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8 *and the Class*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA CRUZ**

11
12 JASON MENDEZ, on behalf of himself and all
others similarly situated,

13
14 Plaintiff,

15 vs.

16
17 RAMSEY LATH & PLASTER, INC., a
18 California corporation; and DOES 1 through
19 100, inclusive,

20 Defendants.
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27
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Case No.: 22CV01808

CLASS ACTION

*[Assigned for all purposes to the Hon.
Syda Cogliati, Dept. 5]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, CLASS
REPRESENTATIVE SERVICE
PAYMENT, AND ATTORNEYS' FEES
AND COSTS**

Date: November 14, 2024

Time: 8:30 a.m.

Dept.: 5

Action Filed: August 22, 2022

Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on November 14, 2024 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 5 of the above-entitled Court, located at 701 Ocean Street, Santa Cruz, California 95060, Plaintiff Jason Mendez (“Plaintiff”) will, and hereby does, move this Court for entry of an Order:

1. Granting final approval of the proposed Settlement Agreement (“Settlement”) between Plaintiff and Defendant Ramsey Lath & Plaster, Inc. (“RLP” or “Defendant”);
2. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure:

All current and former non-exempt employees who worked for RLP in California at any time from August 22, 2018 through May 28, 2024 (the “Class Period”).
3. Confirming the appointment of Plaintiff Jason Mendez as the Class Representative for settlement purposes;
4. Confirming the appointment of Abramson Labor Group as Class Counsel;
5. Approving an award of \$216,666.67 in attorneys’ fees to Class Counsel;
6. Approving an award of \$21,675.82 in costs to Class Counsel;
7. Approving an award of \$7,000.00 in costs to ILYM Group, Inc. for its settlement administration services;
8. Approving a Class Representative Service Payment of \$7,500.00 to Plaintiff for his service as the Class Representative;
9. Approving an award of \$37,500.00 to the Labor & Workforce Development Agency (“LWDA”); and
10. Entering final judgment in the form of the [Proposed] Judgment and Order Granting Final Approval of Class Action Settlement filed herewith.

This Motion is made on the following grounds: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes under Cal. Code of Civil Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and

1 hour claims; (4) the requested amounts for Class Counsel’s attorneys’ fees and costs, settlement
2 administration costs, and the Class Representative’s Service Payment are all fair, adequate, and
3 reasonable; and (5) in light of the foregoing, the [Proposed] Judgment and Order Granting Final
4 Approval of Class Action Settlement submitted herewith should be entered so as to give finality
5 to, and allow for disbursements from, the Settlement.

6 This motion is based on this notice of motion; the attached memorandum of points and
7 authorities; the declaration of Neil M. Larsen and exhibits attached thereto; the declaration of
8 Makenna Snow and exhibits attached thereto; the declaration of Plaintiff; the pleadings and other
9 papers filed in this action; and any further oral or documentary evidence or argument presented
10 at the time of hearing.

11 Respectfully Submitted,

12 Dated: October 14, 2024

ABRAMSON LABOR GROUP

14 *Neil Larsen*
15 Neil M. Larsen
16 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Jason Mendez (“Plaintiff”) seeks final approval of a class action settlement
4 (“Settlement”) with Defendant Ramsey Lath & Plaster, Inc. (“RLP” or “Defendant”) (together
5 with Plaintiff, the “Parties”). Under the Settlement, RLP has agreed to pay \$650,000.00 to the
6 following Settlement Class, which consists of 205 individuals:

7 All current and former non-exempt employees who worked for RLP in California
8 at any time from August 22, 2018 through May 28, 2024 (the “Class Period”).

9 In this non-reversionary Settlement, all Participating Class members will receive
10 automatic payments without the need to submit a claim form, resulting in an average payment
11 (“Settlement Award”) of approximately \$1,439.43 to Participating Class members. This is a
12 favorable resolution of the highly disputed wage and hour claims in this case, especially in light
13 of the significant litigation risks that Plaintiff faced. Moreover, after receiving notice of the
14 proposed Settlement and projected estimated settlement payments, **zero Settlement Class**
15 **members have elected to opt-out of the Settlement, resulting in a 100% participation rate,**
16 **and no Settlement Class members have objected to the Settlement.**

17 As explained further below, the Court should grant Plaintiff’s motion in its entirety
18 because: (1) the Settlement Class continues to meet the requirements for certification for
19 settlement purposes under Cal. Code Civ. Proc. § 382; (2) the Settlement is a fair, adequate, and
20 reasonable compromise of the disputed claims in this case; and (3) the requested amounts for
21 attorneys’ fees and costs, settlement administration costs, and class representative service
22 payment are all fair, adequate, and reasonable.

23 **II. SUMMARY OF THE LITIGATION**

24 **A. Factual And Procedural Background**

25 RLP is a residential plastering company located in Santa Cruz County, California. See
26 Declaration of Neil M. Larsen (“Larsen Decl.”), ¶ 7. Plaintiff is a former non-exempt employee
27 of RLP’s who worked for RLP during the Class Period. *Id.*

28 ///

On August 22, 2022, Plaintiff filed this Action, alleging claims for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) meal period violations; (4) rest period violations; (5) wage statement violations; (6) waiting time penalties; (7) failure to reimburse business expenses; and (8) unfair business practices. *Id.*, ¶ 8. On October 27, 2022, Plaintiff subsequently filed a First Amended Complaint adding a claim for PAGA civil penalties for the aforementioned Labor Code violations. *Id.*, ¶ 9.

B. Discovery, Mediation, And Settlement

In preparation for mediation, the Parties engaged in extensive informal discovery. Larsen Decl., ¶ 10. RLP provided my office with a detailed class list that included Settlement Class members' hire dates and termination dates (if applicable). *Id.* RLP also produced a 20% sampling of timekeeping and payroll records for putative class members, its wage and hour policies, and other data points and information. *Id.* Plaintiff's counsel hired an expert data analyst to analyze and extrapolate the data produced by RLP. *Id.* This discovery allowed the Parties to assess the merits and value of Plaintiff's claims and RLP's defenses, as well as the chances for class certification. *Id.*

On September 5, 2023, the Parties attended a full-day mediation with Tripper Ortman, Esq., an experienced and well-respected wage and hour class action mediator. At the mediation, the Parties vigorously debated Plaintiff's claims and RLP's defenses, and the chances of certification. *Id.*, ¶ 11. With Mr. Ortman's assistance, the Parties reached a resolution in principle at the mediation. Over the following months, the Parties negotiated the finer terms of the agreement, and ultimately agreed upon the Settlement.

C. Preliminary Approval And Mailing Of Notices

On April 25, 2024, Plaintiff submitted the proposed Settlement to this Court with his Motion for Preliminary Approval of Class Action Settlement. Larsen Decl., ¶ 12. On May 28, 2024, this Court issued its Order Granting Preliminary Approval. *Id.*, ¶ 12 & Exhibit A (Order Granting Preliminary Approval).

On July 9, 2024, the Court-approved Class Notice was mailed to Settlement Class members in English and Spanish via U.S. First Class Mail, who had until September 7, 2024 to

submit objections, requests for exclusion, or workweek disputes. *See* Declaration of Makenna Snow (“Snow Decl.”), ¶ 7 & Exhibit A. As of the date of this filing, ILYM Group, Inc. (“ILYM”) received no objections, no requests for exclusion, and no workweek disputes. *Id.* at ¶¶ 11-13. Now that notice has been provided to the Settlement Class and the Notice process is complete, Plaintiff respectfully submits the Settlement for this Court’s final approval.

III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS

A. Settlement Class Definition

As noted above, the Settlement Class is comprised of “All current and former non-exempt employees who worked for RLP in California at any time from August 22, 2018 through May 28, 2024 (the “Class Period”).” *See* Exhibit A to Larsen Decl.

B. Monetary terms

The Settlement provides for RLP to pay a non-reversionary Gross Settlement Amount (“GSA”) of \$650,000.00. *See* Settlement, § 4. After deducting requested attorneys’ fees (\$216,666.67) and litigation costs (\$21,675.82), Class Representative Service Payment (\$7,500.00), settlement administration costs (\$7,000.00), and the amount set aside as PAGA civil penalties (\$50,000.00), the Net Settlement Amount (“NSA”) is estimated at \$347,157.51. *See* Settlement, §§ 4(C), 6(A); Larsen Decl., ¶¶ 20, 22 & Exh. A; Snow Decl., ¶ 15. Together with the \$12,500.00 PAGA Amount, the total amount to be paid to Settlement Class members equals \$359,657.51. Snow Decl., ¶¶ 15-17.

The NSA shall be distributed to Participating Class members as follows: ten percent of the NSA will be designated as the “Waiting Time Amount” for Class members who are former employees of RLP and whose employment ended at any time from August 22, 2019 until May 28, 2024, and they will receive an equal share of the Waiting Time Amount; five percent of the NSA will be designated as the “Wage Statement Amount” such that each Class member employed by RLP during the period from August 22, 2021 until May 28, 2024 will receive a *pro rata* portion of the Wage Statement Amount based on the proportionate number of pay periods that one worked; and the remaining 85 percent of the NSA (“NSA Remainder”) will be distributed to Class members based on each Class member’s proportionate number of workweeks worked for RLP

during the Class Period. *See* Settlement, § 6(B). Additionally, \$12,500.00 shall be designated as the 25% share of the PAGA civil penalties designated for distribution to the PAGA members and shall be distributed to Settlement Class members proportionately based on the number of pay periods worked at any time from August 22, 2021 through May 28, 2024. *See* Settlement, § 6(C).

All payments from the PAGA Amount will be classified as 100% penalties; all payments from the NSA will be classified as follows: one-third (33.3%) as wages, and two-thirds (66.7%) as penalties and interest. *See* Settlement, § 6(E). The portion of individual Settlement Awards allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. *Id.* The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement Administrator. *Id.* RLP's share of employer-side payroll taxes shall be paid by RLP separate from, and in addition to, the Gross Settlement Amount. *See* Settlement, § 4(D).

C. Summary of Notice Process

On June 18, 2024, ILYM received a data file from Defense Counsel that contained names, last known mailing addresses, Social Security numbers, dates of employment for each Settlement Class member ("Class Data"), which contained 205 Settlement Class members. Snow Decl., ¶ 5. Prior to mailing Notice Packets, ILYM conducted a National Change of Address ("NCOA") search in an attempt to update Settlement Class members' addresses as accurately as possible. *Id.*, ¶ 6.

On July 9, 2024, ILYM mailed the Notice Packet via U.S. first class mail, in English and Spanish, to all 205 Settlement Class members. *Id.* Decl., ¶ 7. Following the initial mailing, 13 Notice Packets were returned to ILYM. *Id.*, ¶ 8. None of them were returned with forwarding addresses. *Id.* ILYM obtained 2 updated addresses through a skip trace, and promptly remailed the Notice Packets to those individuals. *Id.* As of the date of this filing, 11 Notice Packets are considered undeliverable. *Id.*, at ¶ 10.

Settlement Class members had until September 7, 2024, to submit objections, disputes, or requests for exclusion. *Id.*, ¶¶ 11-13. ILYM received no objections from Class members, no requests for exclusion, and no workweek disputes. *Id.* With respect to the Settlement Class members, the average estimated payment is \$1,439.43, with the highest estimated payment being

1 \$5,308.30. *Id.*, ¶ 16. There are 101 Aggrieved Employees in the PAGA Period. The highest
2 individual PAGA payment to be paid is approximately \$301.33, and the average individual PAGA
3 payment to be paid to the PAGA Settlement Class is approximately \$123.76. *Id.*, ¶ 17.

4 **D. Funding of the Settlement and Uncashed Settlement Funds**

5 The Settlement will be fully funded in accordance with the following schedule: the first
6 payment of \$325,000.00 was due on or before June 5, 2024 (payment was deposited with ILYM);
7 the remaining \$3235,000.00 to be funded in three quarterly installments of: (1) \$108,333.33 due
8 on or before September 5, 2024 (payment was deposited with ILYM); (2) \$108,333.33 due on or
9 before December 5, 2024; and (3) \$108,333.34 due on or before March 5, 2025. *See* Settlement,
10 § 4(B). Within seven (7) business days of Defendant’s deposit of the Gross Settlement Amount
11 (“GSA”), the Settlement Administrator will calculate Settlement Awards and provide those
12 calculations to Class Counsel and Defense Counsel for review and approval. *Id.*, § 6(D). Within
13 five (5) business days of receiving approval of its calculations by counsel, the Settlement
14 Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings,
15 to Settlement Class members, as well as the Class Representative Service Payment to Plaintiff,
16 the LWDA’s PAGA payment to the LWDA, and Class Counsel’s attorneys’ fees and costs to
17 Class Counsel. *Id.*

18 After disbursement, Class members will have 180 days to cash their checks. *See*
19 Settlement, § 6(F). Funds remaining unclaimed after 180 days shall be distributed to the
20 Controller of the State of California to be held pursuant to the Unclaimed Property Law, in the
21 name of the Class member who did not cash his/her check. *Id.*

22 **IV. ARGUMENT**

23 **A. This Court Should Confirm its Conditional Certification of the Settlement**
24 **Class for Settlement Purposes Because it Meets All of the Requirements for**
25 **Class Certification Under Code of Civil Procedure § 382**

26 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
27 and its members are too numerous for joinder to be practical; (2) the representative and absent
28 class members share a community of interest, and questions of law and fact common to the class

predominate over questions unique to individual class members; (3) the representative's claims are typical of the classes' claims; and (4) the representative will fairly and adequately represent the class's interests. *See Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 470 (1981).

Here, this Court found that the Settlement Class meets all the requirements for class certification for settlement purposes when it granted preliminary approval of the Settlement on May 28, 2024. *See generally* Larsen Decl., Exhibit A. No subsequent events have cast doubt on the propriety of this determination, and in fact, the reaction of the Settlement Class has been overwhelmingly positive, with not a single objection and no requests for exclusion. *See* Snow Decl., ¶¶ 11-13. This Court should therefore confirm its conditional certification of the Settlement Class.

B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate, and Reasonable Compromise of Disputed Wage and Hour Claims

Rule of Court 3.769 conditions class settlements on court approval, which is generally evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United Teachers Los Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine "that the settlement is fair, reasonable and adequate to all concerned"); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine "whether a proposed settlement is fundamentally fair, adequate, and reasonable"). Settlement is the preferred means of dispute resolution, particularly in class actions. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008). There is a presumption of fairness when a settlement is negotiated at arm's length by counsel. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

The court approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held, at which class members have the opportunity to be heard with respect to the settlement. *See Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). Now that notice has been provided to the Settlement Class, Plaintiff respectfully requests that this Court finally approve the Settlement as fair, adequate, and reasonable.

///

1 **1. *The Settlement was Reached at Arm’s Length, Through Experienced***
2 ***Counsel and an Experienced Mediator, and Was Based on Sufficient***
3 ***Information to Intelligently Negotiate a Fair Settlement in Light of the***
4 ***Claims Asserted and Risks of Continued Litigation***

5 To make a fairness determination, the Court should consider several factors, including:
6 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
7 litigation, the risk of maintaining class action status through trial, the amount offered in
8 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
9 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
10 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
11 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
12 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate,
13 and reasonable in light of the overall balance of factors in this case.

14 **2. *The Settlement is Fair, Adequate and Reasonable in Light of the Risks***
15 ***Faced by Plaintiff***

16 The Settlement resulted from extensive arm’s-length negotiations between qualified
17 counsel, with the assistance of an experienced mediator, and is fair, adequate, and reasonable for
18 all Settlement Class members. While Plaintiff steadfastly maintains his claims are meritorious,
19 Plaintiff acknowledges his position included substantial risks and uncertainty, which justifies a
20 downward departure from the maximum exposure each claim potentially carried.

21 As detailed in Plaintiff’s Motion for Preliminary Approval, there was a significant risk of
22 non-certification and/or not prevailing on the merits with respect to each of Plaintiff’s claims.
23 Larsen Decl., ¶¶ 13-19. For example, with respect to Plaintiff’s claim that RLP engaged in
24 unlawful rounding/time shaving practices, resulting in underpayment of wages including
25 overtime and minimum wages, RLP raised several defenses including that its rounding policy was
26 neutral in application, and that Plaintiff cannot, with meaningful accuracy, estimate the amount
27 of time for which he and other non-exempt employees were uncompensated. *Id.*, ¶ 13.

28 As for Plaintiff’s meal period claim, RLP raised several defenses including that it has
 maintained legally compliant meal period policies and practices, and that individualized inquiries
 would be required to determine whether individual employees, under different foremen or
 supervisors, did not take legally compliant meal periods and whether these meal periods were

missed, late, short, or interrupted. *Id.*, ¶ 14.

As for Plaintiff's rest period claim, RLP raised several defenses including that it is only required to authorize and permit rest periods, not ensure they are taken; that it has always maintained lawful rest period policies and practices; and that differences in job duties, supervisors, and other individualized circumstances respecting each individual shift worked by employees makes class certification far less likely. *Id.*, ¶ 15.

As for Plaintiff's reimbursement claim, RLP raised several defenses including that employees did not need to use their personal cell phones in connection with their job duties; that employees are provided with any equipment necessary to perform their job duties; and that it would require well over one hundred individualized inquiries as to whether employees incurred business-related expenses, whether they were reimbursed, and whether RLP knew, or reasonably should have known, about the expenses and whether they were necessary under the circumstances. *Id.*, ¶ 16.

As for Plaintiff's wage statement and waiting time claims, RLP raises the defense that these derivative claims fail for the same reason that the underlying claims based on Labor Code violations fail. Also, RLP asserts that any alleged violations of the Labor Code with respect to providing accurate and complete wage statements was not knowing and intentional, given RLP's good faith defenses, and that the employee wage statements provided accurately reflect amounts actually paid to employees. *Id.*, ¶ 17.

As for Plaintiff's PAGA claim, RLP argues that Plaintiff's claim fails for the same reasons his underlying claims for various Labor Code violations fail, and further maintains that given its strong defenses and its good-faith attempts to comply with the law, that the Court would substantially reduce PAGA penalties even if the Court were to find in Plaintiff's favor on his underlying claims. *Id.*, ¶ 18.

These considerations not only bore heavily on the negotiations leading to the Settlement, but they also confirm that the Settlement is a fair, adequate, and reasonable compromise in view of the risks of further litigation. *Id.*, ¶ 19. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate, and reasonable. *Id.*

1 **3. *The Settlement Fairly, Reasonably, and Adequately Compensates Class***
2 ***Members Because Each Participating Class Member Will Be Paid***
3 ***Based on the Extent of His or Her Injury***

4 Each individual Settlement Award will be calculated based on the proportionate number
5 of workweeks worked by each Class member during the Class Period (aside from Class members
6 receiving Waiting Time Amount payments, which will be shared on an equal basis among eligible
7 Class members), and payments from the PAGA Amount will be based on the proportionate
8 number of Pay Periods in which they worked during the PAGA Period. *See* Settlement, § 6(B)-
9 (C). This method of distribution compensates Settlement Class members based on the estimated
10 extent of their injuries, as those who worked more workweeks would have been subject to more
11 of the alleged wage and hour violations than those who worked fewer workweeks and those who
12 are eligible for a portion of PAGA Amount would be entitled to additional penalties. Thus, the
13 formula for compensating Settlement Class members is fair, adequate, and reasonable, as it is
tethered to the damages and penalties that could be recovered.

14 **4. *The Absence of Any Objections and Only One Opt-Out Confirms that***
15 ***the Settlement is Fair, Adequate, and Reasonable***

16 Class members' response to a settlement is relevant in evaluating whether it merits final
17 approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The absence of objections and only one requests
18 for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v.*
19 *Southland Corp.*, 85 Cal.App.4th 1135, 1152-53 (2000) (finding 9 objections and 80 opt-outs
20 from a class of 5,454 showed a "particularly impressive" favorable response from class
21 members). Here, not a single Settlement Class member has objected to the Settlement, and
22 likewise there are no requests for exclusion from the Settlement, resulting in a 100% participation
23 rate. *See* Snow Decl., ¶¶ 11-13. The extremely favorable response of the Settlement Class further
confirms that the Settlement is fair, adequate, and reasonable.

24 **C. The Requested Award of Attorneys' Fees is Reasonable**

25 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to
26 recover their attorneys' fees and costs for their wage claims. *See* Labor Code §§ 226(e), 1194,
27 2699(g), and 2802(c). A fee award is justified where the legal action has produced its benefits by
28 way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987);

1 *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983).

2 **1. Under the Common Fund Doctrine, it is Proper to Compensate Class**
3 **Counsel Based on a Percentage of the Recovery Obtained for the Class**

4 When a settlement results in a common fund for the benefit of a class, class counsel may
5 be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at
6 254 (recognizing the “percentage of recovery” method). The California Supreme Court
7 confirmed in *Laffitte v. Robert Half Int’l, Inc.*, 1 Cal.5th 480, 506 (2016), that “[t]he percentage
8 of fund method survives in California class action cases.” Specifically, the *Laffitte* Court held:

9 The recognized advantages of the percentage method—including relative
10 ease of calculation, alignment of incentives between counsel and the class,
11 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.”

12 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
13 (“when a number of persons are entitled in common to a specific fund, and an action brought by
14 a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,
15 such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Rawlings v.*
16 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
17 method for calculating attorneys’ fees more accurately reflects the results achieved for the
18 putative class than the lodestar method and “establishes reasonable expectations on the part of
19 plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which
20 avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d
21 Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund cases
22 because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success
23 and penalizes it for failure.’”).

24 Here, Class Counsel’s fee request of \$216,666.67 (one-third of the Gross Settlement
25 Amount) is fair and reasonable based on a percentage of the recovery confirmed with a lodestar
26 cross-check. First, “regardless whether the percentage method or the lodestar method is used, fee
27 awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162
28 Cal.App.4th 43, 66, fn. 11 (2008). This is also consistent with Class Counsel’s experience in

1 similar wage and hour class action matters. See Larsen Decl., ¶¶ 22-24, & Exhibit C. Thus, the
2 percentage sought by Class Counsel here (the same percentage approved in *Laffitte*) is
3 reasonable.

4 **2. The Fees Requested are Reasonable**

5 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards
6 with tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s
7 lodestar (hours worked multiplied by hourly rate) and determines whether the “lodestar
8 multiplier” needed to bring the lodestar on par with the percentage of recovery is reasonable.
9 *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.*,
10 at 506 (“[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a
11 percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-
12 check and use other means to evaluate the reasonableness of a requested percentage fee.”)

13 Under the lodestar method, the court computes the “lodestar” amount by multiplying the
14 number of hours reasonably expended by each attorney or legal staff member by their reasonable
15 hourly rates. See, e.g., *Serrano*, 20 Cal.3d at 48. The court then enhances the lodestar by a
16 “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its
17 contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24 Cal.4th
18 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
19 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to
20 increase or decrease a lodestar calculation”).

21 Under California law, lodestar multipliers can range from 2 to 3 or even higher. See, e.g.,
22 *Chavez, supra*, 162 Cal.App.4th at 49-50, 62 (approving multiplier of approximately 2.5); *City*
23 *of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34);
24 *Coalition for Los Angeles County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d
25 241, 251 (1977) (approving multiplier of ~2.04); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
26 1050-51 (9th Cir. 2002) (upholding multiplier of 3.65). In class actions such as this one, where
27 the value of the benefit conferred to the class “can be monetized with a reasonable degree of
28 certainty,” a court may “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

1 legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557
2 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a
3 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned
4 lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte*,
5 *supra*, 1 Cal.5th at 503-05.

6 Class Counsel have a lodestar of approximately \$156,675.00 without the use of any
7 multiplier, resulting in a modest multiplier of 1.38 compared to the \$216,666.67 fee request.
8 Larsen Decl., ¶ 22. A general summary showing the number of hours of work performed by each
9 attorney and paralegals is set forth below. The billing rates used are reasonable in view of the
10 evidence submitted herewith. *Id.*, at ¶¶ 22-25; Exh. C (*Laffey Matrix*).

Name	Rate	Hours	Lodestar
Tuvia Korobkin (15th Year Attorney)	\$675	121.5	\$82,012.50
Neil M. Larsen (13th Year Attorney)	\$650	88.3	\$57,395.00
Eli J. Drummond (2nd Year Attorney)	\$375	10.3	\$3,862.50
Jennifer S. Rivera (1st Year Attorney)	\$350	15.4	\$5,390.00
Meghan E. McNally (1st Year Attorney)	\$350	12.5	\$4,375.00
Paralegals	\$200	18.2	\$3,640.00
Total Lodestar			\$156,675.00

20 The fee award requested here is justified because Class Counsel achieved a significant
21 monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the
22 substantial burdens of representation on a contingency basis, and the fees requested are in line
23 with the market rate. *Vizcaino*, 290 F.3d at 1048-51 (finding that exceptional results in a
24 contingency case, significant risk and the absence of supporting precedents, are proper
25 considerations in awarding attorneys’ fees). Class Counsel negotiated a substantial recovery for
26 the Settlement Class, and not a single Settlement Class member has objected to the Settlement or
27 to Class Counsel’s requested fees. *See Snow Decl.*, ¶¶ 9-13.

28 ///

1 Additionally, the average settlement payment in this case of approximately \$1,425.65
2 exceeds payments in similar wage and hour class action settlements. *See, e.g., Schiller v. David's*
3 *Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. 2012) (finding
4 that average payment to class members of less than \$200 was a “good” result); *Williams v.*
5 *Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting
6 final approval of class action settlement where average recovery for each class member was
7 approximately \$108, based on \$239,363.14 distributed to 2,212 claimants). The fact that Class
8 Counsel achieved these results in the face of serious defense challenges, and an uncertain legal
9 landscape, confirms the strength of the results achieved.

10 As discussed above, this case presented significant risk as to both class certification and
11 merits considerations. Accordingly, it is fair and reasonable to account for these risks in
12 compensating Class Counsel. Class Counsel should also be compensated for the risks involved
13 in undertaking this litigation and expending considerable effort, all while working on a pure
14 contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all
15 the costs of litigation without receiving any compensation. Larsen Decl., ¶ 20. During this time,
16 Class Counsel have expended \$21,675.82 in costs and have devoted substantial time to this
17 litigation. *Id.*, ¶¶ 20, 24 & Exhibits B-C.

18 Class Counsel’s efforts have included conducting pre-filing investigation, analyzing
19 Plaintiff’s claims, conducting legal research, reviewing RLP’s documents and policies,
20 conducting extensive informal discovery, analyzing timekeeping and payroll records with help of
21 an expert to develop a comprehensive mediation brief and exposure analysis, preparing for and
22 attending mediation, negotiating and preparing the short-form Memorandum of Understanding
23 and the long-form Settlement Agreement, preparing the Motion for Preliminary Approval,
24 overseeing the Notice process and fielding inquiries from Settlement Class members, drafting the
25 instant Motion for Final Approval, and otherwise litigating the case. *See* Larsen Decl., ¶ 21. Given
26 the considerable potential for adverse outcomes in this case, including, but not limited to, losing
27 on class certification and/or merits issues, the contingent risk borne by Class Counsel was great.
28 *Id.*

1 Class Counsel's previous experience in litigating wage and hour class actions also
2 supports the reasonableness of the fee request. Class Counsel are well-versed in wage and hour
3 class action litigation, with substantial experience litigating claims for unpaid wages, meal and
4 rest period violations, and related penalties, and have been certified as class counsel in numerous
5 other cases. *See* Larsen Decl., ¶¶ 3-5. Class Counsel's experience in similar matters was integral
6 in evaluating the strengths and weaknesses of the case against RLP, and the reasonableness of the
7 Settlement. *Id.* Practice in the narrow field of wage and hour litigation requires skill and
8 knowledge concerning the rapidly evolving substantive state and federal law, as well as the
9 procedural law of class action litigation. *Id.* Because it is reasonable to compensate Class Counsel
10 commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross
11 Settlement Amount is reasonable as the California Supreme Court held in *Laffitte*.

12 **D. The Requested Litigation Cost Amount Warrants Final Approval as Fair,**
13 **Adequate, and Reasonable**

14 Class Counsel requests \$21,675.82 in litigation costs. Larsen Decl., ¶ 20 & Exh. C. The
15 cost request is fair, adequate, and reasonable, as the costs were reasonably incurred, and the costs
16 Plaintiff seeks are routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19
17 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be
18 charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3
19 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions and exhibits are typically billed by
20 attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry &*
21 *Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006)
22 (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F.
23 Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
24 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
25 Because the expense reimbursements requested by Class Counsel were reasonably incurred, and
26 no Class member has objected to them, this Court should grant the request for costs.

27 **E. This Court Should Approve the Requested Settlement Administration Costs**

28 Plaintiff also requests that this Court approve \$7,000.00 in settlement administration costs

1 to the Settlement Administrator, ILYM. As detailed in the declaration of Makenna Snow
2 submitted herewith, ILYM performed duties in connection with this Settlement that were integral
3 in effectuating the Settlement and the Notice process. Among other things, ILYM calculated each
4 Settlement Class member's individual payment, updated addresses contained in the class data
5 supplied by ILYM, translated and formatted Notices for mailing, mailed Notice Packets to all 205
6 Settlement Class members, kept the parties informed of any objections or requests for exclusion,
7 and have otherwise administered the Settlement. *See* Snow Decl., ¶¶ 3-6. ILYM's requested costs
8 are fair, reasonable, and adequate, and should be finally approved.

9 **F. This Court Should Approve Plaintiff's Requested Class Representative**
10 **Service Payment**

11 Courts routinely approve enhancement payments to compensate named plaintiffs for the
12 services they provide and the risks they incur during class action litigation. *See, e.g., Bell v.*
13 *Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding "service payments" to
14 named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*
15 (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 service payment).

16 Here, Plaintiff seeks a Class Representative Service Payment of \$7,500.00, and believes
17 this request is reasonable given his efforts in this case and the risks he undertook on behalf of
18 Class members. *See* Mendez Decl. ¶¶ 4-6. Plaintiff gathered documents for use in the lawsuit,
19 reviewed and analyzed documents related to the claims in this case and the policies produced by
20 RLP, and discussed case strategy and RLP's wage and hour practices and policies with Class
21 Counsel on numerous occasions. *Id.*, ¶ 6.

22 Plaintiff also undertook the risk of being liable for RLP's costs if this case were lost, as
23 well as the reputational risk of being the named plaintiff in a wage and hour class action against
24 an employer. *See, e.g., Deaver v. Compass Bank*, 2015 WL 8526982 at **14-15 (N.D. Cal. Dec.
25 11, 2015) (approving \$7,500 incentive payment in \$500,000 wage and hour settlement, finding
26 the award "particularly appropriate in this wage and hour class action, where Plaintiff undertook
27 a significant 'reputational risk' in bringing this action against his former employer"). *See*
28 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$15,000

1 total award to named plaintiff in wage and hour class action settlement, including \$10,000
2 incentive award plus an additional \$5,000 for plaintiff's release of claims). Moreover, after
3 receiving notice of the proposed Service Award for Plaintiff, no Settlement Class member has
4 objected to it. *See* Snow Decl., ¶ 9-11. Thus, the requested \$7,500.00 service payment to Plaintiff
5 is appropriate and justified as part of the Settlement and should be finally approved.

6 **V. CONCLUSION**

7 For the foregoing reasons, Plaintiff respectfully submits that this Court should grant
8 Plaintiff's motion in its entirety and adopt the [Proposed] Judgment and Order Granting Final
9 Approval of Class Action Settlement submitted herewith.

10 Respectfully submitted,

11 Dated: October 14, 2024.

ABRAMSON LABOR GROUP

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13 By: Neil Larsen
14 Neil M. Larsen
15 *Attorneys for Plaintiff*
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