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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MONTEREY**

12 CESAR RODRIGUEZ VINALAY, on
13 behalf of himself and all others similarly
situated,

14 Plaintiff,

15 vs.

16 RESTAURANT PACIFIC GROUP, LLC, a
17 California Limited Liability company, and
DOES 1-50, inclusive ,

18 Defendants.
19
20

Case No. 22CV000486
ASSIGNED FOR ALL PURPOSES TO:
Judge: Thomas W. Mills
Dept.: 15
Class Action

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA SETTLEMENT**

**[Declarations of James R. Hawkins, Cesar
Rodriguez Vinalay, and Nathalie Hernandez,
Concurrently Filed Herewith]**

Date: June 28, 2024
Time: 8:30 a.m.
Dept.: 15

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1 **PLEASE TAKE NOTICE THAT** on June 28, 2024 at 8:30 a.m. in Department 15 of the
2 above-entitled court located at 1200 Aguajito Road, Monterey, CA 93940, Plaintiff Cesar
3 Rodriguez Vinalay (“Plaintiff”) will and hereby does move the Court for an Order (1) granting
4 final approval of the Joint Stipulation of Class Action Settlement (hereinafter “Settlement
5 Agreement” or “Settlement”); (2) confirming James R. Hawkins, Isandra Fernandez, and Lance
6 Dacre, of James Hawkins APLC as Class Counsel; (3) approving the “Gross Settlement Amount”,
7 or “GSA”, of Two Hundred Seventy-Five Thousand Dollars (\$275,000); (4) approving all
8 Individual Settlement Payments and PAGA Settlement Payments; (5) allocating a Plaintiff’s
9 Class Representative Enhancement Payment of Five Thousand Dollars (\$5,000) to named
10 Plaintiff Cesar Rodriguez Vinalay; (6) Ten Thousand Dollars (\$10,000) in PAGA penalties; (7)
11 costs of administering the Settlement to the Settlement Administrator, ILYM Group, in the
12 amount of Eight Thousand Eight Hundred Fifty Dollars (\$8,850); (8) a Class Counsel Fees
13 Payment to Class Counsel, James Hawkins, APLC, in the amount of Ninety-One Thousand Six
14 Hundred Sixty-Six Dollars and Sixty-Six Cents (\$91,666.66) and; (9) payment for Litigation
15 Costs in the amount of Eleven Thousand Two Hundred Twenty Dollars and Ninety-Seven Cents
16 (\$11,220.97).

17 This Motion is made pursuant to California Rules of Court Rule 3.769, which requires
18 court approval of the settlement of a putative class action. Further, this Motion will be based on
19 the following: the Memorandum of Points and Authorities set forth herein; the Settlement
20 Agreement attached to the Declaration of James R. Hawkins as Exhibit 1; the Declarations of
21 James R. Hawkins, Cesar Rodriguez Vinalay, and Nathalie Nathalie Hernandez filed concurrently
22 herewith, and any supplements thereto and such evidence or oral argument as may be presented at
23 the hearing, and on the complete records and file herein.

24 Dated: June 3, 2024

JAMES HAWKINS, APLC



James R. Hawkins
Isandra Y. Fernandez
Lance Dacre
Attorneys for Plaintiff Joel Hernandez

1 **I. INTRODUCTION**

2 On February 18, 2022, Plaintiff Cesar Rodriguez Vinalay filed this wage and hour class
3 action on behalf of himself and all employees employed by, or formerly employed by Restaurant
4 Pacific Group, LLC (“Defendant” or “RPG”) and Does 1 through 50, who occupied non-exempt
5 hourly positions in the state of California. The lawsuit seeks recovery of alleged unpaid wages,
6 premium wages and penalties pursuant to California Labor Code, applicable California Industrial
7 Welfare Commission (“IWC”) Wage Orders, Bus. & Prof. Code § 17200 and the Private Attorney
8 General Act of 2004 (“PAGA”) Labor Code section 2699 *et seq.* The action also seeks an award
9 of attorneys’ fees, interest, and costs.

10 On December 8, 2023, this Court preliminarily approved the settlement amount of Two
11 Hundred Seventy-Five Thousand Dollars (\$275,000) as being fair, adequate, and reasonable.
12 Further, this Court preliminarily appointed Plaintiffs’ counsel, James Hawkins, Isandra
13 Fernandez, and Lance Dacre, of James Hawkins APLC, the named Plaintiff Cesar Rodriguez
14 Vinalay as Class Representative, and preliminarily certified the Settlement Class (“Class
15 Members”) comprised of all current and former non-exempt employees of Defendant who
16 worked for Defendant in the State of California at any time from February 18, 2018, through
17 August 13, 2021 (the “Class Period”) (Settlement Agreement ¶ 4). The Court also approved and
18 appointed ILYM Group (“ILYM”) as the Settlement Administrator.

19 On February 23, 2024, Counsel for Defendant provided ILYM with a mailing list (“Class
20 List”) containing the name, last known address, Social Security Number, and pertinent
21 employment information during the Class Period for the Class Members. The Class List
22 contained data for 295 Class Members (Declaration of Nathalie Hernandez (“Hernandez Decl.”)
23 ¶¶ 5, 6). On March 1, 2024, Notice Packets were mailed to Class Members with addresses
24 contained in the Class List via First Class Mail (Hernandez Decl. ¶ 7) The deadline for Class
25 Members to submit a request for exclusion from the Class Settlement, object to the Class
26 Settlement, or submit a workweeks dispute was April 15, 2024 (Hernandez Decl. ¶¶ 11, 12, 13).
27 The benefits conferred to the Settlement Class, as a result of this Settlement, are favorable.
28 Specifically, as previously set forth in Plaintiffs’ Motion for Preliminary Approval (“Preliminary

1 Approval Motion”), this is a cash settlement with no reversionary aspect. Every Class Member
2 who has not opted out of the Settlement will automatically be mailed an individual settlement
3 payment. There is no claims filing process, and Class Members do not have to file a claim to be
4 mailed a payment. Moreover, out of the 295 Class Members there are zero (0) exclusions, zero (0)
5 disputes, and zero (0) objections to the settlement (Hernandez Decl. ¶¶ 11-13).

6 Additionally, in the event the Court approves the requested fees, costs and enhancements,
7 the average estimated Individual Settlement Payment is \$502.58, the highest estimated Individual
8 Settlement Payment is \$2,024.56, and the lowest estimated Individual Settlement Payment is
9 \$6.43 (Hernandez Decl. ¶15).

10 In sum, the proposed Settlement, which is the product of diligent advocacy and arms-
11 length negotiations by Class Counsel, provides good benefits to the Class and has been well
12 received as a favorable outcome. The Settlement of this action is fair, reasonable, and adequate,
13 and in the best interest of the Class. Accordingly, final approval of the Settlement should be
14 granted.

15 **II. LITIGATION AND SETTLEMENT**

16 **A. Pleadings**

17 On February 18, 2022, Plaintiff Cesar Rodriguez Vinalay initiated this action styled *Cesar*
18 *Rodriguez Vinalay v. Restaurant Pacific Group, LLC* (Monterey County Case No. 22CV000486).
19 On the same date Plaintiff provided notice to the Labor and Workforce Development Agency
20 (“LWDA”) and the Defendant of his intent to seek civil penalties against Defendant for alleged
21 Labor Code violations, pursuant to Labor Code Section 2699 *et seq.* The Complaint asserted
22 causes of action for; (1) failure to pay all lawful wages; (2) failure to provide lawful meal and rest
23 periods or compensation in lieu thereof; (3) failure to reimburse employee expenses; (4) failure to
24 timely pay all wages owed during employment and at the termination of employment; (5) failure
25 to comply with itemized wage statement provisions; (6) violations of the unfair competition law
26 (Bus. & Prof. Code § 17200 *et seq.*). On April 26, 2022, Plaintiff filed a First Amended
27 Complaint (“FAC”), adding a claim for violations of the Private Attorney General Act (Labor
28 Code § 2699 *et seq.*). The FAC is the operative pleading (the “Action”) (See Declaration of James

1 R. Hawkins in Support of Final Approval Motion “Hawkins Decl.” ¶ 2).

2 **B. Discovery and Mediation**

3 Through formal and informal discovery, Plaintiffs and Defendant have exchanged
4 extensive documents and information related to the claims asserted (Hawkins Decl. ¶ 3). Plaintiff
5 propounded written discovery but, in an effort, to focus on resolution, the Parties agreed on
6 exchanging informal discovery (*Id.*) The named Defendant produced timecard and payroll
7 records, and reports related to putative class members. The timekeeping and payroll data was
8 submitted to an expert, Berger Consulting Group, Inc, for extensive analysis (*Id.*).

9 After conducting formal and informal discovery, exchanging relevant information and
10 engaging in numerous discussions regarding the claims alleged, on September 27, 2022, the
11 Parties participated in a private mediation with the Honorable Leo Wagner (Ret.), an experienced
12 wage and hour class action mediator (Hawkins Decl. ¶ 4). During the course of the mediation, the
13 Parties exchanged further information and documentation concerning Plaintiff’s claims and
14 Defendant’s defenses thereto, and aggressively advocated for their respective positions (*Id.*) but
15 were unable to reach a resolution.

16 Over the next several months the Parties, with the assistance of the mediator, continued
17 discussions to resolve the matter, culminating in a mediator’s proposal. On February 13, 2023, the
18 Parties accepted the mediator’s proposal (*Id.*). The Parties executed the Joint Stipulation of Class
19 Action Settlement (“Settlement Agreement” or “Settlement”) on May 22, 2023, and which the
20 court preliminarily approved on December 8, 2023. The Parties now seek the Court’s final
21 approval of this Settlement Agreement (Hawkins Decl. ¶ 5; **Exhibit 1**- Settlement Agreement.

22 **C. The Preliminarily Approved Settlement**

23 On November 14, 2023, Plaintiff Vinalay filed the Motion for Preliminary Approval of
24 Class Action and PAGA Settlement (“Preliminary Approval Motion”) On December 8, 2023, the
25 Court entered the Order granting preliminary approval and preliminarily appointed Class Counsel
26 (James R. Hawkins, Isandra Fernandez, and Lance Dacre of James Hawkins APLC) and the Class
27 Representative (Cesar Rodriguez Vinalay), and appointed the Settlement Administrator (ILYM
28 Group). The Court also approved the proposed Court Approved Notice of Class Action and

1 PAGA Settlement. Notice was provided to the LWDA of the preliminary approval of the
2 settlement (Hawkins Decl. ¶ 26, **Exhibit 4**). Now that administration has been completed, subject
3 to the Court's final approval, the fees and expenses will be paid from the Gross Settlement
4 Amount (GSA) of Two Hundred Seventy-Five Thousand Dollars (\$275,000) (Settlement
5 Agreement ¶ 6) as follows:

6 **1.** Subject to Court approval, Counsel shall be paid a Class Counsel Fees Payment of
7 \$91,666.66 and an Expenses Payment of \$11,220.97 which is less than the estimated amount of
8 \$15,000 (Settlement Agreement ¶¶ 6, 41).

9 **2.** Subject to Court approval, the Class Representative shall be Cesar Rodriguez Vinalay who
10 shall be paid a Class Representative Enhancement Payment of \$5,000 (in addition to any other
11 amounts the Named Plaintiff may be entitled to as a participating Class Member and/or
12 Aggrieved Employee) (Settlement Agreement, ¶¶ 9, 10, 42).

13 **3.** Subject to Court approval, the Administrator's Expenses Payment shall be deducted from
14 the GSA in the amount of \$8,850 (Hernandez Decl. ¶ 16) and were estimated to be no more than
15 \$8,850 (Settlement Agreement, ¶¶ 34, 43).

16 **4.** Subject to Court approval, the total amount of PAGA civil penalties to be paid from the
17 Gross Settlement Amount is \$10,000, of which 25% (\$2,500) will be allocated to the Aggrieved
18 Employees and 75% (\$7,500) to LWDA (both payments together, the "PAGA Payment") in
19 settlement of PAGA claims. (Settlement Agreement, ¶¶ 21, 44).

20 **5.** The Net Settlement Amount ("NSA") means the Gross Settlement Amount, less the
21 following payments in the amounts approved by the Court: any Court-approved attorneys' fees
22 and litigation costs, Administrative Costs, Enhancement Payment to the Named Plaintiff, and the
23 PAGA Payment (Settlement Agreement, ¶ 18).

24 **6.** Each Participating Class Member shall have 10% of their Individual Class Payment
25 allocated to settlement of their wage claims (the "Wage Portion"), which is subject to IRS W-2
26 reporting and taxes/withholdings, and 90% as penalties and interest (Settlement Agreement, ¶
27 63). The Settlement Administrator shall be responsible for issuing 1099 forms or other tax forms
28 as may be required by law for all amounts paid pursuant to the Settlement (Settlement Agreement

¶ 64)

7. Defendant shall be responsible for employer- side payroll taxes on the wages portion of the Individual Settlement Payments, separate from the GSA. Settlement Class Members and Aggrieved Employees are responsible for all other taxes (Settlement Agreement ¶ 39)

8. This settlement is non-reversionary and has no reversion with no part or amount of the Gross Settlement Amount returning to the Defendant. This Settlement does not require the use of any claim forms for participation by Class Members or Aggrieved Employees (Settlement Agreement ¶¶ 39, 51).

D. Dissemination of the Notice Packet

On February 23, 2024, Defendant’s Counsel provided ILYM a Class List containing data for 295 individuals (Identification numbers, full names, last known mailing addresses, Social Security Numbers, email addresses, and such other information as was necessary for ILYM to calculate workweeks during the Class Period and PAGA Period. The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database (“NCOA”) (Hernandez Decl. ¶¶ 5, 6). On March 1, 2024, the Class Notice was mailed to all Class Members. (Hernandez Decl. ¶ 7). A total of sixty-one (61) Notice Packets were returned by the post office. ILYM performed an advanced address search (i.e. skip trace) through which ILYM was able to locate twenty-six (26) updated addresses and ILYM promptly mailed a Class Notice to those updated addresses. Ultimately, after additional searches, thirty-five (35) Notice Packets were undeliverable because ILYM was unable to find a better address (Hernandez Decl. ¶¶ 8-10).

E. The Settlement Provides Reasonable Compensation to the Class Members

Even without the presumption of fairness and reasonableness, the Settlement is clearly well within the range of reasonableness. All Settlement Class Members will be paid their portion of the Net Settlement Fund. Subject to Court approval, the Net Settlement Fund amount available to pay the Settlement Class is approximately \$148,262.37 (Hernandez Decl. ¶ 15).

As of this date, 295 Class Members are to be paid Individual Settlement Payments out of the Net Settlement Fund, (Hernandez Decl. ¶ 14). The *average* estimated Individual Settlement Payment to Class Members is \$502.58, the *highest* estimated Individual Settlement Payment is

1 \$2,024.56, and the *lowest* estimated Individual Settlement Payment is \$6.43. (Hernandez Decl. ¶
2 15).

3 Also as of this date, one hundred twenty-one (121) of the Class Members are also
4 Aggrieved Employees. These Aggrieved Employees will be issued Individual PAGA Payments in
5 addition to the Individual Settlement Payments they are to receive as Class Members. (Hernandez
6 Decl. ¶¶ 14, 15). The Individual PAGA Payments are each Aggrieved Employees' pro-rata share
7 of the Employee PAGA Amount of \$2,500. The *average* estimated Individual PAGA Payment is
8 \$20.66, the *highest* estimated Individual PAGA Payment is \$35.37, and the *lowest* estimated
9 Individual PAGA Payment is \$2.21 (Hernandez Decl. ¶ 15).

10 The predominant claims in this action arise from alleged violations of California law with
11 respect to hours worked, meal breaks and rest breaks. Specifically, the claim for failure to pay
12 wages for all hours worked is based on allegations that Plaintiffs and Class Members were
13 required to engage in pre and post shift work duties. They were not paid for this "off the clock"
14 work and thus were not paid all lawful wages owed including overtime and/or minimum wage.
15 Plaintiffs further allege that they were required to work through meal and rest breaks and were
16 not compensated for that time (Hawkins Decl. ¶ 6).

17 Defendant adamantly disputes Plaintiff's claim and asserts that: (i) employees were not
18 required to work "off the clock" and (ii) Plaintiffs have no evidence of any "off the clock" work
19 (Hawkins Decl. ¶ 7). Defendant further contends that this claim would be difficult to certify given
20 the predominance of individualized inquiries that would be necessary to obtain certification (*Id.*)

21 The meal period violation claim is based primarily on allegations that Defendant failed to
22 provide an uninterrupted thirty (30) minute meal break by the end of the fifth hour and failed to
23 pay putative Class Members, one hour of pay at their regular rate of compensation for each
24 workday that a meal period was not lawfully provided. Specifically, due to their work
25 requirements and Defendant's policies and practices, Plaintiff alleges that they and Class
26 Members routinely worked in excess of five hours without being provided a compliant thirty-
27 minute meal break and were not compensated one (1) hour of pay at their regular rate of
28 compensation for each workday that a lawful meal break was not provided (Hawkins Decl. ¶ 8).

1 Similarly, with respect to the rest break claim, Plaintiff and Class Members were not provided a
2 net 10-minute rest break and were not compensated one (1) hour of pay at their regular rate of
3 compensation for each workday that a lawful rest period was not provided (Hawkins Decl., ¶ 9).
4 Defendant disputes Plaintiff's meal and rest break claims and contends that: (i) Class Members
5 were allowed to take 30-minute meal breaks (ii) were allowed ten-minute rest periods; and (iii)
6 regularly took lawful meal and rest breaks (Hawkins Decl. ¶ 10). Defendant also disputes the
7 propriety of certification in this case and contends that its policies and practices concerning the
8 claims asserted in this lawsuit are compliant with California law. Defendant has also denied and
9 continues to deny that the lawsuit is appropriate for class treatment for any purpose other than for
10 settlement (*Id.*).

11 As thoroughly discussed in Plaintiff's motion for preliminary approval, Plaintiff's
12 counsels' estimated range of maximum potential liability is \$141,040 to \$319,314 that may be
13 owed to the putative class, assuming Plaintiff and the Class were able to obtain an order certifying
14 the class and were also able to fully prove all their claims. Similarly, Plaintiff estimated a
15 maximum potential liability of \$101,000 for the PAGA claim that may be owed to the Aggrieved
16 Employees (Hawkins Decl. ¶ 11).

17 Through their counsel, Plaintiff took into consideration the significant risk that class
18 certification could be denied on the central claims, or that a merits decision on the central claims
19 would not favor the Class (Hawkins Decl. ¶ 12). Plaintiff considered the expense and length of
20 continued proceedings necessary to continue the Action against Defendant through trial and any
21 possible appeals along with Defendant's financial position (*Id.*). Thus, the settlement for
22 Settlement Class members is fair, reasonable, and adequate, given the inherent risk of litigation,
23 the risk relative to class certification and the costs of pursuing such litigation (*Id.*)

24 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

25 The law favors settlement, particularly in class actions and other complex cases in which
26 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
27 *City of Seattle* 955 F.2d at 1276; *Potter v Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
28 592, 602-603.; 4 NEWBERG §11.41. When faced with a motion for final approval of a class

1 action settlement under *Code of Civil Procedure* §382, a court inquires whether the settlement is
2 “fair, adequate, and reasonable.” See e.g., *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
3 (2010) 186 Cal. App. 4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
4 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.

5 **A. This Court Preliminarily Found This Settlement to be Fair, Adequate and**
6 **Reasonable and Nothing Has Changed to Disturb That**

7 Before granting Final approval of a class action settlement, courts must determine that the
8 proposed settlement is fair, reasonable, and adequate — and not a product of fraud, overreaching,
9 or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor Co.*, supra, 48
10 Cal.App.4th at 1801. Courts must presume that a settlement is fair, reasonable, and adequate, and
11 thus appropriate for Final approval when the following three factors are satisfied: (1) the Parties
12 reached settlement via arms-length negotiations; (2) counsel conducted sufficient investigation
13 and discovery to allow themselves and the court to act intelligently; and (3) counsel is
14 experienced in similar litigation *Id.* at 1802. See also *7-Eleven Owners for Fair Franchising v.*
15 *Southland Corp.*, (2000) 85 Cal. App. 4th 1135, 1146. Further, as discussed below, although not
16 determinative, courts consider the percentage of objectors in determining whether a presumption
17 of fairness exists. (*Id.*) There is no question that these factors are satisfied here. The Parties
18 conducted a sufficient amount of discovery, participated in private mediation, and numerous
19 conferences of counsel that ultimately led to an arms-length settlement that provides for
20 substantial recovery. Moreover, out of 260 Class Members presumed to have received Class
21 Notice there were zero requests for exclusion from, zero disputes with, and zero objections to, the
22 Settlement (Hernandez Decl. ¶¶ 11-13).

23 **B. The Settlement Resulted from Non-Collusive, Arms-Length Negotiations**

24 There certainly is no collusion between the Parties. The involvement of a neutral third-
25 party mediator is a factor that favors approval and evidences the presumptive fairness of the arms-
26 length negotiations. Indeed, courts should give considerable weight to the competency and
27 integrity of counsel and the involvement of a neutral mediator in assuring themselves that a
28 settlement agreement represents an arms-length transaction entered without self-dealing or other

1 potential misconduct *Kullar v. Foot Locker, supra*, 168 Cal. App. 4th at 129. Here, the Parties
2 engaged in a mediation session with a knowledgeable wage and hour mediator Hon. Leo Wagner
3 and were able to reach an arms-length resolution (Hawkins Decl. ¶ 4).

4 **C. The Settlement is Supported by Substantial Investigative and Discovery Efforts**

5 As discussed in the preliminary approval papers, supporting declaration and herein, Class
6 Counsel analyzed a significant amount of information that Defendant produced in response to
7 formal and informal discovery requests and requests in preparation for mediation (Hawkins Decl.
8 ¶¶ 3-5). The Parties conducted significant investigation of the facts and law during the
9 prosecution of the Action. Class Counsels' research enabled them to pinpoint the relevant issues
10 and claims and to assess potential liability and damages. These efforts resulted in the parties
11 having a clear view of the strengths and weaknesses of their respective cases and achieving a
12 resolution on favorable terms, as was evidenced during mediation and negotiations leading to
13 Settlement (Hawkins Decl. ¶¶ 3-4).

14 **D. Class Counsel is Experienced in Similar Litigation**

15 The endorsement of qualified and well-informed counsel of the settlement as fair is
16 entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the
17 preliminary approval papers and set forth in the declarations of Class Counsel, Class Counsel
18 have represented, mediated, and settled other employee class actions in wage and hour litigation
19 and have knowledge of the strengths and weaknesses of the claims against Defendant and the
20 benefits of the proposed settlement under the circumstances of the case. (Hawkins Decl. ¶¶ 13-
21 19). Class Counsel contends that the Settlement is fair, adequate, reasonable, and in the best
22 interests of the Class as a whole.

23 **E. Class Members' Positive Reaction to the Settlement Favors Final Approval**

24 Finally, courts look at the reaction of class members to determine if a settlement that
25 directly affects their interests should be approved as fair, adequate, and reasonable. As noted
26 above, out of 260 Class Members presumed to have received the Class Notice, there were no
27 requests for exclusion, no objections, and no disputes, to the Settlement (Hernandez Decl. ¶¶ 11-
28 13.)

1 A court may appropriately infer that a class action settlement is fair, adequate, and
2 reasonable even when class members object to it. Indeed, a court may approve a class action
3 settlement as fair, adequate, and reasonable even over the objections of a significant percentage of
4 class members. *See Boyd v. Betchel Corp.* (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v.*
5 *General Motors* (5th Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec.*
6 *Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1394. In our case, there were no objections to the
7 Settlement and no disputes. The Court should construe this as a further indication of Class
8 Members' support for the Settlement as fair, adequate, and reasonable.

9 **IV. CLASS REPRESENTATIVES' ENHANCEMENT PAYMENTS ARE**
10 **REASONABLE**

11 The Settlement provides for an Enhancement Payment to be paid to the Class
12 Representative. The purpose is to provide an additional incentive payment, taking into
13 consideration the risks, time, and effort, in coming forward to fulfill all the duties associated with
14 being a Class Representative. Awarding incentive awards to compensate named plaintiffs in class
15 actions has been specifically recognized. *See, e.g., Clark v. American Residential Services, LLC,*
16 *(2009) 175 Cal App 4th 785, 804* (incentive awards to named Plaintiffs appropriate for
17 participation in class action); *Bell v Farmers Ins. Exchange, (2004) 115 Cal App 4th 715, 726*
18 *(upholding "service payments" to named Plaintiffs for their efforts in bringing class case).*

19 As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive
20 awards are "intended to compensate class representatives for work done on behalf of the class, to
21 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
22 recognize their willingness to act as a private attorney general." *Cellphone Termination Fee*
23 *Cases, (2010) 186 Cal. App. 4th 1380, 1394* (approving an incentive award of \$10,000).

24 The Enhancement Payment is intended to compensate named Plaintiff Cesar Rodriguez
25 Vinalay as the Class Representative for his willingness to accept the responsibility of representing
26 the interests of all Class Members. The purpose is to provide an incentive payment, taking into
27 consideration the risks, time, and effort expended by their coming forward to provide invaluable
28 information and to litigate this matter on behalf of all Class Members (Hawkins Decl. ¶ 20). The

1 Enhancement Payment is also in consideration for executing a general release of all his claims
2 against Defendant (Hawkins Decl. ¶ 20; Declaration of Cesar Rodriguez Vinalay (“Vinalay
3 Decl.”) ¶¶ 8, 10).

4 Plaintiff also risked potential judgment against him if this case had been unsuccessful. In
5 class action losses, class representatives are deemed the losing party that is liable for the
6 prevailing party’s costs *Earley v. Superior Court*, (2000) 79 Cal. App. 4th 1420, 1433-1434.
7 Finally, Plaintiff also risked this lawsuit having a negative impact on future employment
8 opportunities, as prospective employers may be less inclined to hire an employee who has served
9 as a class representative (Hawkins Decl. ¶ 20; Vinalay Decl. ¶ 9) *See, e.g. Staton v. Boeing*, 327
10 F.3d 938, 977 (9th Cir. 2003). As such, Plaintiff Cesar Rodriguez Vinalay, respectfully requests
11 that this Court approve the Enhancement Payment in the amount of \$5,000.

12 **V. CLASS COUNSELS’ REQUEST FOR FEES IS REASONABLE**

13 Subject to court approval, this settlement amount of \$275,000 includes an allocation of
14 \$91,666.66 in Class Counsel Fees. Plaintiff and class members are entitled to recover their
15 attorneys’ fees and costs. (Labor Code §2802; Code Civ. Proc. §1021.5(a); *Earley v. Super. Ct.*,
16 (2000) 79 Cal.App.4th 1420. A fee award is justified when class benefits are obtained via
17 settlement. *Maria P. v. Riles*, (1987) 43 Cal.3d 1281, 1290-91; *Westside Cty. for Indep. Living*,
18 *Inc. v. Obledo*, (1983) 33 Cal.3d 348, 352-53.

19 Fee awards may be based on (1) the percentage-of-the-benefit method; or (2) the lodestar
20 plus multiplier method. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254;
21 *Lealao v. Beneficial California, Inc.*, (2000) 82 Cal.App.4th 19, 27. Both methods are proper in
22 California, with courts often only using a lodestar-multiplier method as a check against the
23 reasonableness of a percentage fee award. (*See, e.g., Serrano v. Priest (Serano III)*, (1977) 20
24 Cal.3d 25, 48-49 fn. 23; *People ex rel. Dept. of Transportation v. Yuki*, 31 (1995) Cal. App. 4th
25 1754, 1769-1772; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, (1985)172 Cal. App. 3d
26 914, 954).

1 **A. Class Counsels' Requested Fees Are Reasonable Under the Lodestar/Multiplier**
2 **Method.**

3 When fees are allocated by percentage method, courts have discretion to “cross-check” the
4 fees awarded through the lodestar method. However, the Supreme Court in *Laffitte v. Robert Half*
5 *Internat. Inc.*, 1 Cal. 5th at 505, “emphasize[d] [that] the lodestar calculation, when used in this
6 manner, does not override the trial court’s primary determination of the fee as a percentage of the
7 common fund and thus does not impose an absolute maximum or minimum on the potential fee
8 award.” Thus, a lodestar cross-check is aimed at reigning in astronomical multipliers.

9 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4
10 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001). In
11 determining the outcome of a fee award in a class action matter, one of the main benchmarks to
12 consider is the result for the class. The Supreme Court has said that in an award of attorney’s fees
13 the “most critical factor is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424,
14 436 (1983). The “benefit obtained for the class” is considered the “foremost” consideration in
15 determining the appropriate fee in a common fund case. *In Re Bluetooth*, 654 F.3d at 942.

16 The lodestar-multiplier method begins with a calculation of time spent and reasonable
17 hourly compensation of each attorney and paralegal who worked on the case. Then to compensate
18 counsel for risk, quality, and result, courts commonly apply a "multiplier" to the lodestar in
19 awarding attorneys' fees. California courts often increase the base lodestar with a multiplier after
20 considering: (1) the continuing obligation of Plaintiff’s counsel to devote time and effort to the
21 litigation; (2) the extent to which the litigation precluded other employment by the attorneys; (3)
22 the contingent nature of the fee agreement, both from the point of view of eventual success on the
23 merits and securing an award; (4) the experience, reputation, and ability of the attorneys who
24 performed the services, and the skill they displayed in litigation; (5) the amount involved and the
25 results obtained on behalf of the class by Plaintiff’s counsel; and (6) the reaction of the class
26 members. *See, e.g. Serrano, supra*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co., supra*, 48 Cal.
27 App. 4th at 1810 n.21. However, no rigid formula applies, and each factor should be considered
28 only “where appropriate.” *See Dept. of Transp. v. Yuki*, (1995) 31 Cal. App. 4th 1754, 1771; *See*

also *Serrano*, *supra*, 20 Cal.3d at 49.

1. Time and Effort

Class Counsel, who are experienced wage and hour class action attorneys, have put a significant number of hours in this case. Class Counsel had to conduct substantial investigation, research numerous issues, review and analyze policies, independently analyze time records, and wage statements, as well as dedicate substantial time to analyze data, time records and payroll records and discuss with class members (Hawkins Decl. ¶¶ 3-5, 22) Those efforts, along with negotiating settlement, attempting and obtaining preliminary approval, preparing and filing the final approval papers, required a significant amount of time and labor (*Id.*)

Since on or about April 2017, prior to the inception of the filing of this lawsuit, the total amount of attorney time estimated to have been expended thus far, and estimated to be expended in finalizing this matter is 181.3 hours and Class Counsel's total lodestar is \$148,980. This lodestar exceeds the requested fees and a multiplier is not requested (Hawkins Decl. ¶ 23). Multipliers have been found to be reasonable (*Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB, 2021 [finding a multiplier of 2.57 reasonable "in light of the contingent nature of recovery, the complexity of the issues, and the result obtained"].) Here, the tasks and work performed by Class Counsel were reasonable and necessary to the prosecution of this case and justified, particularly in light of the result achieved (Hawkins Decl., ¶ 22). As Class Counsel's lodestar exceeds the fees requested a multiplier is not requested. The fee request of \$91,666.66 is reasonable, fair, and should be awarded.

2. Extent Litigation Precluded Other Employment

Inherent to class action litigation is the amount of time and labor required to properly adjudicate the case. From start to settlement, judgment or verdict, class action litigation commands commitment, an extensive amount of time, labor and resources to successfully litigate. Although this litigation did not conclusively preclude other employment it did impact Class Counsels' ability to take on other class action cases. Class Counsel work at a boutique law firm with few attorneys and staff (Hawkins Decl. ¶ 17).

1 **3. Contingent Nature of the Agreement**

2 In *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132, the court noted, the economic
3 rationale for contingency cases has been explained as follows: “A contingent fee must be higher
4 than a fee for the same legal services paid as they are performed. As discussed further below, the
5 contingent fee compensates the lawyer not only for the legal services he renders but also for the
6 loan of those services. The implicit interest rate on such a loan is higher because the risk of
7 default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher
8 than that of conventional loans.” (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534,
9 567.) “A lawyer who both bears the risk of not being paid and provides legal services is not
10 receiving the fair market value of his work if he is paid only for the second of these functions. If
11 he is paid no more, competent counsel will be reluctant to accept fee award cases.” *Id.* Here,
12 Class Counsel took the matter on a contingent basis (Hawkins Decl. ¶ 21)

13 **4. Experience, Reputation, and Ability of Plaintiff Counsel**

14 Class Counsel also has considerable experience and has demonstrated competence with
15 litigating wage and hour class actions. (Hawkins Decl. ¶¶ 13-17). As also set forth in the
16 Declaration of James R. Hawkins submitted in support of this Final Approval Motion, and the
17 further discussions herein, Class Counsels’ skill and experience in litigating wage and hour class
18 actions, in state and federal forums, contributed to the results obtained on behalf of the putative
19 class members (*Id.*).

20 **5. Results Obtained on Behalf of the Class by Plaintiff Counsel**

21 The award of attorney fees should reflect the successful outcome of the case, *Hensley v.*
22 *Eckerhart*, (1983) 461 U.S. 424,440. As already discussed herein and in the preliminary approval
23 motion, this case involves numerous and difficult issues largely precluding a clear-cut outcome as
24 to liability. There also were significant class certification issues concerning whether individual
25 issues predominate and whether class member declarations and statistical samplings can support
26 certification. Defendant recognized the uncertainty of Plaintiff’s claims and vigorously disputed
27 liability, Class Counsels’ ability to obtain certification, and the amount of damages. Nevertheless,
28 despite the obstacles as already discussed in the preliminary approval motion and herein, Class

1 Counsel obtained significant favorable compensation for the class members. All Class Members
2 who did not opt out of the Settlement will receive payments. The *average* estimated Individual
3 Settlement Payment is \$502.58, the *highest* estimated Individual Settlement Payment is
4 \$2,024.56, and the *lowest* estimated Individual Settlement Payment is \$6.43 (Hernandez Decl.
5 ¶15). These are favorable sums for the Class Members.

6 All Aggrieved Employees will receive Individual PAGA Payments, even if they decline to
7 participate as a Class Member. The *average* estimated Individual PAGA Payment is \$20.66, the
8 *highest* estimated Individual PAGA Payment is \$35.37, and the *lowest* estimated Individual
9 PAGA Payment is \$2.21 (Hernandez Decl. ¶15).

10 Further, as also discussed, Plaintiff would have faced significant legal and factual
11 obstacles in demonstrating that Class certification was appropriate. Despite the complexity of the
12 case, Class Counsel have, through the investment of substantial effort, and the resources of their
13 boutique law firm, been able to secure a great Settlement on behalf of the Class Members.

14 **6. Reaction of Putative Class Members**

15 As already discussed herein, the reaction of the Class Members has been positive.
16 Specifically, not one of the Class Members objected to Class Counsel's request for attorneys' fees
17 or disputed the Settlement, which also provides compelling evidence that the request is fair,
18 adequate, and reasonable.

19 In sum, based on the six factors discussed above, Class Counsel's lodestar exceeds the
20 fees requested in this action and a multiplier is not requested. By settling this case prior to trial,
21 rather than continuing to litigate issues that remain somewhat unsettled, counsel obtained great
22 results for the class at far less expense to the parties, the counsel and to this Court. Accordingly, a
23 positive multiplier of Class Counsels' lodestar is further warranted. "Considering that our
24 Supreme Court has placed an extraordinarily high value on settlement, it would seem counsel
25 should be rewarded, not punished, for helping to achieve that goal." *Lealao*, supra, 82 Cal. App.
26 4th at 52. Multipliers of two to four are commonplace in California class actions and can range
27 even higher. *Wershba*, supra, 91 Cal. App. 4th at 255; *In re California Indirect Purchases*
28 (October 22, 1998) WL1031494 at * 10, fn 5. In this case, as noted above, a multiplier is not

1 required. The requested class counsel fee is fair and reasonable.

2 **B. Class Counsels' Requested Fees Are Reasonable Under the Percentage of the Benefit**
3 **Method.**

4 **1. Attorney's Fees Should be Based Upon the Total Benefit to the Class.**

5 Under California law, courts have the discretion to award fees under the percentage
6 method when fees are drawn from an ascertainable fund. See *Laffitte v. Robert Half Int'l*, 1 Cal.
7 5th 480, 503 (2016) ("*Laffitte II*") ("We join the overwhelming majority of federal and state
8 courts in holding that when class action litigation establishes a monetary fund for the benefit of
9 the class members, and the trial court in its equitable powers awards class counsel a fee out of that
10 fund, the court may determine the amount of a reasonable fee by choosing an appropriate
11 percentage of the fund created."). The common fund method "better approximates the workings
12 of the marketplace than the lodestar approach" in setting the price of contingent fees. See *Lealao*
13 *v. Beneficial Cal. Inc.* 82 Cal. App. 4th 19, 48 (2000) ("*Lealao*"). The percentage method
14 "provide[s] incentives roughly comparable to those negotiated in the private bargaining that takes
15 place in the legal marketplace." (Id.)

16 The primary benefit of the percentage method is that it focuses on the benefit conferred on
17 the class as a result of the efforts of Class Counsel. Awarding Class Counsel fees based on a
18 percentage of the recovery has the advantages of eliminating the incentive for attorneys to
19 increase hours unnecessarily, encouraging early settlement of disputes, and preserving judicial
20 resources otherwise used to monitor attorneys' billable hours. See *In re Activision Sec. Litig.*,
21 (N.D. Cal. 1989) 723 F. Supp. 1373, 1378-79; *Manual For Complex Litigation* 4th ed. §14.121
22 (2004) ("in practice, the lodestar method is difficult to apply, time consuming to administer,
23 inconsistent in result. . . capable of manipulation,... [and] creates inherent incentive to prolong the
24 litigation"); See also *In re Quantum Health Resources, Inc.* (C.D.Cal. 1997) 962 F.Supp. 1254,
25 1256 (noting that lodestar "creates an incentive to keep litigation going in order to maximize the
26 number of hours included in the court's lodestar calculation").

27 The percentage of the fund method survives in California class action cases. *Laffitte v*
28 *Robert Half Intern, Inc.* (2016) 1 Ca. 4th 480, 506. [See also. *Chavez v. Netflix, Inc.*, (2008) 162

1 Cal. App. 4th 43 at 65, 66; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.*,
2 (2005) 127 Cal. App. 4th 387, 397 [the common fund doctrine is “frequently applied in class
3 actions when the efforts of the attorney for the named class representatives produce monetary
4 benefits for the entire class”]; *Wershba v. Apple Computer, Inc.*, supra, 91 Cal. App. 4th at 254.

5 **2. The Contingent Nature of Class Counsel’s Representation Supports the Requested**
6 **Fees Based on One Third of the GSA.**

7 Further, the contingent nature of Class Counsels’ representation also warrants the
8 requested attorney fees based on the percentage of the common fund. The risks in taking on any
9 class action are enormous especially in regards to wage-and-hour class actions because the wage
10 laws are still developing and a change in the law could wipe out a Plaintiff’s recovery. Litigating
11 a class action through trial takes years and requires the investment of hundreds of thousands of
12 dollars. Attorneys willing to undertake this risk deserve appropriate compensation. As elaborated
13 by the California Supreme Court in *Graham v. Daimler Chrysler Corp.*, (2008) 34 Cal. 4th 553,
14 579-580, counsel should be awarded a fee enhancer for taking on contingent cases because a
15 "contingent fee compensates the lawyer not only for the legal services he renders but for the loan
16 of those services. The implicit interest rate on such a loan is higher because the risk of default (the
17 loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of
18 conventional loans."

19 As the California Supreme Court specifically explained:

20 A contingent fee must be higher than a fee for the same legal services paid as they
21 are performed. The contingent fee compensates the lawyer not only for the legal
22 services he renders but for the loan of those services. The implicit interest rate on
23 such a loan is higher because the risk of default (the loss of the case, which cancels
24 the debt of the client to the lawyer) is much higher than that of conventional loans.
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.

25 *Id.* at 580. (citing *Ketchum v. Moses*, (2001) 24 Cal. 4th 1122, 1132-33).

26 In the legal marketplace, an attorney whose compensation is entirely dependent on success
27 – who takes a significant risk – should and does expect a significantly higher fee than an attorney
28 who is paid a market rate as the case goes along, win or lose. *See, e.g., Rader v. Thrasher*, (1962)

1 57 Cal. 2d 244, 253 (“[a] contingent fee contract, since it involves a gamble on the result, may
2 properly provide for a larger compensation than would otherwise be reasonable” (citation
3 omitted); *Salton Bay Marina v. Imperial Irrig. Dist.*, (1985) 172 Cal. App. 3d 914, 955
4 (contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee
5 award).

6 Class Counsel represented the Class Members in this matter and has borne the entire risk
7 and costs of litigation on a pure contingency basis. To date, Class Counsel has not received any
8 compensation but have expended litigation costs on behalf of the class. Class action contingency
9 cases are inherently risky. Upon retention, Class Counsel makes a commitment to litigate the case
10 through trial. These types of cases can take years, hundreds of hours of work and cost an
11 enormous amount of money; these risks are known upon retention. The risks involved coupled
12 with the contingency basis of this case further support Class Counsel’s request for attorneys’ fees
13 and costs (Hawkins Decl. ¶ 21).

14 **3. Additional Factors re: Contingency Market Rate Justify the Requested Fee Award**

15 Further, important public policies underlie a court's determination of a motion for
16 attorneys' fees in class actions. Employees who are wronged by an employer’s violation of state
17 and federal labor laws should have access to counsel with the ability and resources necessary to
18 litigate complex cases. *See e.g., Say-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Cal. 4th
19 319, 340 (enforcement of labor laws and class action device both matters of public policy); Our
20 legal system places unique reliance on private litigants to enforce substantive provisions of
21 employment law through class actions. *See e.g., Gentry v. Superior Court*, 42 Cal. 4th 443, 450-6
22 (2007) (confirming the public importance of private enforcement of overtime laws through class
23 actions); *Lealao*, 82 Cal. App. 4th (legal system relies on private litigants to enforce substantive
24 provisions of law through class and derivative actions; attorneys providing the essential
25 enforcement services must be provided incentives roughly comparable to those negotiated in the
26 private bargaining that takes place in the legal marketplace).

27 As the California Court of Appeal recognized in *Thayer v. Wells Fargo Bank*, *supra*, 92
28 Cal. App. 4th at 839: "Adequate fee awards are perhaps the most effective means of achieving

1 [the] salutary goal [of encouraging `private attorney general actions and] [c]ourts should not be
2 indifferent to the realities of the legal marketplace or unduly parsimonious in the calculation of
3 such fees." *See also Lealao*, 82 Cal.App.4th at 53 (cautioning against fee awards that are too
4 small and therefore "chill the private enforcement essential to vindication of many rights..."). At a
5 minimum, attorneys providing these substantial benefits should be paid an award equal to the
6 amount negotiated in private bargaining that take place in the legal marketplace. *Deposit*
7 *Guaranty Nat. Bank, Jackson, Miss. v. Roper*, (1980) 445 U.S. 326, 338; *Lealao*, 82 Cal. App. 4th
8 at 49-50.

9 **4. Class Counsel's Requested Fee Award is Well Within California's Benchmark**
10 **Awards and Thus Reasonable Under the Percentage of the Benefit Method.f**

11 Class Counsel's request for One Third (1/3) of the monetary fund recovered is
12 California's standard benchmark and well within the range customarily approved by the
13 California courts in comparable class actions and other class actions as well as with contingency
14 contracts negotiated by Plaintiff and their counsel. "Empirical studies also show that regardless of
15 whether the percentage method or the lodestar method is used, fee awards in class actions average
16 around one-third of the recovery." *See e.g., Chavez v. Netflix, Inc.*, supra 162 Cal. App. 4th at 66
17 fn.11; *In re California Indirect Purchases* (October 22, 1998) WL1031494 at * 9(citing to *In re*
18 *Milk Antitrust Litigation* (L.A. Sup. Ct. 1998) Civ. Case No. BC070061 (33 1/3% award); *In re*
19 *Facsimile Paper Antitrust Litigation* (San Francisco Sup. Ct. 1997) Civ. Case No. BC0070061
20 (33 1/3% award) *In re Liquid Carbon Dioxide Cases* (San Diego Sup.Ct.1996) J.C.C.P. 3012 (33
21 1/3% award); *Romero v Producers Dairy Food, Inc.* (E.D. Cal. Nov. 14, 2007) WL 3492841 at *
22 4 ("fee awards in class actions average around one-third of the recovery." (quoting Newberg on
23 Class Actions § 14.6 (4th ed.2007).

24 Moreover, the percentage should be measured against the full fund established by the
25 settlement and not upon the total value of the net settlement fund. *Williams v. MGM-Pathe*
26 *Communications Co.*, (9th Cir. 1997)129 F.3d 1026, 1027. This method recognizes that the
27 efforts of class counsel established the entire settlement, including non-monetary benefits, for the
28 benefit of the class (Id.) In the Ninth Circuit's decision in *Williams*, the parties settled class

1 action claims in favor of the class for a total settlement fund of \$4.5 million, and the district court
2 awarded class counsel attorneys' fees based upon "the class members' claims against that fund.
3 *Williams*, 129 F.3d at 1027. The class counsel in *Williams* contended that the district court erred
4 and should have calculated their fee as one-third of the entire \$4.5 million settlement fund. *Id.*
5 The Ninth Circuit agreed with class counsel and determined that the district court's award of a fee
6 based solely upon the claims against the settlement fund was an abuse of its discretion.
7 Ninth Circuit courts have applied *Williams* in a variety of contexts, including claims made
8 settlements without a minimum or maximum recovery. *See, e.g., Browning v. Yahoo! Inc.*, (N.D.
9 Cal. Nov. 16, 2007) WL 4105971 at *13–14(claims-made settlement with no minimum or
10 maximum recovery); *Young v. Polo Retail*, (N.D. Cal. Mar. 28, 2007) WL 951821 at*14-24
11 (same); *Lopez v. Youngblood*, (E.D. Cal. Sept. 1, 2011) WL 10483569 at *32–43 (reversionary
12 common fund with maximum recovery only). *Hopson v. Hanesbrands Inc.*, (N.D. Cal. Apr. 3,
13 2009) 09 WL 928133 at *11; *Glass v. UBS Financial Services*, (N.D. Cal. Jan. 26, 2007) WL
14 221862 at *16) (same). In sum, Class Counsels' request for an award of attorney's fees in the
15 amount of One-Third of the Gross Settlement Amount is reasonable.

16 **VI. CLASS COUNSELS' REQUESTED COSTS ARE REASONABLE**

17 Class Counsel has not only expended substantial time in diligently prosecuting this
18 Action, but they have also expended considerable resources during litigation with no guarantee
19 that their costs would be reimbursed. The Settlement provides for reasonable actual costs of up to
20 \$15,000 (Settlement Agreement ¶¶ 6, 41). Counsel's costs amount actually incurred is \$11,220.97
21 which is less than the estimated amount (Hawkins Decl. ¶ 25). Thus Class Counsel respectfully
22 requests that the Court approve the incurred amount as per the Settlement Agreement (true and
23 correct copies of Class Counsel's Cost Invoices are attached as Exhibit 3 to the Declaration of
24 James R. Hawkins).

25 **VII. THE SETTLEMENT ADMINISTRATOR'S EXPENSES ARE REASONABLE**

26 ILYM was retained to administer the notice and claims process. ILYM' duties included,
27 but were not limited to: (a) printing and mailing the Court Approved Notice of Class Action and
28 PAGA Settlement ("Class Notice") (b) receiving undeliverable Notices; (c) receiving any

1 requests for exclusion; (d) answering questions from Class Members. Should the Court grant
2 final approval of this Settlement, ILYM will be responsible for further duties, including but not
3 limited to: (e) calculating Individual Settlement Payments, (f) calculating Individual PAGA
4 Payments, (g) distributing funds, (h) tax-reporting following final approval; (i) mailing Settlement
5 checks; (j) and for such other tasks as the Parties mutually agree or the Court orders ILYM to
6 perform (Hernandez Decl. ¶ 3). Plaintiff requested that, as per the Settlement Agreement, that
7 ILYM be awarded costs in an amount not to exceed \$8,850 (Settlement Agreement, ¶¶ 34, 43).
8 As per ILYM, their actually incurred and anticipated costs in administrating this settlement
9 through completion are \$8,850 and should be awarded (Hernandez Decl. ¶ 16).

10 **VIII. CONCLUSION**

11 For all of the foregoing reasons, Plaintiff respectfully request that the Court: (1) grant final
12 approval of the Settlement, including the gross settlement amount of \$275,000; (2) confirm James
13 R. Hawkins, Isandra Fernandez, and Lance Dacre, of James Hawkins APLC as Class Counsel; (3)
14 approve distribution of payments to the Settlement Class; (4) approve payment of \$10,000 for
15 PAGA Penalties; (5) approve Settlement Administrator's costs in the amount of \$8,850; (6)
16 approve the request for a \$5,000 Enhancement Payment to the named Plaintiff Cesar Rodriguez
17 Vinalay; and (7) approve Class Counsel's request for an award of \$91,666.66 in attorneys' fees
18 and \$11,220.97 in costs. Finally, Plaintiff respectfully request that the Court enter the [Proposed]
19 Order and Judgement Granting Final Approval of Class Action and PAGA Settlement, filed
20 concurrently herewith.

21 Respectfully submitted,

22
23 Dated: June 3, 2024

JAMES HAWKINS, APLC

24 

25 James R. Hawkins, Esq.
26 Isandra Fernandez, Esq.
27 Lance Dacre
28 Attorneys for Plaintiff
Cesar Rodriguez Vinalay

PROOF OF SERVICE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On June 4, 2024, I served on the interested parties in this action the following document(s) entitled:

-PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT
-DECLARATION OF JAMES R. HAWKINS IN SUPPORT OF FINAL APPROVAL MOTION
-DECLARATION OF CESAR RODRIGUEZ VINALAY IN SUPPORT OF FINAL APPROVAL MOTION
-DECLARATION OF NATHALIE HERNANDEZ OF ILYM GROUP, INC., IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
-[PROPOSED] ORDER AND JUDGMENT GRANTING FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address citlalli@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

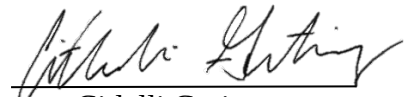
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ddoss@fentonkeller.com- Dawn A. Doss

Attorneys for Defendant

[X] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on June 4, 2024, at Irvine, California.


Citlalli Gutierrez