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

MICHAEL THOMAS MENDOZA and ROSA
VALADEZ GARCIA, individually, and on behalf
of all others similarly situated, the State of
California, and other aggrieved persons,

Plaintiffs,

v.

OSI INDUSTRIES, LLC, a Limited Liability
Company; and DOES 1 through 10, inclusive,

Defendants.

Case No. CVRI2203101

**CLASS AND PAGA REPRESENTATIVE
ACTION**

*[Assigned for all purposes to: Hon. Harold W.
Hopp, Dept. 1]*

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

FINAL APPROVAL HEARING

Date: January 26, 2026

Time: 8:30 a.m.

Dept.: 1

Reservation ID. 245430952997

Complaint filed: July 26, 2022

FAC filed: July 8, 2024

Trial date: Not set

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 26, 2026 at 8:30 a.m., in Department 1 of the Riverside County Superior Court, located at 4060 Main Street, Riverside, CA 92501, Plaintiffs Michael Thomas Mendoza and Rosa Valadez Garcia (“Plaintiffs”) will, and hereby does, move for an order as follows:

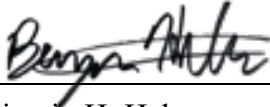
1. Certifying the Class for settlement purposes;
2. Approving the settlement as fair and reasonable and finding that class members were given notice of the settlement, and advised of their rights to participate in the settlement, object to the settlement, or exclude themselves from the settlement, in a reasonable manner;
3. Appointing Plaintiffs Michael Thomas Mendoza and Rosa Valadez Garcia as Class Representatives for settlement purposes, and approving a Class Representatives Service Award of \$10,000.00 each, for a cumulative total of \$20,000.00 paid to Plaintiffs Michael Thomas Mendoza and Rosa Valadez Garcia;
4. Appointing Plaintiffs’ Counsel, Benjamin H. Haber, Daniel J. Kramer, Alan Wilcox and Lucy Nguyen of Wilshire Law Firm, PLC as Class Counsel for settlement purposes, and approving payment of \$191,666.67 in attorneys’ fees, which is 33 1/3% of the Gross Settlement Amount;
5. Approving costs in the amount of \$22,684.39 for litigating this action to Class Counsel;
6. Approving payment of administrative expenses to ILYM Group, Inc. as the Settlement Administrator in the amount \$6,950.00
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 Benjamin H. Haber, Nick Castro, and Plaintiffs’ declarations and such oral argument as may be heard by the Court, and all other papers on file in this action.

Dated: December 31, 2025

Respectfully submitted,

WILSHIRE LAW FIRM, PLC

By: 
Benjamin H. Haber
Daniel J. Kramer
Alan Wilcox
Lucy Nguyen

Attorneys for Plaintiffs

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Michael Thomas Mendoza and Rosa Valadez Garcia (“Plaintiffs”) seeks final approval of a proposed \$575,000.00 non-reversionary, wage and hour class action settlement with Defendant OSI Industries, LLC (“Defendant”, and together with Plaintiffs, the “Parties”). The Settlement will provide substantial monetary payments to approximately 208 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, which 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 net settlement payment of approximately \$838.86*, with the *highest individual estimated net settlement payment to be paid of approximately \$4,036.65* (Declaration of Nick Castro Regarding Notice and Settlement Administration [“Castro Decl.”], ¶ 14.) As of filing this Motion for Final Approval of Class Action Settlement (the “Motion”), there **no objections to the settlement and one request for exclusion**. (*Id.* at ¶¶ 11-12.) 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 of Class Action Settlement, the proposed Settlement provides excellent benefits to the class, particularly considering the complexities and risks of the case. Accordingly, Plaintiffs request that the Court grant final approval of the proposed Settlement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs’ Claims

This is a wage and hour class action and Private Attorneys General Act (“PAGA”) (Labor

Code §§2699, et seq.) representative action. Plaintiffs and putative class members worked in California as hourly-paid or non-exempt employees for Defendant OSI Industries, LLC (“Defendant”) during the class period. Defendant advertises itself as a premier global food provider that partners with the world’s leading food service and retail food brands, such as McDonald’s, Oscar Meyer, Whole Foods, and Chipotle, to provide “concept-to-table solutions. (Declaration of Benjamin H. Haber in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement [“Haber Decl.”], ¶ 2.)

Plaintiffs allege that Defendant’s payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiffs allege that Defendant failed to pay for all hours worked. Plaintiffs further allege that Defendant failed to provide employees with legally compliant meal and rest periods and Defendant failed to reimburse business expenses. Based on these allegations, Plaintiffs assert related claims for failure to provide accurate wage statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under the PAGA. (Haber Decl., at ¶ 3.)

On April 29, 2022, Plaintiffs filed a putative wage-and-hour class action complaint against Defendant for: (1) failure to pay minimum and straight time wages (Labor Code §§ 204, 1194, 1194.2, and 1197); (2) failure to pay overtime wages (Labor Code §§ 1194 and 1198); (3) failure to provide meal periods (Labor Code §§ 226.7 and 512); (4) failure to authorize and permit rest periods (Labor Code §§ 226.7 and 512); (5) failure to timely pay final wages at termination (Labor Code §§ 201-203); (6) failure to provide accurate itemized wage statements (Labor Code § 226); and (7) unfair business practices (Business and Professions Code 17200, et seq.). On July 11, 2022, the class action was removed to the United States District Court, Central District of California which is currently pending as case number 5:22-cv-01202-JGB-SP (“Federal Class Action”). (Haber Decl., at ¶ 4.) Plaintiffs sent a notice to Defendant and the California Labor & Workforce Development Agency (“LWDA”) alleging similar wage and hour violations pursuant to the PAGA (Cal. Lab. Code §§ 2699, et seq.) on May 10, 2022. On July 26, 2022, Plaintiffs filed a separate Complaint in this court against Defendant pursuant to PAGA based on underlying Labor Code violations. On July 8, 2024, Plaintiffs filed a First Amended

1 Complaint in this court adding the causes of action from the Federal Class Action to Plaintiffs’
2 PAGA Action. (*Id.*)

3 **B. Discovery and Investigation**

4 Following the filing of the Complaint, the parties exchanged documents and information
5 before mediating this action. (Haber Decl., ¶ 5.) Defendant produced information regarding the
6 total number of current and former employees and a sample of time and pay records for class
7 members. Defendant also provided limited documentation regarding its wage and hour policies
8 and practices during the class period and a sample meal period waiver, although Defendant did not
9 provide any meal period waivers signed by Plaintiffs or any other employees. (*Id.*)

10 After reviewing documents regarding Defendant’s wage and hour policies and practices
11 and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able to evaluate
12 the probability of class certification, success on the merits, and Defendant’s maximum monetary
13 exposure for all claims. (Haber Decl., at ¶ 6.) Class Counsel also investigated the applicable law
14 regarding the claims and defenses asserted in the Litigation. (*Id.*) Class Counsel reviewed these
15 records and utilized an expert to prepare a damages analysis prior to mediation. (*Id.*)

16 **C. Settlement Negotiations and Agreement**

17 On November 21, 2023, the parties participated in private mediation with experienced
18 class action mediator Michael Dickstein, Esq. (Haber Decl., ¶ 7.) The mediation was conducted
19 via Zoom. The settlement negotiations were at arm’s length and, although conducted in a
20 professional manner, were adversarial. The Parties went into the mediation willing to explore
21 the potential for a settlement of the dispute, but each side was also prepared to litigate their
22 position through trial and appeal if a settlement had not been reached. (*Id.*) After extensive
23 negotiations and discussions regarding the strengths and weaknesses of Plaintiffs’ claims and
24 Defendant’s defenses, the Parties reached a settlement, the material terms of which are
25 encompassed within the Settlement Agreement. (*Id.*, Ex. 1 [Class Action and PAGA Settlement
26 Agreement and Class Notice].)

27 Class Counsel has conducted a thorough investigation into the facts of this case. Based
28 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.)

D. Preliminary Approval and Overwhelming Support for the Settlement

Following the execution of the Settlement Agreement, the Court granted Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement on April 30, 2025. (Haber Decl., ¶ 9.) The deadline for class members to opt out or object to the Settlement was December 4, 2025. (*Id.*) The reaction of the Class to the settlement so far has been overwhelmingly positive. Indeed, as of the filing of this Motion, only one Class Member has opted out of the settlement and no Class Member has objected to the settlement. (*Id.*)

E. Key Terms of the Proposed Settlement

Under the Settlement Agreement, Defendants will pay \$575,000.00 to resolve this litigation. The key terms include:

1. Class Definition: For purposes of this Settlement Agreement only, the Parties agree to the certification of the classes pursuant to California Code of Civil Procedure § 382 defined as: “means all persons employed by OSI in California as non-exempt employees during the Class Period.” (Settlement, ¶ 1.5.)

2. Class Period: “means the period of time from November 2, 2017 to November 21, 2023.” (Settlement, ¶ 1.12.)

3. Participating Class Members: “means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.” (Settlement, ¶ 1.35.)

4. Aggrieved Employees: “means a person employed by OSI in California as non-exempt employees at any time during the PAGA Period.” (Settlement, ¶ 1.4.)

5. PAGA Period: “means the period from May 10, 2021 to November 21, 2023.” (Settlement, ¶ 1.31.)

6. Gross Settlement Amount: This amount is \$575,000.00 for all claims, including Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class

Counsel Fees, Class Counsel Expenses, Class Representatives Service Payments, and the Administrator's Expenses. (Settlement, ¶ 1.22.)

7. Uncashed Checks: For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b), Legal Aid At Work, located at 180 Montgomery Street, #600, San Francisco, California 94104 ("Cy Pres Recipient"). The Parties, Class Counsel, and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. (Settlement, ¶ 4.4.3.)

8. Release: "All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the and ascertained in the course of the Action including any and all claims 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 employees for expenditures; and (8) violation of California's Unfair Competition Law, California Business and Professions Code §§ 17200, *et seq.* Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period." (Settlement, § 6.2.) This Release will be deemed effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff's, Class Members, and Class Counsel. (Settlement, ¶ 6.)

9. No Reversion: "None of the Gross Settlement Amount will revert to Defendant."

1 (Settlement, ¶ 3.1)

2 10. PAGA Allocation: The settlement includes \$25,000.00 allocated to Plaintiffs’
3 claims under PAGA, with 75% of which (\$18,750.00) being paid to the LWDA and 25%
4 (\$6,250.00) being paid to the Aggrieved Employees. (Settlement, § 1.34.) Class Counsel
5 submitted the proposed settlement to the LWDA before filing the Motion for Preliminary
6 Approval. (Haber Decl., ¶ 11.)

7 11. Net Settlement Amount: “The “Net Settlement Amount” is the amount that
8 remains and that shall be paid to Settlement Class Members after the following amounts are
9 subtracted: Individual PAGA Payments, the LWDA PAGA Payment, Class Representatives
10 Service Payments, Class Counsel Fees Payments, Class Counsel Litigation Expenses Payment,
11 and the Administration Expenses Payment.” (Settlement, § 1.28.)

12 12. Distribution Formula: “An Individual Class Payment calculated by (a) dividing
13 the Net Settlement Amount by the total number of Workweeks worked by all Participating Class
14 Members during the Class Period and (b) multiplying the result by each Participating Class
15 Member’s Workweeks.” (Settlement, § 3.2.4.) As to PAGA: “The Administrator will calculate
16 each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25%
17 share of PAGA Penalties (\$6,250.00) by the total number of PAGA Period Pay Periods worked
18 by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each
19 Aggrieved Employee’s PAGA Period Pay Periods.” (Settlement, § 3.2.5.1.)

20 13. Tax Allocation: 15% of each Participating Class Member’s Individual Class
21 Payment will be allocated to settlement of wage claims. The Wage Portions are subject to tax
22 withholding and will be reported on an IRS W-2 Form. The 85% of each Participating Class
23 Member’s Individual Class Payment will be allocated to settlement of claims for interest and
24 penalties. The Non-Wage Portions are not subject to wage withholdings and will be reported
25 on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for
26 any employee taxes owed on their Individual Class Payment (Settlement, ¶ 3.2.4.1.)

27 14. Class Representative Service Award: Subject to Court approval, Plaintiffs shall
28 be paid an enhancement award not to exceed \$10,000.00 each, or \$20,000.00 total. (Settlement,

§ 3.2.1.) This amount is for Plaintiffs’ time and effort in bringing and presenting the action, and in exchange for a general release of all claims, known or unknown, pursuant to Civil Code Section 1542. (Settlement, § 6.1.) If the Court approves a lesser enhancement, then the unapproved portion or portions shall revert into the Net Settlement Amount to be distributed between the participating Settlement Class Members on a pro-rata basis. (Settlement, § 3.2.1.)

15. Attorneys’ Fees and Costs: The Settlement provides that Defendant will not oppose a fee application of up to 33 1/3% (\$191,666.67) of the Gross Settlement Amount, plus out-of- pocket costs not to exceed \$25,000.00. (Settlement, § 3.2.2.)

16. Notice of Proposed Class Action Settlement: The Notice set forth in plain terms, a statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys’ fees, costs, and service awards being sought, and an explanation of how the settlement allocations are calculated. (Castro Decl., ¶ 14, Settlement, Ex. A.) Class Members were notified by first-class mail of the settlement. (Settlement, ¶ 8.4.2.) ILYM Group, Inc., the proposed Settlement Administrator, will undertake its best efforts to ensure that the notice is provided to the current addresses of class members, including conducting a national change of address search and remailing the notice to updated addresses. (*Id.*)

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: “(1) 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 or she 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 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 Plaintiffs' claims. (Haber Decl., ¶ 10.) While Plaintiffs are confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (*Id.*) Plaintiffs also recognize that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiffs 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. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of \$575,000.00 is within the "ballpark" of reasonableness, and settlement approval is appropriate.

1 *Indeed, each Settlement Class Member is eligible to receive an average benefit of approximately*
2 *\$838.86, and the highest estimated net payout is expected to be approximately \$4,036.65. (Castro*
3 *Decl., ¶ 14.)*

4 **B. The Settlement was Reached After Arms-Length Negotiations Following**
5 **Formal and Informal Discovery**

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

12 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
13 the claims set forth in the litigation, such as a sample of class member timekeeping and payroll
14 records, Defendant's policies and procedures concerning the payment of wages, the provision of
15 meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well
16 as information regarding the number of putative class members and the mix of current versus
17 former employees, the wage rates in effect, and the amount of meal and rest period premium wages
18 paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation,
19 Class Counsel investigated the applicable law regarding the claims and defenses asserted in the
20 litigation. (*Id.*) Class Counsel reviewed these records and utilized an expert to prepare a damages
21 analysis prior to mediation. (*Id.*)

22 **C. Plaintiffs' Counsel Has Substantial Class Action Experience**

23 Class Counsel also has considerable experience and has demonstrated competence with
24 litigating wage and hour class actions. (Haber Decl., ¶¶ 27-35.) Class Counsel has substantial
25 experience in all facets of litigation in state and federal court, including discovery, law and motion,
26 trial, appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on
27 behalf of plaintiffs and have been lead counsel or otherwise exercised significant case handling
28 responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

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

10 **D. There Are No Objections to the Settlement**

11 To date, no class member has objected to the Settlement, and only one class member,
12 Elizabeth Nunez, has requested exclusion from the Settlement. (Castro Decl., ¶¶ 11-12.) The
13 overwhelmingly positive response of the class strongly supports final approval of the Settlement.
14 (*See, e.g., In re Lifelock, Inc. Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL
15 3715138, *6 [relatively few objections and requests for exclusion support approval].)

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

1 **IV. THE COURT SHOULD AWARD PLAINTIFFS THE REQUESTED AMOUNTS OF**
2 **FEES, COSTS AND ENHANCEMENT PAYMENTS.**

3 Under the Settlement, subject to the Court's approval, Defendant has agreed to pay Class
4 Counsel reasonable attorneys' fees in the amount of \$191,666.67, which is 33 1/3% of the Gross
5 Settlement Amount, costs up to \$25,000.00 for litigating this action, and enhancement awards of
6 \$10,000.00 to each named Plaintiffs Michael Thomas Mendoza and Rosa Valadez Garcia.
7 Defendant has also agreed that it would not oppose an application for these payments addressed
8 above, and no class member has objected to these amounts.

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

15 As to the incentives a lodestar cross-check might create for class counsel, we
16 emphasize the lodestar calculation, when used in this manner, ***does not override***
17 ***the trial court's primary determination of the fee as a percentage of the common***
18 ***fund*** and thus ***does not impose an absolute maximum or minimum on the***
19 ***potential fee award***. If the multiplier calculated by means of a lodestar cross-
20 check is extraordinarily high or low, the trial court should consider whether the
21 percentage used should be adjusted so as to bring the imputed multiplier within a
22 justifiable range, but the court is not necessarily required to make such an
23 adjustment. Courts using the percentage method have generally weighed the time
24 counsel spent on the case as an important factor in choosing a reasonable
25 percentage to apply.

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

28 **A. A Fee Award Based on One-Third of the Common Fund is Standard**

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, Plaintiffs’ 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. While the Lodestar Method is Not Necessary in Common Fund Cases, Courts May Perform a Cross-Check to Award Fees.

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

1 be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id.* at p. 557.)

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

6 With regard to expenditure of judicial resources, we note that trial courts
7 conducting lodestar cross-checks have generally not been required to closely
8 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.”

9 (5 Newberg on Class Actions, *supra*, § 15:86, p. 331; *see, e.g., Goldberger v.*
10 *Integrated Resources, Inc., supra*, 209 F.3d at p. 50 [2d Cir.; “where used as a
11 mere cross-check, the hours documented by counsel need not be exhaustively
12 scrutinized by the district court”]; *In re Prudential Ins. Co. America Sales*
13 *Practice Litigation Agent Actions* (3d Cir.1998) 148 F.3d 283, 342 [agreeing with
14 district court that “detailed time summaries were unnecessary where, as here, it
was merely using the lodestar calculation to double check its fee award.”];
15 *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.”].)

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

16 Class Counsel’s lodestar is at least \$156,525 based on over approximately 171 hours of
17 work performed thus far. (Haber Decl., ¶¶ 18-19.) Accordingly, the requested fee of \$191,666.67
18 is reasonable and fair as it is based on an approximate multiplier of 1.2. To be sure, trial courts
19 have substantial discretion in adjusting the lodestar to account for various factors. (*See Lealao v.*
20 *Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26, 39-45; *see also Serrano v. Priest* (1977)
21 20 Cal.3d 25, 49.) In addition, it has been held that “[m]ultipliers can range from 2 to 4 or even
22 higher.” (*See Wershba, supra*, 91 Cal.App.4th at p. 255; *see also Van Vranken, supra*, 901 F.
23 Supp. At p. 298 “[m]ultipliers in the 3-4 range are common in lodestar awards for lengthy and
24 complex class action litigation.”.) Similar multipliers have been found to be reasonable for Class
25 Counsel. (*See, e.g., Moreno v. Pretium Packaging, L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-
26 02500-SB, 2021 WL 3673845, *3 [finding Wilshire Law Firm, PLC’s multiplier of 2.57 reasonable
27 “in light of the contingent nature of recovery, the complexity of the issues, and the result
28 obtained”].)

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

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

8 **2. Applying a Positive Multiplier Is Appropriate.**

9 Once this lodestar figure has been determined, the Court may take into account other
10 “enhancement” factors to adjust the lodestar award. While Plaintiff seek a positive multiplier of
11 1.2 here, the overall reasonableness of Plaintiff’s request is underscored by the fact that a
12 significantly higher multiplier would be justified under applicable law.

13 Contingency fees should be higher than fees for the same legal services paid concurrently
14 with the provision of the services. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33.) “A
15 lawyer who both bears the risk of not being paid and provides legal services is not receiving the
16 fair market value of his work if he is paid only for the second of these functions. If he is paid
17 no more, competent counsel will be reluctant to accept fee award cases.” (*Id.* at p. 1133.)
18 Application of that rule is particularly appropriate where the case is brought to redress important
19 rights of vulnerable persons. (*Id.*) A risk enhancement is “earned compensation; unlike a
20 windfall, it is neither unexpected nor fortuitous. Rather it is intended to approximate market-
21 level compensation for such services which typically pay a premium for the risk of nonpayment
22 or delay in payment of attorney’s fees.” (*Id.* at p. 1138.)

23 “Multipliers can range from 2 to 4 or even higher.” (*Wershba, supra*, 91 Cal.App.4th at
24 p. 255; *see also Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512
25 [applying a 2.52 multiplier on a cross-check in an antitrust class action]; *Chavez, supra*, 162
26 Cal.App.4th at p. 60 [applying a 2.5 multiplier on a lodestar cross-check]; *Vizcaino v. Microsoft*
27 *Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n.6 [“most” common fund cases apply a multiplier
28 of 1.0-4.0]; *Been v. O.K. Industries Inc.* (E.D. Okla. 2011) 2011 WL 4478766, *11, *citing a*

1 study “reporting [an] average multiplier of 3.89 in survey of 1,120 class action cases” and
2 finding that a multiplier of 2.43 would be “per se reasonable.”) The intermediate court in
3 *Laffitte*, after finding that “2 to 4” is a reasonable range for multipliers on a cross-check,
4 affirmed a 2.13 multiplier. (*Laffitte v. Robert Half Int’l* (2014) 231 Cal.App.4th 860, 881-82.)
5 The intermediate court opinion was affirmed in full by the California Supreme Court in its new
6 decision guiding lower courts on assessing fees.

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

14 The major consideration in determining the necessity of a multiplier is the contingent nature
15 of the award. (*Ketchum, supra*, 24 Cal.4th at pp. 1132-33.) Further, the possibility of no recovery
16 is only one of the uncertainties involved in taking on such a case. Other uncertainties are the
17 amount that will be recovered, uncertainty as to the cost, both in effort and expenses, and
18 uncertainty about how much time will pass before the recovery is obtained. (*Id.* at pp. 1132-1133,
19 1138.) Here, Class Counsel have been the only counsel to represent Class Members in this matter
20 and have borne the entire risk and costs of litigation purely on a contingency basis. Class Counsel’s
21 outlay of time and money in this case has been significant.

22 The other factors are also present here. Class Counsel are skilled attorneys who have
23 had success in wage and hour class actions. This case required experienced and competent
24 lawyers and expertise in the issues presented herein. Defendant’s contentions underscore the
25 risk of prevailing at class certification and trial, and any of these obstacles could have prevented
26 recovery completely. Further, proceeding to trial would have added years to the resolution of
27 this case because of the difficult legal and factual issues raised and the likelihood of appeals.
28 Despite these risks, Class Counsel took this case on a contingency basis. Yet, there are only so

1 many cases that Class Counsel can take at any one time. Consequently, there were other
2 meritorious cases presented to Class Counsel that would have generated substantial fees, but
3 were declined, during the pendency of this action in order to devote the attention necessary to
4 achieve favorable results. (Haber Decl., ¶ 25.) Considered against the risks of continued
5 litigation, and the importance of the employment rights and a speedy recovery, the relief
6 provided under the Settlement represents a very strong result for the Class.

7 **C. Costs Are Reasonable.**

8 As of the date of filing this Motion, Class Counsel has incurred around \$22,684.39 in costs,
9 and Defendant has agreed that they will not oppose any cost award request up to \$25,000.00.
10 (Haber Decl., ¶ 26.) Accordingly, Class Counsel respectfully requests reimbursement of up to
11 \$25,000.00 in costs. The categories of costs are set forth in the accompanying Declaration of
12 Benjamin H. Haber, and these costs are easily seen to be both reasonable and necessary.

13 Counsel can recover “out-of-pocket expenses that ‘would normally be charged to a fee
14 paying client’” including costs for “service of summons and complaint, service of trial
15 subpoenas, fee for defense expert at deposition, postage, investigator, copying costs, hotel bills,
16 meals, messenger service and employment record reproduction.” (*Harris v. Marhoefer* (9th Cir.
17 1994) 24 F.3d 16, 19.) Such costs are properly recoverable on motions for settlement approval.
18 (*See Nunez v. BAE Sys. San Diego Ship Repair Inc.* (S.D. Cal. 2017) 292 F. Supp. 3d 1018,
19 1057; *Rutti v. Lojack Corp.* (C.D. Cal. July 31, 2012) No. CV 06–00350 DOC, 2012 WL
20 3151077, at *12 [“Expenses such as reimbursement for travel, meals, lodging, photocopying,
21 long-distance telephone calls, computer legal research, postage, courier service, mediation,
22 exhibits, documents scanning, and visual equipment are typically recoverable.”].)

23 **D. The Enhancement Payments to the Plaintiffs are Reasonable.**

24 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
25 compensate them for the expense or risk they have incurred in conferring a benefit on other
26 members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
27 Cal.App.4th 399, 412.) Courts routinely grant approval of class action settlement agreements
28 containing enhancements for the class representatives, which are necessary to provide incentive to

1 represent the class, and are appropriate given the benefit the class representatives help to bring
2 about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59.) The
3 California Supreme Court has also noted that “retaliation against employees for asserting statutory
4 rights under the Labor Code is widespread,” despite anti-retaliation statutes designed to protect
5 employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460-61.) Plaintiff should therefore be
6 rewarded for assuming the risk of retaliation for the sake of class members. (*See Frank v. Eastman*
7 *Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

8 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay
9 a Class Representative Service Payment in the amount of \$10,000.00 each, for a cumulative total
10 of \$20,000.00 to each Plaintiff Michael Thomas Mendoza and Rosa Valadez Garcia. This amount
11 is also in exchange for Plaintiffs’ general releases of all claims against Defendant. Plaintiffs have
12 submitted a declaration demonstrating their devotion to this case, including their efforts assisting
13 counsel in the case, communicating with counsel frequently for litigation, preparing for mediation,
14 and reviewing case-related documents. (*See, generally*, Declaration of Plaintiffs submitted in
15 support of Motion for Preliminary Approval.)

16 When compared with the amounts awarded in typical class action cases, the amount
17 requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive
18 award given to class action plaintiffs from 1993 to 2002 found that the “average award per class
19 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
20 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
21 53 UCLA L. Rev. 1303, 1308 (2006).) Courts routinely approve a \$10,000 enhancement award
22 for plaintiffs represented by Class Counsel. (*See, e.g., Moreno, supra*, 2021 WL 3673845 at *3
23 [“The Court concludes a \$10,000 incentive award is appropriate.”]; *Suarez, supra*, 2024 WL
24 150721 at p. *4 [“The court approves awards of \$10,000 for each class representative.”].)

25 “Since without a named plaintiff there can be no class action, such compensation as may
26 be necessary to induce him to participate in the suit.” (*Clark v. Am. Residential Services LLC*
27 (2009) 175 Cal.App.4th 785, 804.) “[T]he rationale for making enhancement or incentive
28 awards to named plaintiffs is that they should be compensated for the expense or risk they have

1 incurred in conferring a benefit on other members of the class.” (*Id.* at p. 806.) “An incentive
2 award is appropriate ‘if it is necessary to induce an individual to participate in the suit.’”
3 (*Cellphone Term. Fee Cases* (2010) 186 Cal.App.4th 1380, 1394, *quoting Clark*, 175
4 Cal.App.4th at p. 804.) The “criteria courts may consider in determining whether to make an
5 incentive award include: (1) the risk to the class representative in commencing suit, both
6 financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
7 representative; (3) the amount of time and effort spent by the class representative; (4) the
8 duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class
9 representative as a result of the litigation.” (*Id.* at pp. 1394–95.) Plaintiffs’ declarations
10 describe how each of the five *Cellphone Termination* factors are present here.

11 **E. Administration Expenses Should be Approved.**

12 ILYM Group, Inc., the Settlement Administrator, estimates that it will incur a total of
13 \$6,950.00 in costs associated with the administration of this Settlement. (Castro Decl., ¶ 16.)
14 These expenses are reasonable, based upon the size of the class, claim and exclusion tracking, and
15 Class Member payment processing.

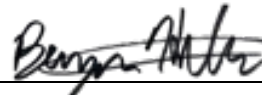
16 **V. CONCLUSION**

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

20 Dated: December 31, 2025

Respectfully submitted,

21 **WILSHIRE LAW FIRM, PLC**

22 

23 Benjamin H. Haber
24 Daniel J. Kramer
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