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

SOCORRO OCHOA, ANA GAYTAN
GARCIA, TERESA GONZALEZ VEGA,
LILIANA J. MOISEN, ANDREA GARCIA
CERVANTES, and CECILIA CERVANTES,
individually, and on behalf of all others
similarly situated; ANA GAYTAN GARCIA
and TERESA GONZALEZ VEGA, on behalf of
the State of California and other aggrieved
persons,

Plaintiffs,

v.

LA TAVOLA, LLC, a California limited
liability company; BBJ RENTALS INC., a
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 22CV000862

CLASS & REPRESENTATIVE ACTION

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

FINAL APPROVAL HEARING

Date: January 23, 2025
Time: 8:30 a.m.
Dept.: A

Complaint filed: July 29, 2022
FAC filed: April 9, 2024
Trial date: Not set

1 **NOTICE OF MOTION AND MOTION**

2 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE** that on January 23, 2025 at 8:30 a.m., in Department A of the
4 Napa County Superior Court, located at 825 Brown Street, Napa, California 94559, Plaintiffs Socorro
5 Ochoa, Ana Gaytan Garcia, Teresa Gonzalez Vega, Liliana J. Moisen, Andrea Garcia Cervantes, and
6 Cecilia Cervantes (collectively, “Plaintiffs”) will, and hereby do, move for an order as follows:

- 7 1. Certifying the Class for settlement purposes;
- 8 2. Approving the settlement as fair and reasonable and finding that class members were given
9 notice of the settlement, and advised of their rights to participate in the settlement, object to
10 the settlement, or exclude themselves from the settlement, in a reasonable manner;
- 11 3. Appointing Plaintiffs Socorro Ochoa, Ana Gaytan Garcia, Teresa Gonzalez Vega, Liliana J.
12 Moisen, Andrea Garcia Cervantes, and Cecilia Cervantes as Class Representatives for
13 settlement purposes, and approving Class Representative Service Awards of \$7,500.00 to
14 Plaintiffs Ochoa, Gaytan Garcia, and Vega; and \$5,000.00 to Plaintiffs Moisen, Garcia
15 Cervantes, and Cervantes;
- 16 4. Appointing Plaintiffs’ Counsel, Arrash T. Fattahi and Benjamin H. Haber of Wilshire Law
17 Firm, PLC as Class Counsel for settlement purposes, and approving payment of \$333,333.33
18 in attorneys’ fees, which is 33 1/3% of the Gross Settlement Amount;
- 19 5. Approving costs in the amount of \$28,461.38 for litigating this action to Class Counsel;
- 20 6. Approving payment of administrative expenses to ILYM Group, Inc. as the Settlement
21 Administrator in the amount of \$10,850.00;
- 22 7. Directing that the clerk of the Court to enter the Court’s order as a final judgment; and,
- 23 8. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the
24 Parties for the purposes of implementing, enforcing and/or administering the Settlement or
25 enforcing the terms of the judgment.

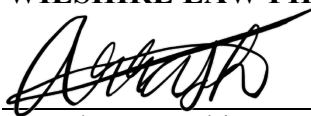
26 This Motion will be based on the accompanying Memorandum of Points and Authorities,
27 the accompanying declarations, and such oral argument as may be heard by the Court, and all
28 other papers on file in this action.

1 The Napa Court uses a Tentative Ruling System. To receive the tentative ruling,
2 visit the Court's website at <http://www.napa.courts.ca.gov> or telephone the Court at (707)
3 299-1270 after 3:00 p.m. the court day before the scheduled hearing date. Unless the Court
4 directs otherwise, no oral argument will be permitted unless a party or counsel for a party
5 requests a hearing by calling the Court and all other parties or counsel no later than 4:00
6 p.m. the court day before the hearing.

7
8 Dated: December 30, 2024

Respectfully submitted,

9 **WILSHIRE LAW FIRM, PLC**

10
11 By:  _____

Arrash T. Fattahi
Benjamin H. Haber

12 Attorneys for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Socorro Ochoa, Ana Gaytan Garcia, Teresa Gonzalez Vega, Liliana J. Moisen, Andrea Garcia Cervantes, and Cecilia Cervantes (collectively, “Plaintiffs”) seek final approval of a proposed \$1,000,000.00 non-reversionary, wage and hour class action settlement with Defendants La Tavola, LLC and BBJ Rentals Inc. (“Defendants,” and together with Plaintiffs, the “Parties”). The Settlement will provide substantial monetary payments to approximately 506 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 \$1,063.87*, with the *highest individual net settlement payment to be paid of approximately \$4,531.63*. (Declaration of Nick Castro of ILYM Group, Inc., in Support of Motion for Final Approval of Class Action Settlement [“Castro Decl.”], ¶ 13.) As of filing this Motion for Final Approval of Class Action Settlement (the “Motion”), there **no objections to the settlement and no requests 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.

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II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

This is a wage and hour class and Private Attorneys General Act ("PAGA") representative action. Plaintiffs and the putative class members worked in California as hourly-paid or non-exempt employees for Defendants during the class period. Defendants operate the "largest linen tastemaker in the nation" and have a presence in every state in the country. (Declaration of Arrash T. Fattahi in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ["Fattahi Decl.,"] ¶ 2.)

Plaintiffs allege that Defendants' payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiffs allege that Defendants failed to pay for all hours worked. Plaintiffs further allege that Defendants failed to provide employees with legally compliant meal and rest periods and Defendants 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. (*Id.* at ¶ 3.)

On July 29, 2022, Plaintiff Ochoa filed a putative wage and hour class action complaint against Defendant La Tavola, LLC 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) unfair business practices. On June 1, 2022, Plaintiff Gaytan Garcia sent a notice to Defendants and the California Labor & Workforce Development Agency ("LWDA") alleging similar wage and hour violations pursuant to the PAGA. On March 17, 2023, Plaintiff Vega also sent a notice to Defendants and the LWDA alleging similar wage and hour violations pursuant to the PAGA. On April 9, 2024, Plaintiff Ochoa filed a First Amended Class & Representative Complaint, adding Defendant BBJ Rentals Inc. as a named defendant, adding a cause of action for civil penalties under the PAGA, and adding additional class representatives. (Fattahi Decl., ¶ 4.)

1 **B. Discovery and Investigation**

2 Following the filing of the initial complaint, the Parties exchanged documents and
3 information before mediating this action. Defendants produced a sample of time and pay records
4 for the class members. Defendants also provided documents of its wage and hour policies and
5 practices during the class period and information regarding the total number of current and former
6 employees in its informal discovery responses. (*Id.* at ¶ 5.)

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

13 **C. Settlement Negotiations and Agreement**

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

24 Class Counsel has conducted a thorough investigation into the facts of this case. Based
25 on the foregoing discovery and their own independent investigation and evaluation, Class
26 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
27 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
28 of significant delay, the defenses that could be asserted by Defendants both to certification and

on the merits, trial risk, and appellate risk. (*Id.* at ¶ 8.)

D. Preliminary Approval and Overwhelming Support for the Settlement

The Court granted Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement on September 11, 2024. (Fattahi Decl., ¶ 9.) The deadline for class members to opt out or object to the Settlement was November 25, 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 Member has objected to the settlement. (*Id.*)

E. Key Terms of the Proposed Settlement

Under the Settlement Agreement, Defendants will pay \$1,000,000.00 to resolve this litigation. The key terms include:

1. Settlement Class: 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: “all of Defendants’ current and former non-exempt employees in the state of California during the Class Period.” (Settlement, § I(2).)

2. Class Period: “shall refer to the time period from February 1, 2018 through January 17, 2024...” (Settlement, § I(11).)

3. Eligible Class Member: “means a Class Member who is not an Opt-Out.” (Settlement, § I(16).)

4. Gross Settlement Amount: “means the amount Defendants shall pay as a consequence of this Settlement, which is One Million Dollars and Zero Cents (\$1,000,000.00).” (Settlement, § I(22).)

5. Uncashed Checks: Any settlement checks remaining uncashed after one hundred and eighty (180) days shall be transmitted to the cy pres recipient, Legal Aid at Work, thereby leaving no “unpaid residue” subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Settlement, § II(12)(d).)

6. Released Claims: “shall mean any and all claims, demands, liabilities, damages, attorneys’ fees, costs, and penalties against Released Parties, relating to any and all facts and

claims asserted in the Action or any other claims that could have been asserted in Action based on the facts alleged, including but not limited to claims arising from alleged unpaid wages; minimum wages; regular wages; overtime and double wages; meal and rest period violations; unpaid reimbursements and expenses; untimely payment of wages; wage statement violations; separation pay violations; failure to maintain accurate records; and PAGA penalties during the Class Period. Regardless of whether Class Members opt-out of the Class Settlement, this Settlement shall release all PAGA claims as alleged on behalf of all Class Members, as detailed herein.” (Settlement, § I(37).)

7. No Reversion: “The unclaimed funds shall not revert back to Defendants.” (Settlement, § I(17).)

8. PAGA Allocation: The settlement includes \$50,000.00 allocated to Plaintiffs’ claims under PAGA, with 75% of which (\$37,500.00) being paid to the LWDA and 25% (\$12,500.00) being paid to Aggrieved Employees. (Settlement, § I(25).) Class Counsel submitted the proposed settlement to the LWDA before filing the Motion for Preliminary Approval of Class Action Settlement. (Fattahi Decl., ¶ 11.)

9. Net Settlement Amount: “shall mean the Gross Settlement Amount minus (a) Settlement Administration Costs, (b) Class Counsel Fees and Costs, (c) the LWDA Fund, (d) the Named Plaintiffs Enhancement, and (e) To-Be Plaintiffs Enhancement.” (Settlement, § I(29).)

10. Eligible Class Member Share(s): means “the portion of the Net Settlement Amount that will be allocated to each Eligible Class Member, according to the following method: first, dividing the Net Settlement Amount by the total number of Eligible Class Member Work Weeks to arrive at the Eligible Class Member Work Week Rate, and then, second, by multiplying the resulting Eligible Class Member Work Week Rate by the total number of Eligible Class Member Work Weeks for each respective Eligible Class Member.” (Settlement, § I(17).)

11. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 10% wages, 45% to Form 1099 report, and 45% to penalties and interest.

(Settlement, § II(12)(a).)

12. Named Plaintiffs Enhancement: “shall mean the amount approved by the Court to be paid to Plaintiffs Socorro Ochoa, Ana Gaytan Garcia, and Teresa Gonzalez Vega in addition to their individual Eligible Class Member Shares, in consideration for their effort in coming forth as a class and/or PAGA representative, and in consideration for their General Release, as defined herein. The Parties agree that such amounts shall be Seven Thousand and Five Hundred Dollars and Zero Cents.” (Settlement, § I(28).) As to the To-Be Plaintiffs Enhancement: “shall mean the amount approved by the Court to be paid to To-Be Plaintiffs Liliane J. Moisen, Andrea Garcia Cervantes, and Cecilia Cervantes in addition to their individual Eligible Class Members Shares, in consideration for their effort in coming forth as a class representative, and in consideration for their General Release, as defined herein. The Parties agree that such amounts shall be Five Thousand Dollars and Zero Cents. (Settlement, § I(45).)

13. Attorneys’ Fees and Costs: “shall mean an amount of thirty three and one third percent (33 1/3%) of the Gross Settlement Amount (\$333,333.33) in Class Counsel’s Fees subject to Court approval, in addition to actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, with those costs and expenses not to exceed \$30,000.00. (Settlement, § I(5).)

14. 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., ¶ 7, Ex. A.) Class Members were notified by first-class mail of the settlement. (Settlement, § II(6).) ILYM Group, Inc., the Settlement Administrator, undertook its best efforts to ensure that the notice was provided to the current addresses of class members, including conducting a national change of address search and re-mailing the notice to updated addresses. (*Id.*)

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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.”].)

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

8 Because of the proposed Settlement, class members will receive timely, guaranteed relief
9 and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the
10 uncertainties involved in achieving class certification, the burdens of proof necessary to establish
11 liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of
12 \$1,000,000.00 is within the "ballpark" of reasonableness, and settlement approval is appropriate.

13 *Indeed, each Settlement Class Member is eligible to receive an average benefit of approximately*
14 *\$1,063.87, and the highest estimated net payout is expected to be approximately \$4,531.63.*
15 (Castro Decl., ¶ 13.)

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

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

24 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
25 the claims set forth in the litigation, such as a sample of class member timekeeping and payroll
26 records, Defendants' policies and procedures concerning the payment of wages, the provision of
27 meal and rest breaks, issuance of wage statements, and providing all wages at separation, as well
28 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, Plaintiffs and their counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

C. Plaintiffs’ Counsel Has Substantial Class Action Experience

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 27-35.) 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 Plaintiffs’ claims, the strength of Defendants’ defenses against certification, the strength of Defendants’ 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”].)

D. There Are No Objections to the Settlement

No class member has objected to the Settlement, and no class member has requested exclusion from the Settlement. (Castro 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. THE COURT SHOULD AWARD PLAINTIFFS THE REQUESTED AMOUNTS OF FEES, COSTS AND ENHANCEMENT PAYMENTS.

Under the Settlement, subject to the Court’s approval, Defendants have agreed to pay Class Counsel reasonable attorneys’ fees in the amount of \$333,333.33, which is 33 1/3% of the Gross Settlement Amount, costs up to \$30,000.00 for litigating this action, and enhancement awards of \$7,500.00 each to named Plaintiffs Ochoa, Garcia, and Vega; and \$5,000.00 each to Plaintiffs Moisen, Garcia Cervantes, and Cervantes. Defendants have also agreed that they 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 attorneys’ 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 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. 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.

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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 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 \$236,375 based on approximately 236 hours of work performed thus far. (Fattahi Decl., ¶¶ 18-19.) Accordingly, the requested fee of \$333,333.33 is reasonable and fair as it is based on an approximate multiplier of 1.4. To be sure, trial courts have substantial discretion in adjusting the lodestar to account for various factors. (*See Lealao v. 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, PLC’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’s \$1,500 hourly rate was recently approved in *Suarez v. Bank of America, N.A.* (N.D. Cal. Jan. 11, 2024), No. 18-cv-01202-LB, 2024 WL150721. 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

1 “enhancement” factors to adjust the lodestar award. While Plaintiffs seek a modest multiplier
2 of 1.4 here, the overall reasonableness of Plaintiffs’ request is underscored by the fact that a
3 significantly higher multiplier would be justified under applicable law.

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

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

26 Factors considered in determining whether a lodestar multiplier is appropriate generally
27 include: (1) the risks presented by the contingent nature of the case; (2) the novelty and difficulty
28 of the questions involved and the skill requisite to perform the legal service properly; (3) the

1 nature of the opposition; (4) the preclusion of other employment by the attorney due to
2 acceptance of the case; and (5) the result obtained and the importance of the lawsuit to the
3 public. (*Serrano, supra*, 20 Cal.3d at pp. 48-49.) All of these factors favor approval of a
4 multiplier along the lines of those approved in the cases above.

5 The major consideration in determining the necessity of a multiplier is the contingent nature
6 of the award. (*Ketchum, supra*, 24 Cal.4th at pp. 1132-33.) Further, the possibility of no recovery
7 is only one of the uncertainties involved in taking on such a case. Other uncertainties are the
8 amount that will be recovered, uncertainty as to the cost, both in effort and expenses, and
9 uncertainty about how much time will pass before the recovery is obtained. (*Id.* at pp. 1132-1133,
10 1138.) Here, Class Counsel have been the only counsel to represent Class Members in this matter
11 and have borne the entire risk and costs of litigation purely on a contingency basis. Class Counsel's
12 outlay of time and money in this case has been significant.

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

26 **C. Costs Are Reasonable.**

27 As of the date of filing this Motion, Class Counsel has incurred around \$27,961.38 in costs,
28 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. (Fattahi Decl., ¶ 26.) Accordingly, Class Counsel respectfully requests reimbursement of up to \$28,461.38 in costs. Notably, Defendants have agreed that they will not oppose any cost award request up to \$30,000.00. The categories of costs are set forth in the accompanying Declaration of Arrash T. Fattahi, 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. The Enhancement Payments to the Plaintiffs are Reasonable.

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.) Plaintiffs 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.)

1 Under the settlement agreement, subject to the Court’s approval, Defendants agreed to pay
2 Plaintiff Enhancements in the amount of \$7,500.00 each to Plaintiffs Ochoa, Garcia, and Vega;
3 and \$5,000.00 each to Plaintiffs Moisen, Garcia Cervantes, and Cervantes. These amounts are also
4 in exchange for Plaintiffs’ general releases of all claims against Defendants.

5 When compared with the amounts awarded in typical class action cases, the amount
6 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
7 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
8 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
9 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
10 53 UCLA L. Rev. 1303, 1308 (2006).) Courts routinely approve a \$10,000 enhancement award
11 for plaintiffs represented by Class Counsel. (*See, e.g., Moreno, supra*, 2021 WL 3673845 at *3
12 [“The Court concludes a \$10,000 incentive award is appropriate.”]; *Suarez, supra*, 2024 WL
13 150721 at p. *4 [“The court approves awards of \$10,000 for each class representative.”].)

14 “Since without a named plaintiff there can be no class action, such compensation as may
15 be necessary to induce him to participate in the suit.” (*Clark v. Am. Residential Services LLC*
16 (2009) 175 Cal.App.4th 785, 804.) “[T]he rationale for making enhancement or incentive
17 awards to named plaintiffs is that they should be compensated for the expense or risk they have
18 incurred in conferring a benefit on other members of the class.” (*Id.* at p. 806.) “An incentive
19 award is appropriate ‘if it is necessary to induce an individual to participate in the suit.’”
20 (*Cellphone Term. Fee Cases* (2010) 186 Cal.App.4th 1380, 1394, *quoting Clark*, 175
21 Cal.App.4th at p. 804.) The “criteria courts may consider in determining whether to make an
22 incentive award include: (1) the risk to the class representative in commencing suit, both
23 financial and otherwise; (2) the notoriety and personal difficulties encountered by the class
24 representative; (3) the amount of time and effort spent by the class representative; (4) the
25 duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class
26 representative as a result of the litigation.” (*Id.* at pp. 1394–95.)

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

28 ILYM Group, Inc., the Settlement Administrator, estimates that it will incur a total of

1 \$10,850.00 in costs associated with the administration of this Settlement. (Castro Decl., ¶ 14.)
2 These expenses are reasonable, based upon the size of the class, claim and exclusion tracking, and
3 Class Member payment processing.

4 **V. CONCLUSION**

5 For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval
6 of the proposed settlement.

7
8 Dated: December 30, 2024

Respectfully submitted,

9 **WILSHIRE LAW FIRM, PLC**

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11 Arrash T. Fattahi
12 Benjamin H. Haber

13 Attorneys for Plaintiffs
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PROOF OF SERVICE

Ochoa v. La Tavola, LLC, et al.
22CV000862

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

I, Zeyra Ceballos, 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 15707 Rockfield Blvd., Suite 250, Irvine, California 92618. My electronic service address is zeyra.ceballos@wilshirelawfirm.com.

On **December 30, 2024**, I served the foregoing **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS 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:

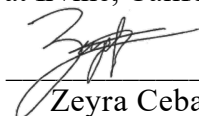
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Attorneys for Defendants

- (X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor & Workforce Development Agency Online Filing Site.
- (X) **BY E-MAIL:** I hereby certify that this document was served from Irvine, 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.

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

Executed on **December 30, 2024** at Irvine, California.



Zeyra Ceballos