

1 HEATHER DAVIS, SBN 239372
heather@protectionlawgroup.com
2 AMIR NAYEBDADASH, SBN 232204
amir@protectionlawgroup.com
3 CARLOS JIMENEZ, SBN 227534
carlos@protectionlawgroup.com
4 **PROTECTION LAW GROUP, LLP**
237 California Street
5 El Segundo, California 90245
6 Tel.: (424) 290-3095 / Fax: (866) 264-7880

7 *Attorneys for Plaintiff*
8 ALEXANDER VALLEJO

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ALEXANDER VALLEJO, individually and on
12 behalf of others similarly situated,

13 Plaintiff,

14 vs.

15 STERIGENICS U.S., LLC, a Delaware limited
16 liability company; and DOES 1 through 50,
inclusive,

17 Defendants.
18

Case No. 3:20-cv-01788-AJB-AHG

*Assigned for all purposes to the Hon.
Anthony J. Battaglia, and the Hon.
Magistrate Judge Allison H. Goddard*

**CLASS AND REPRESENTATIVE
ACTION**

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

19 Date: August 24, 2023
20 Time: 2:00 p.m.
21 Ctrm: 4A

22 Complaint Filed: August 5, 2020
23 FAC Filed: July 14, 2021
24 SAC Filed: October 15, 2021
TAC Filed: January 6, 2021
Fourth Am. Cx. Filed: December 29, 2022
Trial date: None Set

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1 **I. INTRODUCTION:**

2 Plaintiff Alexander Vallejo (“Plaintiff”) comes before this Court seeking final approval of the
3 Parties’ Joint Stipulation of Class Action and PAGA Settlement (the “Settlement Agreement” or
4 “Agreement” or “Settlement”) entered into with Defendant Sterigenics U.S. LLC (“Defendant”)
5 (Plaintiff and Defendant collectively the “Parties”)¹. Once final approval is granted, 320 Class
6 Members will receive an Individual Settlement Payment as their share of the non-reversionary
7 \$875,000.00² Gross Settlement Amount recovered on their behalf.

8 This Court granted preliminary approval of the Settlement Agreement on April 20, 2023. (ECF.
9 No. 87.) Pursuant to this Court’s preliminary approval order and the terms of the Settlement
10 Agreement, on May 11, 2023, ILYM Group, Inc. (“ILYM”), the Settlement Administrator, mailed the
11 Class Notice Packet to Class Members. Declaration of Nathalie Hernandez (“ILYM Decl.”) at ¶7.
12 Class Members’ response to the Settlement has been universally positive. Only one Aggrieved
13 Employee submitted a Request for Exclusion and Objected to the PAGA Settlement.³ ILYM Decl. at
14 ¶¶11-12. The average Class Member will receive \$1,793.50 under the Settlement. *Id.* at ¶15.

15 The Settlement is fair, reasonable, and adequate and satisfies all of the criteria for final approval
16 and deserves approval. Accordingly, Plaintiff respectfully requests that this Court issue an order: (i)
17 granting final approval of the Settlement; (ii) approving distribution of Individual Settlement
18 Payments to Settlement Class Members; (iii) approving distribution to the California Labor &
19 Workforce Development Agency (“LWDA”) for the LWDA’s share of the PAGA Award in the
20 amount of \$18,750.00; (iv) approving payment of Plaintiff’s Class Representative’s Payment of
21

22

23 ¹ A copy of the fully executed Settlement Agreement is attached as Exhibit 1 to the Declaration of
24 Heather Davis in Support of Plaintiff’s Unopposed Motion for Preliminary Approval of Class Action
25 Settlement (“Davis Decl.”) (ECF 69-2). Unless otherwise noted, all capitalized terms shall have the
26 same definition as set forth in the Settlement Agreement.

27 ² The escalator clause contained in paragraph 41 of the Agreement was triggered, increasing the Gross
28 Settlement Amount to \$888,588.24. (ILYM Decl. ¶15).

29 ³ The Class Member/Aggrieved Employee that attempted to object/requested to be excluded from the
30 Settlement is Anthony Freeman. Mr. Freeman improperly attempted to both object and request to be
31 excluded from the Settlement. (ILYM Decl. ¶¶11-13).

1 \$7,500.00 to Plaintiff; (v) approving payment of Settlement Administration Costs of \$10,599.00 to
2 ILYM Group, Inc.; and (vi) approving Class Counsel's Fees Award of \$262,500.00 and Class Counsel
3 Costs Award of \$4,994.35.

4 **II. LITIGATION AND SETTLEMENT HISTORY**

5 On August 5, 2020, Plaintiff Alexander Vallejo ("Plaintiff") filed a civil Complaint against
6 Defendant Sterigenics U.S. LLC ("Defendant") in the San Diego County Superior Court, Case No.
7 37-2020-00027438-CU-OE-CTL (the "Action"). Plaintiff asserted the following claims on behalf of
8 himself other employees of Defendant: (1) unpaid overtime; (2) unpaid meal period premiums; (3)
9 unpaid rest period premiums; (4) unpaid minimum wages; (5) final wages not timely paid; (6) failure
10 to reimburse expenses; and (7) violation of California Business and Professions Code section 17200,
11 *et seq.* Declaration of Heather M. Davis in Support of Plaintiff's Motion for Final Approval of Class
12 Action Settlement ("Davis Decl.") ¶12.) Plaintiff's claims for unpaid wages were based on allegations
13 that Defendant required class members work off-the-clock, and hence failed to pay minimum and/or
14 overtime wages to California non-exempt hourly employees for all hours worked, and that class
15 members were subject to a time-rounding policy that on its face was not fair and neutral and
16 implemented in a manner that over time failed to compensate employees for all time under the
17 employer's control. (*Id.* ¶13.) Plaintiff's meal period claim was based on allegations that Defendant
18 required class members to miss their meal periods and take late, shortened or interrupted meal periods,
19 and failed to compensate class members the full meal period premium due for missed, shortened, late,
20 or interrupted meal periods. (*Id.* ¶14.) Plaintiff's rest period claim was based on allegations that
21 Defendant required class members to work during rest periods, failed to allow class members to take
22 rest periods, and failed to pay California non-exempt hourly employees the full rest period premium
23 for work performed during rest periods and/or failure to authorize and permit uninterrupted rest breaks.
24 (*Id.*) Plaintiff failure to reimburse claim is based on allegations that Defendant failed to reimburse
25 class members for all necessary business-related expenditures and costs incurred during the course
26 and scope of employment. (*Id.*)
27
28

1 On September 11, 2020, Defendant removed this matter to the United States District Court for the
2 Southern District of California, alleging the Court had jurisdiction over this matter pursuant to 28
3 U.S.C. §§ 1332(d) (the Class Action Fairness Act of 2005), 1441, and 1446. (*Id.* ¶15.) On September
4 18, 2020, Defendant filed its first Motion to Dismiss (“MTD”) Plaintiff’s Complaint and/or Strike
5 Portions of the Complaint. (*Id.*) On October 8, 2020, Plaintiff filed his Motion to Remand the case
6 back to San Diego County Superior Court. (*Id.*) On June 29, 2021, the Honorable Judge Anthony J.
7 Battaglia denied Plaintiff’s Motion to Remand. (*Id.*) That same day, Judge Battaglia also granted
8 Defendant’s MTD and/or Strike at to Plaintiff’s sixth cause of action for failure to provide accurate
9 wage statements without leave to amend, and as to the remaining causes of action with leave to amend.
10 (*Id.*)

11
12 On July 28, 2021, Defendant filed a second MTD Plaintiff’s First Amended Complaint (“FAC”)
13 and/or Strike Class Allegations. On October 4, 2021, the Court granted Defendant’s MTD Plaintiff’s
14 FAC, with leave to amend, but denied Defendant’s Motion to Strike Plaintiff’s class allegations.
15 (Davis Decl. ¶16.) On October 29, 2021, Defendant filed a third MTD Plaintiff’s Second Amended
16 Complaint (“SAC”), but later withdrew the MTD and refiled it on November 01, 2021. (*Id.*) On
17 December 14, 2021, the Court granted in part and denied in part Defendant’s MTD. Specifically,
18 Plaintiff’s sixth cause of action for business expense reimbursements was dismissed with leave to
19 amend. (*Id.*) On January 6, 2022, Plaintiff filed a Third Amended Complaint (“TAC”), which included
20 Plaintiff’s sixth cause of action for business expense reimbursements. (*Id.*)

21 After several discussions regarding the merits of Plaintiff’s claims and Defendant’s defenses, the
22 Parties agreed to attempt resolution of this matter through a Mandatory Settlement Conference
23 (“MSC”) with Honorable Magistrate Judge Allison H. Goddard (“Judge Goddard”). (Davis Decl. ¶17.)
24 Prior to the mediation, Counsel for the Parties extensively investigated Plaintiff’s claims and
25 Defendant’s defenses. (Davis Decl. ¶18.) Class Counsel negotiated an exchange of information
26 sufficient to enable them to fully evaluate the strengths and weaknesses of the claims and defenses
27 raised by each side. (*Id.*) Among other things, as a result of the negotiation and related agreements,
28

1 Defendant provided Class Counsel with detailed information about the Class Members and their
2 claims. (*Id.*) Specifically, Defendant provided Plaintiff with a 20% sample of a putative anonymized
3 class list and most recent rates of pay information for each Class Member, copies of employment and
4 compensation policies applicable to Class Members during the relevant period, a sampling of pay stubs
5 and payroll data for Class Members, and data relating to time worked recorded by Class Members.
6 (*Id.*)

7
8 On September 26, 2022 and October 28, 2022, after the commencement of both formal and
9 informal written discovery, the Parties participated in two MSCs with Judge Goddard. (Davis Decl.
10 ¶19.) Although the Action did not resolve after the first MSC, the Parties were able to reach a class-
11 wide settlement during the second MSC. (*Id.*) Further negotiations regarding settlement details
12 culminated in the Parties' execution of the Agreement. (*Id.*)

13 Pursuant to a term of the Agreement, the Parties stipulated to grant Plaintiff leave to file a Fourth
14 Amended Complaint to add two (2) additional causes of action: (i) under the California Labor Code §
15 226(a) (failure to provide accurate wage statements); and (ii) California Labor Code § 2699, et seq.
16 (Davis Decl. ¶20.) On December 20, 2022, Plaintiff provided notice to the Labor and Workforce
17 Development Agency ("LWDA") of similar allegations against Defendant. (*Id.*) On December 21,
18 2022, the Parties filed the Joint Stipulation re: Filing of Fourth Amended Complaint ("Stipulation to
19 Amend"), and Plaintiff filed his Fourth Amended Complaint on December 29, 2022. (*Id.*) Defendant
20 filed its Answer to the Fourth Amended Complaint on January 12, 2023. (*Id.*)

21 **A. Summary of the Settlement Agreement Terms**

22 The Settlement Agreement provides that Defendant will pay \$875,000.00 (Eight Hundred Seventy-
23 Five Thousand Dollars and Zero Cents), the Gross Settlement Amount, in addition to the employer's
24 share of payroll taxes, to settle the Claims of Plaintiff and Class Members consisting of individuals
25 who are members of the class:
26

27 All current and former hourly-paid, non-exempt employees of Defendant who were
28 employed by Defendant in the state of California ("Class Members") at any time

1 between August 5, 2016 and ending on either the date of Preliminary Approval of the
2 Settlement by the Court or sixty-five (65) days from the date of mediation, *i.e.* January
3 1, 2023, whichever date occurs earlier. (the “Class Period”). There are approximately
4 264 class members. (Agreement ¶¶ 6 & 7.)

(Davis Decl. ¶21, Ex. 1.)

5 In addition to the Individual Settlement Payments to Participating Class Members, the Gross
6 Settlement Amount will be used to pay: (1) the Class Representative Enhancement Payment to
7 Plaintiff (Seven Thousand Five Hundred Dollars (\$7,500.00) [Agreement ¶¶ 9 & 45.]); (2) Class
8 Counsel’s Fees (which they will seek in a separate application prior to final approval in an amount up
9 to \$262,500.00 (Two Hundred Sixty-Two Thousand Five Hundred Dollars and Zero Cents
10 [Agreement ¶¶ 4 & 44]); (3) Class Counsel Costs (for reimbursement of Class Counsel’s reasonable
11 costs and expenses associated with the litigation and settlement of the Action not to exceed \$20,000.00
12 (Twenty Thousand Dollars and Zero Cents) [Agreement ¶¶ 4 & 44]); (4) the PAGA award \$25,000.00
13 (Twenty-Five Thousand Dollars and Zero Cents), \$18,750.00 of which will be paid to the to the
14 California Labor and Workforce Development Agency (“LWDA”) with the remaining \$6,250.00
15 distributed among PAGA Members [Agreement ¶¶ 21 & 47]; and (5) Settlement Administration Costs
16 estimated not to exceed \$10,599.00 [Agreement ¶¶ 37 & 46]. The Parties propose to have ILYM
17 Group, Inc. serve as the Settlement Administrator [Agreement ¶ 36]. (Davis Decl. ¶22, Ex. 1.)

18 After deducting: (1) the Court-approved Class Counsel’s Fees and Costs; (2) the Court-approved
19 Class Representative Enhancement Payment to Plaintiff; (3) the PAGA Payment to the LWDA and
20 PAGA Members; and (4) the Settlement Administrator Costs from the Gross Settlement Amount, the
21 remaining balance available for distribution (the Net Settlement Amount) shall be distributed to the
22 Participating Class Members, *i.e.* those Class Members who do not opt out of the Settlement
23 Agreement. (Agreement ¶¶ 18, 25, 43 & 48; Davis Decl. ¶23, Ex. 1.) The Net Settlement Amount will
24 be at approximately \$549,401.00 based on the foregoing deductions, meaning the average Individual
25 Settlement Payment to Participating Class Members (assuming 246 Participating Class Members) is
26 estimated to be \$3,314.39 (Three Thousand Three Hundred Fourteen Dollars and Thirty-Nine Cents).
27 (Agreement ¶ 48; *Id.*)
28

1 Each Participating Class Member will receive an Individual Settlement Payment, which means the
2 portion of the Net Settlement Amount distributable to each Participating Class Member. (Davis Decl.
3 ¶24, Ex. 1.) The Settlement Administrator will calculate the total Workweeks for all Participating
4 Class Members by adding the number of Workweeks worked by each Participating Class Member
5 during the Class Period. (*Id.*, Ex. 1.) The respective Workweeks for each Participating Class Member
6 will be divided by the total Workweeks for all Participating Class Members, resulting in the Payment
7 Ratio for each Participating Class Member. Each Participating Class Member's Payment Ratio will
8 then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member's
9 estimated share of the Net Settlement Amount: (Participating Class Member's Workweeks ÷
10 Workweeks during Class Period) × Net Settlement Amount. (Agreement ¶ 49; *Id.*, Ex. 1.)

12 Each PAGA Member will received a share of the PAGA Payment. (Davis Decl. ¶25, Ex. 1.) The
13 Settlement Administrator will calculate the total Pay Periods for all PAGA Members by adding the
14 number of Pay Periods worked by each PAGA Member during the PAGA Period. (*Id.*, Ex. 1.) The
15 respective Pay Periods for each PAGA Member will be divided by the total Pay Periods for all PAGA
16 Members, resulting in the Payment Ratio for each PAGA Member. (*Id.*, Ex. 1.) Each PAGA Member's
17 Payment Ratio will then be multiplied by the employee portion of the PAGA Payment to calculate
18 each PAGA Member's estimated share of the PAGA Payment: (PAGA Member's Pay Periods ÷ Pay
19 Periods during PAGA Period) x \$6,250.00 (the employee portion of the PAGA Payment). (*Id.*, Ex. 1.)
20 PAGA Members shall receive this portion of the PAGA Payment and will be deemed to have released
21 any claim arising out of PAGA regardless of whether they opt out of the participation regarding the
22 class claims. (Agreement ¶ 50; *Id.*, Ex. 1.)

24 The entirety of the Net Settlement Amount will be distributed to Participating Class Members.
25 Any amounts attributable to Class Members who validly and timely request exclusion will be
26 distributed pro rata to Participating Class Members. (Davis Decl. ¶26, Ex. 1.) Checks issued to
27 Participating Class Members shall remain valid and negotiable for one hundred and eighty (180)
28 calendar days from the date of their issuance and then shall become void on the 181st day after mailing.

(*Id.*, Ex. 1.) Any unclaimed funds from the Net Settlement Amount as a result of any Participating Class Members' failure to cash their Individual Settlement Payment check shall be transmitted by the State of California Controller's Office Unclaimed Property Fund. (Agreement ¶ 65; *Id.*, Ex. 1.)

As part of the Settlement Agreement, upon the complete funding of the Gross Settlement Amount and all applicable employer-side payroll taxes, Plaintiff, Participating Class Members, PAGA Members, the State of California, and the LWDA release the Released Parties from each of the Class Members' Released Class Claims and Released PAGA Claims defined in the Settlement Agreement as:

Released Class Claims

"[A]ny and all claims, rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the operative Complaint in this Action, and the December 20, 2022 PAGA Notice, including the following claims: (i) failure to pay all regular wages, minimum wages and overtime wages due; (ii) failure to provide meal periods or compensation in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to provide complete, accurate wage statements; (v) failure to pay wages timely at time of termination or resignation; (vi) failure to reimburse all business expenses, and (vii) unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative Complaint. This release shall apply to claims arising during the Class Period. Participating Class Members also shall be deemed to have acknowledged and agreed that that the Released Class Claims are disputed, the payments set forth herein constitute full payment of any amounts alleged due to them for the Released Class Claims, and that California Labor Code Section 206.5 is not applicable." (Agreement ¶¶ 30 & 70; Davis Decl. ¶27, Ex. 1.)

1 Released PAGA Claims

2 “[A]ny and all PAGA claims that could have been asserted under the California Labor
3 Code Private Attorneys General Act of 2004 based on the same or similar factual
4 allegations and claims in the operative Complaint in this Action or any PAGA notice
5 submitted by Plaintiff to the LWDA, for the PAGA Period.” (Agreement ¶¶ 31 & 71;
6 Davis Decl. ¶27, Ex. 1.)

7 Release of Additional Claim & Rights by Plaintiff

8 “[A]ll claims known or unknown, accrued or unaccrued, that he has or may have
9 against Released Parties, including execution of a California Civil Code Section 1542
10 release and waiver. In consideration of the monetary sum provided to him by
11 Defendant, and subject to court approval, Plaintiff fully releases and forever discharges
12 the Released Parties from any all actions, causes of action, claims, charges, complaints,
13 liabilities, obligations, promises, agreements, controversies, damages, actions, suits,
14 rights, demands, liens, costs, losses, debts, penalties, fines, wages, liquidated damages,
15 restitutionary amounts, attorneys’ fees and costs, interest, punitive damages and
16 expenses (including, without limitation, back wages, penalties, liquidated damages, and
17 attorneys’ fees and costs actually incurred) or liabilities of whatever kind or nature,
18 whether known or unknown, which Plaintiff has ever had, or hereafter may claim to
19 have, arising on or before the date the Agreement is signed, including, without
20 limitation, any claims for alleged violations of any contracts, express or implied
21 (including but not limited to any contract of employment); any contract or covenant of
22 good faith or fair dealing (express or implied); any tort, including, without limitation,
23 negligence, fraud, misrepresentation under California Labor Code § 970, negligent
24 infliction of emotional distress, intentional infliction of emotional distress, slander and
25 defamation; wrongful or constructive termination; any “retaliation” claims; any claims
26 relating to any breach of public policy; any legal restrictions on Defendant’s right to
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1 discharge employees or refuse to hire applicants; and any federal, state, or other
2 governmental statute, regulation, order or ordinance, including, without limitation: (1)
3 Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and national origin
4 discrimination or harassment, including retaliation for reporting discrimination or
5 harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) sections 503 and 504 of the
6 Rehabilitation Act of 1973 (handicap discrimination); (4) Equal Pay Act, 29 U.S.C. §
7 206(d) (equal pay); (5) Americans with Disabilities Act, 42 U.S.C. § 12100 et seq.
8 (disability discrimination); (6) Family and Medical Leave Act, 29 U.S.C. § 2601 et seq.
9 (family/medical leave); (7) California Fair Employment and Housing Act, Cal. Gov't
10 Code § 12900 et seq. (discrimination or harassment in employment and/or housing,
11 including discrimination or harassment based on race, religious creed, color, national
12 origin, ancestry, disability, marital status, sex (including pregnancy), sexual
13 orientation, or age, including, without limitation, retaliation for reporting
14 discrimination or harassment); (8) California Family Rights Act, Cal. Gov't Code
15 §12945.1 et seq. (family/medical leave); (9) California Labor Code, including but not
16 limited to California Labor Code § 2698 et seq. (PAGA), or any Industrial Welfare
17 Commission Wage Order; (10) the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.;
18 (11) Executive Order 11246 (race, color, religion, sex, and national origin
19 discrimination or harassment); (12) Executive Order 11141 (age discrimination); (13)
20 California Business and Professions Code Section 17200, et. seq., and (14) Employee
21 Retirement Income Security Act, 29 U.S.C. § 1000 et seq. (employee benefits). Plaintiff
22 waives all rights and benefits afforded by California Civil Code Section 1542, which
23 provides:
24

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
26 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
27 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
28

1 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
2 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
3 DEBTOR OR RELEASED PARTY.”

4 (Agreement ¶ 72; Davis Decl. ¶27, Ex. 1.)

5 The Released Class Claims and the Released PAGA Claims are narrowly tailored to encompass
6 only those claims that are based on the same or similar factual allegations and claims in the operative
7 Complaint in this Action or any PAGA notice submitted by Plaintiff to the LWDA. (Davis Decl. ¶28.)
8

9 **B. This Court Granted Preliminary Approval of the Settlement Agreement**

10 On April 20, 2023, this Court issued its preliminary approval order finding, on a preliminary basis,
11 that the Settlement Agreement is fair, adequate, and reasonable. (ECF. No. 87 at pp. 12-13.) The Court
12 appointed Plaintiff and Class Counsel as representatives of Class Members, and ILYM Group, Inc. as
13 the Settlement Administrator. (*Id.* at p. 17.) The Court further directed the mailing of the Class Notice
14 Packet to Class Members. (*Id.*)

15 **C. Notice of Settlement Was Distributed to Class Members**

16 Pursuant to this Court’s preliminary approval order and the terms of the Settlement Agreement, on
17 May 11, 2023 ILYM Group, Inc. mailed the Class Notice Packet to Class Members based on Class
18 Information received from Defendant after conducting a national change of address search for all Class
19 Members. ILYM Decl. at ¶¶6-7. Only eleven (11) of the Class Notice Packets were returned as
20 undeliverable, and eleven (11) were remailed. *Id.* at ¶10.
21

22 **D. Class Members’ Participation in the Settlement**

23 The deadline for Class Members to request exclusion or objection to the Settlement Agreement
24 was July 10, 2023. ILYM Decl. at ¶¶11-12. Class Members’ response to the Settlement Agreement
25 was universally positive. Only one Aggrieved Employee submitted both a Request for Exclusion and
26 Objected to the PAGA Settlement. ILYM Decl. at ¶¶11-12.
27
28

III. FINAL APPROVAL IS APPROPRIATE

A. The Three-Step Class Action Settlement Approval Process

A class action may not be dismissed, compromised, or settled without Court approval. *See* Fed. R. Civ. P. 23(e). Before granting final approval of the Settlement Agreement, the Court must find that it is fair, reasonable, and adequate. *Id.* The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); William B. Rubenstein, 4 Newberg on Class Actions (“4 Newberg”) § 13:1 (5th ed. 2020) (and cases cited therein).⁴ Judicial proceedings have led to a defined procedure and specific criteria for settlement approval in class action settlements, as described in section 21.63 of the Manual for Complex Litigation (Fourth) (2004) (the “Manual”). The Manual’s settlement approval procedure describes the following steps: (i) preliminary approval of the proposed settlement at an informal hearing; (ii) dissemination of notice of the settlement to all affected class members; and (iii) a final settlement approval hearing, at which class members may be heard and evidence presented regarding the settlement, its fairness, adequacy, and reasonableness. Manual for Complex Litigation, Fourth, §21.63. This procedure, commonly used by courts and endorsed by the leading class action commentator, Professor Newberg, safeguards class members’ procedural due process rights and enables the Court to fulfill its role as the guardian of class interests. *See* 4 Newberg, *supra*, § 13:1.

The first and second steps of the settlement approval process have been completed. The third and last step is the final approval hearing, scheduled for August 24, 2023, at which this Court shall determine whether the Settlement is fair, reasonable, and adequate. At the conclusion of the hearing, this Court will decide whether to grant final approval and enter a final order and judgment. With this Motion, Plaintiff respectfully requests that this Court grant final approval of the Settlement.

⁴ Here, as throughout, all emphasis is added and citations and footnotes are omitted unless otherwise noted.

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B. The Settlement Is Fair, Reasonable, and Adequate

Under the Settlement, Defendant will pay \$875,000.00 to settle this matter. The entirety of this amount will be distributed, and no portion qualifies for reversion to Defendant. The Parties negotiated the Settlement in good faith and at arm's length, following an intensive investigation of the factual and legal claims at issues, attending two Mandatory Settlement Conferences ("MSC") with the Honorable Magistrate Judge Allison H. Goddard ("Judge Goddard"). Davis Decl., ¶¶17-19. The Parties engaged in extensive informal discovery before arriving at a settlement and fully apprised each other of their respective factual contentions, legal theories, and defenses. *Id.* Class Counsel are experienced in class action wage-and-hour litigation. Davis Decl., ¶¶3-11. Defendant's counsel, too, are experienced in class action wage-and-hour litigation.

Courts should 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 that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998). As shown below, the Settlement is fair, reasonable, and adequate and should be granted final approval.

1. The Settlement's Terms Disclose No Grounds to Doubt Its Fairness

The Settlement's terms provide a significant recovery to Class Members and clearly fall within the range of reasonableness, raising no doubts as to its fairness. Davis Decl., ¶29. The Settlement provides for immediate cash benefits to Settlement Class Members. The amounts Class Members are eligible to receive under the Settlement are commensurate with the Claims released adjusted for risk. The amounts to be paid are not nominal or symbolic. Rather, the Settlement provides real benefits in relation to the claims brought on behalf of Class Members, and the legal and factual grounds Defendant offered in defense of this Action. Additionally, the LWDA will receive a sizable payment

1 (\$18,750.00) as its share of the Settlement attributable to PAGA civil penalties. The monetary
2 recoveries exemplify the fairness, reasonableness, and adequacy of the Settlement and justify its final
3 approval. *Id.*

4 **2. The Parties Engaged in Extensive Investigation of the Claims Which Favors Final**
5 **Approval**

6 The Parties engaged in significant informal discovery, exchanging a considerable amount of
7 information and fully apprising each other of their respective factual contentions, legal theories, and
8 defenses. Davis Decl., ¶30. The Parties negotiated the Settlement with ample knowledge of the claims
9 and defenses and the amounts necessary to properly compensate Class Members, taking into account
10 the strengths, weaknesses, and the risks of going forward with this litigation. *Id.*

11 **3. Liability is Contested, and the Settlement Provides Reasonable Compensation for**
12 **the Alleged Injuries**

13 Defendant has legal and factual grounds available to it for defending this Class Action. Defendant
14 has denied each of Plaintiff's allegations and/or denied that there was any resulting injury and liability.
15 Considering Defendant's defenses, there was a prospect that the Class may not have obtained
16 certification or, even with certification, would have not been able to recover any damages. Davis Decl.,
17 ¶31.

18 **4. The Complexity, Expense, and Likely Duration of Continued Litigation in the**
19 **Absence of Settlement Favors Final Approval**

20 Employment class action cases are expensive and time consuming to prosecute. Due to the nature
21 of the claims, continued litigation of this Class Action against Defendant would likely be complex on
22 some issues and expensive, particularly in light of the defense mounted by Defendant. Davis Decl.,
23 ¶32. The Settlement avoids the need for a contested class certification motion that would be time
24 consuming and costly for Plaintiff to file, Defendant to oppose, and the Court to decide. The Settlement
25 also avoids a lengthy trial(s) and appeals and provides Settlement Class Members with substantial
26 money now. *Id.*

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5. The Experience and Views of Class Counsel Favors Final Approval

Class Counsel believes this Settlement to be a favorable result for Class Members and supports the Settlement as fair, reasonable, adequate, and in the best interests of the Class. Davis Decl., ¶33.

6. The Positive Reaction to the Settlement Favors Final Approval

Class Members' response to the Settlement has been universally positive. Only one Aggrieved Employees submitted a Request for Exclusion and Objected to the PAGA portion of the Settlement. ILYM Decl. at ¶¶11-12. This Court should construe Class Members' support for the Settlement as a strong indication that the Settlement is fair, reasonable, and adequate and thus deserving of final approval. The LWDA has also been advised of the Settlement and has not objected to the Settlement or any of its terms. Davis Decl., ¶34.

7. This Court Should Approve the PAGA Payment

The PAGA requires that this Court review and approve the settlement of penalties under PAGA. Cal. Lab. Code §2699(l). Under the Settlement, \$25,000.00 is allocated to PAGA of which \$18,750.00 is payable to the LWDA as its 75% share of the penalties under the PAGA. This amount compares very favorably to the range of PAGA penalties routinely approved by Courts. *See, e.g., Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 589 (2010) (approving settlement where no civil penalties were allocated for settlement of PAGA claims); *Singer v. Becton Dickinson & Co.*, No. 08-CV-821-IEG (BLM), 2010 WL 2196104, at *1-2 (S.D. Cal. June 1, 2010) (PAGA penalty approved in amount of 0.3% of settlement). Further, the LWDA was provided with a copy of the Settlement on January 13, 2023 and did not object to the portion of the Settlement it was receiving as its share of penalties under the PAGA. Davis Decl., ¶36.

IV. CLASS COUNSEL'S REQUEST FOR ATTORNEYS' FEES AND COSTS IS FAIR AND REASONABLE

Concurrently filed on July 27, 2023, Plaintiff filed her Fee Motion submitting that Class Counsel's requested percentage of the common fund recovery for attorneys' fees, 30% of the Gross Settlement

1 Amount (\$262,500.00), is well within the range of reasonableness. Class Counsel respectfully requests
2 that the Court award Class Counsel the requested fee award, equivalent to 30% of the Gross Settlement
3 Amount, as fair and reasonable. *See, e.g., In re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir.
4 1995) (affirming attorneys' fees of 33% of the recovery); *Morris v. Lifescan, Inc.*, 54 F. App'x 663,
5 664 (9th Cir. 2003) (unpublished) (affirming fee award of 33% of the recovery); *Vasquez v. Coast*
6 *Valley Roofing, Inc.*, 266 F.R.D. 482, 491-92 (E.D. Cal. 2010) (citing to five recent wage and hour
7 class actions where federal district courts approved attorneys' fees ranging from 30 to 33%); *Martin*
8 *v. AmeriPride Servs., Inc.*, No. 08-CV-440-MMA (JMA), 2011 WL 2313604, at *8 (S.D. Cal. June 9,
9 2011) (noting that "courts may award attorneys fees in the 30-40% range in wage and hour class
10 actions that result in recovery of a common fund under \$10 million"); *Craft v. Cty. of San Bernardino*,
11 624 F. Supp. 2d 1113, 1126-27 (C.D. Cal. 2008) (same); *Singer v. Becton Dickinson & Co.*, No. 08-
12 CV-821-IEG (BLM), 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010) (approving attorneys' fees of
13 33.33% of the common fund and holding that fee was similar to awards in three other wage and hour
14 class action cases where fees ranged from 33.3% to 40%); *Ingalls v. Hallmark Retail, Inc.*, No. CV08-
15 04342 VBF(Ex), 2009 U.S. Dist. LEXIS 131078, at *5-6 (C.D. Cal. Oct. 16, 2009) (approving 33.33%
16 fee on a \$5.6 million wage and hour class action); *Birch v. Office Depot, Inc.*, No. 06CV1690 DMS
17 (WMC), 2007 U.S. Dist. LEXIS 102747, at *7-8 (S.D. Cal. Sept. 28, 2007) (approving a 40% fee on
18 a \$16 million wage and hour class action); *Rippee v. Boston Mkt. Corp.*, No. 05CV1359 BTM (JMA),
19 2006 U.S. Dist. LEXIS 101136, at *4, *11-12 (S.D. Cal. Oct. 10, 2006) (approving a 40% fee on a
20 \$3.75 million wage and hour class action). Here, Class Counsel's effort resulted in an average payout
21 to Settlement Class Members that exceeds \$1,799.12 each. This is an unusually high recovery for a
22 wage and hour class action. This significant value garnered on behalf of Class Members is attributable
23 to the work and expertise of Class Counsel. Unlike many other cases where a large class recovery is
24 derivative of small recoveries on behalf of thousands of class members receiving small sums, this case
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1 involves large individual recoveries and nearly a million dollars in consideration for a Class consisting
2 of 246⁵ class members. As such, the requested fee award is fair, reasonable, and adequate.

3 The Settlement permits Class Counsel to seek up to \$20,000.00 in costs. As set forth in the Fee
4 Motion, Class Counsel incurred out-of-pocket costs totaling \$4,994.35. For the reasons set forth in the
5 Fee Motion, Class Counsel respectfully request that the Court award costs in the amount of \$4,994.35.

6 Class Counsel's intention to request attorneys' fees up to \$262,500.00 and up to \$20,000.00 in
7 costs from the Gross Settlement Amount was clearly disclosed to each Class Member in the Class
8 Notice Packet. Not one of the Class Members objected to Class Counsel's request of attorneys' fees
9 up to \$262,500.00 and up to \$20,000.00 in costs. ILYM Decl. at ¶7, Ex. A.

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11 **V. THE REQUESTED CLASS REPRESENTATIVE'S PAYMENT IS FAIR AND**
12 **REASONABLE AND SHOULD BE APPROVED**

13 Plaintiff seeks a Class Representative's Payment in the amount of \$7,500.00. This service award
14 is intended to recognize the time and efforts Plaintiff spent on behalf of the Class, the risks in acting
15 as the class and PAGA representative, the results achieved, and the release of claims he entered into
16 that is broader than that for Class Members. Settlement Agreement ¶¶ 45 & 72; Davis Decl., ¶40.

17 Plaintiff has been an extremely active and invaluable participant in this Class Action. Plaintiff was
18 willing and able to prosecute this action and to protect the interests of Class Members. Plaintiff actively
19 participated in all phases of this Class Action, spending substantial time participating in interviews
20 and telephone consultations with Class Counsel who required considerable information pertaining to
21 Defendant's employment policies and procedures. Plaintiff also spent considerable time locating and
22 gathering information and documents in support of the claims, and responding to written inquiries
23 from Class Counsel. This work was undertaken in order to prepare the PAGA exhaustion letter, the
24 original and the amended complaints, to prepare for the mediation, the anticipated certification motion,
25 and, ultimately, trial. Davis Decl., ¶41.

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28 ⁵ The Class increased to 320 Class Members at the time of Final Approval.

1 Plaintiff's willingness to sacrifice and set aside his own personal interests for the benefit of the
2 Class should be rewarded as just compensation for her risks, efforts, and achievements in this case.
3 By agreeing to file this case, Plaintiff assumed the risk of a judgment against him and personal liability
4 for an award of costs to Defendant in the event of an adverse outcome. In class action losses, the class
5 representative may be deemed the losing party and thus potentially liable for the prevailing party's
6 costs. For the risks, a service award is appropriate. Here, Plaintiff is requesting \$7,500.00 (0.857% of
7 Gross Settlement Amount) for all the risks of suing on a class action and PAGA representative basis.
8 Davis Decl., ¶42.

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10 Furthermore, to obtain the achieved Settlement on behalf of Class Members, Plaintiff was required
11 to enter into a Complete and General Release that is much broader than the narrowly tailored Class
12 Member Released Claims applicable to Class Members under the Settlement. Settlement Agreement
13 ¶¶ 45 & 72. As a result, Settlement Class Members will share in a \$573,918.41⁶ based on the New
14 Gross Settlement Fund. Had Plaintiff not committed to being the class representative and his individual
15 broad release of claims, there would be no monetary recovery achieved for Class Members.
16 Accordingly, a fair service fee is necessary to ensure that a successful representative receives just
17 compensation for his willingness to take on risks. Davis Decl., ¶43.

18 Equally significant is the fact that Plaintiff's intention to request a \$7,500.00 Class
19 Representative's Payment was clearly disclosed to each Class Member in the Class Notice Packet.
20 Davis Decl., ¶44. Not one of the Class Members objected to Plaintiff's request for a \$7,500.00 Class
21 Representative's Payment. ILYM Decl. at ¶7, Ex. A. Accordingly, a \$7,500.00 Class Representative's
22 Payment (0.857% of Gross Settlement Amount) is fair and reasonable sum in light of Plaintiff's
23 involvement, the risks undertaken, the result achieved, and her broad release of claims. *See, e.g.,*
24 *Singer*, 2009 WL 4809646, at *6 (approving \$25,000 service award); *Glass v. UBS Fin. Servs., Inc.*,
25 No. C-06-4068 MMC, 2007 WL 221862, at *14 (N.D. Cal. Jan. 26, 2007) (awarding \$25,000 each to
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28 ⁶ The Gross Settlement Amount listed in paragraph 48 of the Settlement Agreement is \$549,401.00.

four plaintiffs); *c.f. Hopson v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009) (approving service award in the amount of 1.25% of the settlement fund).

VI. THE COURT SHOULD APPROVE THE PAYMENT TO ILYM GROUP, INC. – THE SETTLEMENT ADMINISTRATOR

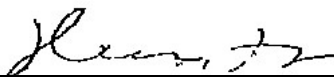
As a part of the preliminary approval process, this Court approved the hiring of ILYM Group, Inc. as Settlement Administrator. ILYM Group, Inc. Settlement Administrators has performed all of its required duties to date and is committed to completing the claims administration process. See generally ILYM Decl. ILYM Group, Inc.’s total costs for the administration of the Settlement, including fees incurred and future costs for completion of administration, are \$10,599.00. ILYM Decl. at ¶16. Plaintiff respectfully requests that this Court approve payment Settlement Administration Costs to ILYM Group, Inc. in the amount of \$10,599.00 in connection with administering the Settlement.

VII. CONCLUSION

For all of the foregoing reasons, Plaintiff requests, that this Court enter the order and judgment submitted concurrently with this motion.

DATED: July 27, 2023

PROTECTION LAW GROUP, LLP



Heather Davis
Amir Nayebdadash
Carlos Jimenez
Attorneys for Plaintiff
ALEXANDER VALLEJO