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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

HECTOR MENDOZA PAZ, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

BORREGO SOLAR SYSTEMS, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 37-2022-00030081-CU-OE-CTL

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

*[Assigned for all purposes to Hon. Gregory
W. Pollack, Dept. C-71]*

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

*[Filed concurrently with: Declarations of
Justin F. Marquez, Hector Mendoza Paz, and
the Settlement Administrator; and [Proposed]
Order]*

FINAL APPROVAL HEARING

Date: March 22, 2024

Time: 9:30 a.m.

Dept: C-71

Complaint filed: July 29, 2022

FAC filed: May 25, 2023

Trial date: Not Set

1 **TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on March 22, 2024, at 9:30 a.m., in Department C-71 of
3 the San Diego County Superior Court, 330 W Broadway, San Diego, CA 92101, pursuant to Code
4 of Civil Procedure § 382 and California Rules of Court 3.769 *et seq.*, Plaintiff Hector Mendoza
5 Paz will, and hereby does, move the Court for an Order granting Final Approval of the proposed
6 class action and PAGA settlement between Plaintiff and Defendant Borrego Solar Systems, Inc.
7 Plaintiff further will and hereby does move the Court for an Order:

- 8 1. Certifying a Class for settlement purposes;
- 9 2. Approving the settlement of \$171,535.00¹ as fair and reasonable and finding that
10 Class Members were given notice of the settlement, and advised of their right to
11 participate in the settlement, object to the settlement, or exclude themselves from the
12 settlement, in a reasonable manner;
- 13 3. Appointing Plaintiff Hector Mendoza Paz as Class Representative for settlement
14 purposes, and approving payment of \$5,000.00 to Plaintiff for his services as the Class
15 Representative;
- 16 4. Appointing Plaintiff's Counsel, Justin F. Marquez, Christina M. Le, and Zachary D.
17 Greenberg of Wilshire Law Firm, PLC, as Class Counsel for settlement purposes;
- 18 5. Approving payment of settlement administrative expenses to ILYM Group, Inc. in the
19 amount of \$10,000.00;
- 20 6. Approving payment of \$57,178.33 in attorney's fees, which is 33 1/3% of the
21 settlement amount, and costs of \$14,651.90 to date for litigating this action to Class
22 Counsel;
- 23 7. Approving the PAGA Payment in the amount of \$10,000.00;
- 24 8. Directing that the clerk of the Court enter the Court's order as a Final Judgment; and
- 25 9. Without affecting the finality of the Final Judgment, reserving continuing jurisdiction
26 over the parties for the purposes of implementing, enforcing and/or administering the

27
28 ¹ The Gross Settlement Amount has increased from \$145,000.00 as a result of the
escalator clause being triggered. Please see the Settlement Administrator's Declaration, ¶¶ 5, 15.

1 Settlement or enforcing the terms of the judgment.

2 The motion is based upon this notice, the attached memorandum of points and authorities,
3 the Declarations of Justin F. Marquez, Hector Mendoza Paz, and the Settlement Administrator,
4 filed concurrently herewith, the records and files in this action, and any other further evidence or
5 argument that the Court may properly receive at or before the hearing.

6 Respectfully submitted,

7 Dated: February 29, 2024

WILSHIRE LAW FIRM

8
9 By:



Justin F. Marquez

Christina M. Le

Zachary D. Greenberg

10 Attorneys for Plaintiff
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I. INTRODUCTION

Plaintiff Hector Mendoza Paz (“Plaintiff”) seeks final approval of a proposed \$145,000 non-reversionary, wage and hour class action and Private Attorneys General Act (“PAGA”) (Cal. Lab. Code §§ 2699, et seq.) settlement with Defendant Borrego Energy, LLC (formerly known and named herein as Borrego Solar Systems, Inc.) (“Defendant,” and together with Plaintiff, the “Parties”).

The Stipulation of Class and PAGA Action Settlement and Release (“Settlement” or “Settlement Agreement”), which this Court preliminarily approved on November 3, 2023, and is attached as Exhibit 1 to the Declaration of Justin F. Marquez, satisfies all the criteria for settlement approval under California law. A presumption of fairness exists as the settlement was reached through extensive, mediated arm’s-length negotiations, sufficient investigation and discovery allowed Class Counsel to act intelligently, and Class Counsel is experienced in similar wage-and-hour litigation. The Settlement will provide substantial monetary payments to 42 Class Members. Upon the Court’s final approval of the Settlement, Participating Class Members will receive an **estimated average gross payment of \$1,519.36**. (Declaration of Christina Fowler in Support of Plaintiff’s Motion for Final approval of Class Action and PAGA Settlement [“Fowler Decl.”], ¶ 17.) Among the Participating Class Members, the **estimated highest net payment will be \$4,091.00**. (*Id.*) As of the filing of this Motion, there are no objections to the Settlement and no adequate requests for exclusion. (*Id.* at ¶¶ 11, 13.) There were also no disputes as to the calculated Workweeks for the Class Members. (*Id.* at ¶ 12.) Thus, the proposed Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members.

Plaintiff requests attorneys' fees in the amount of \$57,178.33, reimbursement of costs and expenses in the amount of \$14,651.90, an enhancement in the amount of \$5,000.00 for Plaintiff, Administrative Costs of \$10,000.00, and a PAGA Payment of \$10,000.00, with a 75% allocation to the California Labor Workforce Development Agency ("LWDA") in the amount of \$7,500.00 and a 25% allocation to PAGA Group Members in the amount of \$2,500.00, requests which are reasonable and thus should be approved by the Court.

Accordingly, Plaintiff respectfully requests the Court grant final approval of the Settlement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiff's Claims

This is a wage and hour class and PAGA representative action. Plaintiff and putative class members worked in California as hourly-paid or non-exempt employees for Defendant Borrego Energy, LLC (formerly known as Borrego Solar Systems, Inc.) during the class period. Defendant is a third-party operations and maintenance provider in California. Plaintiff was employed with Defendant as a technician in Defendant's San Diego office from roughly December 2021 to March 2022. (Declaration of Justin F. Marquez in Support of Plaintiff's Motion for Final approval of Class Action and PAGA Settlement ["Marquez Decl."], ¶ 2.)

Plaintiff alleges that Defendant's payroll, timekeeping, and wage and hour practices resulted in Labor Code violations. Plaintiff alleges that Defendant failed to pay for all hours worked, including but not limited to off-the-clock work. Plaintiff further alleges that Defendant failed to provide employees with legally compliant meal and rest periods, and Defendant failed to reimburse for necessary business-related expenses. Based on these allegations, Plaintiff asserts related claims for failure to provide accurate wage statements, failure to pay all final wages at termination, unfair business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

On July 29, 2022, Plaintiff filed a putative wage-and-hour class action complaint ("Class Action") against Defendant for: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to reimburse business expenses; and (8) violation of California's Unfair Competition Law, California Business and Professions Code §§ 17200, et seq. (*Id.* at ¶ 4.) On July 29, 2022, Plaintiff sent a notice to Defendant and the California Labor & Workforce Development Agency ("LWDA") alleging wage-and-hour violations pursuant to PAGA, Cal. Lab. Code §§ 2699, et seq. The operative complaint is the First Amended Complaint deemed filed on May 25, 2023, pursuant to a stipulation submitted by the Parties and granted by the Court. Plaintiff's First Amended Complaint adds claims for civil penalties under PAGA in

1 addition to adding claims for sick leave and regular rate of pay violations. Plaintiff also filed
2 and submitted an amended PAGA notice to the LWDA on May 19, 2023. (*Id.*)

3 **B. Discovery and Investigation**

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

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

15 Defendant denies the allegations in the Operative Complaint, denies any failure to comply
16 with the laws identified in in the Operative Complaint, and denies any and all liability for the
17 causes of action that are or reasonably could have been alleged based on the facts in the Operative
18 Complaint.

19 **C. Settlement Negotiations**

20 On February 13, 2023, the Parties participated in private mediation with experienced class
21 action mediator, Hon. Ronald S. Prager (Ret.). The mediation was conducted via Zoom. The
22 settlement negotiations were at arm’s length and, although conducted in a professional manner,
23 were adversarial. The Parties went into the mediation willing to explore the potential for a
24 settlement of the dispute, but each side was also prepared to litigate their position through trial
25 and appeal if a settlement had not been reached. (*Id.* at ¶ 7.)

26 After extensive negotiations and discussions regarding the strengths and weaknesses of
27 Plaintiff’s claims and Defendant’s defenses, the Parties reached a settlement, the material terms
28 of which are encompassed within the Settlement Agreement. (*Id.* at ¶ 8, **Ex. 1** [Joint Stipulation

of Class Action and PAGA Settlement (“Settlement Agreement”) and **Ex. 2.** [Notice of Class and PAGA Action Settlement (“Notice”)].)

Class Counsel has conducted a thorough investigation into the facts of this case. Based on the foregoing discovery and their own independent investigation and evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best interests of the Settlement Class Members in light of all known facts and circumstances, the risk of significant delay, the defenses that could be asserted by Defendant both to certification and on the merits, trial risk, and appellate risk. (*Id.* at ¶ 9.)

D. Preliminary Approval and Overwhelming Support for the Settlement

The Court granted Plaintiff’s Motion for Preliminary Approval of the Settlement on November 3, 2023. (*Id.* at 10.) The deadline for class members to opt out or object to the Settlement was January 30, 2024. The reaction of the Class to the Settlement has been overwhelmingly positive. Indeed, as of the filing of this Motion, no Class Members have opted out of the Settlement, and no Class Members have objected to the Settlement. (*Id.*)

Altogether, notices explaining class member rights were mailed out to all fifty-two (52) Class Members. (Fowler Decl., ¶ 7.) To date, only one (1) notice packet was returned, and the Settlement Administrator, ILYM Group, Inc. (“ILYM”) performed a computerized skip trace, obtained a new address and remailed the Notice Packet to the Class Member. (*Id.* at ¶ 8.) ***There are no objections to the settlement and no requests for exclusion.*** (*Id.* at ¶¶ 11, 13.) If the Court approves the settlement, the 52 Participating Class Members will receive an **estimated average net payment of \$1,519.36** with the **estimated highest net payment will be \$4,091.00.** (*Id.* at ¶ 17.)

E. Key Terms of the Proposed Settlement

The Settlement’s key terms include:

1. **Settlement Class Definition:** For settlement purposes only, the Parties agree to the certification of a class pursuant to California Code of Civil Procedure § 382 defined as: “All non-exempt or hourly-paid employees of Defendant who worked for Defendant in California during the Class Period.” (Settlement, Definitions, § 4.)

///

2. Settlement Class Period: “is February 1, 2018 through the date the court enters an order granting final approval of the Agreement.” (Settlement, Definitions, § 3.)

3. Participating Settlement Class Members: “are those Class Members who do not submit timely and compliant exclusion requests to the Settlement Administrator.” (Settlement, Definitions, § 21.)

4. Gross Settlement Amount: The Gross Settlement Amount is \$145,000 and is all-inclusive, meaning it covers all Settlement Payments, Plaintiff’s attorney’s fees and costs, the Service Payment to Plaintiff, the costs of settlement administration, the PAGA Allocation, and any other payments provided by this Settlement (“Gross Settlement Amount”), except as provided in the Escalator Clause and Defendant will be separately responsible for any employer-side payroll taxes required by law, including the employer FICA, FUTA, and SDI contributions. Defendant shall not be required to pay any additional sums under this Agreement or to otherwise settle the Action. (Settlement, Primary Terms of Settlement, § 32.)

5. Escalator Clause: “The Parties agree that in the event the actual number of Covered Workweeks exceeds 4,912, Defendant shall increase the Gross Settlement Amount by the percentage that the actual number of Covered Workweeks exceeds 4,912 (the “Escalator Clause”). For example, if the actual number of Covered Workweeks exceeds 4,912 by 1% the Gross Settlement Amount shall be increased by 1%. The Gross Settlement Amount will not be reduced for any reason.” (Settlement, Escalator Clause, § 33.) Based on class data received from Defendant, the class contained 52 class members and 5,812 total class work weeks. (Fowler Decl., ¶ 5.) ILYM calculated an overage of 901 work weeks equating to an 18.3% overage, which results in an additional \$26,535.00 being added to the original \$145,000 figure. The new and final Gross Settlement Amount is \$171,535.00. (*Id.*)

6. Uncashed Checks: “Funds from uncashed or abandoned Settlement Class Payment checks or PAGA Settlement Checks, based on a 180-day void date, shall be transmitted by the Settlement Administrator to the California State Controller’s Office for Unclaimed Property in the name of each Settlement Class Member Joint Stipulation of Class Action and PAGA Settlement and/or PAGA Employee who failed to cash their Settlement Payment check prior to the void date,

1 unless otherwise ordered by the Court.” (Settlement, Disposition of Settlement Payments and
2 Uncashed Checks, § 67.)

3 7. Release: “Release by Settlement Class Members. Upon final approval by the Court
4 of this Settlement and Defendant’s payment of the Gross Settlement Amount and Employer-Side
5 Payroll Taxes, and except as to such rights or claims as may be created by this Settlement, the
6 Settlement Class Members shall be deemed to have released the Released Parties from the Released
7 Claims arising during the Class Period. Release by PAGA Employees. Upon final approval by the
8 Court of this Settlement and Defendant’s payment of the Gross Settlement Amount and Employer-
9 Side Payroll Taxes, the PAGA Employees will be deemed to have released the Released Parties
10 from the Released PAGA Claims, regardless of whether they submitted a request for exclusion
11 from the Settlement of Class claims. Effective Date, Plaintiff and Participating Settlement Class
12 Members, for themselves and their respective heirs, executors, administrators, affiliates,
13 successors, and assigns, shall be deemed to have, and by operation of the judgment shall have, fully,
14 finally, and forever released, relinquished, and discharged all Released Claims against the Released
15 Parties, as defined herein.” (Settlement, Releases, § 69, 70.)

16 “Released Claims” means any and all claims for wages, damages, unpaid costs, penalties,
17 liquidated damages, benefits, fringes, interest, attorney fees, litigation costs, restitution, or equitable
18 relief, against any of the Released Parties, that were pled or could have been pled based on the
19 factual allegations, circumstances, and/or primary rights set forth in the Action and/or PAGA
20 Letter, including all claims under the California Labor Code, Industrial Welfare Commission Wage
21 Orders and applicable law for: failure to pay wages (including minimum wages, regular wages,
22 overtime wages, and regular rates of pay); failure to failure to pay sick leave at the proper rate of
23 pay; failure to provide compliant meal and/or rest periods or proper premiums in lieu thereof; failure
24 to pay wages timely during employment and upon termination; failure to maintain accurate records
25 (including without limitation records of hours worked and meal periods, and payroll records);
26 failure to provide legally-compliant wage statements; failure to reimburse business expenses; all
27 claims for violation of California Business and Professions Code §§ 17200, et seq., arising from
28 the above-referenced claims and those claims in the Actions; and all claims for penalties under

California Labor Code § 2698, et. seq. (Settlement, Definitions, § 18.)

8. No Reversion: “No portion of the Gross Settlement Amount will revert to Defendant.” (Settlement, Primary Terms of Settlement, § 34.)

9. PAGA Allocation: The settlement includes \$10,000 allocated to Plaintiff’s claims under PAGA, with 75% of which (\$7,500) being paid to the LWDA and 25% (\$2,500.00) being paid to the Aggrieved Employees. (Settlement, Definitions, § 12.) Class Counsel submitted the proposed settlement to the LWDA before filing this Motion for Final approval. (Marquez Decl., ¶ 11.)

10. Net Settlement Amount: The “Net Settlement Amount” shall be calculated by deducting from the Gross Settlement Amount (\$145,000.00) the following sums, subject to approval by the Court: (1) Plaintiff’s attorneys’ fees (not to exceed 33 1/3% of the Gross Settlement Amount, or \$48,333.33); (2) Plaintiff’s attorney’s reasonable litigation costs (not to exceed \$15,000.00); (3) the Service Payment (not to exceed \$5,000.00 to Plaintiff); (4) the PAGA Allocation (\$10,000.00); and (5) costs of settlement administration (\$5,350.00). (Settlement, Primary Terms of Settlement, § 36.)

11. Distribution Formula: “Settlement Class Payments (Excludes PAGA Payments): Settlement Class Payments will be paid out of the Net Settlement Amount. Each Settlement Class Member will be paid a pro-rata share of the Net Settlement Amount as calculated by the Settlement Administrator. The pro-rata share will be determined by comparing the individual Settlement Class Member’s Covered Workweeks employed during the Class Period in California to the total Covered Workweeks of all the Settlement Class Members during the Class Period as follows: [Workweeks worked by a Settlement Class Member] ÷ [Sum of all Covered Workweeks worked by all Settlement Class Members] × [Net Settlement Amount] = individual Settlement Class Payment for a Settlement Class Member. Settlement Class Payments in the appropriate amounts will be distributed by the Settlement Administrator by mail to the Settlement Class Members. Uncashed, unclaimed or abandoned checks, shall be transmitted by the Settlement Administrator to the California State Controller’s Office. PAGA Payments: PAGA Settlement Payments will be paid out of the PAGA Allocation deducted from the Gross Settlement Amount after the PAGA Penalty Amount (75

percent of the PAGA Allocation) is paid to the LWDA. Each PAGA Employee will be paid a pro-rata share of the PAGA Settlement Payment, as calculated by the Settlement Administrator. Class Members who are PAGA Employees will not be permitted to exclude themselves from this portion of the Settlement. Each PAGA Employee's pro-rata share will be determined by comparing the individual PAGA Employees' PAGA Pay Periods during the PAGA Period to the total PAGA Pay Periods of all the PAGA Employees during the PAGA Period as follows:
$$\frac{[\text{PAGA Pay Periods worked by a PAGA Employee}]}{[\text{Sum of all PAGA Pay Periods worked by all PAGA Employees}]} \times [\text{PAGA Settlement Payment}] = \text{individual PAGA Employee's portion of the PAGA Settlement Payment.}$$
 PAGA Settlement Payments to PAGA Employees in the appropriate amounts will be distributed by the Settlement Administrator by mail to the PAGA Employees at the same time Settlement Class Payments issued to the Settlement Class. Settlement Class Members who are also PAGA Employees may receive their settlement payments in a single check. Joint Stipulation of Class Action and PAGA Settlement Class Members who exclude themselves from the Class Settlement will still receive their PAGA Settlement Payment and be bound by the release of the Released PAGA Claims, notwithstanding their exclusion from the Settlement Class. Uncashed, unclaimed or abandoned checks, shall be transmitted by the Settlement Administrator to the California State Controller's Office, as set forth below. The Settlement Administrator will send the PAGA Penalty Payment to the LWDA at the same time the Settlement Administrator sends Settlement Payments to the Settlement Class and PAGA Settlement Payments to the PAGA Employees." (Settlement, Primary Terms of Settlement, §§ 39, 40.)

12. Tax Allocation: Any settlement money paid to Settlement Class Members will be allocated as 20% wages, 80% to penalties and interest. (Settlement, Primary Terms of Settlement, § 41.)

13. Class Representative Service Award: "Subject to Court approval, and in exchange for a general release from Plaintiff, Defendant will not object to Class Counsel's application for an additional payment of up to \$5,000.00 to Plaintiff for service as a Class Representative ("Service Payment"). The Service Payment is in addition to any individual Settlement Payment to which Plaintiff may be entitled under this Agreement. The Settlement Administrator will issue an IRS

Form 1099 for the Service Payment to the Plaintiff. Plaintiff will be individually responsible for correctly characterizing this compensation on personal income tax returns for tax purposes and for paying any taxes on the amounts received. Any amount not approved by the Court shall be added to the Net Settlement Amount. Plaintiff agrees not to opt out or object to the Service Payment as the Class Representative. Plaintiff will apply to the Court for, and Defendant will not oppose the application for, an award not to exceed ten thousand dollars (\$10,000) for his role in serving as the Settlement Class Representative (i.e., Enhancement Award). The Enhancement Award is in addition to the Settlement Share to which Plaintiff is entitled along with other Participating Settlement Class Members. An award by the Court of a lesser amount than that sought by Plaintiff for the Enhancement Award will not constitute a material change to the Settlement.” (Settlement, Primary Terms of Settlement, § 44.)

14. Attorneys’ Fees and Costs: “Subject to approval by the Court, Defendant will not object to Class Counsel’s application for attorney’s fees of up to 33 1/3% of the Gross Settlement Amount (meaning \$48,333.33) and reimbursement of litigation costs and expenses not to exceed \$15,000.00, subject to proof. (Settlement, Primary Terms of Settlement, § 43.) With the Escalator Clause, Class Counsel’s attorneys’ fees are estimated to be \$57,178.33.

15. Notice of Proposed Class Action Settlement: Each Class Member will be mailed a notice setting forth the material terms of the proposed Settlement, along with instructions about how to object or request exclusion from the class portion of the proposed Settlement. For each Class Member, there will be pre-printed information on the mailed Notice, based on Defendant’s records, stating the Class Member’s Covered Workweeks during the Class Period, PAGA Pay Periods during the PAGA Period, and the estimated total Settlement Payment under the Settlement, including the Settlement Class Payment and the PAGA Settlement Payment. The Notice will issue in English only. The Parties agree a Spanish translation or other non-English translation is not necessary. (Settlement, Primary Terms of Settlement, §§ 48, 49.)

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

1 be considered in evaluating a class action settlement include “the strength of plaintiffs’ case, the
2 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
3 action status through proceedings, the experience and views of counsel, the presence of a
4 government participant, and the reaction of the class members to the proposed settlement.” (*Kullar*
5 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is
6 fair and reasonable exists where, as here, the following four factors are present: “(1) the settlement
7 is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow
8 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
9 percentage of objectors is small.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
10 245.)

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

18 **A. The Settlement Reflects a Reasonable Compromise.**

19 The Settlement represents a significant percentage of the maximum damages that may have
20 been awarded to the class in this case if they had prevailed at trial. The Settlement, of course,
21 reflects a compromise. The amount of settlement benefits takes into account all the litigation risks
22 related to obtaining class certification, proving Defendant’s liability, and proving Class Members’
23 damages. In light of all the defenses asserted by Defendant which posed substantial litigation risks,
24 a compromise effectively awarding Participating Class Members a significant percentage of the
25 maximum value of their claims is eminently fair and reasonable.

26 ///

27 ///

28 ///

1 Because of the Settlement, and through the efforts of Plaintiff and Class Counsel,
2 Participating Class Members will receive timely, guaranteed relief and will avoid the risk of an
3 unfavorable judgment.

4 To be sure, Plaintiff contends that Defendant ultimately has to pay less under the settlement
5 than it would have had to pay if Plaintiff had achieved a judgment on claims at trial. But an ideal
6 settlement requiring a defendant to pay the full amount of its potential damages is rarely achieved.
7 As the Ninth Circuit has observed, “the very essence of a settlement is compromise, ‘a yielding of
8 absolutes and an abandoning of highest hopes.’” (*Officers for Justice v. Civil Service Commission*
9 *of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 624.) Thus, a proposed
10 settlement “is not to be judged against a hypothetical or speculative measure of what might have
11 been achieved by the negotiators.” (*Id.* at p. 625.) A court’s “intrusion upon what is otherwise a
12 private consensual agreement negotiated between the parties to a lawsuit must be limited to the
13 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or
14 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
15 whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

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

18 The Settlement was reached following extensive negotiations following a full day of
19 mediation with experienced employment mediator, Hon. Ronald S. Prager (Ret.) (Marquez Decl.,
20 ¶¶ 7-8.) The settlement negotiations were at arm’s length and, although conducted in a professional
21 manner, were adversarial. (*Id.*) The Parties went into the mediation willing to explore the potential
22 for a settlement of the dispute, but each side was also prepared to litigate their or its position through
23 trial and appeal if a settlement 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 class member timekeeping and payroll records,
26 Defendant’s policies and procedures concerning the payment of wages, the provision of meal and
27 rest breaks, issuance of wage statements, and providing all wages at separation, as well as
28 information regarding the number of putative class members and the mix of current versus former

employees, the wage rates in effect, and the amount of meal and rest period premium wages paid to class members. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual investigation, Class Counsel investigated the applicable law regarding the claims and defenses asserted in the Litigation. (*Id.*) Thus, Plaintiff and his counsel were able to act intelligently and effectively in negotiating the proposed Settlement. (*Id.*)

C. Plaintiff's Counsel Has Substantial Class Action Experience.

Class Counsel has considerable experience and has demonstrated competence with litigating wage and hour class actions. (*Id.* at ¶¶ 26-40.) Class Counsel has substantial experience in all facets of litigation in state and federal court, including discovery, law and motion, trial, appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf of plaintiffs and have been lead counsel or otherwise exercised significant case handling responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

Based on Class Counsel's experience as employment and class action attorneys, Class Counsel is eminently qualified to evaluate the strength of Plaintiff's claims, the strength of Defendant's defenses against certification, the strength of Defendant's defenses on the merits, and the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the best interests of class members in light of the significant risks of litigation is entitled to great weight. (*See Kullar, supra*, 168 Cal.App.4th at 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 Members have objected to the Settlement and no Class Members have requested a valid exclusion from the Settlement. (Fowler Decl., ¶¶ 11, 13.) 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

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

13 **IV. THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED AMOUNTS OF**
14 **ATTORNEYS’ FEES, COSTS AND AN ENHANCEMENT PAYMENT.**

15 Under the Settlement, subject to the Court’s approval, Defendant has agreed not to oppose
16 Class Counsel’s request for reasonable attorneys’ fees in the amount of \$57,178.33 (which includes
17 the escalator amount), which is 33 1/3% of the Gross Settlement Amount, and Litigation costs in an
18 amount not to exceed \$15,000.00 for litigating this Action, which shall be paid from the Gross
19 Settlement Amount. In addition, Defendant will not oppose an application for the payment of
20 Administrative Costs in the amount of \$5,350.00 and a Class Representative Enhancement payment
21 in the amount of \$5,000.00, to be paid from the Settlement Amount. The proposed attorneys’ fees
22 and expenses were disclosed to the Class Members in the Notice of Proposed Class Action
23 Settlement.

24 “In general, questions whether a settlement was fair and reasonable, whether certification of
25 the class was proper, and whether the attorney fee award was proper are matters addressed to the
26 trial court’s broad discretion.” (*Wershba, supra*, 91 Cal.App.4th at pp. 234-235.) “Courts recognize
27 two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and
28

the percentage of recovery method.” (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)

A. Counsel Requests an Award of Fees Based on the “Common Fund” Method.

California courts have long awarded attorneys’ fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. The California Supreme Court held that “when a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys’ fees out of the fund.” (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34 [quoting *D’Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1.]

Class Counsel intends to seek an award of attorneys’ fees on the “percentage of recovery/common fund” theory. The purpose of the common fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *Quinn v. State of California* (1995) 15 Cal. 3d 162, 167, the California Supreme Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons are entitled to share.”

The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th 480 that, “when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—

convince us the percentage method is a valuable tool that should not be denied our trial courts.” (*Id.* [internal citations omitted].)

Several courts have expressed frustration with the alternative “lodestar” approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote: “This court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit analysis, the answer would be a resounding, ‘No!’” (*In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. (*Id.* at pp. 1378-79.) The Ninth Circuit now routinely uses the percentage of the common fund approach to determine the award of attorney’s fees. (*See, e.g., In re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79 [approving attorney’s fee of 33 1/3%].)

1. The Standard Fee Award in Class Actions Has Resolved Itself As One-Third Of The Recovery In Common Fund Cases.

According to a leading treatise on class actions, “No 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 that are 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.*** (*See Id.*; *see also, Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating that most cases where 30-50 percent 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

1 fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical studies
2 show that, regardless whether the percentage method or the lodestar method is used, fee awards in
3 class actions average around one-third of the recovery.”].) Thus, Plaintiff’s fee request is in line
4 with the prevailing guidelines established in California case law and academic literature and is
5 consistent with awards in California. Accordingly, Plaintiff requests that the Court approve the
6 attorneys’ fees as negotiated by the Parties and requested herein.

7 **2. This Matter Involves A “Fee-Shifting” Provision of the Labor Code.**

8 Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

9 [A]ny employee receiving less than the legal minimum wage or the legal overtime
10 compensation applicable to the employee is entitled to recover in a civil action the
11 unpaid balance of the full amount of this minimum wage or overtime compensation,
including interest thereon, reasonable attorney’s fees, and costs of suit.

12 (Lab. Code § 1194.)

13 As this litigation culminated in a settlement that provided for a recovery of unpaid wages,
14 including unpaid minimum wages and overtime compensation, Plaintiff is entitled to recover
15 reasonable attorneys’ fees and costs under the California Labor Code.

16 Class Counsel is also entitled to a fee award under California’s private attorney general
17 statute, Code of Civil Procedure § 1021.5. “The award of attorney fees is proper under Section
18 1021.5 if ‘(1) plaintiffs’ action ‘has resulted in the enforcement of an important right affecting the
19 public interest,’ (2) ‘a significant benefit, whether pecuniary or nonpecuniary, has been conferred
20 on the general public or a large class of persons’ and (3) ‘the necessity and financial burden of
21 private enforcement are such as to make the award appropriate.’” (*Press v. Lucky Stores* (1983) 34
22 Cal.3d 311, 317-318.) The fundamental objective of the statute is “to encourage suits enforcing
23 public policies by providing substantial attorneys’ fees to successful litigants in such cases.”
24 (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

25 This action resulted in the enforcement of an important right affecting the public interest, as
26 Plaintiff sought to enforce Settlement Class Members’ rights to recover statutory wages arising
27 from Defendant’s failure to pay all wages and failure to provide meal and rest breaks. (*See Murphy*
28 *v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that “health and safety

concerns” are what motivated the Industrial Welfare Commission to adopt mandatory meal and rest periods].)

This action also conferred a significant benefit on a large class of persons. Notice was sent to 52 individuals, and no Class Members have objected to the Settlement and no Class Members have requested exclusion. (Fowler Decl., ¶¶ 11, 13.) The Settlement provides a significant monetary benefit, in that it permits all persons who worked for Defendant during the applicable class period to obtain significant compensation for unpaid wages and missed meal and rest periods.

Finally, the necessity and financial burden of private enforcement render an award appropriate. Without the incentive of an attorneys’ fee award, Plaintiff could not have afforded to hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff’s potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th 1033, 1044 [“As to the necessity and financial burden of private enforcement, an award is appropriate where the cost of the legal victory transcends the claimants’ personal interest; in other words, where the burden of pursuing the litigation is out of proportion to the plaintiff’s individual stake in the matter.”].)

3. The Experience, Reputation and Ability of Class Counsel Support the Fee Award.

As demonstrated by their past experience in pursuing class actions on behalf of consumers and employees, Class Counsel possesses considerable expertise in litigating class action matters. Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting in a multitude of beneficial results to class members in California. (Marquez Decl., ¶¶ 26-40; *see also Moreno v. Pretium Packaging, Inc.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB-DFM, 2021 WL 3673845 [approving Plaintiff’s counsel’s request for attorney’s fees after finding it was “reasonable, given the qualifications of the attorneys who worked on this matter.”]; *Mark Brulee, et al. v. DAL Global Services, LLC* (C.D. Cal. Dec. 13, 2018) No. CV 17-6433 JVS(JCGx), 2018 WL 6616659 [“Class Counsel’s declarations show that the attorneys are experienced and successful litigators.”].) Because it is reasonable to compensate class counsel commensurate with their skill, reputation and experience, a fee award of 33 1/3% of the Maximum Settlement Amount, a

percentage considered within the norm in class action practice, is certainly justified here.

Class Counsel’s experience in wage and hour class actions was integral in evaluating the strengths and weaknesses of the case against Defendant and the reasonableness of the settlement. Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive law (state and federal), as well as the procedural law of class action litigation. Based on these and other factors, Class Counsel has frequently received fee awards amounting to 33 1/3% of the recovery for the class. Therefore, the requested fee award is reasonable and fair.

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

“Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.” (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar method as a drain on the judicial system and a disincentive on attorneys to take on high-risk, challenging cases. (*Id.* at p. 29.) Indeed, the lodestar approach: “(1) ‘increases the workload of an already overtaxed judicial system,’ (2) is ‘insufficiently objective and produce[s] results that are far from homogenous,’ (3) ‘creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law,’ (4) ‘is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an overall dollar amount,’ (5) ‘encourages lawyers to expend excessive hours, and . . . engage in duplicative and unjustified work,’ (6) ‘creates a disincentive for the early settlement of cases,’ (7) deprives trial courts of ‘flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered,’ (8) ‘works to the particular disadvantage of the public interest bar,’ and (9) results in ‘confusion and lack of predictability.’” (*Id.*)

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

1 within the range of fees freely negotiated in the legal marketplace in comparable litigation.” (*In re*
2 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

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

11 Wilshire Law Firm’s current lodestar is \$82,320.00 based on at least 142.8 hours of reported
12 work performed by Class Counsel. (Marquez Decl., ¶¶ 17-25.) Accordingly, the requested fee of
13 \$57,178.33 is reasonable and fair as it results in a negative multiplier of about .69. Additionally,
14 there are additional hours devoted by Class Counsel to this litigation that are not reflected in Class
15 Counsel’s request for attorneys’ fees, such as future time that will need to be devoted to ensuring
16 the settlement checks are administered. (Marquez Decl., ¶ 22.)

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

18 Class Counsel provides a declaration to support their lodestar hourly rates. “Affidavits of
19 the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate
20 determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are
21 satisfactory evidence of the prevailing market rate.” (*United Steelworkers of America v. Phelps*
22 *Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of their
23 hourly rates in other wage and hour class action settlements. These rates are not opposed or
24 challenged.

25 **2. The Lawsuit Provided a Public Benefit.**

26 Class Counsel’s choice to litigate this matter provided a public benefit to 52 California
27 employees. Indeed, California Labor Code section 90.5(a) states:
28

1 It is the policy of this state to vigorously enforce minimum labor standards in order to
2 ensure employees are not required or permitted to work under substandard unlawful
3 conditions...and to protect employers who comply with the law from those who
4 attempt to gain a competitive advantage at the expense of their workers by failing to
5 comply with minimum labor standards.

6 Moreover, the California Supreme Court stated that “Labor Code section 1194 confirms “a clear
7 public policy . . . that is specifically directed at the enforcement of California's minimum wage and
8 overtime laws for the benefit of workers.” [citation omitted].” (*Sav-on Drug Stores, Inc. v. Super.*
9 *Ct.* (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous attorney hours attendant
10 to the litigation of Plaintiff’s claims, this factor supports Class Counsel’s fee request and encourages
11 the private enforcement of legal rights for the general good.

12 **C. Costs Are Reasonable.**

13 Class Counsel requests reimbursement of \$14,651.90 in expenses. (Marquez Decl., ¶ 25.)
14 Defendant has agreed that it will not oppose any cost award request up to \$15,000. (Settlement, §
15 3.2.2.) The categories of costs are set forth in the accompanying Declaration of Justin Marquez, and
16 these costs are easily seen to be both reasonable and necessary.

17 **D. The Class Representative Payment to Plaintiff is Reasonable.**

18 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
19 compensate them for the expense or risk they have incurred in conferring a benefit on other
20 members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
21 Cal.App.4th 399.) Courts routinely grant approval of class action settlement agreements containing
22 enhancements for the class representatives, which are necessary to provide incentive to represent
23 the class, and are appropriate given the benefit the class representatives help to bring about for the
24 class. (*See Rodriguez v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958-59.)

25 Service awards are particularly important to plaintiffs in wage and hour cases because they
26 promote the important public policies underlying the wage and hour laws. This strong policy is
27 codified in California Labor Code section 90.5, which provides, “it is the policy of this state to
28 vigorously enforce minimum labor standards in order to ensure employees are not required or
permitted to work under substandard unlawful conditions”)

Under the Settlement Agreement, subject to the Court’s approval, Defendant agreed not to

1 oppose an enhancement to Plaintiff in the amount of \$5,000.00. (Settlement, § 3.2.1.) This amount
2 is also in exchange for Plaintiff's general release of all claims against Defendant. Plaintiff has
3 submitted a declaration demonstrating that he devoted a great deal of time and work assisting
4 counsel in the case, including numerous phone calls to discuss the case, case strategy, mediation,
5 and settlement. (*See generally*, Declaration of Plaintiff Hector Mendoza Paz ["Paz Decl."]
6 (showing at least 40 hours of estimated time devoted to this case).)

7 When compared with the amounts awarded in typical class action cases, the amount
8 requested here is particularly reasonable. Indeed, a 2006 study examining the average incentive
9 award given to class action plaintiffs from 1993 to 2002 found that the "average award per class
10 representative was \$15,992 and the median award per class representative was \$4,357." (Theodore
11 Eisenberg & Jeffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*, 53
12 UCLA L. Rev. 1303, 1308 (2006)) That same study found that named plaintiffs in employment
13 discrimination class actions received an average award of \$69,850 and a median award of \$31,081,
14 while named plaintiffs in other employment class actions received an average award of \$12,121 and
15 a median award of \$13,059. (*Id.* at p. 1334.) The authors of the study found that higher awards in
16 employment cases reflected the "courts' wish to make representative plaintiffs whole by
17 compensating them for the high costs of their service to the class, including risks of stigmatization
18 or retaliation on the job." (*Id.* at p. 1308.)

19 Another factor that supports the awarding of service awards is whether the class
20 representative's service resulted in notoriety or other personal difficulties. (*See, e.g., Schaffer*
21 *v. Litton Loan Servicing, LP* (C.D. Cal. 2012) 2012 WL 10274679, at *18.) The California
22 Supreme Court has recognized that "retaliation against employees for asserting statutory rights
23 under the Labor Code is widespread," despite anti-retaliation statutes designed to protect
24 employees. (*Gentry v. Superior Court* (2007) 42 Cal.4th 443, 460-61.) In this context, class
25 representatives should be rewarded for assuming the risk of retaliation for the sake of class
26 members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

27 Here, Plaintiff has lent his name to this case and thus subjected himself to public attention.
28 He has also risked his reputation in the community and with regard to future employment

opportunities as a result of stepping forward publicly in a class action. When a class representative shoulders some degree of personal risk in joining the litigation, such as workplace retaliation or financial liability, an incentive award is especially important. (*See Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977; *Weeks v. Kellogg Co.* (C.D. Cal. 2013) 2013 WL 6531177, *36.) Plaintiff has been subject to the rigors of litigation and has had to devote his own time and expenses in participating in the case. (*See, generally*, Paz Decl.; *see also* Marquez Decl., ¶ 12-16.)

E. Administrative Costs Should be Approved.

ILYM Group, Inc., the Settlement Administrator, estimates that it will incur a total of \$5,350.00 in costs associated with the administration of this Settlement. (Fowler Decl., ¶ 15.) These expenses are reasonable, based upon the size of the class and the additional tasks associated with claim and exclusion tracking and Class Member payment processing.

V. CONCLUSION

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

Dated: February 29, 2024

Respectfully submitted,

WILSHIRE LAW FIRM

By: 

Justin F. Marquez

Christina M. Le

Zachary D. Greenberg

Attorneys for Plaintiff

PROOF OF SERVICE

Hector Mendoza Paz v. Borrego Solar Systems, Inc., et al.
37-2022-00030081-CU-OE-CTL

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

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

On February 29, 2024, I served the foregoing **PLAINTIFF'S 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:

Marlene M. Moffitt (SBN 223658)
marlene.moffitt@ogletree.com
**OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C.**
4660 La Jolla Village Drive, Suite 900
San Diego, CA 92122
Telephone: (858) 652-3100
Facsimile: (858) 652-3101

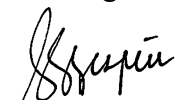
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- (X) **BY UPLOAD:** I hereby certify that the documents were uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site.
- (X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

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

Executed this **February 29, 2024**, at Los Angeles, California.



Sandy Sespene