Manny Starr (319778)
manny@frontierlawcenter.com
Theodore Tang (313294)
theodore@frontierlawcenter.com
Daniel Ginzburg (327338)
daniel@frontierlawcenter.com
FRONTIER LAW CENTER
23901 Calabasas Road, Suite 1084
Calabasas, CA 91302
Telephone: (818) 914-3433
Facsimile: (818) 914-3433

Attorneys for Efrain Robles,
individually and on behalf of all others similarly situated

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF IMPERIAL

EFRAIN ROBLES, for himself and all others similarly situated, Plaintiff, vs. GEO TRANSPORTATION, INC. and DOES 1 to 100, inclusive Defendants	Case No. ECU002464 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** **Date:** Feburary 11, 2025 **Time:** 8:30 a.m. **Department:** 5

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Feburary 11, 2025, at 8:30 a.m., or as soon thereafter as may be heard, in Department 5 of Imperial County Superior Court located at 939 West Main Street, El Centro, CA 92243, Plaintiff Efrain Robles will move the Court for an order and judgement for final approval of a class action settlement. Through this Motion, Plaintiff seeks entry of an Order:

(1) Approving the parties' class and representative action settlement in the amount of $750,000;

(2) Approving the payment of $250,000 (or approximately 1/3 of the Gross Settlement Fund after escalator) to Class Counsel as reasonable attorney's fees;

(3) Approving the payment of $17,632.27 to Class Counsel for reimbursement of reasonably incurred litigation expenses;

(4) Approving the payment of $5,950 to the Claims Administrator, ILYM Group, INC., for its services in administering the settlement; and

(5) Approving the payment of the $50,000 the parties set aside from the Gross Settlement Amount as PAGA civil penalties, $37,500 of which is to be paid to the Labor & Workforce Development Agency ("LWDA"), and $12,500 of which is to be paid to the Aggrieved Employees on a pro rata basis.

This motion is based upon this Notice of Motion, the Memorandum of Points and Authorities, the Class Action and Paga Settlement Agreement, the supporting Declarations of Class Counsel Manny Starr and Garvin Brown of ILYM Group, INC., the [Proposed] Order of Final Approval and Judgment, as well as all pleadings and documents filed in this action, and any other matters as may be presented at or before the final approval hearing.

DATED: January 15, 2025

/s/ Manny Starr
MANNY STARR
Attorney for Plaintiff

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Efrain Robles ("Plaintiff") seeks final approval of a $750,000 **non-reversionary** settlement of wage and hour claims on behalf of 104 current and former non-exempt employees of GEO Transportation, Inc. ("GTI" or "Defendant"). The settlement provides substantial relief to class members, with an average recovery of approximately **$4,238.35 per participating class member**, while avoiding the risks and delays of continued litigation. (Declaration of Garvin Brown in Support of Motion for Final Approval ("Brown Decl.") ¶ 13.).

On October 23, 2024, this Court granted preliminary approval of the settlement. Plaintiff now seeks final approval of the settlement.

As demonstrated below, the settlement is fair, reasonable, and adequate under Rule 23(e) and warrants final approval. Accordingly, Plaintiff respectfully requests that the Court: (1) grant final approval of the settlement; (2) approve Class Counsel's request for attorneys' fees of $250,000 (one-third of the gross settlement amount) and costs of $17,632.27; (3) approve the settlement administration costs of $5,950; (4) approve the PAGA allocation of $50,000, with $37,500 to be paid to the Labor and Workforce Development Agency and $12,500 to be distributed among the aggrieved employees; and (5) enter final judgment.

II. PROCEDURAL BACKGROUND AND SETTLEMENT TIMELINE

On April 26, 2022, Plaintiff submitted his PAGA notice to the LWDA and served it on GTI. (Declaration of Manny Starr in Support of Motion for Final Approval ("Starr Decl.") ¶ 2.). On July 5, 2022, Plaintiff filed his initial complaint alleging various wage and hour violations, including failure to provide meal and rest breaks, failure to pay overtime wages, failure to pay minimum wages, and failure to provide accurate wage statements. (*Id.*).

The parties initially participated in mediation with experienced employment law mediator Steve Pearl on September 23, 2022. (*Id.* at ¶ 3.). Although this first mediation session did not result in a settlement, it ultimately helped to narrow the issues in the case. (*Id.*). Following the unsuccessful mediation, Plaintiff filed a First Amended Complaint on October 12, 2022, adding class allegations. (*Id.*).

The parties then engaged in additional informal discovery with the goal of reaching settlement through a second mediation. (*Id.* at ¶ 4.). GTI produced substantial data for analysis, including: (1) Plaintiff's personnel file; (2) written company policies, procedures, and handbooks; and (3) a sampling of time and payroll records. (*Id.*).

The parties returned to mediation with Steve Pearl on March 2, 2023. (*Id.*). Although the case did not settle during this second mediation session, the parties continued settlement negotiations and ultimately reached an agreement on September 13, 2023. (*Id.*). After further negotiations to finalize the language of the long-form settlement agreement, the long-form agreement was fully executed on August 29, 2024. (*Id.*).

Plaintiff moved for preliminary approval, which this Court granted on October 23, 2024. Since then, the settlement administration has proceeded according to the Court's preliminary approval order. ILYM Group, Inc., the appointed settlement administrator, issued notices to the 104 class members. The opt-out and objection deadline has now passed, with only one class member opting out and no objections filed. Plaintiff now seeks final approval of the settlement.

III. THE SETTLEMENT TERMS

The Settlement provides for a total non-reversionary payment of $750,000. (Starr Decl. ¶ 7.). The gross settlement amount will be allocated as follows:

- $250,000 for attorneys' fees (33.33% of the gross settlement amount)
- $17,632.27 for litigation costs
- $50,000 for PAGA penalties, with $37,500 (75%) to the LWDA and $12,500 (25%) to aggrieved employees
- $5,950 for settlement administration costs
- $426,417.73 estimated net settlement amount for distribution to class members

(*Id.*).

The settlement covers all 104 class members who worked for GTI as non-exempt employees in California during the Class Period (July 5, 2018 to September 19, 2023). (*Id.* at ¶ 8.). The net settlement amount will be distributed based on the number of workweeks worked during the Class Period.

IV. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

Pursuant to Rule of Court 3.769(g), the court conducts a final approval hearing to inquire into the fairness of a settlement. There is a presumption of fairness when the following exist: 1) the settlement was reached through arm's-length bargaining, 2) investigation and discovery are sufficient to allow counsel to act intelligently, 3) counsel is experienced in similar litigation, and 4) the percentage of objectors is small. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) All the factors are present here. The settlement is the product of significant work and effort by the parties and their counsel. (Starr Decl. ¶ 9.).

Prior to engaging in settlement discussions, GTI produced substantial data during informal discovery, including Plaintiff's personnel file, written company policies, procedures, and handbooks, and a sampling of time and payroll records. (*Id.* at ¶ 10.). Plaintiff's counsel retained an expert to analyze this data and prepare detailed a damages model prior to settling. (*Id.* at ¶ 11.).

On October 23, 2024, the Court reviewed and granted Preliminary Approval of the settlement. (*Id.* at ¶ 12.). The Court also approved the Notice Packet to be sent to the class members. (*Id.* at ¶ 13.). The Notice Packet has been sent to the Class Members pursuant to the Court's order in both English and Spanish. (Brown Decl. ¶ 3.). On November 21, 2024, ILYM mailed the Notice Packet via First Class Mail to all 104 class members. (*Id.* at ¶ 7.). Only 2 Notice Packets were returned as undeliverable, and none included forwarding addresses. (Id. at ¶ 10). ILYM performed skip tracing on the undeliverable notices but was unable to obtain updated addresses. (*Id*.). The response from class members has been overwhelmingly positive. Only one class member submitted a timely request for exclusion by the January 6, 2025 deadline, resulting in 103 participating class members (representing 99% of the class). (Id. at ¶ 11). No objections were received by the objection deadline. (Id. at ¶ 12). Additionally, Plaintiff's counsel provided notice to the LWDA of the settlement agreement as required under Labor Code section 2699(l)(2) at the time of moving for preliminary approval. Thus, the procedural requirements for final approval have been met.

Frontier Law Center has significant experience representing employees in wage and hour cases, including numerous class and PAGA actions. (Starr Decl. ¶ 14.). Finally, the extremely low opt-out rate of less than 1% and complete absence of objections strongly support the fairness of the settlement. Thus, under *Wershba* the settlement is fair. To provide further substance for the settlement's fairness, Plaintiff will analyze the Kullar factors below.

V. THE SETTLEMENT WARRANTS FINAL APPROVAL UNDER KULLAR

In applying the presumption of fairness, the court examines the following factors: 1) strength of the case, 2) risk, expense, complexity, and likely duration of further litigation, 3) risk of maintaining class action status through trial, 4) amount offered in settlement, 5) extent of discovery completed and the stage of proceedings, 6) experience and views of counsel, 7) presence of a governmental participant, and 8) reaction of the class members to the settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.).

A. Strength of Plaintiff's Case

Based on the data obtained through informal discovery, Plaintiff's counsel analyzed GTI's potential liability for each claim. Based on this analysis, the total maximum liability, including PAGA penalties and prejudgment interest, was approximately $7,697,994. (Starr Decl. ¶ 15.). When accounting for various litigation risks and defenses outlined below, including the challenge of obtaining class certification and proving uniform violations, the $750,000 settlement represents approximately 9.7% of the total estimated maximum liability, which is well within the range of reasonableness for class action settlements. (*Id*.). Additionally, if prejudgment interest and PAGA penalties are excluded so as to only focus on the underlying wage claims, the total maximum liability is $5,705,586. (*Id*.). This results in resulting in a 13.1% recovery. (*Id*.).

Numerous courts have held that gross settlements approximating between only 8 and 25% of the defendant's potential exposure are fair and reasonable. (*See, e.g., In re Mego Fin. Corp. Secs. Litig.*, (9th Cir.2000) 213 F.3d 454, 459 [holding that class action settlement recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be assessed relative to risks of pursuing the litigation to judgment"; noting that whether the settlement is fair and adequate depends on the "the difficulties in proving the case"].); (*Bellinghausen v. Tractor Supply Co*., (N.D. Cal. Mar. 20, 2015) No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 [holding that class action settlement recovering between 8.5% and 25% of the defendant's potential exposure was fair].); (*Van Ba Ma v. Covidien Holding Inc*., (C.D. Cal. 2014) U.S. Dist. Ct. Case No. 8:12-cv-02161, 2014 WL 2472316, at *3 [court granted preliminary approval of wage and hour class settlement which obtained only 9.1% of projected damages, given the risks of continued litigation].); (*Villegas v. J.P. Morgan Chase & Co*., (N.D. Cal. Nov. 21, 2012) No. CV 09-00261 SBA EMC, 2012 WL 5878390, at *6 [holding that gross class action settlement of approximately 15% of the potential recovery was fair and reasonable].); (*Greko v. Diesel U.S.A., Inc*., (N.D. Cal. Apr. 26, 2013) No. 10–cv–02576 NC, 2013 WL 1789602, at *5 [finding that 24% was reasonable].).

The primary claims and their respective strengths and risks are as follows:

i. Meal and Rest Period Violations

Employers must allow their employees to take 30-minute meal periods after every five hours of work. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1037-1038. Such meal periods must be unfettered — i.e., when taking such meal periods, the employee must be relieved of all duty during the entire 30-minute meal period. IWC Wage Order No. 4 § 11(A). Indeed, this has been well settled since being affirmed by the California Supreme Court in *Brinker*, supra, 53 Cal. 4th at 1040-41 n. 19 ("The employer that refuses to relinquish control over employees during an owed meal period violates the duty to provide the meal period and owes compensation"). Similarly, employees' rest break must be taken off-duty and unfettered by the employer; Labor Code section 226.7 provides for an additional hour of pay at the regular rate for each meal period missed and/or day in which a rest break was denied.

Plaintiff alleges that GTI required class members to go through a COVID screening any time they entered or left the facility. (Starr Decl. ¶ 16.). Plaintiff alleges that these screenings took so long as to act as a prohibition against leaving the facility during breaks. (*Id.*). While the records indicated that GTI at least sometimes paid missed break premiums to the employees, it did not do so each time a break was so discouraged. (*Id.*). Further, even if the Screenings were not required, Plaintiff alleges that GTI's policy as written was not complaint with California law, as it stated that employees may be restricted to the premises during meal breaks but did not obtain on-duty meal period agreements. (*Id.*).

Defendant denies any liability or wrongdoing of any kind. (*Id.* at ¶ 17.). Further, Plaintiff's records indicate that he was paid meal and rest break premium pay 41 times (out of the 51 break violations alleged in the same period), from which one could infer that GTI paid for missed breaks it was aware of. (*Id.*). Furthermore, Defendant would likely argue that regardless of what the written policy says GTI may do, a violation could only occur if GTI did in fact restrict employees to the premises, which would require an individual analysis into each and every individual instance where that happened. (*Id.*).

The facts above comprised risks for certification, since there could be a possibility that only individual questions would predominate, and no method of proof would show a uniform lack of breaks at all locations. (*Id.*).

ii. Unpaid Minimum and Overtime Wages

Plaintiff alleges GTI required class members to perform work-related functions before and after their shifts without pay. (*Id.* at ¶ 18.). In addition, Plaintiff alleges that GTI did not correctly calculate overtime pay, and as a result underpaid class members. (*Id.*).

As explained above, Plaintiff alleges that GTI required each employee to go through a COVID screening before entering the facility. (*Id.* at ¶ 19.). While employees were allowed to clock in prior to the screening, they were not allowed to clock in prior to entering the lobby of the facility. (*Id.*). Due to the COVID restrictions, only 4 employees were allowed in the lobby at a time, meaning that most of the employees had to wait outside before they could clock in. (*Id.*). This caused extensive wait times for which the employees were not compensated. (*Id.*).

Yet, even if this is so, the test for whether or not this time is compensable hinges on the level of control GTI held over its employees waiting in line. (*Id.* at ¶ 20.). Defendant would likely argue that while there were delays entering the facility, these delays would be no different from traffic caused by coworkers arriving at the same time, which would clearly not be compensable. (*Id.*). Further, the level of control GTI exercised over its employees while waiting for screening is disputed.

Plaintiff further alleges that, up until GTI changed its policy in September 2021, employees were required to clock out and then go through an extensive disarming process. (*Id.* at ¶ 21.). The disarming process involved returning their weapons and signing out with their supervisor at the end of each shift. (*Id.*). In September 2021, presumably realizing that their employees should be getting paid for this time, GTI changed its policy such that they were permitted to undergo the disarming process prior to clocking out. (*Id.*).

As stated above, this policy was changed in 2021. (*Id.* at ¶ 22.). Further, not all employees in the class had to undergo this process. (*Id.*). Finally, GTI would likely argue that the disarming process is not "integral and indispensable" to the employees' performance of their daily tasks. (*Id.*).

iii. Regular Rate Violations

Plaintiff alleges that the employees received "Health & Wel" pay every pay period. (*Id.* at ¶ 23.). This pay, which was a non-discretionary, cash payment to the employees, is generally considered a "cash-in-lieu of benefits payment." However, because this "cash-in-lieu" payment was paid directly to the Aggrieved Employees, and not "irrevocably made by an employer to a trustee or third person", it should have been included in their regular rate of pay. (*See Flores v. City of San Gabriel*, (9th Cir. 2016) 824 F.3d 890, 901).

iv. Wage Statement Penalties

The wage statement violations are derivative of the unpaid time and meal and rest break violations. (*Id.* at ¶ 24.). Thus, GTI could counter that any alleged omission of information from the wage statements was not knowing and intentional, which could negate wage statement penalties. (*Id.*).

v. PAGA Penalties

While the maximum PAGA penalties were calculated at $997,450, courts have wide discretion to reduce PAGA penalties and regularly do so. (*Id.* at ¶ 25.). Given the derivative nature of PAGA claims and GTI's compliance efforts, the $50,000 PAGA allocation (with 75% to the LWDA) is fair and reasonable. (*Id.*).

B. Risk, Expense, Complexity and Duration of Further Litigation

Continued litigation would present substantial risks and challenges. Class certification would face significant hurdles, particularly regarding typicality and commonality, given the various challenges with establishing uniform violations. For example, with respect to the meal and rest break claims, GTI would argue that while its written policy may have allowed it to restrict employees to the premises during breaks, proof would be required that GTI actually did restrict employees in each instance, requiring individualized inquiries.

The pre-shift COVID screening claim would also face certification challenges, as GTI would likely argue that any waiting time was analogous to normal traffic or entry delays that are not compensable. Further, proving the level of control GTI exercised over employees while they waited would require individual analysis. The post-shift weapon checkout process claims are limited by the fact that this policy was changed in September 2021 and did not apply to all employees in the class.

The regular rate claims would require complex calculations and face potential defenses about the nature of these payments. The wage statement claims are derivative of the underlying violations and would therefore face the same certification challenges.

Given these substantial risks in continued litigation, the certainty of a significant recovery now rather than years in the future after trial and possible appeals strongly supports the reasonableness of the settlement.

C. Stage of Proceedings and Investigation

The settlement follows substantial investigation and informal discovery. (Starr Decl. ¶ 26.). GTI produced comprehensive data including class member information, time records, and wage statements. (*Id.*). Plaintiff's counsel retained an expert to analyze this data and prepare a detailed damages model. (*Id.*). Through informal discovery, the parties exchanged sufficient information to evaluate the claims' strengths and weaknesses and make informed decisions about settlement value. (*Id.*).

D. Experience and Views of Counsel

Frontier Law Center has extensive experience in wage and hour class actions and PAGA matters, having successfully prosecuted numerous similar cases. (Starr Decl. ¶ 27.). Based on this experience and their thorough investigation, Class Counsel strongly believes this settlement represents an excellent result for the class. (*Id.*).

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E. Presence of Government Participant/LWDA

The settlement allocates $50,000 to PAGA penalties, with 75% ($37,500) going to the LWDA as required by statute. Plaintiff properly provided notice to the LWDA at the outset of litigation and when seeking preliminary approval. (Starr Decl. ¶ 34.). The LWDA will also be notified of this motion for final approval as required by Labor Code section 2699(l)(2). (*Id.*). The LWDA has not indicated any objection to the settlement or PAGA allocation. (*Id.*).

F. Class Members' Reaction to Settlement

The class response strongly supports approval. Of 104 class members, only one opted out, and no one objected. (Starr Decl. ¶ 35.). This overwhelming participation rate demonstrates strong class support for the settlement. (*Id.*). Courts regularly approve settlements with far higher opt-out rates. The complete absence of objections and minimal opt-outs provides compelling evidence that the class views the settlement as fair and reasonable.

VI. THE FEE AND COST REQUEST IS REASONABLE

Class Counsel seeks an award of $250,000 in attorneys' fees (one-third of the gross settlement amount) and $17,632.27 in costs. This request is reasonable under both the percentage and lodestar methods of calculation.

A. The Percentage Method Supports the Fee Request

Courts in California frequently use the "percentage-of-the-fund" method to calculate attorneys' fees in common-fund settlements. This approach awards class counsel a percentage of the total settlement fund to compensate for their efforts, expenses, and the assumption of significant contingency risk. Here, Class Counsel requests an attorneys' fee award of one-third (33.33%) of the $750,000 Gross Settlement Amount, which is consistent with awards in similar wage and hour class actions. Indeed, the percentage-of-the-fund method is firmly endorsed in California law. In *Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480, 503, the California Supreme Court explicitly recognized that trial courts may reasonably award attorneys' fees using the percentage method, and that awarding one-third of a common fund is well within the court's discretion.

Further supporting this request is the significant risk Class Counsel undertook in prosecuting this matter on a purely contingent basis. Counsel advanced all litigation costs, performed extensive discovery and investigation, and invested considerable time preparing for and attending mediation and litigating the novel claims that form the basis of the settlement. Throughout this process, Class Counsel bore the risk of receiving no compensation at all if they were unsuccessful. This commitment of time and resources—without any guarantee of recovery—favors a fee award commensurate with a standard contingency rate.

Additionally, the 33.33% request aligns with the market rate for complex wage and hour class actions in California. Courts regularly approve fee awards of 33.33% or higher when counsel has demonstrated skill, expended significant resources, and achieved a favorable result for class members. Here, Class Counsel successfully negotiated a $750,000 non-reversionary settlement that provides meaningful and immediate relief to the class members. The Settlement also avoids the substantial expense, uncertainty, and delay that would inevitably accompany continued litigation or trial. These considerations strongly support the conclusion that a fee award of one-third of the fund is fair and reasonable under the percentage-of-the-fund method.

Thus, taking into account the excellent result for class members, the contingent risk borne by Class Counsel, the complexity of this action, and the market rate for similar wage and hour matters, the percentage method fully supports the fee request of $250,000 (33.33% of the common fund).

B. The Lodestar Cross-Check Confirms the Reasonableness

While courts in common-fund cases often rely on the percentage-of-the-fund method to determine attorneys' fees, many courts also perform a lodestar "cross-check" to confirm the reasonableness of the percentage-based award. (*See Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 504 [acknowledging that trial courts may cross-check percentage-based fees against the lodestar].) Here, Class Counsel's cumulative lodestar stands at approximately $189,767, based on the reasonable hourly rates and hours devoted to this case. (Starr Decl. ¶ 30.). The requested fee of $250,000—representing approximately 33.33% of the common fund—translates to a multiplier of about 1.32 relative to this lodestar amount. A modest positive multiplier is appropriate to account for the numerous risks and factors inherent in prosecuting this class action on a contingent basis. Class Counsel's lodestar spreadsheet is attached to the Starr Declaration as **Exhibit C**.

C. The Costs Request Is Reasonable

Class Counsel seeks reimbursement of $17,632.27 in actual litigation costs. (Starr Decl. ¶ 32.). These costs were reasonably necessary to prosecute this action. The costs include two separate mediation fees, court filing and service fees, expert fees for damages analysis, and other routine litigation expenses. Since the settlement agreement allows for a maximum cost reimbursement of $20,000, Class Counsel's $17,632.27 cost reimbursement request is within the amount allotted for in the settlement agreement. Class Counsel's costs spreadsheet is attached to the Starr Declaration as **Exhibit D**.

VII. CONCLUSION

For these reasons, Plaintiff respectfully requests this Court approve the Settlement, the proposed incentive award, and Class Counsel's request for an award of attorneys' fees, and the modified payment schedule. Plaintiff respectfully requests the court to enter judgment, retaining jurisdiction pursuant to Code of Civil Procedure section 664.6.

DATED: January 15, 2025

/s/ Manny Starr
MANNY STARR
Attorney for Plaintiff