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Attorneys for Plaintiff and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

AUXAVIAIR CARTER, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

MEDLAB2020, Inc., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 30-2022-01247444-CU-OE-CXC

CLASS & REPRESENTATIVE ACTION

[*Assigned for all purposes to Hon. Lon F. Hurwitz, Dept. CX-103*]

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

FINAL APPROVAL HEARING
Date: November 15, 2024
Time: 1:30 p.m.
Dept.: CX-103

Complaint filed: February 28, 2022
FAC filed: May 10, 2022
Trial date: Not set

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 15, 2024 at 1:30 p.m., in Department CX-103 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Auxaviair Carter ("Plaintiff") will, and hereby does, move for an order as follows:

1. Certifying the Class for settlement purposes;
2. Approving the settlement as fair and reasonable and finding that class members were given notice of the settlement, and advised of their rights to participate in the settlement, object to the settlement, or exclude themselves from the settlement, in a reasonable manner;
3. Appointing Plaintiff Auxaviair Carter as Class Representative for settlement purposes, and approving a Class Representative Service Award of $5,000.00 to named Plaintiff;
4. Appointing Plaintiff's Counsel, Justin F. Marquez and Arrash T. Fattahi of Wilshire Law Firm, PLC as Class Counsel for settlement purposes, and approving payment of $131,579.74 in attorneys' fees, which is one-third of the Total Settlement Amount;
5. Approving costs in the amount of $18,873.81 for litigating this action to Class Counsel;
6. Approving payment of administrative expenses to ILYM Group, Inc. as the Settlement Administrator in the amount of $12,150.00;
7. Directing that the clerk of the Court to enter the Court's order as a final judgment; and,
8. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the Parties for the purposes of implementing, enforcing and/or administering the Settlement or enforcing the terms of the judgment.

This Motion will be based on the accompanying Memorandum of Points and Authorities, the Declarations of Justin F. Marquez and Cassandra Polites, and such oral argument as may be heard by the Court, and all other papers on file in this action, including, but not limited to, the Declaration of Plaintiff (previously submitted in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement).

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Dated: November 1, 2024

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

By: ______________________

Justin F. Marquez
Arrash T. Fattahi

Attorneys for Plaintiff and the Class

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TABLE OF AUTHORITIES

STATE CASES

Beaver v. Tarsadia Hotels
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Cellphone Term. Fee Cases
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Clark v. Am. Residential Services LLC
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Dunk v. Ford Motor Co.
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Gentry v. Super. Ct.
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Hernandez v. Restoration Hardware
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In re Consumer Privacy Cases
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Ketchum v. Moses
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Kullar v. Foot Locker Retail, Inc.
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Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles
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Neary v. Regents of Univ. of California
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Raining Date Corp. v. Barrenechea
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Sutter Health Uninsured Pricing Cases
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Wershba v. Apple Computers, Inc.
(2001) 91 Cal.App.4th 224....................14, 19, 21

FEDERAL CASES

Been v. O.K. Industries Inc.
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Harris v. Marhoefer
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Vizcaino v. Microsoft Corp.
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TREATISES

Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.) 18, 19

OTHER SOURCES

Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303 (2006) 24

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Auxaviair Carter ("Plaintiff") seeks final approval of a proposed $394,739.21 non-reversionary, class action settlement with Medlab2020, Inc. ("Defendant," and collectively with Plaintiff, the "Parties").[1] The Settlement will provide substantial monetary payments to approximately 459 class members. And, as set forth more fully below, the proposed Settlement satisfies all the criteria for settlement approval under California law.

The proposed settlement satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the Settlement was reached through extensive, mediated arm's-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage-and-hour litigation. Upon the Court's approval of the settlement, participating class members will receive an ***average estimated individual <u>net</u> settlement payment of approximately $448.82***, with the ***highest individual <u>net</u> settlement payment to be paid of approximately $2,034.07***. (Polites Decl., ¶ 17.) As of the filing this Motion for Final Approval of Class and PAGA Action Settlement (the "Motion"), there are **no objections to the settlement** and **no requests for exclusion**. (*Id.* at ¶¶ 12-13.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Final approval of the settlement is warranted as it satisfies all the criteria for approval under California law. As demonstrated in the Motion for Preliminary Approval, the proposed Settlement provides excellent benefits to the class, particularly considering the complexities and risks of the case. Accordingly, Plaintiff requests that the Court grant final approval of the proposed Settlement.

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[1] In light of the escalator clause being triggered, the Gross Settlement Amount increased by $104,739.21. (Declaration of Cassandra Polites of ILYM Group, Inc. Regarding Notice and Settlement Administration ["Polites Decl."], ¶ 7.)

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims

This is a wage-and-hour class and Private Attorneys General Act ("PAGA") (Labor Code §§ 2699, *et seq.*) representative action. Plaintiff and putative Class Members worked in California as hourly-paid or non-exempt employees for Defendant during the Class Period (September 3, 2017 to March 28, 2024). Defendant specializes in clinical laboratory providing "fast and accurate test results to both doctors and patients," with multiple sites throughout the state of California. (Declaration of Justin F. Marquez in Support of Plaintiff's Motion for Final Approval of Class and PAGA Action Settlement ["Marquez Decl."], ¶ 2.)

Plaintiff alleges that Defendant's payroll, timekeeping, and wage-and-hour practices resulted in Labor Code violations. In addition, Plaintiff alleges that Defendant failed to provide employees with legally compliant meal and rest periods and improperly calculated the regular rate of pay for overtime and sick pay. Furthermore, Plaintiff alleges that Defendant failed to include all renumerations in the employees' overtime rate, sick pay, meal period premiums, and unreimbursed business expenses. Based on these allegations, Plaintiff asserts related claims against Defendant for failure to provide accurate wage statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.) Defendant denies these allegations.

On February 28, 2022, Plaintiff filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to indemnify for necessary business expenditures; and (8) unfair business practices (Business and Professions Code § 17200, *et seq.*). (*Id.* at ¶ 4.) On May 10, 2022, Plaintiff filed his First Amended Class and Representative Action Complaint, which added a cause of action for civil penalties under PAGA. (*Id.*)

B. Discovery and Investigation

Following the filing of the Complaint, the Parties exchanged documents and information

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before mediating this action. Defendant produced a sample of time and pay records for class members. Defendant also provided documents of its wage-and-hour policies and practices during the class period, and information regarding the total number of current and former employees in its informal discovery responses. (*Id.* at ¶ 5.)

After reviewing documents regarding Defendant's wage-and-hour policies and practices and analyzing Defendant's timekeeping and payroll records, Class Counsel was able to evaluate the probability of class certification, success on the merits, and Defendant's maximum monetary exposure for all claims. (*Id.* at ¶ 6.) Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Class Counsel reviewed these records and prepared a damage analysis assessing Defendant's potential liability prior to mediation. (*Id.*)

C. Settlement Negotiations and Agreement

On November 4, 2022, the Parties participated in private mediation with experienced class action mediator, Jeffrey Krivis, Esq. (*Id.* at ¶ 7.) The mediation was conducted via Zoom. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions regarding the strengths and weaknesses of Plaintiff's claims and Defendant's defenses, the Parties reached a resolution, the material terms of which are encompassed within the Settlement Agreement. (*Id.*, **Ex. 1** [Joint Stipulation of Class and PAGA Action Settlement].)

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 8.)

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D. Preliminary Approval and Overwhelming Support for the Settlement

The Court granted Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement on March 28, 2024. (*Id.* at ¶ 9.) The deadline for class members to opt out or object to the Settlement was June 17, 2024. (*Id.*) The reaction of the Class to the settlement has been overwhelmingly positive. Indeed, as of the filing of this Motion, no Class Member has opted out of the settlement, and no Class Members have objected to the settlement. (*Id.,* Polites Decl., ¶¶ 12-13.)

E. Key Terms of the Proposed Settlement

Under the Settlement Agreement, Defendant will pay $394,739.21 to resolve this litigation. The key terms include the following (Settlement, §§ 27 [a – w]):

a. It is agreed by and among the Class and Defendant that this Action and any claims, damages, or causes of action arising out of the disputes which are the subject of this Action, be settled and compromised as between the Class and Defendant, subject to the terms and conditions set forth in this Settlement and the approval of the Court.

b. Effective Date: Shall be the date all of the following have occurred: (i) final approval of the settlement is granted by the Court; (ii) the Gross Settlement Amount is fully funded by Defendant; and (iii) Judgment approving the settlement becomes Final. "Final" shall mean the latest of: (i) if there is an appeal of the Court's Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for writ of certiorari to the United States Supreme Court, or, (ii) if a petition for writ of certiorari is filed, the date of denial of the petition for writ of certiorari, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no objection is made, or if an objection is withdrawn prior to the date the Court grants final approval, the date the final approval order is signed.

c. Gross Settlement Amount: Defendant's maximum total payment under the

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Settlement, including all attorney's fees and costs, the Service Payment to the named Plaintiff, the costs of settlement administration, the PAGA Allocation, and any other payments provided by this Settlement, is $290,000.00 ("Gross Settlement Amount"), subject to the Escalator Clause (which was triggered here) and except that, to the extent that any portions of the Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any employer payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions.

d. Escalator Clause: In the event of an increase of more than 15% from original estimate of 8,661 workweeks, in the period from September 3, 2017 through date the Court grants preliminary approval (i.e. specifically 9,960 or more workweeks), the settlement amount shall be increased by the percentage that that actual number of workweeks exceeds a 15% increase from the original estimate. The Gross Settlement Amount will not be reduced for any reason.[2]

e. Non-reversionary Settlement: No portion of the Gross Settlement Amount will revert to Defendant.

f. No Claims Required: Class Members will not be required to submit a claim to receive their Settlement payment.

g. Net Settlement Amount: The Net Settlement Amount shall be calculated by deducting from the Gross Settlement Amount ($394,739.21) the following sums, subject to approval by the Court: (1) attorney's fees (not to exceed 33 1/3% of the Gross Settlement Amount, or $131,579.74); (2) reasonable litigation costs (not to exceed $20,000.00); (3) the Service Payment (not to exceed $5,000.00 to the named Plaintiff); (4) the PAGA Penalty Payment in the amount of $15,000.00 (which is 75% of the PAGA Allocation); and (5)

[2] "The escalator clause was triggered and the Defendant agreed to pay the increased Gross Settlement Amount. Therefore, the Gross Settlement Amount increased by 36.12% or $104,739.21. The new Gross Settlement Amount is $394,739.21." (Polites Decl., ¶ 6.)

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costs of settlement administration (estimated not to exceed $15,000). Settlement Payments to the Class Members will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount as set forth below.

h. Payroll Taxes and Required Withholdings: To the extent that any portions of the Settlement Class Members' Settlement Payments constitute wages, Defendant will be separately responsible for any **employer** payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Except for any employer payroll taxes and as set forth in the Escalator Clause, it is understood and agreed that Defendant's maximum total liability under this Settlement shall not exceed the Gross Settlement Amount. The Settlement Administrator will calculate and submit the Defendant's employer share of payroll taxes after advising Defendant of the total amount owed, in aggregate, as employer-side payroll taxes and receiving a lump sum payment from Defendant in that amount when the Gross Settlement Amount is delivered to the Settlement Administrator.

i. Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a pro-rata share of the Net Settlement Amount (less the PAGA Settlement Payments to the LWDA), as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member's Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows: [Workweeks worked by a Settlement Class Member] ÷ [Sum of all Covered Workweeks worked by all Settlement Class Members] × [Net Settlement Amount – all PAGA Settlement Payments to the LWDA] = individual Settlement Payment for a Settlement Class Member. Settlement

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Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. All checks not cashed within 180 days of payment shall be sent to a *cy pres* recipient, Legal Aid at Work, an organization that seeks to protect the rights of workers.

j. PAGA Payments: PAGA Settlement Payments will be paid out of the Net Settlement Amount. Each PAGA Employee will be paid a pro-rata share of the PAGA Employees' PAGA Settlement Payment, as calculated by the Settlement Administrator minus PAGA Settlement Payments to the LWDA . Class Members will not be permitted to exclude themselves from this portion of the Settlement. The pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows: [PAGA Pay Periods worked by a PAGA Employee] ÷ [Sum of all PAGA Pay Periods worked by all PAGA Employees] × [PAGA Settlement Payment] = individual PAGA Employee's portion of the PAGA Settlement Payment. PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issue to the Settlement Class. Un-cashed, unclaimed or abandoned checks, shall be transmitted to the California Controller's Office, as set forth below. The LWDA's PAGA Penalty Payment will issue to the LWDA at the same time Settlement Payments issue to the Settlement Class.

k. Allocation of Settlement Payments: The Parties have agreed that Settlement Class Payments will be allocated as follows: 33 1/3% to wages, 33 1/3% to penalties, and 33 1/3% to interest. The PAGA Settlement Payment shares to PAGA Employees will be entirely allocated to penalties. Appropriate federal, state and local withholding taxes will be taken out of the wage

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allocations, and each Class Member will receive an IRS Form W-2 with respect to this portion of the Settlement Payment. The employer's share of payroll taxes and other required withholdings will be paid as set forth above, including but not limited to the Defendant's FICA and FUTA contributions, based on the payment of claims to the Class Members. IRS Forms 1099 will be issued to each Class Member reflecting the payments for penalties and interest. Class Members are responsible to pay appropriate taxes due on the Settlement Payments they receive. To the extent required by law, IRS Forms 1099 and W-2 will be issued to each Class Member with respect to such payments.

l. <u>Settlement Payments Do Not Give Rise to Additional Benefits</u>: All Settlement Payments to individual Class Members shall be deemed to be paid to such Class Member solely in the year in which such payments actually are received by the Class Member. It is expressly understood and agreed that the receipt of such Settlement Payments will not entitle any Class Member to additional compensation or benefits under any company bonus, contest or other compensation or benefit plan or agreement in place during the period covered by the Settlement up to and including the date the Settlement becomes effective, nor will it entitle any Class Member to any increased retirement, 401(k) benefits or matching benefits or deferred compensation benefits. It is the intent that the Settlement Payments provided for in this Settlement are the sole payments to be made by Defendant to the Class Members, and that the Class Members are not entitled to any new or additional compensation or benefits as a result of having received the Settlement Payments (notwithstanding any contrary language or agreement in any benefit or compensation plan document that might have been in effect during the period covered by this Settlement).

m. <u>Attorney's Fees and Costs</u>: Subject to approval by the Court, Defendant will

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not object to Class Counsel's application for attorney's fees not to exceed 33 1/3% of the Gross Settlement Amount ($131,579.74) and reimbursement of litigation costs and expenses not to exceed $20,000.00.

n. Service Payment: Subject to Court approval, and in exchange for a general release, Defendant will not object to Class Counsel's application for an additional payment of up to $5,000.00 to Plaintiff for service as a Class Representative ("Service Payment"). It is understood that the Service Payment is in addition to the individual Settlement Payment to which a Class Representative is entitled to along with the other Class Members. In exchange, Plaintiff has agreed to release all claims, whether known or unknown, under federal law or state law against the Releasees, to the extent permitted by law, through the Class Period ("Plaintiff's Released Claims"). Plaintiff understands that this release includes unknown claims and that she is, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

> **A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

Specifically excluded from Plaintiff's Released Claims are any claims for workers' compensation benefits. The Service Payment will issue at the same time all Settlement Payments are mailed to the Settlement Class.

o. Defendant or the Settlement Administrator will issue an IRS Form 1099 for the Service Payment to the Plaintiff. The Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Should the Court approve a Service Payment in an amount less than that set forth above, the difference between the lesser amount(s)

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approved by the Court and the Service Payment amount(s) set forth above shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative.

p. Settlement Administrator: The Settlement Administrator will be ILYM Group, Inc., or such Settlement Administrator as may be mutually agreeable to the Parties and approved by the Court. Settlement Administration Costs are estimated not to exceed $15,000. The costs of the Settlement Administrator for work done shall be paid regardless of the outcome of this Settlement.

q. Funding of Settlement Account: Defendant will fund the settlement account 14 days after the date the Court grants final approval.

r. Mailing of Settlement Payments: The Settlement Administrator shall cause the Settlement Payments to be mailed to the Class Members within 14 calendar days of the receipt of funding.

s. Notice of Settlement: Each Class Member was mailed a notice setting forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the proposed class action Settlement ("Notice"). For each Class Member, there was pre-printed information on the mailed Notice, based on Defendant's records, stating the Class Member's Covered Workweeks during the Class Period and the estimated total Settlement Payment under the Settlement, including the Settlement Class Payment and the PAGA Settlement Payment that will be distributed irrespective of any exclusion request. The pre-printed information based on Defendant's records was presumed to be correct. A Class Member was afforded the opportunity to dispute the pre-printed information on the Notice as to his or her Covered Workweeks during the Class Period. Class Members must have submitted any dispute regarding the information on the Notice as to his or her Covered Workweeks within the Response Deadline. Unless a

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disputing Class Member submitted documentary evidence in support of his or her dispute, the records of the Defendant were determinative.

t. Settlement Notice Language: The Notice was issued in English and Spanish.

u. Class Members Cannot Exclude Themselves from the Released PAGA Claims: Class Members submitting a Request for Exclusion will nevertheless receive their pro-rata share of the PAGA Settlement Payment. If the Court approves the compromise of the PAGA Claim, all Class Members are bound by the Court's resolution of that Claim. Plaintiff served a notice of settlement on the California Labor and Workforce Development Agency at or before the time Plaintiff filed the Motion for Preliminary Approval.

v. Resolution of Workweek Disputes: If a Class Member disputed the accuracy of Defendant's records used to calculate Covered Workweeks, and the Parties' counsel could not resolve the dispute informally, the matter was referred to the Settlement Administrator. The dispute should have been mailed to the Settlement Administrator: ILYM Group, Inc., 14751 Plaza Dr. Ste J, Tustin, CA 92780. The Settlement Administrator reviewed Defendant's records and any information or documents submitted by the Class Member and issued a non-appealable decision regarding the dispute. The Class Member must have submitted information or documents supporting his or her position to the Settlement Administrator prior to the expiration of the Response Deadline. Information or documents submitted after the expiration of the Response Deadline will not be considered by the Settlement Administrator, unless otherwise agreed to by the Parties. In the case of a re-mailed Notice, the Response Deadline was 46 days after the date of the re-mailed Notice. The Response Deadline was only extended as expressly described herein.

w. Right of Class Member to Request Exclusion from the Settlement: Any

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Class Member was afforded the right to request exclusion from the Class by mailing a "Request for Exclusion" from the Settlement within the Response Deadline, stating, as follows or in substantially similar terms:

> "I WISH TO BE EXCLUDED FROM THE CLASS IN THE *CARTER V. MEDLAB2020, INC.* CLASS ACTION LAWSUIT, ORANGE COUNTY SUPERIOR COURT CASE NO. 30-2022-01247444-CU-OE-CXC. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OTHER THAN MY SHARE OF THE PAGA PAYMENT."

Any Request for Exclusion must have included the name, address, telephone number, last four digits of the Class Member's Social Security Number, and the signature of the Class Member requesting exclusion. The Request for Exclusion should have been mailed to the Settlement Administrator: ILYM Group, Inc., 14751 Plaza Dr. Ste J, Tustin, CA 92780. Any such request must be made in accordance with the terms of the Notice, and the Notice will advise Class Members of these requirements. Any Class Member who timely requested exclusion in compliance with these requirements (i) shall not have any rights under this Settlement other than a right to receive a pro-rata share of the portion of the PAGA payment allocated to the Class Members if the Class Member is also PAGA Employee; (ii) shall not be entitled to receive any Settlement Payments under this Settlement other than as stated in Paragraph 26(j); and (iii) shall not be bound by this Settlement or the Court's Order and Final Judgment other than as it applies to the PAGA Claim.

x. <u>Right of Settlement Class Member to Object to The Settlement</u>: Any Class Member may object to the Settlement. To object, the Class Member may (1) appear at the Final Approval Hearing, remotely or in person, to explain any objection, (2) have an attorney object for the Class Member, or (3) submit a simple written brief or statement of objection to the Settlement

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Administrator. If any Class Member chooses to submit a written objection, the written objection should contain sufficient information to confirm the identity of the objector and the basis of the objection, including (1) the full name of the Settlement Class Member; (2) the signature of the Settlement Class Member; (3) the grounds for the objection; and (4) be postmarked within the Response Deadline to permit adequate time for processing and review by the Parties of the written statement or objection. Written objections should be mailed to the Settlement Administrator: ILYM Group, Inc., 14751 Plaza Dr. Ste J, Tustin, CA 92780. Class Counsel shall ensure that any written objections are transmitted to the Court for the Court's review (either by Class Counsel or as an attachment to declaration from the Settlement Administrator). Regardless of the form, an objection alone will not satisfy the requirement that a Settlement Class Member must either make a timely complaint in intervention before final judgment or by file a motion to set aside and vacate the class judgment under Code of Civil Procedure § 663 to have standing to appeal entry of judgment approving this Settlement, as is required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal.5th 260 (2018). The Final Approval hearing shall take place in Department CX-103 of the Orange County Superior Court, located at 751 W. Santa Ana Blvd., CA 92701, as provided for in the Class Notice. A Class Member who does not object prior to or at the Final Approval Hearing, will be deemed to have waived any objections and will be foreclosed from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the Settlement. If the objecting Class Member does not formally intervene in the action or move to set aside any judgment and/or the Court rejects the Class Member's objection, the Class Member will still be bound by the terms of this Agreement. Class Counsel and Defendant's Counsel may, at least five (5) calendar days (or some other

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number of days as the Court shall specify) before the final approval hearing, file responses to any written objections submitted to the Court.

III. THE SETTLEMENT MERITS FINAL APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors to be considered in evaluating a class action settlement include "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through proceedings, the experience and views of counsel, the presence of a government participant, and the reaction of the class members to the proposed settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is fair and reasonable exists where, as here, the following four factors are present: "(l) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 245.)

Whether a class action settlement should be approved is a question committed to the trial court's broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give "[d]ue regard ...to what is otherwise a private consensual agreement between the parties." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." (*Id*. [internal citations omitted].)

A. The Settlement Reflects a Reasonable Compromise

A settlement is not judged against what the plaintiff might recover had he prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba, supra,* 91 Cal.App.4th at pp. 246, 250 ["Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement

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because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation."].)

The settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (Marquez Decl., ¶ 10.) While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. (*Id.*) Plaintiff also recognizes that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the class. (*Id.*)

Because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. ***Indeed, each Settlement Class Member is eligible to receive an average benefit of approximately $448.82, and the highest estimated net payout is expected to be approximately $2,034.07.*** (Polites Decl., ¶ 17.)

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B. <u>The Settlement was Reached After Arms-Length Negotiations Following Formal and Informal Discovery</u>

The Settlement was reached over the course of a full-day mediation with experienced employment mediator, Jeffrey Krivis, Esq. (Marquez Decl., ¶ 7.) The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate their or its position through trial and appeal if a settlement had not been reached. (*Id.*)

Prior to reaching this settlement, Class Counsel conducted formal and informal discovery concerning the claims set forth in the litigation, such as a sample of class member timekeeping and payroll records, Defendant's policies and procedures concerning the payment of wages, the provision of meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well as information regarding the number of putative class members and the mix of current versus former employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the litigation. (*Id.*) Thus, Plaintiff and his counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

C. <u>Plaintiff's Counsel Has Substantial Class Action Experience</u>

Class Counsel also has considerable experience and has demonstrated competence with litigating wage-and-hour class actions. (*Id.* at ¶¶ 27-40.) Class Counsel has substantial experience in all facets of litigation in state and federal court, including discovery, law and motion, trial, appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf of plaintiffs and have been lead counsel or otherwise exercised significant case handling responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

Based on Class Counsel's experience as employment and class action attorneys, Class Counsel is eminently qualified to evaluate the strength of Plaintiff's claims, the strength of Defendant's defenses against certification, the strength of Defendant's defenses on the merits, and the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the best interests of class members in light of the significant risks of litigation is entitled to great weight. (*See Kullar, supra,* 168 Cal.App.4th at p. 129 ["The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arms' length transaction entered without self-dealing or other potential misconduct"].)

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D. <u>There Are No Objections to the Settlement</u>

No class member has objected to the Settlement, and no class members has requested exclusion from the Settlement. (Polites Decl., ¶¶ 11-12.) The overwhelmingly positive response of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few objections and requests for exclusion support approval].)

Factors to be considered in evaluating a class action settlement include "the reaction of the class members to the proposed settlement." (*Kullar, supra,* 168 Cal.App.4th at p. 128.) The reaction here has been overwhelmingly positive. Courts have approved class action settlements in lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist. LEXIS 5976, 2001 WL 34089697, *8 [court found that the "class members overwhelmingly support[ed] the settlement" where there were over 37,000 notices sent out, 2,745 class members participated in the settlement, "only nine objections were submitted," and there were 86 timely opt-outs and over 20 additional defective or untimely opt-outs, "these indicia of the approval of the class of the terms of the settlement support a finding of fairness under Rule 23"], *citing Hanlon v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by objectors, the "fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness," and the court did not abuse its discretion in approving settlement].)

IV. <u>THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED AMOUNTS OF FEES, COSTS AND ENHANCEMENT PAYMENTS.</u>

Under the Settlement, subject to the Court's approval, Defendant has agreed to pay Class Counsel reasonable attorneys' fees in the amount of $131,579.74, which is 33 1/3% of the Gross Settlement Amount, costs up to $20,000.00 for litigating this Action, and an enhancement award of $5,000.00 to named Plaintiff. Defendant has also agreed that it would not oppose an application for these payments addressed above, and no class member has objected to these amounts.

In common fund cases like this one, the primary method California courts use for calculating attorney's fees is the percentage of the common fund method, which may be followed by a lodestar cross-check. In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, the California Supreme Court affirmed an award of 33 1/3% of a $19 million wage-and-hour class action settlement with a 2.03 to 2.13 multiplier. (*Id.* at p. 506.) In doing so, the California Supreme Court explained:

> As to the incentives a lodestar cross-check might create for class counsel, we emphasize the lodestar calculation, when used in this manner, ***does not override the trial court's primary determination of the fee as a percentage of the common fund*** and thus ***does not impose an absolute maximum or minimum on the potential fee award***. If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment. Courts using the percentage method have generally

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> weighed the time counsel spent on the case as an important factor in choosing a reasonable percentage to apply.

(*Id.* at p. 505, emphasis added; *see also Beaver v. Tarsadia Hotels* (S.D. Cal. Sept. 28, 2017) 2017 WL 4310707, at *9 [applying *Laffitte* standard to fee request for 33 1/3% of common fund].)

A. <u>A Fee Award Based on One-Third of the Common Fund is Standard</u>

According to a leading treatise on class actions, "[n]o general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented." (*See* Conte & Newberg, *Newberg on Class Actions* (3rd Ed.) § 14.03.) Attorneys' fees at fifty percent of the fund are typically considered the upper limit, with ***thirty to forty percent*** commonly awarded in cases where the settlement is relatively small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50% was awarded involved "smaller" settlement funds of under $10 million].)

The settled-for 33 1/3% fee award is consistent with the average fee award in class actions. Indeed, the custom and practice in class actions is to award approximately one-third of a fund as a fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 ["Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."].) Thus, Plaintiff's fee request is in line with the prevailing guidelines established in California case law and academic literature and is consistent with awards in California. Accordingly, the Court should approve the attorneys' fees requested herein.

B. <u>While the Lodestar Method is Not Necessary in Common Fund Cases, Courts May Perform a Cross-Check to Award Fees.</u>

Although California supports the common fund doctrine, the lodestar method can be used to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to 'cross-check' or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

Applying the lodestar method requires a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a multiplier to the lodestar to take into account various factors. "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.* at pp. 556-57.) "Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis." (*Id.* at p. 557.)

Detailed timesheets are not necessary to a lodestar cross-check. "The law is clear … that an award of attorney fees may be based on counsel's declarations, without production of detailed time records." (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375.) As the California Supreme Court explained in *Laffitte*:

> With regard to expenditure of judicial resources, we note that trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to "focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys." (5 Newberg on Class Actions, *supra*, § 15:86, p. 331; *see, e.g., Goldberger v. Integrated Resources, Inc., supra*, 209 F.3d at p. 50 [2d Cir.; "where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court"]; *In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions* (3d Cir.1998) 148 F.3d 283, 342 [agreeing with district court that "detailed time summaries were unnecessary where, as here, it was merely using the lodestar calculation to double check its fee award."]; *Barbosa v. Cargill Meat Solutions Corp.* (E.D.Cal.2013) 297 F.R.D. 431, 451 ["Where the lodestar method is used as a cross-check to the percentage method, it can be performed with a less exhaustive cataloguing and review of counsel's hours."].)

(*Laffitte, supra,* 1 Cal.5th at p. 505.)

Class Counsel's lodestar is at least $131,150 based on at over 149 hours of work performed thus far. (Marquez Decl., ¶¶ 18-19.) Accordingly, the requested fee of $131,579.74 is reasonable and fair as it is based on an approximate multiplier of 1.003. To be sure, trial courts have substantial discretion in adjusting the lodestar to account for various factors. (*See Lealao v.*

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Beneficial California, Inc. (2000) 82 Cal.App.4th 19, 26, 39-45; *see also Serrano v. Priest* (1977) 20 Cal.3d 25, 49.) In addition, it has been held that "[m]ultipliers can range from 2 to 4 or even higher." (*See Wershba*, *supra,* 91 Cal.App.4th at p. 255; *see also Van Vranken*, *supra,* 901 F. Supp. At p. 298 ["[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation."].) Similar multipliers have been found to be reasonable for Class Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB, 2021 WL 3673845, *3 [finding Wilshire Law Firm's multiplier of 2.57 reasonable "in light of the contingent nature of recovery, the complexity of the issues, and the result obtained"].)

1. Class Counsel's Rates Have Been Approved by Several Courts.

Class Counsel provides a declaration to support their lodestar hourly rates. "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." (*United Steelworkers of America v. Phelps Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of their hourly rates in other wage-and-hour class action settlements.

For example, Mr. Marquez' hourly rate of $1,500.00 was recently approved in *Suarez v. Bank of America, N.A.* (N.D. Cal. Jan. 11, 2024), No. 18-cv-01202-LB, 2024 WL150721, as well as other many other cases. (Marquez Decl., ¶ 35(c).) There, the court held that "[a]s for the lodestar cross-check, the billing rates are normal and customary for timekeepers with similar qualifications and experience in the relevant market." (*Id.* at p. *3.)

2. Applying a Positive Multiplier Is Appropriate.

Once this lodestar figure has been determined, the Court may take into account other "enhancement" factors to adjust the lodestar award. While Plaintiff seeks a modest multiplier of 1.003 here, the overall reasonableness of Plaintiff's request is underscored by the fact that a significantly higher multiplier would be justified under applicable law.

Contingency fees should be higher than fees for the same legal services paid concurrently with the provision of the services. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33.) "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the

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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." (*Id.* at p. 1133.) Application of that rule is particularly appropriate where the case is brought to redress important rights of vulnerable persons. (*Id.*) A risk enhancement is "earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather it is intended to approximate market-level compensation for such services which typically pay a premium for the risk of nonpayment or delay in payment of attorney's fees." (*Id.* at p. 1138.)

"Multipliers can range from 2 to 4 or even higher." (*Wershba*, *supra,* 91 Cal.App.4th at p. 255; *see also Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 [applying a 2.52 multiplier on a cross-check in an antitrust class action]; *Chavez, supra,* 162 Cal.App.4th at p. 60 [applying a 2.5 multiplier on a lodestar cross-check]; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n.6 ["most" common fund cases apply a multiplier of 1.0-4.0]; *Been v. O.K. Industries Inc.* (E.D. Okla. 2011) 2011 WL 4478766, *11, *citing* a study "reporting [an] average multiplier of 3.89 in survey of 1,120 class action cases" and finding that a multiplier of 2.43 would be "per se reasonable.") The intermediate court in *Laffitte*, after finding that "2 to 4" is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. (*Laffitte v. Robert Half Int'l* (2014) 231 Cal.App.4th 860, 881-82.) The intermediate court opinion was affirmed in full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

Factors considered in determining whether a lodestar multiplier is appropriate generally include: (1) the risks presented by the contingent nature of the case; (2) the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly; (3) the nature of the opposition; (4) the preclusion of other employment by the attorney due to acceptance of the case; and (5) the result obtained and the importance of the lawsuit to the public. (*Serrano, supra,* 20 Cal.3d at pp. 48-49.) All of these factors favor approval of a multiplier along the lines of those approved in the cases above.

The major consideration in determining the necessity of a multiplier is the contingent nature of the award. (*Ketchum, supra,* 24 Cal.4th at pp. 1132-33.) Further, the possibility of no recovery

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is only one of the uncertainties involved in taking on such a case. Other uncertainties are the amount that will be recovered, uncertainty as to the cost, both in effort and expenses, and uncertainty about how much time will pass before the recovery is obtained. (*Id.* at pp. 1132-1133, 1138.) Here, Class Counsel have been the only counsel to represent Class Members in this matter and have borne the entire risk and costs of litigation purely on a contingency basis. Class Counsel's outlay of time and money in this case has been significant.

The other factors are also present here. Class Counsel are skilled attorneys who have had success in wage-and-hour class actions. This case required experienced and competent lawyers and expertise in the issues presented herein. Defendant's contentions underscore the risk of prevailing at class certification and trial, and any of these obstacles could have prevented recovery completely. Further, proceeding to trial would have added years to the resolution of this case because of the difficult legal and factual issues raised and the likelihood of appeals. Despite these risks, Class Counsel took this case on a contingency basis. Yet, there are only so many cases that Class Counsel can take at any one time. Consequently, there were other meritorious cases presented to Class Counsel that would have generated substantial fees, but were declined, during the pendency of this action in order to devote the attention necessary to achieve favorable results. (Marquez Decl., ¶ 25.) Considered against the risks of continued litigation, and the importance of the employment rights and a speedy recovery, the relief provided under the Settlement represents a very strong result for the Class.

C. <u>Costs Are Reasonable.</u>

As of the date of filing this Motion, Class Counsel has incurred around $18,373.81 in costs, and they anticipate incurring at least $500 in combined additional costs up to the time the Court enters a judgment in this action and schedules a hearing on distribution. (Marquez Decl., ¶ 26.) Accordingly, Class Counsel respectfully requests reimbursement of up to $18,873.81 in costs. Notably, Defendant has agreed that they will not oppose any cost award request up to $20,000.00. The categories of costs are set forth in the accompanying Declaration of Justin Marquez, and these costs are easily seen to be both reasonable and necessary.

Counsel can recover "out-of-pocket expenses that 'would normally be charged to a fee paying client'" including costs for "service of summons and complaint, service of trial subpoenas, fee for defense expert at deposition, postage, investigator, copying costs, hotel bills, meals, messenger service and employment record reproduction." (*Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.) Such costs are properly recoverable on motions for settlement approval. (*See Nunez v. BAE Sys. San Diego Ship Repair Inc.* (S.D. Cal. 2017) 292 F. Supp. 3d 1018, 1057; *Rutti v. Lojack Corp.* (C.D. Cal. July 31, 2012) No. CV 06–00350 DOC, 2012 WL 3151077, at *12 ["Expenses such as reimbursement for travel, meals, lodging, photocopying, long-distance telephone calls, computer legal research, postage, courier service, mediation, exhibits, documents scanning, and visual equipment are typically recoverable."].)

D. <u>The Enhancement Payment to the Plaintiff is Reasonable.</u>

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp*. (9th Cir. 2009) 563 F.3d 948, 958-59.) The California Supreme Court has also noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) Plaintiff should therefore be rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

Under the settlement agreement, subject to the Court's approval, Defendant agrees to pay a Service Award in the amount of $5,000.00 to named Plaintiff. This amount is also in exchange for Plaintiff's general release of all claims against Defendant. Plaintiff submitted a declaration demonstrating his devotion to this case, including his efforts assisting counsel in the case, communicating with counsel frequently for litigation, preparing for mediation, and reviewing case-related documents. (*See, generally,* Declaration of Plaintiff, previously submitted with Plaintiff's

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Motion for Preliminary Approval.)

When compared with the amounts awarded in typical class action cases, the amount requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive award given to class action plaintiffs from **1993 to 2002** found that the "average award per class representative was $15,992 and the median award per class representative was $4,357." (Theodore Eisenberg & Jeffrey P. Miller, "Incentive Awards to Class Action Plaintiffs: An Empirical Study", 53 UCLA L. Rev. 1303, 1308 (2006).) Courts routinely approve enhancement awards more than $5,000.00 for plaintiffs represented by Class Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) 2021 WL 3673845, *3 ["The Court concludes a $10,000 incentive award is appropriate."]; *Suarez, supra,* 2024 WL 150721 at p. *4 ["The court approves awards of $10,000 for each class representative."].)

"Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit." (*Clark v. Am. Residential Services LLC* (2009) 175 Cal.App.4th 785, 804.) "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." (*Id.* at 806.) "An incentive award is appropriate 'if it is necessary to induce an individual to participate in the suit."' (*Cellphone Term. Fee Cases* (2010) 186 Cal.App.4th 1380, 1394, *quoting Clark*, 175 Cal.App.4th at 804.) The "criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." (*Id.* at pp. 1394–95.) Plaintiff's declaration describes how each of the five *Cellphone Termination* factors are present here.

E. <u>Administration Expenses Should be Approved.</u>

ILYM Group, Inc., the Settlement Administrator, estimates that it will incur a total of $12,150.00 in costs associated with the administration of this Settlement. (Polites Decl., ¶ 20.)

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These expenses are reasonable, based upon the size of the class, claim and exclusion tracking, and Class Member payment processing.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval of the proposed settlement.

Dated: November 1, 2024

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

By: ______________________________

Justin F. Marquez
Arrash T. Fattahi

Attorneys for Plaintiff and the Class

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PROOF OF SERVICE
Carter v. Medlab2020, Inc., et al.
30-2022-01247444-CU-OE-CXC

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I, Ashley Narinyans, state that I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within action; my business address is 3055 Wilshire Blvd., 12th Floor, Los Angeles, California 90010. My electronic service address is ashley.narinyans@wilshirelawfirm.com.

On **November 1, 2024,** I served the foregoing **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES**, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

R. Jeremy Adamson (251380)
jadamson@kba.law
Chad S. Pehrson (261829)
cpehrson@kba.law
Andrea Coats
acoats@kba.law
KUNZLER BEAN & ADAMSON
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La Jolla, California 92037
Telephone: (619) 365-9110
Facsimile: (801) 758-7436

Attorneys for Defendant

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

(X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.

I declare under the penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on November 1, 2024, at Los Angeles, California.

Ashley

Ashley Narinyans