims through certification proceedings, trial, and/or appeals.⁵⁵ The Settlement was calculated using information and data uncovered through extensive case investigation, formal

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ghosh Decl., ¶ 7.

⁵³ *Id.*, ¶¶ 6-8.

⁵⁴ *Id.*, ¶¶ 13-18.

⁵⁵ *Id.*, ¶¶ 8 & 21.

1 and informal discovery, and the exchange of information in the context of mediation and ongoing
2 settlement negotiations.⁵⁶ Had the action not settled, Defendants would have vigorously
3 challenged class certification, manageability of representative adjudication, and liability.
4 Defendants contended that individualized questions of fact predominated over any common issues,
5 and these issues would pose challenges to certification and representative adjudication. Defendants
6 would have likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-
7 wide and/or representative adjudication. On the other hand, Defendants also faced the risk of the
8 Court certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or
9 representative basis. Additionally, preparation for trial would have been expensive for all parties.

10 It is preferable to reach an early resolution of a dispute because such resolutions save time
11 and money that would otherwise go to litigation. If this matter had settled after further litigation,
12 the settlement amount would have taken into account the additional costs incurred, and there might
13 have been less money available for Class Members and Aggrieved Employees after all was said
14 and done. This is not just an abstract contention. The risks and expenses of further litigation
15 outweighed any benefit that might have been gained otherwise. These risks of further litigation
16 include a determination that the claims were unsuitable for class treatment and/or representative
17 adjudication, failure to obtain certification, class de-certification after certification of a class,
18 allowing a jury to decide the claims asserted in the cases, and the real possibility of no recovery
19 after years of litigation. Additionally, the Parties were moving into the phase of the litigation where
20 they would have to conduct a significant amount of additional discovery, including and not limited
21 to, depositions of Defendants' Person Most Knowledgeable designees, expert witnesses, and
22 percipient witnesses, such as managers, supervisors, and other current and former employees
23 throughout the State of California. Additional discovery would have certainly arisen, which would
24 have cost the Parties additional time and money. In contrast, the Settlement provides real and
25 significant benefits for the Class here and now, while avoiding the further expenses, risks, and
26 delay of prolonged litigation with only the possibility of recovery.

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28

⁵⁶ *Id.*, ¶¶ 6-8.

1 It would be grossly inefficient for such a large class of current and former employees to
2 bring individual actions to recover from Defendants for the alleged violations of wage-and-hour
3 laws. Moreover, the potential individual recovery that could be obtained by a Class Member would
4 not be significant enough to provide him or her with the incentive to sue. By granting final approval
5 of the Settlement, the Court can approve a resolution that provides a certain and substantial
6 recovery for Class Members.

7 **C. The Settlement Is Fair, Reasonable, and Adequate.**

8 The Settlement, which provides for a Gross Settlement Amount of \$500,000.00, represents a fair,
9 reasonable, and adequate resolution of the cases. The Settlement was calculated using information
10 and data uncovered through extensive case investigation, formal and informal discovery, and the
11 exchange of information in the context of preparing for mediation and conducting ongoing
12 settlement negotiations. The Settlement takes into account the potential risks and rewards inherent
13 in any case and, in particular, in this matter. Moreover, considering all of the facts in the cases,
14 the Gross Settlement Amount represents a considerable recovery.

15 Even after deducting Class Counsel Fees Payment in the amount of \$166,666.67, Class
16 Counsel Litigation Expenses Payment in the amount of \$17,963.29, Class Representative Service
17 Payments in the combined amount of \$10,000.00, Administration Costs in the amount of
18 \$12,650.00, and the allocation of PAGA Penalties of \$50,000.00 from the Gross Settlement
19 Amount of \$500,000.00, the Net Settlement Amount is currently estimated to be \$242,720.04.⁵⁷
20 Under the Settlement Agreement, the Gross Settlement Amount will be fully paid out, in
21 accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Participating
22 Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number
23 of Workweeks credited to him or her, and each Aggrieved Employee will be paid a *pro rata* share
24 of 25% of the PAGA Penalties, based on the number of Workweeks during the PAGA Period
25 credited to him or her.⁵⁸ To date, there are six hundred and eighty (680) Participating Class
26 Members, representing one hundred percent (100%) of the Class Members.⁵⁹ The highest

27 ⁵⁷ ILYM Decl., ¶ 14.

28 ⁵⁸ Settlement Agreement, ¶ 3.2.4.

⁵⁹ ILYM Decl., ¶ 14.

Individual Settlement Payment is currently estimated to be \$1,743.50 and the average Individual Settlement Payment is currently estimated to be \$346.59.⁶⁰ The highest Individual PAGA Payment is currently estimated to be \$123.43 and the average Individual PAGA Payment is currently estimated to be \$37.09.⁶¹ These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the State of California, and Aggrieved Employees.⁶² Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. The Class Was Represented by Competent Counsel.

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.⁶³ Lawyers for Justice, PC has been appointed class counsel in numerous complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.⁶⁴ Both parties’ counsel were capable of assessing the strengths and weaknesses of the Class Members’ claims against Defendants and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. There Are No Objections to the Settlement.

⁶⁰ *Id.*, ¶ 15.

⁶¹ ILYM Decl., ¶ 16.

⁶² Ghosh Decl., ¶ 21.

⁶³ *Id.*, ¶¶ 13-18.

⁶⁴ *Ibid.*

The Settlement has been well received by the Class – ***not a single Class Member objected to the Class Settlement.***⁶⁵ Specifically, no objections have been made as to the Gross Settlement Amount or requested Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representatives Service Payments, Administration Costs, or the allocation for PAGA Penalties. California courts have consistently found that a small number of objectors indicates the class’ support for a settlement and strongly favors final approval. *Wershba, supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

Here, the lack of any objections speaks volumes about the fairness, reasonableness, and adequacy of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk, supra*, 48 Cal.App.4th at 1802.

VI. THE CLASS COUNSEL FEE PAYMENT REQUESTED IS FAIR AND REASONABLE AND SHOULD BE APPROVED.

A. Legal Standard for Attorneys’ Fees in a Class Action Settlement.

Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The “experienced trial judge is the best judge of the value of professional services rendered in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118. Where the amount of a settlement is a “certain easily calculable sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and representative actions because “it better approximates the workings of the marketplace than the lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49.

⁶⁵ ILYM Decl., ¶ 12.

California law provides that an attorneys' fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Lealao, supra*, 82 Cal.App.4th at 53.

"The ultimate goal . . . is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03; see also *In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement amount as attorneys' fees). California courts routinely approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); see also *Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of \$19 million).

B. A Fee Award of a Percentage of the Entire Fund Is Appropriate.

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.⁶⁶ The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. See *Vincent, supra*, 557 F.2d at 769.

When a litigant's efforts result in a settlement from which others may derive benefits, the litigant may require the passive beneficiaries to compensate those whose efforts brought about the settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of the other parties enjoying the benefit of the settlement). Both state and federal courts have embraced this doctrine. See *Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

The propriety of calculating and awarding attorneys' fees as a percentage of a monetary settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee[.]" and "[t]he percentage [...] method survives in California." *Id.* (internal quotes omitted).

Courts have consistently recognized that class and representative action litigation is increasingly necessary to protect the rights of individuals whose injuries and/or damages are too small to economically justify legal action on an individual basis. Accordingly, in determining a reasonable fee award, courts award fees to serve as an economic incentive for lawyers to pursue

⁶⁶ The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

1 such litigation in order to achieve increased access to the judicial system for meritorious claims
2 and to enhance deterrents to wrongdoing. This is especially true in situations where multiple
3 similar alleged wrongs would not be economically feasible to pursue individually, such as here.
4 See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

5 When the cases were originally filed, not only was it inescapably contingent, but the
6 prospect of a long, drawn-out battle with a defendant represented by experienced counsel, was
7 almost a certainty. By taking on this “battle” on a contingency basis, Class Counsel risked
8 substantial economic loss if the results were not successful. This substantial risk is the reason that
9 the courts approve the use of the percentage method when a settlement is obtained by the efforts
10 of class counsel. See *Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (discussing the
11 risks of engaging in litigation without certainty of compensation).

12 Under the terms of the Settlement Agreement, Defendants will pay a Gross Settlement
13 Amount of \$500,000.00 on a non-reversionary basis. The requested attorneys’ fees are one-third
14 (1/3) of the total value of the monetary settlement. In light of Class Counsel’s successful
15 prosecution and resolution of the cases, the requested attorneys’ fees are appropriate and
16 reasonable.

17 Compensating class counsel in class litigation on a percentage basis makes good sense
18 because: (1) it is consistent with the private marketplace where contingent fee attorneys are
19 customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent
20 class members in achieving the maximum possible resolution of the case; and (3) it encourages
21 the most efficient and expeditious resolution of the litigation by providing an incentive for early,
22 yet reasonable, settlement. The requested attorneys’ fees in this matter satisfy all of those factors
23 and should be approved on a percentage basis.

24 The percentage method is consistent with, and is intended to mirror, the practice in the
25 private marketplace where contingent-fee attorneys typically negotiate percentage-fee
26 arrangements with their clients. The named plaintiffs’ agreement to pay a contingent fee is
27 powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel’s
28 work to the class is to review the consideration agreed to be paid by the named plaintiffs. If the

named plaintiffs have employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiffs. In this case, Plaintiffs have each agreed to contingency fees in excess of the amount sought.⁶⁷

Furthermore, a percentage-fee award is not dependent on a determination of the actual amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that “it is equitable that [the attorney’s] compensation and expenses should come from the entire fund saved for all classes concerned before it is distributed.” *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee “may be calculated on the basis of the total fund made available rather than the actual payments made to the class.” *Lealao, supra*, 82 Cal.App.4th at 51; *see also Boeing, supra*, 444 U.S. at 478 (“a litigant or a lawyer who recovers” a settlement “for the benefit of persons other than himself or his client is entitled to a reasonable attorneys’ fee from the fund as a whole”).

In *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, in determining reasonable attorneys’ fees, the Court of Appeal valued a settlement based on the total value of the settlement made available to class members by the efforts of counsel, decided in favor of granting fees as a percentage of the total value of the settlement, and rejected an objection that the fees be awarded based on the exact amount claimed by class members. *Id.* at 247.

Class Counsel has obtained a substantial recovery on behalf of Plaintiffs, the Class, Aggrieved Employees, and the State of California, and the results achieved justify an attorneys’ fees award that is the equivalent of the standard market fee and that is consistent with the contingency-fee agreement entered into by and between Plaintiffs and Class Counsel. Thus, the requested attorneys’ fees are appropriate.

C. The Class Counsel Fees Payment Requested Is Reasonable Based on the Factors Considered in Determination of Fee Awards.

⁶⁷ Ghosh Decl., ¶ 9.

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The Class Counsel Fees Payment in the amount of \$166,666.67 (which is 1/3 of the Gross Settlement Amount) is commensurate with the time, effort, and expense dedicated to the cases, the contingent nature of Class Counsel's fee and the risks taken in commencing the cases, the skill and determination required, the results that Class Counsel have achieved, and the value of the settlement that Class Counsel have obtained for the Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declarations, Class Counsel have extensive experience in the handling of class actions and complex litigation cases.⁶⁸

As outlined in the Declaration of Joanna Ghosh, Class Counsel has fully and actively participated in litigation of the cases.⁶⁹ Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and its operations and employment policies, practices, and procedures.⁷⁰ During the litigation of the actions, Class Counsel had the opportunity to interview Plaintiffs and other Class

⁶⁸ Ghosh Decl., ¶¶ 13-18.

⁶⁹ *Id.*, Exh. A.

⁷⁰ *Id.*, ¶ 5.

Members; reviewed and analyzed a large volume of pages of information, documents and data obtained from Defendants, Plaintiffs, and other sources; and prepared liability, damages, penalties, and valuation calculations.⁷¹ Class Counsel also met and conferred with Defendants' counsel over the issues relating to pleadings, case management, discovery, and the production of information, documents and data, among other things; engaged in settlement negotiations with Defendants' counsel; and prepared for and attended court proceedings, mediation sessions, and settlement negotiations.⁷²

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Joanna Ghosh, sets forth in detail the hours that Lawyers for Justice, PC has spent performing tasks on behalf of Plaintiffs and the Class.⁷³ The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent 512.00 hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs, the Class, the Aggrieved Employees, and the State of California.⁷⁴ These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the cases is evident not only in the results achieved, but in the steps necessary to reach those results. Defendants retained well-respected counsel to represent its defenses. More specifically, Defendants and their counsel felt very strongly about

⁷¹ Ghosh Decl., ¶ 6.

⁷² Ibid.

⁷³ Id., Exh. A.

⁷⁴ Id., ¶¶ 11 & 12.

Defendants' ability to obtain a denial of certification and to prevail on the merits. Plaintiffs and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to the mediations. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Joanna Ghosh, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.⁷⁵

3. The Value of the Settlement for the Class Members.

The Settlement represents an excellent resolution of the actions, given the risks inherent in litigating the cases through certification proceedings, trial, and/or appeals. Had the cases not settled, Defendants would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendants, however, faced risks if the Court certified a class and allowed a jury to decide the claims. Additionally, preparing the cases for trial would have been expensive for the Parties.

The Settlement at this stage is preferred over continued litigation because such resolutions save time and money that would otherwise go to litigation. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, class certification proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Participating Class Members, the State of California, and Aggrieved Employees while avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time in the future.

As a result of this litigation and settlement negotiations, Defendants agreed to pay a Gross Settlement Amount of \$500,000.00 to settle the matter. After deducting the Class Counsel Fees Payment (\$166,666.67), Class Counsel Litigation Expenses Payment (\$17,963.29), Class

⁷⁵ Ghosh Decl., ¶¶ 13-18.

Representatives Service Payments (combined, \$10,000.00), Administration Costs (\$12,650.00), and the allocation PAGA Penalties (\$50,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately \$242,720.04.⁷⁶ The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment is currently estimated to be \$1,743.50 and the average Individual Settlement Payment is currently estimated to be \$346.59.⁷⁷ The highest Individual PAGA Payment is currently estimated to be \$123.43 and the average Individual PAGA Payment is currently estimated to be \$37.09.⁷⁸ The Settlement offers significant monetary relief to the Participating Class Members, the State of California, and Aggrieved Employees.

4. Whether the Fee Is Fixed or Contingent.

Plaintiffs entered into contingency fee agreements with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 512.00 hours of time to obtain relief on behalf of Plaintiffs, Class Members, the State of California, and Aggrieved Employees.⁷⁹ Class Counsel has also incurred litigation costs and expenses in the amount of \$17,963.29.⁸⁰

Class Counsel has borne all of the risks and costs of litigation and will not receive any compensation until recovery is obtained.⁸¹ Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.⁸² The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

In determining the reasonableness of a fee award in a class action settlement, whether or

⁷⁶ ILYM Decl., ¶ 14.

⁷⁷ *Id.*, ¶ 15.

⁷⁸ *Id.*, ¶ 16.

⁷⁹ Ghosh Decl., ¶¶ 11, Exh. A.

⁸⁰ *Id.*, ¶¶ 19, Exh. B.

⁸¹ *Id.*, ¶ 19.

⁸² *Id.*, ¶¶ 13-18.

not representation is provided on a contingency basis is an important factor:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

Cates v. Chiang (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted). Class Counsel litigated the case on a contingent basis with all of the concomitant risk factors inherent in such an uncertain undertaking. Had Class Counsel not been successful, the time that Class Counsel have devoted to litigating the case would have been for naught, and would not have produced any fee or any reimbursement of costs or expenses.

5. *The Amount Involved and the Results Achieved.*

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to the Class Settlement.⁸³

The court in *Camden* noted that, “a key element of the common fund case is that fees are [...] taken from the fund [...] and a common fund is itself the measure of success ... [and] represents the benchmark on which a reasonable fee will be awarded.” *Camden*, 946 F. 2d 768, fn. 28 (citing *Court Awarded Attorney Fees, Report of the Third Circuit Task Force* (October 8, 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

Here, the results achieved and obtained on behalf of Plaintiffs and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel’s efforts have resulted in a settlement that provides for a Gross Settlement Amount of \$500,000.00.⁸⁴ The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment is currently estimated to be \$1,743.50 and the average Individual Settlement Payment is currently estimated to be \$346.59.⁸⁵ The highest

⁸³ ILYM Decl., ¶ 12.

⁸⁴ Ghosh Decl., ¶ 10.

⁸⁵ ILYM Decl., ¶ 13.

Individual PAGA Payment is currently estimated to be \$123.43 and the average Individual PAGA Payment is currently estimated to be \$37.09.⁸⁶

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6. The Reputation and Ability of the Attorneys.

Lawyers for Justice, PC is a recognized class action law firm that employed its attorneys' knowledge, skills, and experience in bringing this matter to a successful conclusion. Class Counsel has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.⁸⁷

D. The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Has Performed Work That Is of Significant Value Based On Reasonable Hours and Prevailing Hourly Rates of Compensation.

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. See *Laffitte, supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination"); see also, e.g., *Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award."). Importantly, "the lodestar calculation . . . does not override the trial court's primary determination of the fee as a percentage" of the settlement amount and "does not impose an absolute maximum or minimum on the potential fee award." *Laffitte, supra*, 1 Cal.5th at 505.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum, supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

1. The Number of Hours Spent on the Litigation was Reasonable.

⁸⁶ *Id.*, ¶ 16.

⁸⁷ Ghosh Decl., ¶¶ 13-18.

1 The reasonableness of hours is assessed by “the entire course of the litigation, including
2 pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v.*
3 *Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

4 As discussed above, the case was highly contested and required a significant amount of
5 time and labor. Defendants made it clear very early on that it disputed all of the allegations of the
6 case and disputed that the matter was appropriate for class or representative treatment. Defendants
7 raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and
8 analyzing data not only from Defendants but also from the Class Members. The handling of the
9 cases involved a great amount of effort, and also required and involved the exercise of a high level
10 of skill, which Class Counsel has as a result of its extensive experience in employment class actions
11 and complex wage-and-hour litigation. Long and difficult battles would have followed as the cases
12 moved toward certification and trial, including taking and defending depositions of Defendants’
13 Person Most Knowledgeable designees, percipient witnesses, and experts, propounding additional
14 discovery requests and conducting additional document production, and engaging in extensive
15 motion practice. As Class Counsel geared up for these battles, Class Counsel undertook intense
16 preparation in an attempt to resolve the entire matter through mediations.

17 Class Counsel had to bring together a large volume of information, documents and data
18 that were obtained from Defendants, Plaintiffs, and through other sources. Class Counsel
19 conducted extensive review and analysis of the information, documents and data to strategize the
20 action and to prepare for mediation and engage in settlement discussions.

21 As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Joanna Ghosh is a
22 task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on
23 behalf of Plaintiffs and the Class, and the time required for completing those tasks.⁸⁸ The chart
24 demonstrates that Class Counsel has spent a total of 512.00 hours litigating the cases and finalizing
25 the Settlement.⁸⁹ In light of the facts and circumstances of the cases, as well as the results that
26 Class Counsel has achieved in these cases, Class Counsel has spent a reasonable number of hours
27

28 ⁸⁸ Ghosh Decl., Exh. A.

⁸⁹ *Id.*, ¶¶ 11 & 12, Exh. A.

on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

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2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation in Light of Class Counsel's Efforts and Experience.

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

Class Counsel has been actively involved in this matter, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in these cases has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of \$500,000.00.

As set forth in the Declaration of Joanna Ghosh, the professional backgrounds and experience of Class Counsel support reasonable rates of compensation at least \$850 per hour for services provided by Class Counsel.⁹⁰ Lawyers for Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least \$850 per hour for legal service performed, by courts of this state.⁹¹ While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

⁹⁰ Ghosh Decl., ¶ 12.

⁹¹ *Ibid.*

Applying the rate of \$850 per hour to 512.00 hours for services provided by Class Counsel would place a reasonable value of \$435,200.00 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of \$166,666.67, which is one-third (1/3) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; accord *Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba*, *supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez*, *supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys' fees in the amount of \$166,666.67 to Class Counsel.

VII. CLASS COUNSEL LITIGATION EXPENSES PAYMENT IS FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement provides for a Class Counsel Litigations Expenses Payment of up to \$25,000.00. As set forth in the Declaration of Joanna Ghosh, Class Counsel seeks reimbursement

of \$17,963.29 in litigation costs and expenses incurred in this case.⁹² This amount was reasonable and necessary in the prosecution of the cases and to obtain the Settlement.⁹³ The cost savings of \$7,036.71 will be part of the Net Settlement Amount, which will be distributed to Participating Class Members in accordance with the Settlement.⁹⁴ Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of \$17,963.29 to Class Counsel.

VIII. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

As set forth in the accompanying ILYM Declaration, the total costs incurred and to be incurred by ILYM for the notice and settlement administration process are \$12,650.00.⁹⁵ The costs incurred and to be incurred include, but are not limited to, (a) establishing and maintaining a related settlement fund account; (b) establishing and maintaining a calendar of administrative deadlines and responsibilities; (c) processing and mailing payments to the Plaintiffs, Class Counsel, Participating Class Members, and Aggrieved Employees; (d) printing and mailing the Class Notice to Class Members; (e) receiving and validating Requests for Exclusion, Objections, and disputes to Workweeks submitted by Class Members and Aggrieved Employees; (f) calculating the Employer Taxes and providing appropriate forms and calculations to Defendants; (g) mailing Individual Settlement Payment checks to Participating Class Members and Individual PAGA Payment checks to Aggrieved Employees, (h) providing counsel with weekly reports; and (i) other tasks as the Parties mutually agree or the Court orders ILYM to perform.⁹⁶

Accordingly, the Court should grant final approval of payment to ILYM, a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of \$12,650.00.

IX. THE REQUESTED CLASS REPRESENTATIVES SERVICE PAYMENTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

⁹² Ghosh Decl., ¶¶ 19, Exh. B.

⁹³ Ibid.

⁹⁴ Ghosh Decl., ¶¶ 19, Exh. B.

⁹⁵ ILYM Decl., ¶ 17.

⁹⁶ *Id.*, ¶ 3.

The Settlement provides for Class Representatives Service Payments in the amount of \$5,000.00 each to Plaintiffs Eulalia Trinidad and Marko Asauljuk (for a combined total of \$10,000.00) to compensate Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Class Representatives Service Payments are both common and reasonable and should be awarded.

In determining whether to make service payments, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving \$50,000 participation award to a single class representative).

The requested Class Representatives Service Payments are fair and appropriate because Plaintiffs spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence to support the prosecution of the claims.⁹⁷ Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information to support the pursuit of the cases.⁹⁸

Accordingly, it is appropriate and just for Plaintiffs Eulalia Trinidad and Marko Asauljuk to each receive \$5,000.00, for a total of \$10,000.00, as reasonable Service Payments in addition to their individual settlement payments.

X. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representatives Service Payments, Administration Costs, and the allocation for PAGA Penalties, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

⁹⁷ Ghosh Decl., ¶ 20; Declaration of Eulalia Trinidad ("Trinidad Decl."), ¶¶ 3-5; Declaration of Marko Asauljuk ("Asauljuk Decl.").

⁹⁸ Ghosh Decl., ¶ 20; Trinidad Decl., ¶¶ 3-5; Asauljuk Decl., ¶¶ 3-5.

Dated: May 2, 2024

LAWYERS for JUSTICE, PC



By: _____

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