Neil M. Larsen (SBN 276490)
neil@abramsonlabor.com
Meghan E. McNally (SBN 350701)
meghan@abramsonlabor.com
Jennifer Rivera (SBN 353268)
jennifer.r@abramsonlabor.com
ABRAMSON LABOR GROUP
1700 W. Burbank Boulevard
Burbank, California 91506
Tel: (213) 493-6300
Fax: (213) 723-2522

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

JUAN RIVERA, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

COPENHAGEN SAUSAGE GARDEN, LLC, a California limited liability company; AARMARK BEER GARDENS, a California corporation; and DOES 1 through 100,

Defendants.

Case No. 22CV04059

CLASS ACTION

[Assigned for all purposes to the Hon. James F. Rigali, Dept. 2]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CLASS REPRESENTATIVE INCENTIVE AWARD, AND ATTORNEYS' FEES AND COSTS

Date: June 25, 2024
Time: 8:30 a.m.
Dept.: 2

Action Filed: October 14, 2022
Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on June 25, 2024 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 2 of the above-entitled Court, located at 312-C East Cook Street, Santa Maria, California 93454, Plaintiff Juan Rivera ("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 Copenhagen Sausage Garden, LLC ("CSG") and Defendant Aarmark Beer Gardens ("AGB") (CSG and AGB collectively, "Defendants");
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 Defendants in California at any time from October 14, 2018 through May 2, 2023 (the "Class Period").

3. Confirming the appointment of Plaintiff Juan Rivera as the Class Representative for settlement purposes;
4. Confirming the appointment of Abramson Labor Group as Class Counsel;
5. Approving an award of $116,666.67 in attorneys' fees to Class Counsel;
6. Approving an award of $10,034.59 in costs to Class Counsel;
7. Approving an award of $6,000.00 in costs to ILYM Group, Inc. ("ILYM") for its settlement administration services;
8. Approving an incentive payment of $7,500.00 to Plaintiff for his service as the Class Representative;
9. Approving an award of $30,000.00 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: (l) 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 hour claims; (4) the requested amounts for Class Counsel's attorneys' fees and costs, settlement administration costs, and the Class Representative's incentive payment are all fair, adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Judgment and Order Granting Final Approval of Class Action Settlement submitted herewith should be entered so as to give finality to, and allow for disbursements from, the Settlement.

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

Respectfully Submitted,

Dated: June 10, 2024

ABRAMSON LABOR GROUP

Neil Larsen

Neil M. Larsen
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Juan Rivera ("Plaintiff") submits this memorandum of points and authorities in support of his motion for final approval of the class action settlement (the "Settlement") with Defendant Copenhagen Sausage Garden, LLC ("CSG") and Defendant Aarmark Beer Gardens ("AGB") (collectively, "Defendants," Plaintiff and Defendants together, the "Parties"). Under the Settlement, Defendants have agreed to pay $350,000.00 to the following Settlement Class, which consists of 303 individuals:

> All current and former non-exempt employees who worked for Defendants in California at any time from October 14, 2018 through May 2, 2023 (the "Class Period")[1].

In this non-revisionary Settlement, all Participating Class Members will receive automatic payments without the need to submit a claim form, resulting in an average payment ("Settlement Award") of approximately **$593.40** to Participating Class Members. This is a favorable resolution of the highly disputed wage and hour claims in this case, especially in light of the significant litigation risks that Plaintiff faced. Moreover, after receiving notice of the proposed Settlement and projected estimated settlement payments, **not a single Settlement Class member has objected to the Settlement or elected to opt-out of the Settlement, resulting in a 100% participation rate**.

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

II. SUMMARY OF THE LITIGATION

A. FACTUAL AND PROCEDURAL BACKGROUND

CSG is an outdoor beer garden and restaurant in Solvang, California. *See* Declaration of

[1] In accordance with the Settlement's escalator provision, Defendants elected to cut off the Class Period as of May 2, 2023, such that there are 303 Settlement Class members. *See* Settlement, § 3(E).

Neil M. Larsen ("Larsen Decl."), ¶ 7. AGB is the parent company and sole managing member of CSG, as well as several other restaurants. *Id*. Plaintiff is a former non-exempt front of house employee who worked at CSG in California during the Class Period. *Id*. On October 14, 2022, Plaintiff filed this Action, alleging claims for failure to pay minimum wages, meal and rest period violations, waiting time penalties, wage statement penalties, wage statement penalties, failure to reimburse expenses, and unfair business practices. *Id.*, ¶ 8. On December 19, 2022, Plaintiff subsequently filed a First Amended Complaint adding a claim for PAGA civil penalties. *Id.*, ¶ 9.

B. <u>DISCOVERY, MEDIATION, AND SETTLEMENT</u>

In preparation for mediation, the Parties engaged in extensive informal discovery. Defendants produced a class list with putative class members' hire dates, termination dates, job titles, locations, and other information. Defendants also produced a sampling of timekeeping and payroll records for putative class members during the Class Period, its wage and hour policies, and other information. Larsen Decl., ¶ 10. Plaintiff's counsel hired an expert data analyst to analyze and extrapolate the data produced by Defendants. *Id*. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims and Defendants' defenses, as well as the chances for class certification. *Id*.

The Parties attended a full-day mediation with Phillip Cha, Esq. on June 15, 2023, at which they vigorously debated Plaintiff's claims and Defendants' defenses, and the chances of certification. Larsen Decl., ¶ 11. At the conclusion of the mediation session, the Parties agreed to accept a mediator's proposal. *Id*. Over the next several weeks, the Parties negotiated the finer terms of the settlement, ultimately resulting in the Settlement. *Id*.

C. <u>PRELIMINARY APPROVAL AND MAILING OF NOTICES</u>

On January 3, 2024, Plaintiff submitted the proposed Settlement to this Court with his Motion for Preliminary Approval of Class Action Settlement. Larsen Decl., ¶ 12. On January 31, 2024, this Court requested a supplemental briefing, which Plaintiff provided on February 6, 2024. *Id.* Subsequently, on February 15, 2024, it issued its Order Granting Preliminary Approval. *Id.* & Exhibit A (Order Granting Preliminary Approval).

On April 3, 2024, the Court-approved Class Notice was mailed to Settlement Class members, who had until June 3, 2024 to submit objections, requests for exclusion, or workweek disputes. *See* Declaration of Nick Castro ("Castro Decl."), ¶¶ 7-13. As of the date of this filing, ILYM has received no objections and no requests for exclusion. *Id*. 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, the Settlement Class is comprised of "All current and former non-exempt employees who worked for Defendants in California at any time from October 14, 2018 through May 2, 2023 (the "Class Period")."[2] *See* Exhibit A to Larsen Decl.

B. Monetary terms

The Settlement provides for Defendants to pay a non-reversionary Gross Settlement Amount ("GSA") of $350,000.00. *See* Settlement, § 3. After deducting requested attorneys' fees ($116,666.67) and litigation costs ($10,034.59), Class Representative Incentive Payment ($7,500.00), settlement administration costs ($6,000.00), and the amount set aside as PAGA penalties ($40,000.00), the Net Settlement Amount ("NSA") is estimated at $169,798.74. *See* Settlement, § 3(C)-(D); Larsen Decl., ¶ 18 & Exh. B; Castro Decl., ¶ 14. Together with the $10,000.00 PAGA Amount, the total amount to be paid to Settlement Class members equals $179,798.74.

The NSA shall be distributed to Participating Class Members as follows: (i) 10% of the NSA is designated the "Waiting Time Amount," and will be paid in equal amounts to all Participating Class Members whose employment with Defendants ended at any time from October 14, 2019 to May 2, 2023; (ii) 10% of the NSA is designated the "Wage Statement Amount" and will be paid to all Participating Class Members who were employed by Defendants in California at any time from October 14, 2021 to May 2, 2023, based on their proportionate number of pay periods worked during that time period; and (iii) the remaining 80% of the NSA will be distributed to all Participating Class Members, proportionally based on the number of workweeks worked during the Class Period. *See* Settlement, § 5(B). Additionally, $10,000.00

[2] As noted above, in accordance with the Settlement's escalator provision, Defendants elected to cut off the Class Period as of May 2, 2023, such that there are 303 Settlement Class members. *See* Settlement, § 3(E).

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 October 14, 2021 to May 2, 2023 ("PAGA Period"). *See* Settlement § 2, 4(C).

All payments from the PAGA Amount will be classified as 100% penalties; all payments from the NSA will be classified as one-third (33.33%) wages and two-thirds (66.67%) penalties and interest. *See* Settlement § 5(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.* Defendants' share of employer-side payroll taxes shall be paid by Defendants separate from, and in addition to, the Gross Settlement Amount. *See* Settlement § 3(D).

C. <u>Summary of Notice Process</u>

On February 22, 2024, ILYM received a data file from Defense Counsel that contained names, social security numbers, last known mailing addresses, phone number(s), class workweeks, PAGA pay periods, and employment dates for each Settlement Class Member. ("Class Data"), which contained 303 Settlement Class members. Castro Decl., ¶ 5. As part of the preparation for mailing the Notice Packets to Class members, 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 April 3, 2024, ILYM mailed the Notice Packet via U.S. first class mail, in English and Spanish, to all 303 Settlement Class members. Castro Decl., ¶ 7. Following the initial mailing, 36 Notice Packets were returned to ILYM. *Id*., ¶ 8. None of them were returned with forwarding addresses. *Id*. ILYM obtained 12 updated addresses through a skip trace, and promptly remailed the Notice Packets to those individuals. *Id.* at ¶¶ 8-9. As of the date of this filing, only 24 Notice Packets are considered undeliverable, as no updated address could be found, or they were returned as undeliverable a second time. *Id*., at ¶ 10.

Settlement Class members had until June 3, 2024 to submit objections, disputes, or requests for exclusion. Castro Decl., ¶¶ 11-12. ILYM received **<u>no objections</u>** from Class

Members, **no requests for exclusion**, and **only 1** workweek dispute (which Defendants agreed with the workweek total for Class member and the Class member was credited with the correct number of workweeks). *Id*. The average estimated payment is $593.40, with the highest estimated payment being $2,454.97. *Id*., ¶ 14.

D. Funding of the Settlement and Uncashed Settlement Funds

The Settlement will be funded over two payments: (i) $100,000.00 deposited no later than 30 days following the Court's granting preliminary approval of the settlement (i.e. (March 7, 2024); and (ii) $250,000.00 no later than 30 days after the Court grants final approval of the settlement. *See* Settlement § 3(B). On March 7, 2024, Defendants made the initial $100,000.00 deposit pursuant to the above schedule. Castro Decl., ¶ 16. Within seven (7) business days of the Settlement being fully funded, the Settlement Administrator will calculate Settlement Awards, and provide the same to Class Counsel and Defense Counsel for review and approval. § 5(D). Within five (5) business days of approval by counsel of the individual Settlement Award calculations, ILYM will prepare and mail individual Settlement Awards, to Participating Class Members. *Id.*, § 5(D).

After disbursement, Class Members will have 180 days to cash their checks. *See* Settlement, § 5(F). Funds remaining unclaimed after 180 days shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, in the name of the Class Member who did not cash his/her check. *Id*.

IV. ARGUMENT

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

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent 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' 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 February 15, 2024. *See generally* Larsen Decl., Exh. 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 or request for exclusion. *See* Castro Decl., ¶¶ 11-12. This Court should therefore confirm its conditional certification of the Settlement Class.

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

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

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

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

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

As detailed in Plaintiff's Motion for Preliminary Approval, there was a significant risk of non-certification and/or not prevailing on the merits with respect to each of Plaintiff's claims. Larsen Decl., ¶¶ 13-14. For example, with respect to Plaintiff's minimum wage claim based on alleged failure to pay the statutorily mandated minimum wage rate, Defendants contend that each of AGB's restaurants should be looked at individually, and that each restaurant generally employed 25 or fewer employees and thus was only required to pay the lower minimum wage rate. Larsen Decl., ¶ 13. Defendants further argue that AGB – the parent company – did not directly control the wages, hours, or working conditions of CSG employees, for example, and therefore it could not be held to be a joint employer of those workers. *Id.*

As for Plaintiff's claim for meal and rest period violations, Defendants argue that it has maintained legally-compliant meal and rest period policies and practices throughout the Class Period, and that under *Brinker* it is only required to "provide" the opportunity to take meal periods and "authorize and permit" rest periods, not "ensure" they are taken. Larsen Decl., ¶¶ 14. As for second meal periods and third rest periods, Defendants argue that employees rarely work shifts over 10 hours (only about 1.5% of all shifts as reflected in the timekeeping records), and that those who did not take a second meal period waived their second meal period as they are entitled to do under Labor Code § 512. *Id*. Defendants further argue that any missed meal or rest periods were due to employee choice, and that individualized inquiries would be required to determine whether individual employees received a non-compliant meal or rest period on each shift, and why any meal or rest period was late, short or missed. *Id*.

With respect to Plaintiff's claim for unreimbursed expenses, Defendants counter that employees did not need to use their personal cell phones to perform their job duties, and that if they did, there are procedures in place for employees to request reimbursement. Larsen Decl., ¶ 15. Defendants further argue this claim would not be certified, as it would require hundreds of individualized inquiries as to whether employees incurred work-related expenses, whether they were reimbursed, whether Defendants knew about the expense, and whether the expense was reasonable. *Id*.

As for Plaintiff's derivative claims for wage statement penalties, waiting time penalties, and PAGA civil penalties, Defendants argue that Plaintiff's derivative claims fail for the same reasons his underlying claims fail. Larsen Decl., ¶ 16. Defendants further assert they have strong, good-faith defenses to Plaintiff's underlying claims, precluding imposition of waiting time penalties. *Id*. Defendants further contend any alleged wage statement violations could not be shown to be "knowing and intentional," particularly given its good-faith defenses; that Plaintiff cannot show he or other employees "suffer[ed] injury" due to alleged wage statement violations, as required by Lab. Code § 226(e); and that employee wage statements always accurately reflect amounts paid to employees, as required under the relevant case law. *Id*. Finally, Defendants contend Plaintiff's PAGA claim fails because the underlying claims fail, and that the Court would substantially reduce any potential PAGA penalties given Defendants' good-faith defenses. *Id*.

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. Larsen Decl., ¶ 19. Thus, while these risks are far from exhaustive, they demonstrate that the Settlement is fair, adequate, and reasonable. *Id*.

///

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

Each individual Settlement Award will be calculated based on the proportionate number of workweeks worked by each Class member during the Class Period, and whether the Class member is also entitled to a portion of the Waiting Time Amount, Wage Statement Amount, and/or PAGA Amount. *See* Settlement, § 5(B). This method of distribution compensates Settlement Class members based on the estimated extent of their injuries, as those who worked more workweeks would have been subject to more of the alleged wage and hour violations than those who worked fewer workweeks, and those who are eligible for a portion of the Waiting Time Amount, Wage Statement Amount, and/or PAGA Amount would be entitled to additional penalties. Thus, the formula for compensating Settlement Class members is fair, adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered by them.

4. The Absence of Any Objections and Opt-Outs Confirms that the Settlement is Fair, Adequate, and Reasonable

Class members' response to a settlement is relevant in evaluating whether it merits final approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The absence of objections and requests for exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1152-53 (2000) (finding 9 objections and 80 opt-outs from a class of 5,454 showed a "particularly impressive" favorable response from class members). Here, not a single Settlement Class member has objected to the Settlement, nor has any Settlement Class member elected to opt-out of the Settlement, resulting in a 100% participation rate. Castro Decl., ¶¶ 11-12. The extremely favorable response of the Settlement Class further confirms that the Settlement is fair, adequate, and reasonable.

C. <u>The Requested Award of Attorneys' Fees is Reasonable</u>

Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to recover their attorneys' fees and costs for their wage claims. *See* Labor Code §§ 226(e), 1194, 2699(g), and 2802(c). A fee award is justified where the legal action has produced its benefits by way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987); *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983).

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

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

> 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. at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ("when a number of persons are 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 attorney's fees out of the fund."); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorneys' fees more accurately reflects the results achieved for the putative class than the lodestar method and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'").

Here, Class Counsel's fee request of $116,666.67 (one-third of the Gross Settlement Amount) is fair and reasonable based on a percentage of the recovery confirmed with a lodestar cross-check. First, "regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008). This is also consistent with Class Counsel's experience in similar wage and hour class action matters. *See* Larsen Decl., ¶¶ 2-6. Thus, the percentage sought by Class Counsel here (the same percentage approved in *Laffitte*) is reasonable.

2. *The Reasonableness of the Fee Request is Confirmed by a Lodestar "Cross-Check"*

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

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

Under California law, lodestar multipliers can range from 2 to 3 or even higher. *See, e.g., Chavez, supra*, 162 Cal.App.4th at 49-50, 62 (approving multiplier of approximately 2.5); *City of Oakland v. Oakland Raiders,* 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34); *Coalition for Los Angeles County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d 241, 251 (1977) (approving multiplier of ~2.04); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050-51 (9th Cir. 2002) (upholding multiplier of 3.65). In class actions such as this one, where the value of the benefit conferred to the class "can be monetized with a reasonable degree of 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 legal marketplace in comparable litigation." *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557 (2009). In doing so, "the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market for such services." *Id.* at 556; *see also Laffitte, supra*, 1 Cal.5th at 503-05.

In this case, Class Counsel have a lodestar of approximately $134,315.00 without the use of any multiplier, compared to the $116,666.67 fee request. Larsen Decl., ¶ 20. A general summary showing the number of hours of work performed by each attorney and paralegals is set forth below. The billing rates used are reasonable in view of the evidence submitted herewith. *Id.*, at ¶¶ 20-22; Exh. C (*Laffey* Matrix).

Name	Rate	Hours	Pre-Multiplier Lodestar
Tuvia Korobkin (15th Year Attorney)	$675	135.5	$91,462.50
Neil Larsen (14th Year Attorney)	$650	48.3	$31,395.00
Meghan McNally (1st Year Attorney)	$375	22.5	$8,437.50
Paralegals/Law Clerks	$200	15.1	$3,020
Total Lodestar			**$134,315.00**

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino*, 290 F.3d at 1048-51 (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees). Class Counsel negotiated a substantial recovery for the Settlement Class, and not a single Settlement Class member has requested exclusion from or objected to the Settlement or to Class Counsel's requested fees. *See* Castro Decl., ¶ 12.

Additionally, the average settlement payment in this case of approximately $593.40 exceeds payments in similar wage and hour class action settlements. *See*, *e.g.*, *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. 2012) (finding that average payment to class members of less than $200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately $108, based on $239,363.14 distributed to 2,212 claimants). The fact that Class

Counsel achieved these results in the face of serious defense challenges, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all the costs of litigation without receiving any compensation. Larsen Decl., ¶ 18. During this time, Class Counsel have expended $10,034.59 in costs and have devoted substantial time to this litigation. *Id*. & Exh. B.

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

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

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

Class Counsel requests $10,034.59 in litigation costs. Larsen Decl., ¶ 18 & Exh. B. The cost request is fair, adequate, and reasonable, as the costs were reasonably incurred, and the costs Plaintiff seeks are routinely approved by courts. *See*, *e.g.*, *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (counsel should recover "those out-of-pocket expenses that would normally be charged to a fee paying client"); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3 (N.D. Cal. 2011) ("costs of reproducing pleadings, motions and exhibits are typically billed by attorneys to their fee-paying clients" and are reimbursable); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redland Ins. Co.,* 460 F.3d 1253, 1258-59 (9th Cir. 2006) (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable). Because the expense reimbursements requested by Class Counsel were reasonably incurred, and no Class member has objected to them, this Court should grant the request for costs.

E. This Court Should Approve the Requested Settlement Administration Costs

Plaintiff also requests that this Court approve $6,000.00 in settlement administration costs to the Settlement Administrator, ILYM. As detailed in the declaration of Nick Castro submitted herewith, ILYM performed duties in connection with this Settlement that were integral in effectuating the Settlement and the Notice process. Among other things, ILYM calculated each Settlement Class member's individual payment, updated addresses contained in the class data supplied by Defendants, translated and formatted Notices for mailing, mailed Notice Packets to all 303 Settlement Class members, kept the parties informed of any objections or requests for exclusion, and have otherwise administered the Settlement. *See* Castro Decl., ¶¶ 2-9. ILYM's requested costs are fair, reasonable, and adequate, and should be finally approved.

F. <u>This Court Should Approve Plaintiff's Requested Class Representative Service Award</u>

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

Here, Plaintiff seeks a Class Representative Service Award of $7,500, and believes this request is reasonable given his efforts in this case and the risks he undertook on behalf of Class members. *See* Rivera Decl. ¶¶ 4-5. Plaintiff gathered documents for use in the lawsuit, reviewed and analyzed documents related to the claims in this case and the policies produced by Defendants, and discussed case strategy and Defendants' wage and hour practices and policies with Class Counsel on numerous occasions. *Id*., ¶ 5.

Plaintiff also undertook the risk of being liable for Defendants' costs if this case were lost, as well as the reputational risk of being the named plaintiff in a wage and hour class action against an employer. *See, e.g.*, *Deaver v. Compass Bank*, 2015 WL 8526982 at **14-15 (N.D. Cal. Dec. 11, 2015) (approving $7,500 incentive payment in $500,000 wage and hour settlement, finding the award "particularly appropriate in this wage and hour class action, where Plaintiff undertook a significant 'reputational risk' in bringing this action against his former employer"). *See* *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving $15,000 total award to named plaintiff in wage and hour class action settlement, including $10,000 incentive award plus an additional $5,000 for plaintiff's release of claims). Moreover, after receiving notice of the proposed Service Award for Plaintiff, no Settlement Class member has objected to it. *See* Castro Decl., ¶ 12. Thus, the service award to Plaintiff is appropriate and justified as part of the Settlement and should be finally approved.

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V. CONCLUSION

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

Respectfully submitted,

Dated: June 10, 2024

ABRAMSON LABOR GROUP

By: *Neil Larsen*

Neil M. Larsen
Attorneys for Plaintiff