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

MAYRA MORALES, an individual, on
behalf of herself and others similarly situated,

PLAINTIFF,

v.

EUROSTAMPA CALIFORNIA LLC; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 22CV000095

[Case Assigned for All Purposes to Hon.
Cynthia P. Smith in Dept. A]

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

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Liane Katzenstein Ly, Mayra Morales and
Makenna Snow of ILYM Group, Inc., Proposed
Order, and Judgment]*

Date: June 6, 2023
Time: 8:30 AM
Dept.: A

Complaint Filed: January 27, 2022
FAC Filed: April 4, 2022
Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 6, 2023 at 8:30 AM in Department A of the above-entitled court, Plaintiff Mayra Morales (“Plaintiff”) will, and hereby does, move the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for an order:

1. Granting final approval of the settlement in the case pursuant to the Stipulation for Settlement of Class and Representative Action (“Settlement Agreement”), a copy of which is attached to the concurrently-filed Declaration of Liane Katzenstein Ly as Exhibit “1”;

2. Affirming Kingsley & Kingsley, APC as Class Counsel;

3. Affirming Mayra Morales as Class Representative and awarding an enhancement award of \$5,000.00;

4. Awarding ILYM Group, Inc. claims administration fees of 12,000.00 for its services as Settlement Administrator; and,

5. Entering judgment.

This Motion will be made pursuant to Code of Civil Procedure section 382 and California Rule of Court, rule 3.769 on the grounds that the proposed Settlement Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members and the parties.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Liane Katzenstein Ly, Mayra Morales, Makenna Snow of ILYM Group, Inc., all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: May 8, 2023

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly
Attorneys for Plaintiff MAYRA MORALES and the
proposed class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Mayra Morales (“Plaintiff”) submits this Motion for Final Approval of Class
4 Settlement and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Stipulation for
6 Settlement of Class and Representative Action (“Settlement Agreement”), a copy of which is
7 attached to the concurrently-filed Declaration of Liane Katzenstein Ly as Exhibit “1”;

8 2. Award attorneys’ fees and costs as detailed in the concurrently-filed Motion for
9 Attorneys’ Fees and Costs;

10 3. Award ILYM Group, Inc. claims administration fees of \$12,000.00 for its services
11 as Settlement Administrator;

12 4. Affirm named Plaintiff Mayra Morales as Class Representative and award a
13 cumulative Class Representative payment of \$5,000.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

16 **A. Litigation Overview and Procedural History**

17 Eurostampa California LLC (“Defendant”) operates throughout the United States,
18 providing various printing and publication services for global wine, food, and cosmetic based
19 industries. Plaintiff worked as a customer service representative in Defendant’s Napa, California
20 location during her employment, which was approximately from June 2017 until June 2021.

21 On January 27, 2022, Plaintiff Mayra Morales filed a Complaint against Defendant in the
22 Superior Court of the State of California, County of Napa, Case No. 22CV000095. (Declaration
23 of Liane Katzenstein Ly (“Ly Decl.”) ¶5.) On April 4, 2022, Plaintiff filed a First Amended
24 Complaint. (Ly Decl. ¶6.) In the First Amended Complaint, Plaintiff alleges the following claims
25 against Defendant: (1) Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194,
26 1194.2, and 1199; (2) Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512;
27 (3) Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7; (4) Failure to Reimburse
28 Expenses Pursuant to Labor Code § 2802; (5) Violation of Labor Code § 226(a); (6) Penalties

Pursuant to Labor Code § 203; (7) Violation of Business & Professions Code § 17200; and (9) Violation of the Private Attorneys General Act (“PAGA”) (Labor Code §§ 2698, et seq.) (“Action”) (*Id.*)

B. The Discovery Process

After the matter was at issue, the Parties engaged in extensive informal discovery, which included the Class Representative’s records and a sample of time and pay records for the Class Members working for Defendant during the liability period. (Ly Decl. ¶7.) Careful review and analysis of these records and sample data allowed Class Counsel to properly assess the claims in this lawsuit and ultimately reach settlement, which Class Counsel believes is adequate, fair, and reasonable, and is appropriate for approval by the Court. (*Id.*)

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends that, for any purpose other than settlement, Plaintiff’s claims are not appropriate for class or representative action treatment. (Ly Decl. ¶8.) Defendant contends, among other things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage Commission Orders. (*Id.*)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement classes in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Ly Decl. ¶9.) Although Defendant denies any liability, Defendant is agreeing to this Settlement Agreement solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

C. Preliminary Approval

On January 11, 2023, the Court issued an Order preliminarily approving the settlement in this case, approving the proposed Class Notice, ordering that the Settlement Administrator send

notice to the Class, and setting a date for the Final Approval and Fairness Hearing. (Ly Decl. ¶10.)

III. THE PRELIMINARILY APPROVED SETTLEMENT

A. The Settlement Class

For purposes of settlement, the settlement class is defined as: “all non-exempt employees who are employed or have been employed by Defendant in the State of California who worked one or more pay periods from August 2, 2017 to December 15, 2022, or the date the Court grants preliminary approval of the settlement, whichever comes first.” (“Class Members”) (Ly Decl. ¶11; Ex. A at § I, ¶e.)

The Class Period is August 2, 2017 through December 15, 2022, or the date the Court grants preliminary approval of the settlement, whichever comes first. (“Class Period”) (Ly Decl. ¶12; Ex. A at § I, ¶f.) Based on documents and other information produced by Defendant, there are approximately 76 Class Members and 6,075 workweeks in the Class Period. (Ly Decl. ¶13; Ex. A at § XIX, ¶a.)

The final Class contained 87 individuals (the class list had 89 individuals, but there are two opt outs). (Snow Decl. ¶11-13.)

B. PAGA Group

For purposes of settlement, the PAGA group is defined as: “all non-exempt employees who are employed or have been employed by Defendant in the State of California who worked one or more pay periods from February 1, 2021 to December 15, 2022, or the date the Court grants preliminary approval of the settlement, whichever comes first.” (“PAGA Group Members”) (Ly Decl. ¶14; Ex. A at § I, ¶s.)

The PAGA Period is February 1, 2021 through December 15, 2022, or the date the Court grants preliminary approval of the settlement, whichever comes first. (“PAGA Period”) (Ly Decl. ¶15; Ex. A at § I, ¶t.) Based on documents and other information produced by Defendant, there are approximately 40 PAGA Group Members and 1,083 pay periods in the PAGA Period. (Ly Decl. ¶16; Ex. A at § XIX, ¶a.)

C. Gross Fund Value

As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to

1 pay a Gross Fund Value of \$155,000.00, which includes the sum of the Individual Settlement
2 Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment,
3 and the Settlement Administration Costs. (Ly Decl. ¶17; Ex. A at § I, ¶h.)

4 The Net Settlement Amount is the Gross Fund Value, less Class Counsel Award, Class
5 Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Ly Decl.
6 ¶18; Ex. A at § I, ¶n.)

7 The Parties estimate the amount of the Net Settlement Amount as follows:

9	Gross Fund Value:	\$	155,000.00
10	Less Class Representative Enhancement:	\$	5,000.00
11	Less Class Counsel's Fees (1/3):	\$	51,666.67
12	Less Class Counsels' Costs:	\$	4,000.00
13	Claims Administration:	\$	12,000.00
14	Less PAGA Payment:	\$	10,000.00
			(\$7,500.00 to the LWDA; \$2,500.00 to remain in the Net Settlement Amount)
15	Less Settlement Administrator Costs:	\$	<u>12,000.00</u>
16	Net Settlement Amount:	\$	74,833.33

17 (*Ibid*).

18 D. Individual Settlement Payments

19 The Individual Settlement Payment amount of each Class Member is an individualized
20 amount that is based on the number of compensable workweeks worked by the Class Member
21 during the Class Period. (Ex. A at § VI; see also Ex. 1 to the Settlement Agreement [Class Notice].)
22 Specifically, Individual Settlement Payments will be paid from the Net Settlement Amount and
23 shall be paid pursuant to the settlement formula as follows: (1) First, using the Class List, the
24 Settlement Administrator will compute the total number of eligible workweeks of all Settlement
25 Class Members collectively during the Class Period; this sum shall be known as the workweek
26 total; (2) Second, the Settlement Administrator will divide the Net Settlement Amount by the
27 workweek total to determine the settlement value for each eligible workweek (the "Workweek
28 Value"); and (3) Third, the Settlement Administrator will multiply the number of eligible
workweeks of a Settlement Class Member during the Class Period by the Workweek Value to
determine that Class Member's Individual Settlement Payment. (*Id.*)

One-third percent (33.33%) of the Gross Fund Value to each Settlement Class Member shall be deemed payment for settlement of claims for wages and will be subject to appropriate deductions and withholdings calculated and made by the Settlement Administrator. (Ex. A at § XII.) Two-Thirds percent (66.66%) of the Gross Fund Value to each Settlement Class Member shall be deemed payment for settlement of claims for penalties and interest and other non-wage payments not subject to withholdings. (*Id.*)

The Settlement Agreement provides for a specific and detailed dispute process regarding Individual Settlement Payments. (See Ex. 1 at § IX, ¶f.)

The individual PAGA payment amount of each PAGA Member is an individualized amount that is based on the number of compensable pay periods worked by the PAGA Member during the PAGA Period. (Ex. A at § VII; see also Ex. 1 to the Settlement Agreement [Class Notice].) Specifically, individual PAGA payments will be paid from the PAGA Settlement Fund and shall be paid pursuant to the settlement formula as follows: (1) First, using the Class List, the Settlement Administrator will compute the total number of eligible pay periods of all PAGA Group Members collectively during the PAGA Period; this sum shall be known as the pay period total; (2) Second, the Settlement Administrator will divide the PAGA Settlement Fund by the pay period total to determine the settlement value for each eligible pay period (the “Pay Period Value”); and (3) Third, the Settlement Administrator will multiply the number of eligible pay periods of a PAGA Group Member during the PAGA Period by the Pay Period Value to determine that PAGA Member’s individual PAGA payment. (*Id.*)

Based on these calculations, the average potential recovery is \$831.42 per Settlement Class Member. (Snow Decl. ¶14.)

E. Class Notice

The Court approved the proposed Class Notice and directed the mailing of the Notice by first-class mail to Settlement Class Members in accordance with the proposed implementation schedule. (Ly Decl. ¶19) The procedures for giving notice to the Settlement Class Members, as set forth in the Settlement Agreement and Plaintiffs’ Motion for Preliminary Approval and approved by the Court, have been fully and properly carried out. (Snow Decl. ¶¶3-7.)

1 To date, ILYM Group, Inc. received two (2) requests to be excluded (“opt-outs”) from the
2 proposed Settlement Agreement and zero (0) objections. (Snow Decl. ¶¶11-12.)

3 F. Check Mailed Settlement – No Reversion

4 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
5 without the possibility of reversion of settlement funds to Defendant. Under the Settlement
6 Agreement, every Settlement Class Member will receive a settlement check and Settlement Class
7 Members do not need to submit a claim in order to receive a settlement check. Any funds that
8 remain uncashed after 180 days shall be turned over by the Settlement Administrator, with
9 information for each Settlement Class Member who failed to timely cash his/her settlement check,
10 to the State of California Controller’s Office Unclaimed Property Fund. (Ex. 1 at § XI, ¶b.)

11 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

12 Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be
13 dismissed or compromised without the approval of the court, and notice of the proposed dismissal
14 or compromise shall be given to all members of the Class in such manner as the court directs”
15 In deciding whether to grant final approval to a proposed class action settlement under Code of
16 Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair,
17 adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

18 A. The Settlement is Entitled to a Presumption of Fairness

19 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
20 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
21 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
22 small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case
23 meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

24 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
25 arm’s-length negotiations. All settlement discussions were made by experienced and informed
26 counsel, who believe that this settlement represents a favorable resolution for the Settlement Class
27 Members. (Ly Decl. ¶20.) The settlement negotiations have been, at all times, adversarial and
28 non-collusive, and no self-dealing or other type of misconduct by either side has taken place. (Ly

Decl. ¶21.)

Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. In addition, Defendant produced additional data and documents informally for purposes of settlement. This included time and pay records for the Class Members working for Defendant during the liability period. (Ly Decl. ¶22.) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the lawsuit. (Ly Decl. ¶23.)

Third, Class Counsel have significant experience in cases of this type, including several years prosecuting wage, hour, and working condition violations. (Ly Decl. ¶24.) Class Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Settlement Class Member of over \$850.00.00 is substantial, given the risks inherent in litigation and the defenses asserted. (Ly Decl. ¶25.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were two (2) request to be excluded and no objectors. (Snow Decl. ¶¶11-12.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

B. The Court Should Approve This Class Action Settlement Because it Satisfies Each of the *Kullar* Factors

In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409, the court clarified that a *Kullar* showing does not require the parties to submit the outer reaches of maximum possible recovery without taking into account the actual risks of certification,

1 decertification, dispositive motions, and trial, so long as there is a record which allows “an
2 understanding of the amount that is in controversy and the realistic range of outcomes of the
3 litigation.” *Munoz*, 186 Cal. App. 4th at 409.

4 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
5 informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at
6 Ly Decl. ¶¶26-27.) This discovery permitted Class Counsel to fairly evaluate the strength of the
7 case and the risks associated with ongoing litigation. (Ly Decl. ¶28.) Class Counsel is experienced
8 in handling wage and hour class actions and, after weighing all of the following factors, supports
9 this Settlement Agreement. (Ly Decl. ¶29.)

10 1. The Strength of Plaintiffs’ Case

11 a) The Risks Associated with the Wages/Overtime Claim

12 Under state and federal law, overtime compensation is based on an employee’s ‘regular
13 rate’ of pay. (*Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.App.4th 893, 902.)
14 “California Labor Code section 510, subdivision (a) provides, as relevant here, [that] an employee
15 is entitled to overtime pay at one and one-half times the ‘regular rate’ for work in excess of eight
16 hours in one day and twice the ‘regular rate’ for work in excess of 12 hours in one day.” (*Ibid.*)
17 For hourly employees, the regular rate is generally the employee’s straight-time hourly rate.
18 (*Huntington, supra*, 131 Cal.App.4th at p. 905.) However, in any pay period where an hourly
19 employee earns other includable compensation in addition to hourly wages—such as a non-
20 discretionary bonus, commission, or shift differential—her or his regular rate is computed by
21 dividing the employee’s total compensation in the period in which the other compensation is
22 earned by the total hours worked in that period. (*Marin v. Costco Wholesale Corp.* (2008) 169
23 Cal.App.4th 804, 807.)

24 Plaintiff contends that Defendant maintained an unlawful policy of automatically
25 deducting (“auto-deduct”) for meal periods regardless of whether Defendant actually provided the
26 opportunity to take a compliant meal period. (Ly Decl. ¶30.) This auto-deduct policy resulted in
27 the unlawful withholding of wages and/or overtime for time actually worked. (Ly Decl. ¶31.) As
28 described, Defendant fails to pay Plaintiff and the Class Members for each and every hour worked.

1 Defendant has argued that despite the auto-deduct policy, employees were actually
2 provided meal periods. (Ly Decl. ¶32.) If true, the auto-deduct wage claim is worth nothing. (Ly
3 Decl. ¶33.)

4 b) The Risks Associated with the Meal Period Claim

5 California law requires employers to provide employees a duty-free, uninterrupted thirty
6 (30) minute meal period when an employee works more than five (5) hours in a workday, and it
7 must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage
8 Order 1-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th
9 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30)
10 minute meal period when an employee works more than (10) hours in a workday, and it must be
11 provided before the end of the 10th hour of work. (*Ibid.*) Meal periods can be waived, but only
12 under the following circumstances: (1) if an employee's total work period in a day is over five (5)
13 hours but no more than six (6) hours, the required meal period may be waived by mutual consent
14 of the employer and employee, and (2) if an employee's total work period in a day is over ten (10)
15 hours but no more than twelve (12) hours, the required second meal period may be waived by
16 mutual consent of the employer and employee, but only if the first meal period was not waived.
17 (*Ibid.*)

18 Employers covered by Industrial Welfare Commission ("IWC") Wage Order 1-2001 have
19 an obligation to both (1) relieve their employees for at least one meal period for shifts over five
20 hours (see above), and (2) to record having done so. If the employer fails to properly record a
21 valid meal period, it is presumed that no meal period was provided. IWC Wage Order 1-2001,
22 §7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053,
23 citing §7(A)(3) ("If an employer's records show no meal period for a given shift over five hours,
24 a rebuttable presumption arises that the employee was not relieved of duty and no meal period was
25 provided").

26 Employers must pay employees an additional hour of wages at the employees' regular rate
27 of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal
28 period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code

§226.7; IWC Wage Order 1-2001, §11(B) (“If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

Plaintiff and the Class Members consistently worked shifts over five (5) hours. (Ly Decl. ¶34.) Plaintiff contends that Defendant failed to provide Plaintiff and the Class Members with proper meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period. (*Id.*)

Indeed, due to the hectic nature of their job, Plaintiff was rarely able to ever take a meal break. (Ly Decl. ¶35.) Because Plaintiff and Class Members were required to communicate with and assist customers, answer calls, and schedule appointments for customers throughout their shifts, they had no time to take lawful uninterrupted meal periods if they were to complete their required assignments. (*Id.*) If Plaintiff or Class Members ever failed to complete their assignments, their supervisors would question why their work was incomplete and they would be subject to potential discipline up to and including termination. Thus, Plaintiff and Class Members were routinely discouraged and prevented from taking uninterrupted meal periods in order to complete their assignments to meet the high customer demand and workload and avoid the imposition of potential disciplinary measures. (Ly Decl. ¶36.)

Further, for one year of the Class Period, Defendant violated California’s meal period laws by automatically recording in every employee’s payroll records that a meal break was taken and deducting one half-hour of time from each such employee’s hours worked for a meal break taken, whether a meal break was provided or not. (Ly Decl. ¶37.) Defendant’s “auto-deduct” policy was unlawful and did not account for whether the meal periods were actually provided, whether Plaintiff and the Class Members were able to take their meal periods at all, whether they were able to take timely meal periods, whether they took meal periods of less than sixty (60) minutes, and/or whether they were free from interruption for the full thirty (30) minutes. (*Id.*)

Defendant also violated California’s meal period laws by not paying Plaintiff and aggrieved employees an extra hour of wages for each missed or improper meal period. (Ly Decl.

¶38.)

Defendant argued that the employees did receive their meal periods and presented evidence that other employees would testify to that fact. (Ly Decl. ¶39.) Additionally, Defendant maintained valid meal and rest period policies. (Ly Decl. ¶40.) This presented a risk on the meal period claim that Plaintiff considered when evaluating this settlement. (Ly Decl. ¶41.)

c) The Risks Associated with the Rest Period Claim

Labor Code section 226.7, subdivision (c), requires an employer to pay an additional hour of compensation for each workday the employer fails to provide a rest period according to law. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked, or major fraction thereof. (Cal. Code Regs., tit. 8, § 11010, subd. 12(A).)

Plaintiff and the Class Members' rest period claims arise from a common course of conduct wherein Defendant did not provide employees with the opportunity to take a second 10-minute rest break for shifts between 6-8 hours, or a third 10-min rest break for shifts between 10-12 hours, in compliance with California law. The California Supreme Court has held: "Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." (*Brinker Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at 1029.) In an eight-hour work day, being denied the two paid rest breaks in a day is "essentially perform[ing] 20 minutes of 'free' work." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1104.)

The Court also clarified what steps an employer has to take to "make available" rest breaks to its employees. Under *Brinker*,

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—it has violated the wage order and is liable. No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.

(*Brinker Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at 1033 (emphasis added).)

Employers must authorize and permit a net ten-minute paid rest period for every four hours,

1 or major fraction thereof, of work for its employees. If an employer does not, then the employer
2 must pay the employee one hour of pay at the employee's regular rate of pay for each workday
3 that the rest period is not provided. (Cal. Code Regs., tit. 8, § 11010, subd. 12(B).) Plaintiff and
4 the Class Members consistently worked shifts of 6+ hours and were not authorized or permitted to
5 take second or third rest breaks. (Ly Decl. ¶42.) Therefore, Defendant violated Labor Code §226.7
6 by failing to provide proper rest periods and pay Plaintiff and the Class Members one hour of
7 compensation at their regular rate for rest period premium wages.

8 Defendant again raised the defense that employees received their rest breaks and presented
9 evidence that employees would testify as such. (Ly Decl. ¶43.) Given that the rest period policy
10 was accurate, Plaintiff considered this a viable risk. (Ly Decl. ¶44.)

11 d) The Risks Associated with the Reimbursement Claim

12 Labor Code section 2802 provides that an employer must "indemnify his or her employee
13 for all necessary expenditures or losses incurred by the employee in direct consequence of the
14 discharge of his or her duties" (Lab. Code, § 2802, subd. (a).)

15 Plaintiff contends that Defendant has failed to reimburse her and the Class Members for
16 business-related expenses, including for use of their cell phone in executing Plaintiff and Class
17 Members' duties under Defendant's employ. (Ly Decl. ¶45.) Plaintiff and Class Members used
18 their cell phones daily to communicate with their supervisors about their job assignments and
19 work schedules. (*Id.*) Pursuant to Labor Code section 2802, Defendant is required to reimburse
20 Plaintiff and the Class Members for all out-of-pocket expenses incurred by them in the
21 performance of their job duties. At minimum, they should be reimbursed for a proportion of their
22 cell phone bills. (Ly Decl. ¶46.)

23 One risk that Plaintiff considered was the fact that not all Class Members used their cell
24 phones for every pay period. (Ly Decl. ¶47.) This raised certification issues and meant that the
25 damages were relatively small. (Ly Decl. ¶48.)

26 e) The Risks Associated with the Wage Statement Claims

27 California Labor Code §226(a) requires Defendant to provide its employees with an
28 accurate, itemized written wage statement that shows, in relevant part, all applicable hourly rates

1 and the corresponding number of hours worked. An employee “suffering injury,” like Plaintiff
2 and Class Members, can recover penalties for an employer’s “knowing and intentional failure” to
3 comply with Labor Code §226(a). See Labor Code § 226(e)(1). Under the statute, an employee
4 is deemed to “suffer injury” if the employer does not provide accurate and complete information
5 required by Labor Code § 226(a) and the employee cannot “promptly and easily determine” from
6 the wage statement alone the amount of gross wages or net wages paid to the employee or other
7 information specified by Labor Code § 226(a). See Labor Code § 226(e)(2)(B).

8 Plaintiff contends that Defendant issued wage statements that undeniably violate Labor
9 Code §§ 226(a)(2) and (9). Labor Code § 226(a) specifically requires that the employer shall,
10 semimonthly or at the time of each payment of wages, furnish each of his or her employees, an
11 accurate itemized statement in writing showing all applicable hourly rates in effect during the pay
12 period and the corresponding number of hours worked at each hourly rate by the employee. As a
13 result of the claims alleged above, Defendant violated this statute.

14 As this is a derivative claim, the same risks present for the above claims were present for
15 this claim. (Ly Decl. ¶49.)

16 f) The Risks Associated with the Waiting Time Penalties Claim

17 This claim alleges that Defendant failed to pay all wages due and owing upon termination
18 or resignation. Labor Code § 203(a) provides:

19 If an employer willfully fails to pay ... any wages of an employee
20 who is discharged or who quits, the wages of the employee shall
21 continue as a penalty from the due date thereof at the same rate until
22 paid or until an action therefor is commenced; but the wages shall
23 not continue for more than 30 days.

24 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
25 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
26 8, § 13520; see also *Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”
27 simply means that “the employer intentionally failed or refused to perform an act which was
28 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
wrong toward the other party”).

Here, Plaintiff contends that Defendant failed to properly pay overtime for any work in

1 excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week. (Ly
2 Decl. ¶50.) The risk analysis for the section 203 claim flows from the risk analysis for the
3 underlying wage claim discussed above. (Ly Decl. ¶51.) If Defendant could prove, as it contends,
4 that class members were properly classified and paid for all hours worked, there would be no
5 recovery of wages and no waiting time penalties that flow therefrom. (Ly Decl. ¶52.)

6 Plaintiff also alleged that Defendant owes waiting time penalties by not paying former
7 alleged employees all wages owed and all premium payments for non-compliant meal or rest
8 periods. Labor Code § 226.7. (Ly Decl. ¶53.) Pursuant to *Murphy v. Kenneth Cole Productions,*
9 *Inc.* (2002) 40 Cal.4th 1094, 1120, Plaintiff contended that break premium payments constitute
10 “wages” under Labor Code § 203. (“We hold that section 226.7’s plain language, the
11 administrative and legislative history, and the compensatory purpose of the remedy compel the
12 conclusion that the ‘additional hour of pay’ is a premium wage, not a penalty”). (Ly Decl. ¶54.)

13 Further, to establish liability for waiting time penalties, Plaintiff would have to establish
14 not only that the underlying violations occurred, but also that Defendant’s conduct was “willful”
15 under Labor Code § 203. (Ly Decl. ¶55.)

16 Plaintiff factored in the risk of establishing that any violation was “willful” and the fact
17 that this claim is derivative. (Ly Decl. ¶56.)

18 g) The Risks Associated with the PAGA Claim

19 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, et seq., permits
20 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
21 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
22 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
23 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

24 The Parties discounted the PAGA claim for multiple reasons. (Ly Decl. ¶57.) First, the
25 aggrieved employees’ PAGA claims are derivative of all the foregoing class claims. (Ly Decl.
26 ¶58.) Second, a court has discretion to award less than the maximum penalty. (Ly Decl. ¶59.)
27 Labor Code § 2699(e)(2) (“a court may award a lesser amount than the maximum civil penalty
28 amount specified by this part if, based on the facts and circumstances of the particular case, to do

otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory”). See e.g., *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the settlement class is compensated for these violations in the proposed Settlement Agreement, and thus any PAGA recovery for these same violations would be duplicative. (Ly Decl. ¶60.) As such, the Settlement Agreement’s contemplated PAGA payment of \$10,000.00 is appropriate. (Ly Decl. ¶61.) See *Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement Agreement now. (Ly Decl. ¶62.) If the Court did eventually certify class, trial of a case involving approximately 76 Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Ly Decl. ¶63.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Ly Decl. ¶64.) An appeal would result in further delay for the Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Ly Decl. ¶71.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant’s policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of \$155,000.00. (Ly Decl. ¶66.)

1 This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Ly Decl.
2 ¶67.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of
3 the law, risks, and all information substantiating the amount of penalties reasonably likely to be
4 awarded to the class were the trier of fact to find Defendant liable. (*Id.*)

5 a) Plaintiff's Assessment of Defendant's Maximum Exposure

6 Plaintiff assessed full value of the Wage/Overtime claim, without any discount, at
7 approximately \$43,761.87. (Ly Decl. ¶68.) This calculation assumed that Class Members had a
8 thirty minute meal period deducted from their pay 4.5 days per week for one year of the Class
9 Period. (Ly Decl. ¶69.) Plaintiff used an hourly average rate of \$24.84. (Ly Decl. ¶70.)

10 The full value of the Meal Period claim, without any discount, was approximately
11 \$135,924.48. (Ly Decl. ¶71.) Plaintiff assumed one missed meal period per week. (Ly Decl. ¶72.)
12 For the reasons above, Plaintiff determined that accepting a discount of the full amount was
13 appropriate. (Ly Decl. ¶73.)

14 The full value of the Rest Period claim, without any discount, was approximately
15 \$135,924.48. (Ly Decl. ¶74.) Plaintiff assumed one missed rest period per week. (Ly Decl. ¶75.)
16 For the reasons above, Plaintiff determined that accepting a discount of the full amount was
17 appropriate. (Ly Decl. ¶76.)

18 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
19 to value the potential reimbursement at approximately \$25 per month (approximately \$6.25 per
20 week, per employee, for reimbursement of personal cell phone usage. (Ly Decl. ¶77.) This brought
21 the damages for this claim to \$34,000.00. (Ly Decl. ¶78.)

22 Plaintiff valued the Wage Statement Claim, without discount, at \$76,300.00. (Ly Decl.
23 ¶79.) Plaintiff used \$100 for each wage statement issued. (Ly Decl. ¶80.) This figure is overstated
24 because Labor Code §226(e)(1) uses \$50 for the initial pay period (not \$100) and puts a \$4,000
25 cap on wage statement penalties per employee. (Ly Decl. ¶81.) Due to the risk discussed above,
26 Plaintiff determined that a steep discount of this claim was fair for settlement purposes. (Ly Decl.
27 ¶82.)

28 Plaintiff valued the Waiting Time Claim, tied to the Wage/Overtime claim, at \$283,464.00.

(Ly Decl. ¶83.) Considering the derivate nature of Labor Code §203 and the dispute over whether class members were owed any wages, Plaintiff determined that accepting a discount on this claim was appropriate. (Ly Decl. ¶84.)

Finally, Plaintiff calculated the value of the PAGA claim at \$78,300 for Class Members (using \$100 per pay period). (Ly Decl. ¶85.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Ly Decl. ¶86.) A judge can award the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent per wage statement. (Ly Decl. ¶87.) While there is a dearth of available authority, in Plaintiff’s view, were she to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Ly Decl. ¶88.)

Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the Class Members’ claims was approximately \$742,674.83. (Ly Decl. ¶89.) However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross Fund Value of \$155,000.00 is fair and reasonable. (Ly Decl. ¶90.)

5. The Extent of Discovery Completed and Stage of the proceedings

As outlined above, Class Counsel conducted a thorough investigation into the facts of the claims alleged. (Ly Decl. ¶91.) The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (*Id.*)

6. The Experience and Views of Counsel

Kingsley & Kingsley is very experienced in prosecuting and defending employment litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition violations. (Ly Decl. ¶¶92-93.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Ibid.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Ibid.*) A list of representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying declaration of Liane Katzenstein Ly. (Ly Decl. ¶¶92-93.) After factoring in the

1 risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable.
2 (Ly Decl. ¶94.)

3 7. The Presence of a Governmental Participant

4 There is no governmental participant in this action. (Ly Decl. ¶95.)

5 8. The Proposed Plan of Allocation Is Fair and Reasonable

6 Plans of allocation are subject to the same standard of review as class action settlements;
7 they must be “fair, adequate and reasonable.” (See, e.g., *Officers for Justice v. Civil Service*
8 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
9 compensates Class Members pro rata based on the number of work weeks worked by the Class
10 Member during the Class Period. The lump sum payment to each member of the Settlement Class
11 not excluding him/ herself will be determined by dividing the Net Settlement Amount by the total
12 number of eligible workweeks worked by all Class Members during the Class Period and then
13 multiplying the Weekly Amount by the number of eligible workweeks by the individual class
14 member as determined by the Settlement Administrator. This allocation distributes Settlement
15 funds proportionally to each class member’s damages, and should therefore be approved as fair,
16 adequate, and reasonable. (Ex. A at § VI.) (Ly Decl. ¶96.)

17 9. The Reaction of the Class Members to the Proposed Settlement

18 To date, there are two (2) request to be excluded from the proposed Settlement Agreement
19 and zero (0) objections. (Snow Decl. ¶¶11-12.) Such indicates that the reaction of Settlement Class
20 Members on the whole is positive and weighs in favor of approval.

21 **V. ENHANCEMENT TO PLAINTIFF**

22 Plaintiff’s Counsel request an enhancement of \$5,000.00 to the Class Representative Mayra
23 Morales for her work on behalf of the Class. (Ly Decl. ¶139.) “Courts routinely approve incentive
24 awards to compensate named plaintiffs for the services they provide and the risks they incurred
25 during the course of the class action litigation.” *Ingram v. The Coca-Cola Company*, 200 F.R.D.
26 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken v.*
27 *Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court approved
28 service awards of \$300,000 to each named plaintiff in recognition of the services they provided to

1 the class by responding to discovery, participating in the mediation process, and taking the risk of
2 stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also, e.g. Van Vranken*,
3 901 F. Supp. at 299 (approving \$50,000 participation award to plaintiffs); *Glass v. UBS Financial*
4 *Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007)
5 (approving \$25,00 enhancement to each named plaintiff).

6 Ms. Morales is an adequate class representative because she has diligently, adequately and
7 fairly represented the Class and has not placed her interests above any member of the Class. (*see*
8 Declaration of Mayra Morales (“Morales Decl.”) ¶¶3-14.)

9 Here, Class Counsel requests an enhancement for Ms. Morales’s valiant effort and time
10 expended in this matter. The time spent by Mayra Morales is significant and includes researching
11 and retaining competent counsel; providing information to Class Counsel regarding the nature of
12 the work at Defendant; compiling relevant documents; working closely with Class Counsel to
13 develop the theories of liability and martial relevant evidence; regularly discussing the status of
14 the case with Class Counsel; discussing the case via telephone with many Class Members; and
15 responding promptly to Class Counsel’s communications regarding settlement.. (Ly Decl. ¶140;
16 Morales Decl. ¶¶3-9.) As set forth in the Settlement Agreement, Plaintiff will also be entering into
17 a general release of liability pursuant to Civil Code Section 1542. (Ly Decl. ¶141; Ex. 1 at § I, ¶w.)

18 Class Counsel considers this to be a fair and reasonable enhancement. (Ly Decl. ¶142.)
19 The enhancement takes into consideration the time, effort, and expense incurred by Ms. Morales
20 in coming forward to litigate this matter on behalf of all Settlement Class Members. (Ly Decl.
21 ¶143.) Additionally, the Class Representative was at risk for paying for Defendant’s legal fees
22 and costs in the event that Defendant prevailed at trial. (Ly Decl. ¶144.)

23 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

24 As indicated on the Proof of Service, Plaintiff’s Motion for Final Approval of Class Action
25 Settlement (“Motion”) will be concurrently uploaded to the Labor and Workforce Development
26 Agency’s (“LWDA”) website on the date this Motion is filed as required by statute. Proof of
27 submission of Plaintiff’s Motion, all related documents, and copy of the email from the LWDA
28 confirming receipt is attached to the Declaration of Liane Katzenstein Ly as Exhibit “6.” (Ly Decl.

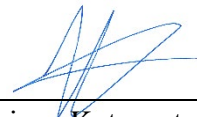
¶150.)

VII. CONCLUSION

Plaintiff respectfully submits that the proposed Settlement Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests that the Court (1) grant Final Approval of the Settlement Agreement and all of its terms; (2) award attorneys' fees and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs; (3) award ILYM Group, Inc. claims administration fees of \$12,000.00; and (4) award the Class Representative an enhancement of \$5,000.00; and (5) enter judgment.

DATED: May 8, 2023

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly
Attorneys for Plaintiff MAYRA MORALES and the
proposed class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On May 8, 2023, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

William Zev Abramson, Esq.
ABRAMSON LABOR GROUP
3580 Wilshire Blvd., Ste 1260
Los Angeles, CA 90010-2513
wza@abramsonlabor.com

Andrew M. McNaught, Esq.
Robin E. Devaux, Esq.
SEYFARTH SHAW LLP
560 Mission Street., Ste 3100
San Francisco, CA 94105-2930
amcnaught@seyfarth.com
rdevaux@seyfarth.com

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 8, 2023, at Los Angeles, California.



Taylor Gregg