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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

EFRAIN J. SANCHEZ, individually and on
behalf of others similarly situated,

Plaintiffs,

v.

GRUPO DECO CALIFORNIA
CORPORATION, a California Corporation;
GRUPO DECO AMERICA CORPORATION,
Delaware Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. BC 526934

Honorable Kenneth R. Freeman

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: June 21, 2022

Time: 10:00 a.m.

Dept.: 14

Complaint Filed: November 6, 2013

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1 **I. INTRODUCTION**

2 Plaintiffs Efrain J. Sanchez, Alejandro Ruiz, and Luis Franco (“Plaintiffs”) respectfully
3 request this Court grant final approval of the proposed class action settlement with Defendants
4 Grupo Deco California Corporation, Grupo Deco America Corporation and Deco Insurance
5 Agency (“Defendant” or “Deco”) (Plaintiffs and Defendants are collectively hereinafter referred
6 to as “the Parties”). This Court preliminarily approved an \$80,000.00 class action settlement for
7 Class Members who were employed as non-exempt employees by Defendants—including
8 without limitation as pre-need agents by Defendants to sell pre-need policies in the State of
9 California at any time and who earned a commission from selling pre-need policies for
10 Defendants—from November 6, 2009 to July 12, 2019. (Ex. 1, Settlement Agreement
11 (“Agreement”), ¶ 12; Ex. 2, Preliminary Approval Order, ¶ B, as modified by Ex. 7, Order
12 Modifying Preliminary Approval Order and Directing Class Notice Procedure.)¹.

13 On December 29, 2021, the Settlement Administrator, ILYM Group, Inc. (“ILYM
14 Group”), mailed 379 Class Members the Class Notice, Request for Exclusion Form, and
15 Objection Form (the “Notice Packet”). (Declaration of Nathalie Hernandez on Behalf of
16 Settlement Administrator ILYM Group, Inc. (“Hernandez Decl.”) ¶ 7, Ex. A to Hernandez Decl.)
17 The deadline to request exclusion or opt out of the Settlement was February 12, 2022. (Id., ¶ 11,
18 Ex. A.) To date, the Settlement Administrator received zero objections and only two requests for
19 exclusion. (Id. ¶ 1). Thus, the Class has overwhelmingly accepted the Settlement.

20 Individual Settlement Payments will be calculated and apportioned from the Net
21 Settlement Fun (“NSF”) based on the following preliminarily approved point system:

- 22 (1) One (1) Point for each month an individual was on Defendants’ payroll at any time
23 from November 6, 2009 to July 19, 2019 and employed as a non-exempt employee.
24 (2) Two (2) Points for each commissioned pre-need sale made by a non-exempt from
25 November 6, 2009 to July 19, 2019. “Commissioned pre-need sales” are limited to
26 sales in which the purchaser did not revoke or otherwise cause the sale to be

27 _____
28 ¹ All exhibits are attached to the Declaration of James R. Hawkins (“Hawkins Decl.”) unless
otherwise indicated.

1 cancelled (including without limitation by a failure to make required payments)
2 within twelve months of the date the sales contract was executed by the purchaser. In
3 the event the twelve-month period had not elapsed by July 19, 2019 with respect to a
4 sales contract, that contract shall be treated as a completed sale.

5 (3) The value of each point will be determined by dividing the Net Settlement Fund by
6 the total number of points derived from the sum of a. and b. above. The estimated
7 amount due to a Settlement Class Member shall be the value of a single point
8 multiplied by the total points available to that Settlement Class Members.

9 (4) If an individual was not on payroll for at least fifteen (15) days during a month, that
10 individual shall not receive a point for that month.

11 (Ex. 1, Agreement ¶ 21, Ex. 2, Preliminary Approval Order ¶ I.)

12 Any funds remaining from uncashed checks will be sent to the California Unclaimed
13 Property Fund for the benefit of the Settlement Class Member to whom the Individual Settlement
14 Payment check is addressed. (Ex. 1, Agreement ¶ 43.)

15 The Settlement Administrator estimates the Participating Settlement Class Members'
16 average settlement payment from the Net Settlement Fund to be \$48.04 and the highest
17 settlement payment to be \$2,175.39. (Hernandez Decl. ¶ 14.)

18 Plaintiffs submit that the Settlement should be approved because it is fair, adequate, and
19 reasonable, and has been overwhelmingly accepted by the Class. It will result in fair and
20 significant payments to Participating Settlement Class Members. The Settlement is non-
21 collusive, and was achieved as a result of informed litigation and arm's-length negotiations
22 conducted by counsel experienced in class action litigation after a full-day mediation session
23 with neutral mediator, Michelle Reinglass. Following the mediation, the Parties negotiated the
24 terms of the settlement and agreed upon the terms and conditions of the Settlement Agreement.
25 (Ex. 3, Declaration of James R. Hawkins In Support of Preliminary Approval ("Hawkins Prelim.
26 Approval Decl."), ¶ 3, 14.)

27 **II. SUMMARY OF LITIGATION**

28 **A. The Complaint and Allegations**

On November 6, 2013, Plaintiff Efrain Sanchez filed his Complaint with the Los Angeles Superior Court against Defendants as a putative class action lawsuit. (Ex. 3, Hawkins Prelim. Approval Decl. ¶ 5.) A First Amended Complaint (hereinafter “FAC”) was filed in 2015 and added Alejandro Ruiz and Luis Franco as named plaintiffs. The FAC purported to allege therein class action and Private Attorney General Act (“PAGA”) claims for (1) breach of contract and the implied covenant of good faith and fair dealing; (2) failure to pay overtime wages; (3) failure to pay minimum wages; (4) failure to reimburse necessary expenditures; (5) failure to provide meal periods; (6) failure to authorize and permit rest periods; (7) failure to provide with accurate itemized wage statements; (8) failure to pay wages owed upon separation from employment; (9) unfair competition, and (10) violation of Labor Code 2698, *et seq.* (Ex. 3, Hawkins Prelim Approval Decl. ¶ 6.) Plaintiffs seek to represent all individuals who were employed as non-exempt employees by Defendants Grupo Deco California Corporation, Grupo Deco America Corporation, and/or Deco California Insurance Agency – including without limitation as pre-need agents by Defendants to sell pre-need policies in the State of California at any time and who earned a commission from selling pre-need policies for Defendants—from November 6, 2009 to July 19, 2019. (hereinafter “Class Members” “Settlement Class,” or “Settlement Class Members”). (Ex. 1, Agreement, ¶ 12.)

Defendants answered and denied all material allegations of the FAC. Defendants assert that they have no liability for Plaintiffs’ or any Class Member’s claims under any statute, wage order, regulation, common law, or equitable theory. (Ex. 3, Hawkins Prelim. Decl. ¶ 7.)

B. The Mediation, Formal and Informal Discovery and Information Exchange, and Legal Analysis by Parties’ Counsel

As detailed in the Motion for Preliminary Approval, after substantial formal and informal information exchange and discovery, the Parties engaged in a voluntary mediation session with the Michelle Reinglass on March 7, 2017. (Ex 3, Hawkins Prelim. Decl. ¶14.). The Parties were unable to resolve the matter at that time but with continued involvement of the mediator were able to come to an agreement. (Id.) In reaching the Settlement, Plaintiffs and Class Counsel considered the very real possibility that continued litigation of the action would diminish any

1 recovery to the Class given Defendant's financial condition or result in Defendant ceasing all
2 operations and declaring bankruptcy, thereby defeating all recovery to the Class. (Id. ¶ 15.)

3 **C. Preliminary Approval of the Settlement and the Notice Process**

4 After multiple rounds of briefing, the Court granted preliminary approval of the Class
5 Action Settlement Agreement ("Settlement Agreement"), approval of the class notice, and
6 conditional certification of the Class via Minute Order on July 9, 2019, followed by a full Court
7 Order on July 12, 2019. (See, Ex. 2, Preliminary Approval Order.) However, following
8 Preliminary Approval, a number of issues arose which delayed the notice process—including
9 logistical setbacks on obtaining and compiling the class list, the provision of an incomplete class
10 list to the administrator, and the unfortunate death of lead defense counsel. (Hawkins Final
11 Approval Decl. ¶¶11-13.) Accordingly, the Order was later modified. (See Section E below.)

12 **D. Summary of the Settlement Terms Preliminarily Approved**

13 Subject to Court approval pursuant to Section 382 of the California Code of Civil
14 Procedure and Rule 3.769 et seq. of the California Rules of Court, the Parties have agreed to
15 settle the lawsuit by agreement upon the terms and conditions and for the consideration set forth
16 in the Settlement Agreement, Exhibit 1 to the Declaration of James R. Hawkins In Support of
17 Final Approval and the Motion for Attorneys' Fees, Costs, and Incentive Payments.

18 A summary of the key terms of the Settlement is as follows:

- 19 • "Settlement Class" or "Settlement Class Members" are defined as all individuals who were
20 employed as non-exempt employees by Defendants Grupo Deco California Corporation,
21 Grupo Deco America Corporation, and/or Deco California Insurance Agency...including
22 without limitation pre-need agents by Defendants to sell pre-need policies in the State of
23 California at any time and who earned a commission from selling pre-need policies for
24 Defendants from November 6, 2009 to July 12, 2019 (Agreement ¶12.)
- 25 • "Settlement Fund" means the total payment \$80,000 under the Settlement Agreement,
26 including but not limited to payments to the Settlement Class, payments to Settlement Class
27 Counsel for attorneys' fees and costs, costs of Settlement Administration, and payments to
28 the Class Representatives. Defendant shall pay its share of any payroll taxes attributable to
the Net Settlement Fund. (Agreement ¶13, 53.)
- "Net Settlement Fund" or "NSF" means the gross amount Defendants will pay (subject to
Court Approval and the occurrence of the Effective Date) to all Participating Settlement
Class Members and is calculated by subtracting the following from the Settlement Fund:
(1) Class Counsel's attorneys' fees (not to exceed 33.33.% of the Common Fund or

\$26,640.33); (2) Class Counsel's documented costs (not to exceed \$15,000); (3) an Incentive Payment to be paid to each of the Class Representatives (not to exceed \$2,500 a piece); (4) \$1,000 to be allocated to PAGA penalties with 75% (\$750) to be paid to the LWDA; and (5) the Settlement Administrator fees not to exceed \$12,000). (Ex. 1, Agreement ¶ 14-21.; Ex. 2, ¶ H.)

- "Individual Settlement Payment" means the total amount due to an individual Participating Class Member. Individual Settlement Payments will be calculated and apportioned from the NSF based on the following formula: (a) One (1) point for each month an individual was on the payroll of Defendants at any time from November 6, 2009 to July 12, 2019 and employed as a non-exempt employee. (b) Two (2) points for each commissioned pre-need sale made by a non-exempt from November 6, 2009 to July 12, 2019. "Commissioned pre-need sales" are limited to sales in which the purchaser did not revoke or otherwise cause the sale to be cancelled (including without limitation by a failure to make required payments) within twelve months of the date the sales contract was executed by the purchaser. In the event the twelve month period has not elapsed by July 12, 2019 with respect to a sales contract, that contract shall be treated as a completed sale. (c) the value of each point will be determined by dividing the Net Settlement Fund by the total number of points derived from the sum of (a) and (b) above. The estimated amount due to a Settlement Class Member shall be the value of a single point multiplied by the total points available to that Settlement Class Member. (d) if an individual was not on the payroll for at least fifteen (15) days during a month, that individual shall not receive a point for that month. (Ex. 1, Agreement ¶ 21.)
- Payments to Participating Settlement Class Members include interest, wages, and penalties and will be allocated as follows: 15% allocated to wages; 80% to expense reimbursement; and 5% allocated to penalties and interest. All settlement payments for wages shall be subject to required withholdings and deductions for W-2 wage payments. With regard to payments in settlement claims for expense reimbursement, penalties and interest, these payments shall be issued through a Form 1099 and not subject to withholdings or deductions. (Agreement ¶ 22.)
- Individual Settlement Payment checks will remain valid for one hundred eighty (180) calendar days. Uncashed checks will be sent to the California State Controller's Office Unclaimed Property Fund for the benefit of and in the name of the Participating Settlement Class Member whose check is cancelled. (Agreement ¶ 43.)
- "Released Claims" shall collectively mean any and all claims, debts, liabilities, demands, obligations, wages, salaries, commissions, penalties, costs, expenses, reimbursement for expenses, attorneys' fees, damages, actions or causes of action of whatever kind or nature that were alleged or could have been alleged in the First Amended Complaint based on the facts and circumstances alleged therein including without limitation any claims for unpaid wages (including wages in the form of commissions), minimum wage, overtime pay, expenses, penalties, liquidated damages, interest, costs or attorney's fees under Labor Code Sections 201, 202, 203, 226, 226.3, 226.7, 510, 557, 1174, 1194, 1198, 2698 *et seq.*, 2802 and any Industrial Wage Commission Wage Order, Business and Professions Code Section

17200 and/or damages relating to the payment of wages under local and/or state as set forth in the operative Complaint from November 6, 2009, up to July 12, 2019. (Agreement ¶ 44.)

- “Released Parties” means Defendants Grupo Deco California Corporation, Grupo Deco America Corporation, and Deco California Insurance Agency, and all of its and their present and former parent companies, subsidiaries, related entities, partners, limited partners, affiliates, successors, assigns and general partners. (Agreement ¶ 44.)
- Class Counsel shall seek attorneys’ fees in the amount of 1/3 or \$26,640.33 and reimbursement of litigation costs up to \$15,000. Defendants will not object to a request by Settlement Class Counsel for an award of attorneys’ fees and costs in the above-referenced amounts. (Agreement ¶ 14-15.)
- Subject to Court approval, the Class Representatives’ Incentive Awards shall be as follows: \$2,500 for Plaintiff Efrain J. Sanchez, \$2,500 for Plaintiff Alejandro Ruiz, and \$2,500 for Plaintiff Luis Franco. This is in addition to Representative’s Individual Settlement Payment. Defendants agree not to oppose the amount of the Incentive Awards. (Agreement ¶ 17.)
- Per the Court’s Order and the Agreement of the Parties, Defendants began funding the Settlement Fund by making equal payments every month since October 9, 2020 into Defense counsel’s trust account. Every payment into the Settlement Fund shall be in the amount of \$2,222.22 until the Settlement Fund is fully funded. (Agreement ¶ 24, see generally, Ex. 2; see Ex. 7, Court Order) The last payment shall be \$2,222.30. Payments shall be made over thirty-six months. To date, Defendants have complied with this Modification and the Court’s Order regarding payments to the Settlement Fund, and as of the date of this filing has paid over \$44,444.00 into the Settlement Fund. (Hawkins Final Decl. ¶21.)

III. CLASS NOTICE AND RESULTS OF THE NOTICE PROCEDURE

The Class Notice was initially sent to only a portion of the class in error, because the Class Member data was found in two lists and only one list had been provided to the administrator. (Hawkins Final Decl. ¶11.) The Parties apprised the Court of the error and, upon the Parties’ request, the Court issued an Order Modifying the Preliminary Approval Order and Directing Class Notice Procedure on or about April 28, 2021. (Hawkins Final Approval Decl. ¶12., Exhibit 7, Order Modifying Prelim. Approval.) The Modified Order directed the Parties to have a second notice sent out to members of the Settlement Class that previously received a notice erroneously indicating their anticipated Settlement. (Hawkins Final Approval Decl. ¶12., Exhibit 7, Order Modifying Prelim. Approval.)

1 Defendants encountered numerous additional difficulties in compiling and providing the
2 complete Class List to the Administrator. (Hawkins Final Decl. ¶13.) On October 5, 2021,
3 ILYM Group received from Class Counsel the Notice Packet prepared by the Parties and
4 approved by the Court. (Hernandez Decl. ¶ 4.) On October 5, 2021 counsel for Defendants
5 provided ILYM Group with a complete class data file (“Class List”) including each Class
6 Member’s name, last known mailing address, employment dates, and the total number of sales.
7 (Hernandez Decl. ¶ 5.) After updating the Class List against the National Change of Address
8 Database maintained by the U.S. Postal Service, the Settlement Administrator mailed the Class
9 Notice to 379 Class Members via First Class Mail on December 29, 2021. (Hernandez Decl. ¶ 6.)

10 The deadline for Class Members to submit requests for exclusions and objections was
11 February 12, 2022. At the completion of the notice period, ILYM Group received only two valid
12 Request for Exclusion and no objections to the settlement. (Hernandez Decl. ¶¶ 11-12; Ex. D.)
13 Therefore, there are 377 Participating Class Members who will receive their share of the Net
14 Settlement Fund. (Hernandez Decl. ¶ 13.)

15 The Settlement Administrator estimates the Participating Settlement Class Members’
16 average settlement payment from the Net Settlement Fund to be \$48.04 and the highest
17 settlement payment to be \$2,175.39. (Hernandez Decl. ¶ 14.)

18 **IV. EVALUATION OF THE SETTLEMENT**

19 **A. The Legal Standard for Final Approval**

20 “[V]oluntary conciliation and settlement are the preferred means of dispute resolution.
21 This is especially true in complex class action litigation...” *7-Eleven Owners for Fair*
22 *Franchising v. Southland Corp.*, 85 Cal. App. 4th 1140, 1151 (2000)(quoting *Officers for Justice*
23 *v. Civil Serv. Comm. Of the City and Cnty. & S.F.*, 688 F.2d 615, 625 (9th Cir. 1982)). The
24 decision to approve or reject a proposed settlement is committed to the trial court’s sound
25 discretion. *Wershba v. Apple Comp., Inc.*, 91 Cal. App. 4th 224, 234-35 (2001). Thus, when
26 evaluating a class action settlement for final approval, the Court should give “[due] regard to
27 what is otherwise a private consensual agreement between the parties.” *Id.* at 245. The Court’s
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1 inquiry thus is limited to whether the proposed settlement is “fair, adequate, and reasonable.” *Id.*
2 at 244-45; *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). A settlement is “fair,
3 adequate, and reasonable” warranting final approval when “the interests of the class are better
4 served by the settlement than by further litigation.” Manual for Complex Litigation (4th ed. 2008)
5 § 21.61.

6 CRC 3.769 explains the procedure for final approval of a class action settlement, which
7 involves three distinct steps: (1) preliminary approval of the proposed settlement by the trial
8 court; (2) dissemination of mailed and/or published notice of the settlement to all affected Class
9 Members; and (3) a “formal fairness hearing,” or final settlement approval hearing, at which
10 Class Members may be heard regarding the settlement, and at which matters concerning the
11 fairness, adequacy, and reasonableness of the settlement may be presented.

12 In this case, the first step was completed on July 12, 2019, when the Court preliminarily
13 approved the Settlement and determined that it was within the range of possible final approval.
14 (See, Ex. 2, Preliminary Approval Order). The second step, dissemination of Class Notice to the
15 Settlement Class, was completed on February 12, 2022, at the close of the notice period. (See
16 generally, Hernandez Decl.) Thus, the final settlement approval hearing is the only remaining
17 step. Plaintiffs respectfully submit that the Settlement has generally accepted by the Settlement
18 Class, and no Class Member objects to the fairness. Accordingly, final approval should be
19 granted.

20 “[T]he trial court has broad powers to determine whether a proposed settlement in a class
21 action is fair.” *Mallick v. Super. Ct.*, 89 Cal. App. 3d 434, 438 (1979). Fairness is presumed
22 when: (1) the settlement is reached through arm’s-length bargaining, (2) investigation and
23 discovery are sufficient to allow counsel and the court to act intelligently, (3) counsel is
24 experienced in similar litigation, and (4) the percentage of objectors is low. *Dunk v. Ford Motor*
25 *Co.*, 48 Cal. App. 4th 1794, 1802 (1996); see also *Nordstrom Com. Cases*, 186 Cal. App. 4th
26 576, 581 (2010). “Where the settlement terms are fair and reasonable, the settlement is
27
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presumptively valid, subject only to objections that may be raised at a final hearing.” Conte & Newberg, *Newberg on Class Actions* § 11.26 (4th ed. 2002) (Newberg).

“The list of factors is not exclusive, and the court is free to engage in a balancing and weighing of factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245. Courts must also give:

proper deference to the private consensual decision of the parties, [since] the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Hanlon v. Chrysler Corp., 150 F.3d 1011, 1027 (9th Cir. 1998).

By granting preliminary approval, this Court has already determined that the Settlement Agreement is fair and reasonable, subject to objections. With no objections to the Settlement, the Court’s preliminary assessment has been separately endorsed by the Settlement Class. Accordingly, this Court should grant final approval of the Settlement.

B. Plaintiffs’ Counsel Conducted a Thorough Investigation of the Factual and Legal Issues and Were Thus Able to Objectively Assess the Settlement’s Reasonableness.

“[T]he extent of discovery completed and the stage of proceedings” are factors considered in assessing the fairness, adequacy, and reasonableness of a class action Settlement. *Dunk*, 48 Cal. App. 4th at 1801. “This factor evaluates whether the parties have sufficient information to make an informed decision about settlement.” *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 588, (N.D. Cal. 2015) (citation omitted).

Plaintiffs and Defendants entered into the Settlement only after conducting an extensive investigation, formal and informal discovery, and engaging in a mediation session with Michelle Reinglass. (Ex. 3, Hawkins Prelim. Approval Decl. ¶¶ 9-11, 14-15). This enabled Class Counsel and Defense Counsel to thoroughly evaluate the strengths and weaknesses of the claims. (*Id.*). As detailed more extensively in the previously filed Motion for Preliminary Approval, the Parties engaged in extensive exchanges of information and informal and formal discovery through

1 which Defendants provided foundational documents such as Defendants’ policies and procedures
2 regarding the payment of wages, the provisions of meal and rest breaks, time keeping policies,
3 including recording hours, issuance of wage statements, and providing all wages at separation, as
4 well as information regarding the number of putative class members and the mix of current
5 versus former employees, the average number of hours worked, the wage rates in effect, and
6 length of employment for class members. (Id. at ¶ 10.) The Parties also engaged in numerous
7 lengthy discussions regarding the information in the data exchanged, the Parties’ respective
8 claims and defenses, and the Plaintiffs’ claimed damages. (Id.) Class Counsel also created a
9 comprehensive damages model from the data and information provided. (Id. ¶ 12; see also Ex. 4,
10 First Suppl. Hawkins Decl. ¶ 6-7.)

11 Plaintiffs’ counsel also conducted a thorough investigation into the factual and legal
12 issues implicated by Plaintiffs’ claims and were able to objectively assess the settlement’s
13 reasonableness. (Ex. 3, Hawkins Prelim Decl. ¶¶ 9-15.)

14 Defendants also provided significant financial information for review before and within
15 the context of mediation, including without limitation tax returns and other financial documents.
16 The financial documents allowed Plaintiffs’ counsel to assess the real possibility that continued
17 litigation or a judgment would defeat any recovery to the Class, and the threat of bankruptcy.
18 (Id. ¶ 10(b), 15.) Counsel reviewed these documents with the assistance of a CPA. (Ex. 4, First
19 Suppl. Hawkins Decl. ¶ 6.)

20 By engaging in such a thorough investigation and evaluation of Plaintiffs’ claims,
21 Plaintiffs’ counsel can opine that the Settlement, for the consideration and on the terms set forth
22 in the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class
23 Members in light of all known facts and circumstances, including the risk of significant delay
24 and uncertainty associated with litigation, and various defenses asserted by Defendants. (Ex. 3,
25 Hawkins Prelim. Approval Decl. ¶¶ 19-15, 30-36.)

26 **C. The Settlement Was Reached Through Arm’s-Length Bargaining in Which All**
27 **Parties Were Represented by Experienced Counsel**
28

1 “[W]hat transpires in settlement negotiations is highly relevant to the assessment of a
2 proposed settlement’s fairness.” *State v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986). Courts
3 presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to
4 the contrary is offered; thus, there is a presumption that settlement negotiations are conducted in
5 good faith. Newberg, § 11.51.

6 As discussed above, the Parties settled on a mediator’s proposal after a mediation with an
7 experienced wage and hour class action mediator, Michelle Reinglass. (Ex. 3, Hawkins Prelim.
8 Approval Decl. ¶¶ 14-15.) The mediator helped to manage the Parties’ expectations and
9 provided a useful, neutral analysis of the issues and risks to both sides. *See In re Bluetooth*
10 *Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator
11 is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc. Derivative*
12 *Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008
13 (mediator’s participation weighs considerably against any inference of a collusive settlement);
14 *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a “mediator’s involvement in pre-
15 certification settlement negotiations helps to ensure that the proceedings were free of collusion
16 and undue pressure.”); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–00261, 2012 WL 5878390,
17 at *6 (N.D. Cal. Nov. 21, 2012 (participation in mediation “tends to support the conclusion that
18 the settlement process was not collusive”); *Ogbuehi v. Comcast of*
19 *California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014 (participation in
20 mediation “tends to support the conclusion that the settlement process was not collusive”). At all
21 times, the Parties’ negotiations were adversarial and non-collusive, conducted at arm’s length,
22 and supported by a knowledgeable mediator. (Ex. 3, Hawkins Prelim Decl. ¶ 14.)

23 The Parties were represented by experienced class action counsel throughout the
24 negotiations resulting in this Settlement. Plaintiffs are represented by James Hawkins, APLC,
25 seasoned class action attorneys who regularly litigate wage and hour claims through certification
26 and on the merits and have considerable experience settling wage and hour class actions. (Ex. 3,
27 Hawkins Prelim Approval Decl. ¶ 29.). Defendants are represented by a respected, experienced
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1 defense attorney Joseph D. Tuchmayer, and were also represented by David J. Hamilton, a
2 respected employment defense attorney, until approximately 2021.

3 **D. The Proposed Settlement Is Reasonable Given the Strength of Plaintiffs’ Case, the**
4 **Risks and Expense of Continued Litigation**

5 In seeking approval, a settling party must provide sufficient information to “enable the
6 court to make an independent assessment of the adequacy of the settlement terms.” *Kullar v.*
7 *Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled
8 law that a cash settlement amounting to only a fraction of the potential recovery will not per se
9 render the settlement inadequate or unfair.” *See Officers for Justice v. Civil Serv. Comm’n of City*
10 *& Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982). “The proposed settlement is not to
11 be judged against a hypothetical or speculative measure of what might have been achieved by the
12 negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the
13 risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often
14 measured in years).” *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act*
15 *(FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims
16 within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled
17 claims for risks such as changes in the law, the probability of success, and other factors.

18 Settling parties are not, however, required to partake in a hypothetical accounting
19 exercise: “**Kullar does not ... require any such explicit statement of [maximum] value;** it
20 requires a record which allows ‘an understanding of the amount that is in controversy and the
21 realistic range of outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.
22 App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)).
23 Overall, “the most important factor” in determining “whether a settlement is fair and reasonable”
24 is the “strength of the case for plaintiffs on the merits, balanced against the amount offered in the
25 settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130).

26 Based on their analysis of documents and data produced by Defendants, Plaintiffs’
27 counsel was able to assess the value of each of the asserted claims for settlement purposes
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(discussed in more detail in Ex. 3, Hawkins Prelim. Approval Decl., ¶ 32-36; Ex. 4, Hawkins Suppl. Decl. ¶7, Ex. 5, Hawkins Second Supp. Decl. ¶ 6; Ex. 6, Hawkins Third Suppl. Decl. ¶ 8-9.) As detailed in the Declaration, Plaintiffs estimated Defendants' maximum potential liability to be approximately \$29.3 million. (Id.) After reviewing Defendants' additional records, evidence produced, and class information, Plaintiffs' counsel estimated Defendants' maximum realistic liability for the thrust of Plaintiffs' claims to be approximately \$800,000. (Id.) Understandably, for purposes of evaluating the settlement's reasonable, this estimate was "tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years)." *In re Toys R Us-Delaware, Inc.-- Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014).

Ultimately, Plaintiffs' counsel determined an appropriate range of recovery for settlement purposes by offsetting Defendants' maximum theoretical liability by: (i) the strength of the defenses to the merits of Plaintiffs' claims; (ii) the risk of class certification being denied; (iii) the risk of losing on any of a number of dispositive motions that could have been brought between certification and trial (e.g., motions to decertify the class, motions for summary judgment, and/or motions in limine) that might have eliminated all or some of Plaintiffs' claims, or barred evidence/testimony in support of the claims; (iv) the risk of losing at trial; (v) the chances of a favorable verdict being reversed on appeal; and (vi) the difficulties attendant to collecting on a judgment. (Hawkins Final Decl. ¶27.)

Plaintiffs determined that a settlement amounting to \$80,000, or approximately 10% of the estimated realistic liability for the thrust of Plaintiffs' claims, was fair and reasonable in view of the odds of: (i) overcoming Defendants' arguments and evidence that it properly provided meal and rest breaks, paid for all hours of work, and properly reimbursed business expenses; (ii) Defendants' arguments and evidence that a significant number of the Class Members were subject to the outside sales person exemption; (iii) the obstacles inherent in satisfying the requirements to certify a class and satisfy manageability requirements; (iv) the challenges of proving the elements of each cause of action; (v) the derivative nature of many of the claims; (vi)

1 the expenses of further litigation; (vii) Defendants' financial hardship and precarious financial
2 position, such that bankruptcy was possible; and (viii) the recovery rate, even if Plaintiffs were to
3 prevail, after years of continued and costly litigation. (Hawkins Final Decl. ¶28.)

4 Courts have routinely approved settlements that provided an even greater discounted
5 range of the maximum potential recovery. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212
6 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6%
7 to 14% of the total estimated damages); *In re Armored Car Antitrust Litig.*, 472 F. Supp. 1357,
8 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were
9 approved); *In re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla. 1972) (approving
10 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D.
11 Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery "[fell]
12 within the range of possible initial approval based on the strength of plaintiff's case and the risk
13 and expense of continued litigation."); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042
14 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).

15 **E. The Endorsement of the Parties' Counsel Favors Final Approval**

16 The endorsement of experienced and well-informed counsel of a settlement as fair,
17 reasonable, and adequate is entitled to significant weight. *Dunk*, 48 Cal. App. 4th at 1801-02; *see*
18 *also Larsen v. Trader Joe's Company*, No. 11cv05188-WHO, 2014 WL 3404531 (N.D. Cal. July
19 11, 2014) ("A [trial] court is entitled to give consideration to the opinion of competent counsel
20 that the settlement is fair, reasonable, and adequate.") Here, counsel for both Parties have
21 significant experience litigating wage and hour class actions and endorse the Settlement as being
22 fair, adequate and reasonable. Class Counsel believes that the Settlement is the best interest of
23 the Class, and an excellent result for the Class. (Ex. 3, Hawkins Prelim. Approval Decl. ¶ 29-36;
24 Ex. 4, Hawkins Suppl Decl. ¶ 6-7; Ex. 5, Hawkins Second Suppl Decl. ¶ 6-7; Ex. 6, Hawkins
25 Third Suppl Decl. ¶ 8-9.) This endorsement of counsel is entitled to significant weight in favor
26 of final approval. *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 622 (N.D. Cal. Aug. 22, 1979) ("The
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1 recommendation of plaintiffs' counsel should be given a presumption of reasonableness.") *In re*
2 *Salomon Inc. Sec. Litig.*, 1194 U.S. Dist. LEXIS 8038, at *42 (S.D.N.Y. June 15, 1994).

3 **F. The Settlement Class Has Responded Positively to the Settlement**

4 In evaluating the fairness of a Settlement, the "absence of a large number of objections to a
5 proposed class action settlement raises a strong presumption that the terms of a proposed class
6 settlement action are favorable to the class members." *National Rural Tele. Coop. v. DIRECTV,*
7 *Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004). Here, less than 0.6% of all Class Members opted out,
8 not a single Class Member has objected to the Settlement. (Hernandez Decl. ¶ 11-13.) The
9 Class's response is "overwhelmingly positive," supporting approval of the Settlement. *See* 7-
10 *Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1152-53 (finding support for the
11 settlement where 80 out of 5,454 class members elected to opt out and nine class members
12 objected); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010)
13 (finding 0 objections and 16 opt-outs out of 329 class members [4.86%] "strongly support[
14 settlement"); *Garner v. State Farm Mut. Auto. Ins. Co.*, No. CV 08 1365 CW EMC, 2010 WL
15 1687832, at *15 (N.D. Cal. Apr. 22, 2010) (finding an opt-out rate of 0.4% supported
16 settlement). In other words, "[t]he fact that the overwhelming majority of the class willingly
17 approved the offer and stayed in the class presents at least some objective positive commentary
18 as to its fairness." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

19 Here, no Class Member submitted an objection to the Settlement and only two Class
20 Members submitted a valid request for exclusion. Accordingly, 377 of the 379 Class Members
21 (99.47%) will participate in the Settlement and receive their individual settlement shares.
22 (Hernandez Decl. ¶¶ 11-13.) In addition, the Participating Settlement Class Members' average
23 settlement payment from the Net Settlement Amount is estimated to be \$48.04 and the highest
24 settlement payment is \$2,175.39. (Hernandez Decl. ¶ 14.)

25 This average net recovery is higher or in line with other wage and hour class action
26 settlements approved by California state and federal courts. *See, e.g., Lim v. Victoria's Secret*
27 *Stores, Inc.*, Case No. 04CC00213 (Orange County Super. Ct.) (average net recovery of
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approximately \$35); and *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of approximately \$20).

V. THE PROPOSED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

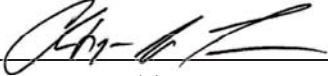
In accordance with the Court’s Preliminary Approval Order (Ex. 2, ¶ N.), the Parties retained ILYM Group, Inc. to administer the notice process. ILYM Group, Inc. is an experienced class administrator and has adequately performed the administration tasks required by the preliminary approval order. ILYM’s duties include: (a) printing and mailing the *Notice of Pendency of Class Action Settlement of Class Action and Request for Exclusion from Class* (“Notice Packet”); (b) receiving and processing requests for exclusion; (c) resolving Settlement Class Members’ disputes over the number of points Defendants have record of them working during the Class Period, which was pre-printed on their individualized Class Notice; (d) calculating individual settlement award amounts; (e) processing and mailing settlement award checks; (f) handling tax withholdings as required by the Settlement and the law; (g) preparing, issuing and filing tax returns and other applicable tax forms; (h) handling the distribution of any unclaimed funds pursuant to the terms of the Settlement; and (i) performing other tasks as the Parties mutually agree to and/or the Court orders ILYM Group to perform. (Hernandez Decl. ¶ 3.) ILYM also agreed to send out the second mailing without additional charge, and per the Settlement Agreement is making several payments to the class over a period of time. (Hawkins Final Approval Decl. ¶ 20; Ex. 1, Settlement Agreement, ¶24.) The Court preliminarily approved up to \$12,000 from the Settlement to cover the costs associated with ILYM’s work in administering the Settlement. (Ex. 2, Order, ¶H.) ILYM’s fees and costs for the service in connection with the administration of this Settlement are \$12,000.00. Plaintiffs’ counsel believes this sum is appropriate and respectfully requests the Court award to ILYM. (Hawkins Final Decl. ¶20.)

1 **VI. CONCLUSION**

2 The Settlement should be approved as fair, adequate, and reasonable. It will result in fair
3 payment to Participating Settlement Class Members, is non-collusive, and was achieved as a
4 result of informed, extensive litigation, and arm's-length negotiations conducted by counsel for
5 the respective parties who are experienced in wage and hour class action litigation, with the
6 assistance of an experienced and well-regarded mediator. The Class Members' positive response
7 indicates that the Settlement is fair and reasonable in light of all known conditions. Accordingly,
8 Plaintiffs respectfully request that the Court grant final approval to the Settlement.

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10 Dated: May 23, 2022

JAMES HAWKINS APLC

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12 By: 
13 James Hawkins, Esq.
14 Christina M. Lucio, Esq.

15 Attorneys for Plaintiffs
16 and the conditionally Certified Class
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