

Edwin Aiwarzian (SBN 232943)
edwin@calljustice.com
Arby Aiwarzian (SBN 269827)
arby@calljustice.com
Joanna Ghosh (SBN 272479)
joanna@calljustice.com
Yasmin Hosseini (SBN 326399)
yasmin@calljustice.com
LAWYERS for JUSTICE, PC
410 West Arden Avenue, Suite 203
Glendale, California 91203
Telephone: (818) 265-1020 / Fax: (818) 265-1021

S. Emi Minne (SBN 253179)
emi@parkerminne.com
Jill J. Parker (SBN 274230)
jill@parkerminne.com
PARKER & MINNE, LLP
700 South Flower Street, Suite 1000
Los Angeles, California 90017
Telephone: (310) 882-6833 / Fax: (310) 889-0822

Attorneys for Plaintiff
NADIA ESTRADA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

NADIA ESTRADA, individually, and on behalf
of other members of the general public similarly
situated and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act,

Plaintiff,

vs.

BELSHIRE ENVIRONMENTAL SERVICES,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 30-2022-01262282-CU-OE-CXC

*Assigned for all purposes to the Honorable Lon
F. Hurwitz, Dept. CX103*

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

Date: March 22, 2024
Time: 1:30 p.m.
Dept.: CX103

Complaint Filed: May 31, 2022
Trial Date: Not Set

1 **TO THE HONORABLE COURT, AND TO ALL PARTIES AND THEIR ATTORNEYS**
2 **OF RECORD:**

3 **PLEASE TAKE NOTICE** that on March 22, 2024, at 1:30 p.m. or as soon thereafter as may
4 be heard in Department CX103 of the above-entitled court, located at 751 West Santa Ana Boulevard,
5 Santa Ana, California 92701, pursuant to Rule 3.769 of the California Rules of Court, Plaintiff Nadia
6 Estrada (“Plaintiff”) will, and hereby does, move this Court for entry of an order as follows:

7 1. Granting final approval of the Second Amended Joint Stipulation of Class Action and
8 PAGA Settlement (“Settlement” or “Agreement”) attached as Exhibit 1 to the Declaration of S. Emi
9 Minne on the grounds that the Settlement is fair, adequate, and reasonable because:

- 10 a. A non-reversionary Net Settlement of at least \$404,950.00 will be distributed to
11 Participating Class Members;
- 12 b. Proper notice of the Settlement was provided to all Class Members pursuant to the
13 terms of the Settlement;
- 14 c. Proper notice of the Settlement was provided to the California Labor & Workforce
15 Development Agency (“LWDA”) in accordance with Labor Code §§ 2699; and
- 16 d. No objections were submitted to the Settlement Administrator; and
- 17 e. Only one (1) Class Member requested to be excluded from the Settlement, meaning
18 99.55% of Class Members are participating in the Settlement.

19 2. Awarding attorneys’ fees in the amount of \$250,000.00 (one-third of the Gross
20 Settlement Amount) to Parker & Minne, LLP and Lawyers for Justice, PC (“Class Counsel”);

21 3. Awarding payment in the amount of \$16,968.03 to Class Counsel for reimbursement
22 of their litigation costs and expenses;

23 4. Approving payment in the amount of \$7,500.00 to Plaintiff as a Class Representative
24 Enhancement Payment;

25 5. Approving payment in the amount of \$7,550.00 to the Settlement Administrator, ILYM
26 Group, Inc., for reimbursement of the costs of settlement administration;

27 6. Approving payment of \$50,000.00 for penalties pursuant to the California Labor Code
28 Section 2698 et. seq. the Private Attorneys General Act of 2004 (“PAGA”), of which seventy-five

(75%), or \$37,500.00, will be paid to the California Labor and Workforce Development Agency (“LWDA”), and twenty-five percent (25%), or \$12,500.00, will be distributed to PAGA Members; and

7. Ordering the funding and distribution of the Gross Settlement Amount in the manner set forth in the Settlement.

8. Setting a post-approval final accounting hearing for December 1, 2024, or a date thereafter that is convenient for the Court.

Pursuant to the terms of the Settlement, Defendant has agreed not to oppose this motion. As the motion is unopposed, Plaintiff respectfully requests that the Court extend the page limit for the supporting memorandum of points and authorities pursuant to Rule 3.1113(e) of the California Rules of Court so that Plaintiff can provide the Court with adequate information to determine whether to grant final approval of the Settlement and award the requested Class Counsel Fees and Costs payment, Class Representative Enhancement Payment, Settlement Administration Costs, and PAGA Penalties.

The motion is based upon this notice, the attached memorandum of points and authorities; the Declaration of S. Emi Minne and exhibits thereto; the Declaration of Joanna Ghosh; the Declaration of Nadia Estrada; the Declaration of Nick Castro of ILYM Group, Inc.; the pleadings and other records on file with the Court in this matter; and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: March 8, 2024

PARKER & MINNE, LLP

By: 
S. Emi Minne
Attorneys for Plaintiff
NADIA ESTRADA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Nadia Estrada (“Plaintiff”) seeks final approval of the Second Amended Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Agreement”)¹ with Defendant Belshire Environmental Services, Inc. (“Defendant”). Specifically, Plaintiff seeks final approval of: (1) a non-reversionary Gross Settlement Amount of \$750,000.00, exclusive of any employer-side payroll taxes; (2) attorneys’ fees to Parker & Minne, LLP and Lawyers for Justice, PC (“Class Counsel”) in the amount \$250,000.00²; (3) reimbursement of actual litigation costs and expenses incurred by Class Counsel in the amount of \$16,968.03³; (4) Class Representative Enhancement Payment in the amount of \$7,500.00 to Plaintiff; (5) reimbursement of Settlement Administration Costs in the amount of \$7,500.00⁴; and (6) allocation of \$50,000.00 for penalties under California Labor Code §§ 2698, et seq. The result is a Net Settlement Amount of approximately \$404,950.00 that will be distributed to 222 Participating Class Members who worked for Defendant as hourly paid and/or non-exempt employees in the State of California at any time from May 23, 2018 to May 31, 2023. It is estimated that Participating Class Members will receive an average Individual Class Payment of approximately \$1,824.10, with the highest payment of approximately \$4,828.32.⁵ In addition, PAGA Members shall receive an average Individual PAGA Payment of \$77.64, with the highest payment of \$142.59.

The Court has already found on a preliminary basis that the Settlement is the result of intensive, arms-length negotiations by experienced counsel, and provides a fair, adequate, and reasonable

¹ A copy of the Settlement is attached as Exhibit 1 to the Declaration of S. Emi Minne in Support of Plaintiff’s Motion for Final Approval of Class Action and PAGA Settlement (“Minne Decl.”).

² The Settlement provides for attorneys’ fees of up to \$262,500.00 (i.e., 35% of the Gross Settlement Amount). (Agreement, ¶¶ 4, 52.) However, Class Counsel are only applying for an award of attorneys’ fees in the amount of one-third of the Gross Settlement Amount. (Minne Decl., ¶ 50.)

³ The Settlement provides for a reimbursement of expenses to Class Counsel of up to \$30,000.00. (Agreement, ¶¶ 4, 52.) However, Class Counsel only seek reimbursement of expenses in the amount of \$16,968.03. (Minne Decl., ¶ 70.)

⁴ The Settlement provides for Settlement Administration Costs of up to \$10,000.00. (Agreement, ¶¶ 37, 54.) However, the Settlement Administrator’s total costs are just \$7,550.00. (Declaration of Nick Castro of ILYM Group Regarding Notice and Settlement Administration (“Castro Decl.”), ¶ 19, Exh. B.)

⁵ These estimates were calculated by the Settlement Administrator based on the full \$30,000.00 in costs allowed under the Settlement. (Castro Decl., ¶¶ 16-17.) However, as noted in footnote 3, Class Counsel only seek reimbursement of costs and expenses in the amount of \$16,968.03, meaning that \$13,031.97 originally allocated towards the Class Counsel’s costs will be included in the Net Settlement Amount. (Agreement, ¶ 52; Minne Decl., ¶ 70.) Thus, the final amounts paid to Participating Class Members will be slightly higher than the estimates provided by the Settlement Administrator.

1 recovery for the Class. The presumption of fairness is confirmed by the response to notice of the
2 proposed Settlement to the Class, which was overwhelmingly positive. Specifically, as of the filing of
3 this Motion, not a single Class Member has objected to any aspect of the Settlement and only one (1)
4 Class Member has requested to be excluded from the Settlement. The lack of objections to the
5 Settlement and 99.55% participation rate by Class Members are further evidence, in addition to the
6 factors already analyzed by the Court at Preliminary Approval, that the Settlement is fair, reasonable,
7 adequate, and in the best interests of the Class. Accordingly, Plaintiff requests that the Court grant
8 final approval of the Settlement.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 Defendant is a provider of waste management and environmental regulation compliance
11 services headquartered in Foothill Ranch, California. (Minne Decl., ¶ 3.) Plaintiff was employed by
12 Defendant from approximately February 18, 2021 to September 9, 2021 as a non-exempt, hourly-paid
13 employee. (Minne Decl., ¶ 4; Declaration of Nadia Estrada [“Estrada Decl.”], ¶ 3.)

14 On March 23, 2022, Plaintiff provided written notice to Defendant and the California Labor &
15 Workforce Development Agency (“LWDA”) of her intent to seek civil penalties pursuant to the Labor
16 Code Private Attorneys General Act of 2004, Cal. Labor Code sections 2698, et seq. (“PAGA”). The
17 LWDA did not respond to Plaintiff’s PAGA Notice. (Minne Decl., ¶ 5, Exh. 2.)

18 On May 31, 2022, after fully exhausting PAGA’s 65-day notice period, Plaintiff filed a putative
19 class action and representative PAGA action complaint against Defendant entitled *Nadia Estrada v.*
20 *Belshire Environmental Services, Inc.* (Orange County Superior Court Case No. 30-2022-01262282-
21 CU-OE-CXC, hereinafter “Action”). The Complaint alleged the following causes of action: (1)
22 Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime Wages); (2) Violation of
23 California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums); (3) Violation of
24 California Labor Code § 226.7 (Unpaid Rest Period Premiums); (4) Violation of California Labor
25 Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages); (5) Violation of California Labor Code
26 §§ 201 and 202 (Final Wages Not Timely Paid); (6) Violation of California Labor Code § 204 (Wages
27 Not Timely Paid During Employment); (7) Violation of California Labor Code § 226(a) (Non-
28 Compliant Wage Statements); (8) Violation of California Labor Code § 1174(d) (Failure to Keep

1 Requisite Payroll Records); (9) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed
2 Business Expenses); (10) Violation of California Business and Professions Code §§ 17200, et seq.;
3 and (11) Violation of California Labor Code § 2698, et seq. (California Labor Code Private Attorneys
4 General Act of 2004). (Minne Decl., ¶ 6.)

5 Shortly after the Action was initiated, Class Counsel met and conferred with Defendant's
6 counsel regarding the potential for resolution of the Action. (*Id.*, ¶ 7.) Pursuant to these discussions,
7 the Parties agreed to exchange informal discovery, engage in private mediation, and stay formal
8 discovery pending the completion of mediation. (*Id.*) Per the Parties' agreement, Defendant provided
9 Class Counsel with extensive informal discovery prior to mediation, which included a 20% sampling
10 of Class Members' time and payroll records. (*Id.*, ¶ 8.) The sampling was randomly selected and
11 included employees across the Class Period. (*Id.*) Defendant also provided Class Counsel with all
12 versions of Defendant's employee handbooks in use during the Class Period and other documents
13 evidencing its relevant wage and hour policies and procedures. (*Id.*) Finally, Defendant provided Class
14 Counsel with key data points regarding the size and composition of the Class, such as the number of
15 Class Members and PAGA Members (including the number of current versus former employees), the
16 total number of workweek and pay periods worked by Class Members, the number of pay periods
17 worked by PAGA Members, and the average rates of pay for the Class. (*Id.*)

18 Prior to mediation, Class Counsel thoroughly reviewed the informal discovery produced by
19 Defendant, which included consulting with an expert to analyze Class Members' time and payroll
20 records. (*Id.*, ¶ 9.) Class Counsel also engaged in further independent investigation, and conducted
21 further legal research regarding the merits of Plaintiff's claims and Defendant's potential defenses
22 thereto. (*Id.*) Based on this investigation and informal discovery, Class Counsel prepared a detailed
23 and informed assessment of Defendant's potential liability in advance of mediation. (*Id.*) Class
24 Counsel also extensively briefed the strengths and weaknesses of Plaintiff's claims and Defendant's
25 anticipated defenses, and provided their analysis to the mediator for his consideration. (*Id.*)

26 After completing a thorough investigation and analysis of Plaintiff's claims, on March 27,
27 2023, the Parties attended a formal mediation with Steven Rottman, Esq., a neutral and respected
28 mediator with extensive experience in complex wage and hour matters. (*Id.*, ¶ 10.) The Parties engaged

1 in a full day of settlement discussions, during which they debated their respective positions and
2 exchanged views regarding the strengths and weaknesses of their claims and defenses. (*Id.*) The
3 settlement discussions were at all times at arm's length and, although conducted with appropriate
4 professional decorum, were adversarial. (*Id.*) Plaintiff and Class Counsel went into mediation willing
5 to explore the potential for a settlement of the Action, but were also prepared to litigate Plaintiff's
6 claims through class certification, trial, and appeal if a settlement was not reached. (*Id.*) After a full
7 day of negotiations, the Parties reached an agreement to settle this action and executed a memorandum
8 of understanding memorializing the key terms of the agreement. (*Id.*)

9 On or about May 4, 2023, after further negotiations, the Parties fully executed a long form
10 Joint Stipulation of Class Action and PAGA Settlement. (*Id.*, ¶ 11.) On June 1, 2023, Plaintiff filed
11 her Motion for Preliminary Approval of Class Action and PAGA Settlement ("Motion for Preliminary
12 Approval"). On the same day, Class Counsel also submitted copies of the Motion for Preliminary
13 Approval and the Joint Stipulation of Class Action and PAGA Settlement to the LWDA. (*Id.*, ¶ 12,
14 Exh. 3.) On July 28, 2023, the Court issued a minute order instructing the Parties to address certain
15 issues and concerns related to the proposed settlement, and continued the hearing date on Plaintiff's
16 Motion for Preliminary Approval. (*Id.*, ¶ 13.)

17 On or about August 8, 2023, the Parties fully executed an Amended Joint Stipulation of Class
18 Action and PAGA Settlement to address the issues raised in the Court's July 28, 2023 Order. (*Id.*, ¶
19 14.) A copy of the amended settlement agreement along with supplemental briefing was filed with
20 the Court on August 28, 2024. (*Id.*) On October 9, 2023, the Court issued a minute order instructing
21 the Parties to remove language regarding Plaintiff's release of claims regarding FEHA-related claims
22 from the amended settlement, and again continued the hearing date on Plaintiff's Motion for
23 Preliminary Approval. (*Id.*, ¶ 15.)

24 On or about October 25, 2023, the Parties fully executed a Second Amended Joint Stipulation
25 of Class Action and PAGA Settlement to address the issues raised in the Court's October 9, 2023
26 Order. (*Id.*, ¶ 16, Exh. 1). On November 17, 2023, the Court issued a minute order granting Plaintiff's
27 Motion for Preliminary Approval. (*Id.*, ¶ 17.) Subsequently, on December 4, 2023, the Court signed
28 the Order Granting Preliminary Approval of Class Action and PAGA Settlement ("Preliminary

Approval Order.”) (*Id.*) Notice of Entry of the Preliminary Approval Order, which included a copy of the Signed Preliminary Approval Order, was filed with the LWDA on December 6, 2023. (*Id.*, Exh. 4.) Plaintiff now moves for final approval of the Settlement.

III. SUMMARY OF THE SETTLEMENT TERMS, ADMINISTRATION PROCESS, AND PLAN OF DISTRIUBTION

A. Class Members and PAGA Members.

The Settlement Class consists of the following individuals: “all current and former hourly-paid, non-exempt employees of Defendant who were employed by Defendant in the State of California at any time during the Class Period.” (Agreement, ¶ 6.) The Class Period runs from May 31, 2018, to May 31, 2023. (Agreement, ¶ 7.) There are a total of 223 Class Members. (Castro Decl., ¶ 5.)

The Settlement also includes a subgroup of “PAGA Members” which consists of all current and former non-exempt employees of Defendant who were employed by Defendant in the state of California at any time during the PAGA Period. (Agreement, ¶ 22.) The PAGA Period runs from March 23, 2021 to May 31, 2023. (Agreement, ¶ 24.) There are a total of 161 PAGA Members. (Castro Decl., ¶ 18.)

B. Monetary Terms

The Settlement requires Defendant to pay a Gross Settlement Amount of \$750,000.00 (Agreement, ¶¶ 15, 48.) The Gross Settlement Amount is non-reversionary, and does not include employer-side payroll taxes, which shall be separately paid by Defendant. (*Id.*) Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Class Counsel’s Fees in the amount of \$250,00.00 (i.e., one-third of the Gross Settlement Amount)⁶; (2) Reimbursement of Class Counsel’s costs and expenses in an amount up to \$30,000.00⁷; (3) Class Representative Enhancement Payment in the amount of \$7,500.00 to Plaintiff; (4) Settlement Administration Costs in the amount of \$7,550.00⁸; and (5) PAGA Penalties in the amount of \$50,000.00. (Agreement, ¶¶ 4, 8, 18, 21, 37, 52-56.) Based on these amounts, the

⁶ See footnote 2.

⁷ See footnote 3.

⁸ See footnote 4.

1 Settlement Administrator calculates the Net Settlement Amount to be \$404,950.00. (Castro Decl., ¶
2 16; Minne Decl., ¶ 27.) The Settlement Administrator has confirmed that the Agreement’s escalator
3 clause was not triggered. (Castro Decl., ¶ 15; Minne Decl., ¶ 27.)

4 The Settlement Administrator will calculate Participating Class Members’ Individual Class
5 Payments on a *pro rata* basis according to the number of workweeks worked during the Class Period.
6 (¶¶ 16, 57.) The average Individual Class Payment is currently estimated to be \$1,824.10, with the
7 highest Individual Class Payment estimated to be \$4,828.32, and the lowest estimated Individual Class
8 Payment estimated to be \$18.50. (Castro Decl., ¶ 17.)⁹ Individual Class Payments shall be allocated
9 as 20% as wages, to be reported on an IRS W-2 Form, 40% interest and 40% penalties to be reported
10 on an IRS 1099 Form. (Agreement, ¶ 58.)

11 In addition to the Individual Class Payments from the Net Settlement Amount, PAGA
12 Members shall receive a pro-rata share of the 25% portion of PAGA Penalties allocated for distribution
13 to PAGA Members. (Agreement, ¶¶ 17, 55, 59.) The average Individual PAGA Payment is currently
14 estimated to be \$77.64, with the highest Individual PAGA Payment estimated to be \$142.59, and the
15 lowest estimated Individual PAGA Payment estimated to be \$1.24. (Castro Decl., ¶ 18.) Individual
16 PAGA Payments will be reported on an IRS 1099 Form. (Agreement, ¶ 60.)

17 **C. Summary of Notice and Administration Process**

18 The Court-appointed Administrator, ILYM Group, Inc. (“Settlement Administrator”), has
19 undertaken all necessary steps to effectuate the notice and settlement administration process, as set
20 forth in the Agreement and the Court’s December 4, 2023 Preliminary Approval Order.

21 On November 29, 2023, Class Counsel sent the Settlement Administrator a copy of the
22 Agreement and Class Notice approved by the Court, as well as other documents related to the
23 Settlement. (Minne Decl., ¶ 18; Castro Decl., ¶ 4.) On November 30, 2023, the Settlement
24 Administrator received the Class List from Defendant’s counsel which contained the name, social
25 security number, last known mailing address, last known telephone number, dates of employment, and
26 number of Workweeks for all Class Members. (Minne Decl., ¶ 19; Castro Decl., ¶ 5.) The Class List
27
28

⁹ See footnote 5.

1 contained 223 Class Members. (Castro Decl., ¶ 5.) As part of the preparation for mailing, the
2 Settlement Administrator processed the mailing list against the National Change of Address Database
3 maintained by the U.S. Postal Service in order to update and confirm the Class Members' addresses.
4 (*Id.*, ¶ 6.)

5 On December 8, 2023, the Settlement Administrator mailed the Class Notice via First Class
6 Mail in both English and Spanish to all 223 Class Members. (Minne Decl., ¶ 21; Castro Decl., ¶ 7,
7 Exh. A.) After mailing, 5 Class Notices were returned as undeliverable. (Castro Decl., ¶ 8.) Of those
8 Class Notices that were returned, 0 were returned with a forwarding address. (*Id.*) The Settlement
9 Administrator performed a skip trace on all returned Class Notices and subsequently re-mailed 3
10 Class Notices to Class Members for whom an updated address was obtained. (*Id.*) A total of 2 Class
11 Notices were ultimately deemed undeliverable as no updated address was found by the Settlement
12 Administrator notwithstanding the skip tracing. (*Id.*, ¶ 11)

13 As of the filing of this Motion, the Settlement Administrator has received zero objections,
14 one (1) request for exclusion, and zero (0) workweek disputes. (Minne Decl., ¶ 22; Castro Decl., ¶¶
15 11-13.) The deadline for Class Members to submit objections, requests for exclusion, and/or
16 workweek disputes was February 6, 2024. (Minne Decl., ¶ 22, Castro Decl., ¶¶ 10-11.)

17 Per the terms of the Settlement, upon final approval, a copy of the Final Judgment will be
18 posted on the Settlement Administrator's website. (Agreement, ¶ 62(l).)

19 **D. Plan of Distribution**

20 Defendant will transmit payment of the Gross Settlement Amount, as well the amounts
21 necessary to fully pay Defendant's share of payroll taxes, to the Settlement Administrator within 30
22 calendar days of the Effective Date. (Agreement, ¶ 50.)¹⁰ Thereafter, within 14 calendar days after
23 Defendant funds the Gross Settlement Amount, the Settlement Administrator shall make all Court-

24
25
26 ¹⁰ "Effective Date" is defined as the date by when both of the following have occurred: (a) the Court enters the Final
27 Approval Order and Judgment; and (b) the Final Approval Order and Judgment is final. The Final Approval Order and
28 Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement,
the day the Court enters Final Approval Order and Judgment; (b) if one or more Participating Class Members objects to the
Settlement, the day after the deadline for filing a notice of appeal from the Final Approval Order and Judgment; or if a
timely appeal from the Final Approval Order and Judgment is filed, the day after the appellate court affirms the Final
Approval Order and Judgment and issues a remittitur. (Agreement, ¶ 12.)

1 approved payments including all Individual Class Payments, all Individual PAGA Payments, PAGA
2 Penalties to the LWDA, the Class Representative Enhancement Payment, Class Counsel's Fees and
3 Costs, and Settlement Administration Costs. (Agreement, ¶ 51.)

4 Checks issued for Individual Class Payments and Individual PAGA Payments shall remain
5 valid for 180 days from the date of mailing. (Agreement, ¶ 77.) If an Individual Class Payment check
6 or Individual PAGA Payment check remains uncashed after one hundred eighty (180) days from the
7 initial mailing, the Settlement Administrator shall transfer the value of the uncashed checks to the
8 California Controller's Unclaimed Property Fund in the name of the Participating Class Member or
9 Aggrieved Employee. (*Id.*) As such, no "unpaid residue" under California Code of Civil Procedure §
10 384 will result from the Settlement. (*Id.*)

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

12 Trial courts have broad discretion to determine whether class action settlement is fair and
13 reasonable. *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 52 (2008). To determine whether the
14 settlement is fair, courts consider relevant factors such as "the strength of plaintiffs' case, the risk,
15 expense, complexity, and likely duration of further litigation, the risk of maintaining class action status
16 through trial, the amount offered in settlement, the extent of discovery completed and state of the
17 proceedings, the experience and views of counsel, the presence of a governmental participant, and the
18 reaction of the class members to the proposed settlement." *Dunk v. Ford Motor Co.* 48 Cal.App.4th
19 1794, 1801 (1996). These factors are not exclusive and "the court is free to engage in a balancing and
20 weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer,*
21 *Inc.*, 91 Cal.App.4th 224, 245 (2001). "Due regard should be given to what is otherwise a private
22 consensual agreement between the parties." *Dunk*, 48 Cal.App.4th at 1801.

23 The burden is on the proponent of the settlement to show that it is fair and reasonable. *Wershba*,
24 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where: (1) the
25 settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient
26 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and
27 (4) the percentage of objectors is small. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).
28

1 In considering a class settlement, the court need not reach any ultimate conclusions on the
2 issues of fact and law which underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising*
3 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). The inquiry is not whether the settlement
4 agreement is the best one that could have possibly obtained, but whether the settlement taken as a
5 whole is “fair, adequate, and reasonable.” *See Chavez*, 162 Cal.App.4th at 55. A settlement need not
6 obtain 100 percent of the damages sought in order to be fair and reasonable. *Wershba*, 91 Cal.App.4th
7 at 251. Even if the relief afforded by the proposed settlement is substantially narrower than it would
8 be if the lawsuit was to be successfully litigated, that is no bar to a class settlement because the public
9 interest may indeed be served by a voluntary settlement in which each side gives ground in the interest
10 of avoiding prolonged litigation. *In re Microsoft I-V Cases*, 135 Cal.App.4th at 723.

11 **A. The Settlement Was Reached Through Arm-Length Negotiations**

12 The Settlement was reached following private mediation with Steven Rottman, Esq., a
13 mediator with substantial experience mediating complex wage and hour matters. (Minne Decl., ¶ 10.)
14 The mediation occurred only after substantial informal discovery and extensive analysis of the claims
15 at issue. (*Id.*, ¶¶ 8-9.) The settlement negotiations were at arm’s length, and, although conducted in a
16 professional manner, were adversarial. (*Id.*, ¶ 10.) The Parties went into settlement discussions willing
17 to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its
18 position through class certification, trial, and appeal if a settlement was not reached. (*Id.*) Arriving at
19 a settlement that was acceptable to the Parties was not easy, and counsel for the Parties vigorously
20 advanced their respective positions throughout the settlement negotiations. (*Id.*) After a full day of
21 negotiations, the Parties reached an agreement to settle this action. (*Id.*)

22 **B. The Settlement Was Based Upon Sufficient Investigation and Discovery.**

23 Class Counsel conducted significant investigation into the claims alleged by Plaintiff before
24 reaching a settlement in this matter. Both prior to the filing of the original complaint and throughout
25 the course of the litigation, Class Counsel had numerous discussions with Plaintiff regarding
26 Defendant’s employment policies and practices, and conducted extensive independent investigation
27 and research regarding the veracity, scope, and strength of the claims alleged by Plaintiff as well as
28 Defendant's potential defenses thereto. (Minne Decl., ¶¶ 8-9, 24, 52, 67; Declaration of Joanna Ghosh

1 ["Ghosh Decl."], ¶¶ 3-5.) Class Counsel also obtained extensive information, data, and documents
2 through informal discovery prior to mediation, which included: a representative 20% sampling of
3 Class Members' time and payroll document; all versions of Defendant's employee handbooks in use
4 during the Class Period; and other documents reflecting Defendant's applicable wage and hour
5 policies. (Minne Decl., ¶ 8.) Defendant also provided Class Counsel with key data points regarding
6 the number of Class Members, the number of PAGA Members, the total workweeks worked by the
7 Class, the number of pay periods worked by PAGA Members, and the average rate of pay for the
8 Class. (*Id.*) Class Counsel thoroughly reviewed this informal discovery prior to mediation, which
9 included consulting with a data analysis expert to fully analyze Class Members' time and payroll
10 records for potential wage and hour violations. (*Id.*, ¶ 9.)

11 Based on this investigation and exchange of informal discovery, prior to mediation Class
12 Counsel prepared a detailed assessment of both Defendant's potential class-wide liability and
13 Defendant's potential liability for civil penalties under PAGA. (*Id.*) Class Counsel also extensively
14 briefed the strengths and weaknesses of Plaintiff's claims and Defendant's anticipated defenses. (*Id.*)
15 These efforts allowed Class Counsel to intelligently and effectively analyze the strengths and
16 weaknesses of Plaintiff's claims throughout the course of settlement negotiations. (*Id.*) With the
17 assistance of the mediator, the Parties were eventually able to reach an agreement to resolve this matter
18 based on their analysis and understanding of the legal and factual issues pertaining to Plaintiff's
19 principal claims, as well as the costs and risks associated with further litigation. (*Id.*, ¶¶ 10, 25-39)

20 **C. The Risks Associated With Continued Litigation Favor Approval of the Settlement.**

21 Class Counsel carefully considered the strengths and weaknesses of Plaintiff's claims and
22 analyzed Defendant's maximum potential liability based on information and data obtained through
23 both informal discovery as well as Class Counsel's independent investigation and research. Based on
24 this evaluation, Class Counsel has determined that the proposed Settlement represents a fair, adequate,
25 and reasonable resolution of the Action given the uncertainty of sustaining each of Plaintiff's claims
26 through class certification, trial, and appeals, and the costs and risks associated with protracted
27 litigation. (*Id.*, ¶¶ 25-39.)
28

As discussed at length in Plaintiff’s Motion for Preliminary Approval and reiterated herein, Class Counsel estimates that Defendant’s maximum potential liability for the Class claims is \$3,842,194.99. (Minne Decl., ¶ 25.) Class Counsel also separately calculated Defendant’s potential liability for civil penalties under PAGA to be \$4,614,755.20. (*Id.*) Although Defendant’s “soaking wet” exposure is significant, Class Counsel recognized that there are significant risks associated with proceeding with this case through class certification, trial, and likely appeals. (*Id.*, ¶¶ 26-38.) As with all class actions, this is a complex case that raises difficult management and proof issues, creating significant risk that the Court may deny class certification. Defendant strongly denied this matter was suitable for class-wide resolution and contended that individualized issues predominated any common issues and would bar certification of Plaintiff’s class claims. Even if Plaintiff obtained class certification, Defendant was prepared to assert a number of potential affirmative defenses, such as Class Members’ purported voluntary waivers of meal and rest periods and its alleged lack of knowledge regarding off-the-clock work. While Plaintiff and Class Counsel were confident that Plaintiff’s claims are fundamentally meritorious and suitable for class-wide resolution, they recognized there are multiple points in the litigation where an adverse ruling or unfavorable judgment could result in the Class receiving no monetary compensation whatsoever. Consideration of these risks factored into their decision to enter into the Settlement at this point in the litigation. (Minne Decl., ¶¶ 26-31.)

There are also numerous risks of protracted litigation of the PAGA claim. First, the same defenses and merits-based risks associated with Plaintiff’s direct Labor Code claims are also applicable to a PAGA claim. *See Green v. Lawrence Service Co.*, 2013 U.S. Dist. LEXIS 109270, at *5, fn. 5 (C.D. Cal. 2013) (“whether each PAGA claims succeeds or fails is determined by the merits of the substantive claims on which each is based.”) (Minne Decl., ¶ 32.) Defendant would also likely attempt to challenge Plaintiff’s standing as an aggrieved employee, and also argue that Plaintiff’s PAGA claim violated its due process rights. (Minne Decl., ¶¶ 33-34.) Moreover, even if Plaintiff defeated such arguments by Defendant, the Court could ultimately decline to award cumulative or “stacked” penalties, or exercise its discretion to find that the imposition of heightened civil penalties was inappropriate, particularly if Plaintiff prevailed on her class claims. Cal. Lab. Code § 2699(2);

1 *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1122 (2012).¹¹ (Minne Decl., ¶¶
2 35-36.) Class Counsel also remained cognizant that PAGA is fundamentally not intended to be
3 compensatory in nature, but is instead intended to facilitate enforcement of California’s labor laws by
4 financing state activities and educating and deterring non-compliance. *See* Cal. Labor Code § 2699(i);
5 *Arias v. Sup. Ct.*, 46 Cal. 4th 980; *Williams v. Sup. Ct.*, 3 Cal.5th 531, 546. (Minne Decl., ¶ 37.)

6 Class Counsel further recognized the significant expense and time that would be expended in
7 continued litigation, trial, and possible appeals, all of which would substantially delay and reduce any
8 recovery by the Class Members. In order to prepare for class certification and trial, the Parties will be
9 required to conduct a significant amount of formal discovery including, but not limited to, depositions
10 of Defendant’s persons most knowledgeable, expert witnesses, and percipient witnesses such as
11 managers, supervisors, and Class Members. Class Counsel will also need to request and analyze
12 thousands of pages of documents, obtain the Class Members’ contact information, contact them and
13 obtain numerous declarations at great expense. Obtaining the cooperation of current employees would
14 also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer.
15 On the other hand, Defendant would likely be able to obtain the cooperation of its current employees.
16 This puts Plaintiff at a particular disadvantage in this case because approximately half of the Class are
17 current employees of Defendant. Moreover, even if Plaintiff prevails at class certification and trial,
18 possible appeals further increase costs and delay any recovery by the Class. These risks are all obviated
19 by the Settlement, which if approved by the Court will ensure that Class Members receive timely and
20 meaningful monetary relief without the risk of an unfavorable judgment. (Minne Decl., ¶ 38.)

21 Taking into consideration the strengths and weaknesses of each claim and the risks, expense
22 and delay associated with continued litigation, it is clear that the Settlement is fair, reasonable, and
23 adequate, and is in the best interest of the Class. (Minne Decl., ¶ 39; Ghosh Decl., ¶ 18.) Moreover,
24 the Gross Settlement Amount of \$750,000.00 – which represents 19.5% of the maximum value of the
25 direct Class claims at issue – falls well within an acceptable range of recovery for this type of litigation
26

27 ¹¹ *See also, Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (reducing penalties by 97.5%); *Fleming v.*
28 *Covidien*, 2011 U.S. Dist. LEXIS 154590, *8-9 (C.D. Cal. 2011) (reducing potential PAGA penalties by over 80 percent);
Magadia v. Wal-Mart Assocs. et al., 384 F. Supp. 3d 1058, 1069 (N.D. Cal. 2019)(applying 67% and 80% reductions to
PAGA Penalties).

given the strengths and weaknesses of the case and the costs and risks associated with class certification, representative adjudication, trial, and/or appeals. (Minne Decl., ¶ 39.) *See, e.g., Cavazos v. Salas Concrete, Inc.*, 2022 U.S. Dist. LEXIS 132056 (E.D. Cal. 2022)(granting preliminary approval of settlement representing approximately 5.8% of maximum damages); *Ayala v. UPS Supply Chain Solutions, Inc.*, 2021 U.S. Dist. LEXIS 194362 (C.D. Cal. 2021)(granting preliminary approval of settlement representing approximately 7.8% of maximum damages); *Perez v. Core & Main, L.P.*, 2021 U.S. Dist. LEXIS 258958 (C.D. Cal. 2021) (granting preliminary approval of settlement representing 10.3% of maximum damages); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (approving settlement amount representing approximately 10% of the estimated actual damages to the class); *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 256 (N.D. Cal. 2015) (approving settlement representing approximately 8.5% of the maximum damages); *Avila v. Cold Spring Granite Co.*, 2017 U.S. Dist. LEXIS 130878 (E.D. Cal 2017) (approving settlement where gross recovery was 11% of the maximum damages); *Thomas v. Cognizant Tech. Sols. U.S. Corp.*, 2013 U.S. Dist. LEXIS 204256 (C.D. Cal. 2013) (granting final approval of settlement representing 5% of maximum liability).

D. The Settlement Fairly, Reasonably, and Adequately Compensates Class Members Based on the Extent of Their Injury.

At the final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel.” *In re American Bank Note Holographics, Inc. Securities Litigation*, 127 F.Supp.2d 418, 429-430 (S.D.N.Y. 2001). As discussed above, each Participating Class Member will paid a *pro rata* share of the Net Settlement Amount based on the total number of Workweeks credited to them. The *pro rata* allocation based on weeks worked by the Class is a fair and reasonable to distribute the Net Settlement Amount because it: (a) relies upon objective evidence of the length of employment which Participating Class Members were allowed to review and confirm for themselves; and (b) allows for a distribution that corresponds closely to each amount of damages suffered by each Participating Class Member, as Participating Class Members experienced more wage and hour violations they longer they were

1 employed by Defendant. Because the allocation formula is rationally tied to Participating Class
2 Members' potential damages, it is fair, reasonable, and adequate.

3 **E. Class Counsel Have Extensive Experience in Complex Wage and Hour Litigation.**

4 The settlement negotiations were conducted by highly capable and experienced counsel. Class
5 Counsel are respected members of the bar with strong records of effective advocacy for their clients,
6 and have extensive experience in handling complex wage-and-hour class action and PAGA litigation.
7 (Minne Decl., ¶¶ 42-49; Ghosh Decl., ¶¶ 10-15.) Class Counsel's experience enabled them to assess
8 the strengths and weaknesses of Class Members' claims against Defendant, and negotiate an informed,
9 reasonable, and intelligent settlement. After completing significant investigation, research, and
10 discovery, it is Class Counsel's opinion that the Settlement is in the best interest of the Class because
11 it provides for a guaranteed result over a reasonably short period of time as opposed to waiting years
12 for an uncertain outcome, and will result in significant savings in costs. (Minne Decl., ¶ 39.)

13 **F. There Are No Objections and Only One (1) Request for Exclusion**

14 California courts have consistently found that a small number of objectors indicates the class's
15 support for a settlement and strongly favors final approval. *See Wershba*, 91 Cal.App.4th at 250-51
16 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-53 (final
17 approval granted despite 9 objectors). Here, as of the filing of this Motion, there have been **no**
18 **objections** to the Settlement, and **only one (1) requests for exclusion** from the Settlement, meaning
19 that **99.55%** of the Class will participate in the Settlement. (Minne Decl., ¶ 22; Castro Decl., ¶¶ 11-
20 14.) Moreover, the LWDA has not objected to the Settlement nor to the proposed allocation for
21 settlement of the PAGA claims. (Minne Decl., ¶ 41.) The absence of any objections and 99.55%
22 participation rate demonstrates that the Settlement is fair, reasonable, and adequate. Accordingly, the
23 Court should grant final approval of the Settlement in its entirety.

24 **V. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AND SHOULD BE**
25 **APPROVED.**

26 **A. Legal Standard for Attorneys' Fees in a Class Action Settlement.**

27 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions
28 will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v. Beneficial Cal, Inc.*,

82 Cal.App.4th 19, 41 (2000). Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement created. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Dunk*, 48 Cal.App.4th at 1808, *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 503 (2016). The ultimate goal is the award of a "reasonable" fee to compensate counsel for their efforts, irrespective of the method of calculation. *See Apple Computer, Inc. v. Sup. Ct.*, 126 Cal.App.4th 1253, 1270 (2005).

California law provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. *Lealao*, 82 Cal.App.4th at 47, 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* at 53. Therefore, fees in class and representative actions should approximate the probable terms of a contingent-fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 47. The percentage-of-the-benefit approach is preferred in class action cases because "it better approximates the workings of the marketplace than the lodestar approach." *Id.*

B. A Fee Award Based on a Percentage of the Gross Settlement Amount is Appropriate.

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value made available to class members by the settlement. *See Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977). The purpose of this equitable doctrine is to spread litigation costs among all beneficiaries so that the active beneficiary does not bear the entire burden alone. *See Vincent*, 557 F.2d at 769. Furthermore, both California and federal courts have long recognized that a percentage of recovery for attorney fees is properly awarded on the basis of the **total value** of the settlement. *Boeing*, 444 U.S. at 478, 480-481; *Winslow v. Harold G. Ferguson Corp.*, 25 Cal.2d 274, 284 (1944); *Lealao*, 82 Cal.App.4th at 51; *Wershba*, 91 Cal.App.4th at 247.

1 Courts have also consistently recognized that class litigation is necessary to protect the rights
2 of individuals whose injuries and/or damages are too small to economically justify individual
3 representation. Accordingly, in determining a reasonable common fund fee award, courts award fees
4 to serve as an economic incentive for lawyers to engage in class litigation that will permit increased
5 access to the judicial system for meritorious claims and deter wrongdoing. *See*, R. Pearle, *California*
6 *Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7. Historically, courts have awarded percentage fees in
7 the range of 20% to 50%, depending on the circumstances of the case. *Newberg on Class Actions*, 4th
8 Ed. 2002, §14:6. According to *Newberg*, “. . . no general rule could be articulated as to what is a
9 reasonable percentage of a common fund. Typically, 50 percent of the fund is the upper limit on a
10 reasonable fee award in order to assure that fees do not consume a disproportionate part of the recovery
11 obtained for the class, though somewhat larger percentages are not unprecedented.” *Id.*; *see, e.g., In*
12 *re Ampicillin Antitrust Litig.*, 526 F.Supp. 494 (D.D.C. 1981) (awarding attorneys’ fees in the amount
13 of 45% of the \$7.3 million settlement); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.*, 480
14 F.Supp. 1195 (S.D.N.Y. 1979) (awarding approximately 53% of the settlement as attorneys’ fees).
15 California courts routinely approve class action attorneys’ fee awards averaging around one-third of
16 the recovery. *Chavez*, 162 Cal.App.4th at 66 n.11 (20 to 40 percent range of contingency fee in
17 marketplace was appropriate in class actions); *see also Laffitte*, 1 Cal.5th 480 (approving fee award of
18 one-third of the common fund of \$19 million.)

19 Here, the amount of attorneys’ fees requested by Class Counsel – one-third of the Gross
20 Settlement Amount (\$250,000.00) - is reasonable in light of the facts and circumstances surrounding
21 this case. Indeed, the Agreement allows for an award of attorneys’ fees in an amount of up to 35% of
22 the Gross Settlement Amount (\$262,500.00), and not a single Class Member has objected to such an
23 allocation. Nevertheless, Class Counsel is voluntarily reducing the requested fee percentage in order
24 to address the concerns raised by the Court that the 35% provided by the Settlement was higher than
25 the Court’s usual benchmark of 33.33%.¹² (Minne Decl., ¶¶ 50, 56.) Class Counsel risked substantial
26 economic loss when they took this case on a purely contingent basis, knowing that there would likely

27
28 ¹² See Register of Actions No. 71, p. 7.

1 be a long battle against a well-funded defendant represented by an aggressive defense firm with no
2 guarantee of success. As a result of Class Counsel taking on this risk and their efforts in prosecuting
3 the case, Class Members are now able to recover compensation for claims that would otherwise have
4 gone unaddressed. Thus, the requested fee award is appropriate because: (1) it is consistent with the
5 private marketplace where contingent-fee attorneys are customarily compensated on such a basis; (2)
6 it aligns the interests of Class Counsel and absent Class Members in achieving the maximum possible
7 resolution of the case; (3) it encourages the most efficient resolution of the litigation by providing an
8 incentive for early, yet fair and reasonable settlement; and (4) reflects the work performed, risks
9 incurred, results obtained, and experience of Class Counsel in handling similar matters.

10 **C. The Requested Fee Award is Reasonable Based on the *Dunkel* Factors.**

11 In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir. 1991),
12 the court identified twelve factors to be considered in determining whether fee awards are reasonable
13 in a common fund case: (1) the time and labor required, (2) the novelty and difficulty of the questions
14 involved, (3) the skill requisite to perform the legal services properly, (4) the preclusion of other
15 employment by the attorney due to the acceptance of the case, (5) the customary fee, (6) whether the
16 fee is fixed or contingent, (7) time limitation imposed by the client or the circumstances, (8) the amount
17 involved and results obtained, (9) the experience, reputation and ability of the attorney, (10) the
18 undesirability of the case, (11) the nature and length of the professional relationship with the client,
19 and (12) awards in similar cases. The court also noted that, “the analysis in a common fund case focuses
20 not on the Plaintiffs’ position as ‘prevailing parties,’ but on a showing that the fund conferring a benefit
21 on the class resulted from their efforts” and thus in common fund cases “the monetary results achieved
22 predominate over all other criteria.” *Id.* at 774.

23 Here, each and every one of the *Dunkel* factors favors approval of attorneys’ fees requested
24 herein. However, this memorandum will address the factors that are particularly relevant to this Action.

25 **1. Time and Labor Required**

26 Class Counsel aggressively pursued the claims alleged in the Action on behalf of the Class,
27 commencing from the initial, pre-litigation investigation through the initiation of litigation and the
28 ultimate settlement of the Action. (Minne Decl., ¶¶ 5-10, 24, 52, Exh. 5; Ghosh Decl., ¶¶ 2-5, 8, Exh.

1 A.) The ongoing work performed by Class Counsel has been extensive and complex, and ultimately
2 secured a settlement that provides Class Members with meaningful monetary compensation for
3 Defendant's alleged unlawful wage and hour practices.

4 Specifically, to date, Class Counsel has expended no less than 335.7 hours litigating the Action.
5 The work performed by Class Counsel includes, but is not limited to, the following: performing
6 extensive independent investigation and research regarding Plaintiff's claims, Defendant's potential
7 defenses, and Defendant's business, operations, and employment policies, practices and procedures;
8 multiple meetings and discussions with Plaintiff and review of documents provided by Plaintiff;
9 analyzing Plaintiff's potential claims and developing a case strategy for class certification; drafting
10 the Complaint; drafting the PAGA notice letter to the LWDA; meeting and conferring with
11 Defendant's counsel on numerous occasions over issues related to the pleadings, case management,
12 and informal discovery; preparing for and attending court proceedings; reviewing and analyzing a
13 representative sampling of time records and payroll records for the Class with the assistance of a data
14 analysis expert in advance of mediation; reviewing numerous policy documents produced as part of
15 informal discovery; preparing a comprehensive class-wide damages analysis and mediation brief;
16 attending private mediation and engaging in settlement negotiations thereat; drafting, negotiating, and
17 revising the original Joint Stipulation of Class Action and PAGA Settlement, Class Notice; drafting
18 the Amended Joint Stipulation of Class Action and PAGA Settlement; drafting the Seconded Amended
19 Joint Stipulation of Class Action and PAGA Settlement; preparing the Motion for Preliminary
20 Approval and supporting documents; preparing two rounds of supplemental briefing in support of the
21 Motion for Preliminary Approval; coordinating the notice process with the Settlement Administrator
22 and monitoring the same; and preparing the Motion for Final Approval and supporting documents.
23 (Minne Decl., ¶¶ 52, 61-32, Exh. 5; Ghosh Decl., ¶¶ 2-5, 8 Exh. A.) The time expended on these tasks
24 was required to bring this matter to a successful conclusion on behalf of the Class. (Minne Decl., ¶
25 52.) In light of time and labor expended on litigating the case, the requested attorneys' fees are fair
26 and reasonable and should be approved.

1 **2. *The Skill Required to Perform Legal Services***

2 The skill required to successfully litigate the Action is evident not only in the results achieved
3 for the Class, but in the steps necessary to reach the same. Class Counsel were required to overcome
4 numerous barriers in order to reach the Settlement before the Court. Defendant is a well-funded entity
5 that retained respected counsel to defend itself against Plaintiff's claims. Defendant and its counsel
6 denied liability, felt very strongly about their ability to prevail, challenged the theories of Class
7 Counsel, and mounted several potential defenses that posed significant problems moving forward.

8 Class Counsel strongly believed that Plaintiff's claims were fundamentally meritorious. Class
9 Counsel engaged in significant investigation, research, and analysis of Plaintiff's claims, developed
10 numerous strategies to defeat Defendant's potential defenses, and were prepared to litigate this case
11 through class certification and trial if Defendant did not offer an adequate class-wide settlement. As a
12 result of these efforts, Defendant ultimately agreed to enter into the proposed Settlement rather than
13 proceed with litigation. This Settlement, against experienced defense counsel and strong potential
14 defenses, was possible because Class Counsel used its extensive experience in handling complex wage
15 and hour matters in order to obtain a favorable result for the Class. (Minne Decl., ¶ 53.)

16 **3. *The Value, Amount, and Results Achieved for the Class***

17 The Settlement represents a fair resolution of this case given the risks inherent in litigating it
18 through trial, class certification, and possible appeals. As discussed above and in Plaintiff's Motion for
19 Preliminary Approval, Defendant vigorously challenged Plaintiff's ability to sustain her claims, both at
20 class certification and trial. Despite these challenges, Class Counsel obtained a non-reversionary Gross
21 Settlement Amount of \$750,000.00, exclusive of employer-side payroll taxes. After deducting the
22 amounts requested for the Class Counsel's Fees and Costs, Class Representative Enhancement
23 Payment, Settlement Administration Costs, and PAGA Penalties, it is estimated that the Net
24 Settlement Amount will be at least \$404,950.00. (Castro Decl., ¶ 16; Minne Decl., ¶ 22.) The average
25 Individual Class Payment is estimated to be \$1,824.10, with the highest Individual Class Payment
26 estimated to be \$4,828.32 and the lowest Individual Class Payment estimated to be \$18.50.¹³ (Castro
27

28

¹³ See footnote 5.

Decl., ¶ 17.) The average Individual PAGA Payment is estimated to be \$77.64, with the highest Individual PAGA Payment estimated to be \$142.59 and the lowest Individual PAGA Payment estimated to be \$1.24. (Castro Decl., ¶ 18.) This is an excellent outcome that provides significant and timely monetary recovery to the Class.

4. *Whether the Fee is Fixed or Contingent*

California courts have recognized that whether representation was provided on a contingent basis is an important factor in determining the reasonableness of a fee award in class action settlements:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions.

Cates v. Chiang, 213 Cal.App.4th 791, 823 (2013) (emphasis added).

Class Counsel agreed to litigate this case on a purely contingent basis, assuming the significant risks attendant with such an undertaking. If Class Counsel had been unsuccessful in prosecuting Plaintiff's claims, they would not receive any compensation for the extensive time devoted to this Action, nor recuperate any portion of the significant expenses incurred in litigating this matter. (Minne Decl., ¶¶ 52, 54.) The fact that this case was litigated on a purely contingent basis also strongly supports the award of attorneys' fees requested by Plaintiff.

D. The Requested Fee Award Is Reasonable Under a Lodestar Analysis

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. That said, courts have cautioned that the primary basis of the fee award in common fund cases remains the percentage of the fund method, and have further explained that class counsel should not necessarily receive a lesser fee achieving a speedy and timely result for class members in need of immediate relief. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F. 3d. 1043, 1050 fn.1 (2002). Indeed, courts have noted that "it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement." *Id.* (quoting

1 *Camden I Condominium Ass'n*, 946 F.2d at 773–74.) Thus, “the lodestar calculation . . . does not
2 override the trial court’s primary determination of the fee as a percentage” or the settlement amount,
3 and “does not impose an absolute maximum or minimum on the potential fee award.” *Laffitte*, 1 Cal.5th
4 at 404.

5 Under the lodestar method, a base fee amount is calculated based on a compilation of the time
6 reasonably spent on the case and the reasonable hourly rate of the attorney, which may be augmented
7 by application of a “multiplier” based on various factors. *Ramos v. Countrywide Home Loans, Inc.*, 82
8 Cal.App.4th 615, 622-623 (2000). Here, Class Counsel’s current lodestar, excluding anticipated post-
9 approval work on the case, is \$259,970.00, which is based on 335.7 attorney hours at reasonable
10 prevailing hourly rates for the attorneys who worked on this matter. (Minne Decl., ¶¶ 61-64, Exh. 5;
11 Ghosh Decl., ¶¶ 8-9, Exh. A.) Under California law, Class Counsel are entitled to compensation for
12 every hour reasonably spent on the matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001).
13 Moreover, Class Counsel’s lodestar in this matter actually *exceeds* the requested fee award.
14 Accordingly, the requested fee award of \$250,00.00 is reasonable under the lodestar cross-check.

15 ***1. The Number of Hours Spent on the Action Was Reasonable***

16 Reasonableness of hours is assessed by “the entire course of the litigation, including pretrial
17 matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las Virgenes*
18 *Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed at length above, this case was
19 highly contested, and Defendant made it clear that it disputed Plaintiff’s allegations, contended that
20 Plaintiff’s claims were not suitable for class treatment, and raised numerous potential defenses to both
21 class certification and liability. As detailed above, Class Counsel has expended at least 335.7 hours
22 litigating this case and finalizing the Settlement. (Minne Decl., ¶¶ 61-62, Exh. 5; Ghosh Decl., ¶¶ 8-9,
23 Exh. A.) In addition, Class Counsel anticipates that they spend an additional 20 hours following the
24 date of final approval performing tasks that are necessary to ensure that terms of the Settlement are
25 fully effectuated. (Minne Decl., ¶ 61.) The work performed by Class Counsel was necessary to ensure
26 that the Action was successfully prosecuted on behalf of the Class and that performance of the
27 Settlement is completed. In light of the facts and circumstances of this Action, as well as the result
28

1 achieved for the Class, it is clear that Class Counsel has spent a reasonable number of hours on this
2 matter.

3 **2. Class Counsel's Hourly Rates are Reasonable**

4 "The reasonable hourly rate is that prevailing in the community for similar work." *PLCM*
5 *Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1095 (2000). In determining a reasonable hourly rate, courts
6 may consider factors such as the attorney's skill and experience, the nature of the work performed, the
7 relevant area of expertise, and the attorney's customary billing rates. *Flannery v. California Highway*
8 *Patrol*, 61 Cal.App.4th 629, 632-633 (1998). The trial court may also "find hourly rates reasonable
9 based on evidence of other courts approving similar rates." *Parkinson v. Hyundai Motor America*, 796
10 F.Supp.2d 1160, 1172 (C.D. Cal. 2010). "Affidavits of the plaintiff's attorney and other attorneys
11 regarding prevailing fees in the community, and rate determinations in other cases, particularly those
12 setting a rate for the plaintiff's attorney, are satisfactory evidence of the prevailing market rate." *United*
13 *Steelworkers of America v. Phelps Dodge Corp.*, 896 F.2d 403, 407(9th Cir. 1990); *Bouman v. Block*,
14 940 F.2d 1211, 1235 (9th Cir. 1991) ("declarations stating that the rate was the prevailing market rate
15 in the relevant community [was]... sufficient to establish the appropriate rate for lodestar purposes").

16 Class Counsel are skilled litigators with extensive experience prosecuting complex wage and
17 hour class actions and representative PAGA Action. The professional background and experience
18 support the use of hourly rates of \$750.00 for the attorneys at Parker & Minne, LLP and a blended
19 hourly rate of \$800.00 for the attorneys at Lawyers for Justice, PC, yielding a total lodestar value of
20 \$259,970.00. (Minne Decl., ¶¶ 42-49, 59-64; Ghosh Decl., ¶¶ 10-11.) Class Counsel's hourly rates are
21 in line with the rates approved by courts for attorneys in California with comparable experience and
22 qualifications. (Minne Decl., ¶ 60; Ghosh Decl., ¶¶ 9-15.) *See also Roberti v. OSI Sys.*, 2015 U.S. Dist.
23 LEXIS 164312, at *19-20 (C.D. Cal. 2015) (finding rates between \$525 and \$975 per hour
24 reasonable); *Rodrigues v. County of Los Angeles*, 96 F.Supp.3d 1012, 1022-1023 (C.D. Cal. 2014)
25 (approving attorney rates in 2014 from \$500 to \$975); *Perfect 10, Inc. v. Giganews, Inc.*, No. CV 11-
26 07098-AB SHX, 2015 WL 1746484, *15-18 (C.D. Cal. 2015), *aff'd*, 847 F.3d 657 (9th Cir. 2017)
27 (finding hourly rates of \$825-\$930 for a senior partner, \$350-\$690 for associates, and \$290 and \$240
28 for support staff—for work performed in 2011 and 2014—to be reasonable and prevailing market rates

1 at that time); *Zest IP Holdings, LLC v. Implant Direct MFG., LLC*, 2014 U.S. Dist. LEXIS 167563,
2 *14-15 (S.D. Cal. 2014) (finding that plaintiff's counsel's average hourly rate of \$775 was reasonable
3 when compared to 21 other law firms practicing in the Southern District of California); *Gutierrez v.*
4 *Wells Fargo Bank, N.A.*, 2015 U.S. Dist. LEXIS 67296, *5 (N.D. Cal. 2015) (find rates between \$474
5 to \$975 for partners to be reasonable).

6 Given Class Counsel's skill and experience, and the excellent result swiftly achieved for the
7 Class, Class Counsel's hourly rates are reasonable. Plaintiff therefore respectfully requests the Court
8 award the requested attorneys' fees of \$250,000.00.¹⁴

9 **VI. THE REQUESTED COSTS TO BE REIMBURSED TO CLASS COUNSEL ARE FAIR**
10 **AND REASONABLE.**

11 Class Counsel requests the reimbursement of the costs incurred litigating this case in the
12 amount of \$16,968.03. (Minne Decl., ¶¶ 78-70, Exh. 6; Ghosh Decl., ¶ 16, Exh. B.) These costs include
13 items such as filing fees, mediation fees, expert fees, as well as \$140.00 in future costs associated with:
14 (1) the filing of the Motion for Final Approval; (2) monitoring distribution of the Gross Settlement
15 Amount; and (3) filing of a final accounting declaration. These costs are significantly less than the
16 \$30,000.00 allocation to costs under the Settlement, meaning an additional \$13,031.97 will be
17 allocated to the Net Settlement Amount and distributed to Participating Class Members. (Minne Decl.,
18 ¶ 70; Agreement, ¶ 52.) These costs were both reasonable and necessary for the successful resolution
19 of this Action and should be approved by the Court.

20 **VII. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS**
21 **FAIR AND REASONABLE.**

22 Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments as
23 compensation "for the expense or risk they have incurred in conferring a benefit on other members of
24 the class." *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399, 412 (2010). The criteria courts
25 may consider in determining whether to make an enhancement payment include: (1) risks faced by the
26

27
28 ¹⁴ Parker & Minne LLP and Lawyers for Justice, PC have agreed that any attorneys' fees awarded in this case will be divided equally between the firms. Plaintiff was provided a full written disclosure of this arrangement and consented to the arrangement in writing. (Minne Decl., ¶ 66; Estrada Decl., ¶ 15.)

1 representative; (2) personal difficulties encountered; (3) the time and effort spent on the case; (4) the
2 duration of the litigation; and (5) the personal benefit to the representatives. *See Van Vranken v.*
3 *Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995); *Gaudin v. Saxon Mortgage Servs., Inc.*,
4 2015 WL 7454183, at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be “fair and
5 reasonable”).

6 The requested Class Representative Service Award in the amount of \$7,500.00 to Plaintiff is
7 fair and appropriate based on the substantial amount of effort Plaintiff invested into bringing this suit
8 and assisting Class Counsel on this case. Throughout the course of the litigation, Plaintiff spent a
9 substantial amount of time and effort searching for relevant documents and providing the facts and
10 evidence necessary to help establish the claims alleged against Defendant. Plaintiff was available
11 whenever she was needed by Class Counsel, and actively provided information to support pursuit of
12 her claims for the benefit the Class. Prior to signing the Settlement Agreement, Plaintiff reviewed the
13 Settlement Agreement, asked questions, and extensively discussed the terms of the Settlement with
14 Class Counsel. The information and documentation provided by Plaintiff was instrumental in
15 establishing the wage and hour violations alleged in this action, and the recovery provided for in the
16 Settlement Agreement would have been impossible to obtain without her active participation. (Minne
17 Decl., ¶ 715; Ghosh Decl., ¶ 17; Estrada Decl., ¶¶ 4-7, 11.)

18 At the same time, Plaintiff faced many risks in serving as the class representative in this
19 matter. Plaintiff faces actual risks with her future employment, as putting herself on public record in
20 an employment lawsuit could also very well affect her likelihood for future employment. Plaintiff also
21 placed herself at substantial risk because if Defendant had prevailed in this action, she could have been
22 found liable for Defendant’s costs. Despite these risks, Plaintiff still chose to bring this litigation on
23 behalf of the Class and has placed the interests of the Class ahead of her own. (Minne Decl., ¶ 72;
24 Estrada Decl., ¶¶ 9-10.) Plaintiff has also agreed to enter into a general release of her individual claims
25 against Defendant which is far broader than the limited release applicable to other Participating Class
26 Members. (Agreement, ¶ 85; Minne Decl., ¶ 73; Estrada Decl., ¶ 11.)

27 As a result of Plaintiff’s service, a significant Settlement fund was secured for 222 Participating
28 Class Members, who will receive compensation for wage violations they may have never known about

1 on their own or been willing to pursue on their own. If these Class Members would have each tried to
2 pursue their legal remedies on their own, that would have resulted in each having to expend a
3 significant amount of their own monetary resources and time, which was obviated by Plaintiff putting
4 herself on the line on behalf of the Class. (Minne Decl., ¶ 74.)

5 In the final analysis, the Settlement would not have been possible without the aid of Plaintiff,
6 who put her own time and effort into this litigation, sacrificed the value of her own individual claims,
7 and placed herself at risk for the sake of the Class Members. An Enhancement Award of \$7,500.00 to
8 recognize Plaintiff's active participation in this lawsuit is well deserved and should be approved by
9 the Court. See *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995)
10 (approving \$50,000.00 enhancement); *Alcantar v. Hobart Serv.*, 2018 U.S. Dist. LEXIS 221900 at *
11 28 (C.D. Cal. 2018) (approving incentive award of \$25,000.00); *Flo & Eddie, Inc. v. Sirius XM Radio,*
12 *Inc.*, 2017 U.S. Dist. LEXIS 199172 at *31 (C.D. Cal. May 8, 2017)(approving incentive awards of
13 \$25,000.00 to each named plaintiff); *Friedman v. Guthy-Renker, LLC*, 2016 U.S. Dist. LEXIS 149900
14 at *27 (C.D. Oc. 28, 2016) (holding that incentive awards totaling \$57,500.00 were "well within the
15 range. . . approved by the Ninth Circuit.") *Gaudin v. Saxon Mortgage Servs., Inc.*, 2015 WL 7454183,
16 at *10 (N.D. Cal. Nov. 23, 2015) (finding service award of \$15,000 to be "fair and reasonable"); *Miller*
17 *v. CEVA Logistics USA, Inc.*, 2015 WL 4730176, at * 9 (E.D. Cal. Aug. 10, 2015) (approving service
18 award of \$15,000 to each plaintiff).

19 **VIII. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE.**

20 As set in the accompanying Declaration of Nick Castro on behalf of ILYM Group, Inc., the
21 Settlement Administrator has incurred a total of \$7,550.00 in costs associated with administering the
22 Settlement. (Castro Decl., ¶ 19, Exh. B) These costs, which are less than the maximum costs allowed
23 under the Settlement, were incurred by the Settlement Administrator in performing various duties and
24 tasks necessary to complete administration of the Settlement and should be approved in full by the
25 Court.

26 **IX. CONCLUSION**

27 For the foregoing reasons, Plaintiff respectfully requests that the Court grant the Motion for
28 Final Approval and enter Judgment in this case pursuant to the terms of the Settlement. Plaintiff further

1 requests that the Court set a post-approval final accounting hearing for December 1, 2024, or a date
2 thereafter that is convenient for the Court.

3
4 Dated: March 8, 2024

Respectfully submitted,

PARKER & MINNE, LLP

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6 By:  _____

7 S. Emi Minne
8 Attorneys for Plaintiff
9 NADIA ESTRADA
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