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

ERNEST RABELAS, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

ARAM LOGISTICS, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: 37-2023-00003165-CU-OE-CTL

CLASS ACTION

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

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

Date: May 17, 2024

Time: 9:30 a.m.

Dept.: C-71

[Hearing Date Set by Order of the Court]

Action Filed: January 24, 2023

Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on May 17, 2024 at 9:30 a.m., or as soon thereafter as the matter may be heard in Department C-71 of the above-entitled Court, located at 330 W. Broadway, San Diego, California 92101, Plaintiff Ernest Rabelas ("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 Aram Logistics, Inc. ("ALI" or "Defendant");
2. Confirming the certification of the Settlement Class for settlement purposes under Section 382 of the California Code of Civil Procedure:
All current and former employees who worked for ALI in California at any time from January 24, 2022 through August 4, 2023 (the "Class Period").
3. Confirming the appointment of Plaintiff Ernest Rabelas as the Class Representative for settlement purposes;
4. Confirming the appointment of Abramson Labor Group as Class Counsel;
5. Approving an award of \$40,000.00 in attorneys' fees to Class Counsel;
6. Approving an award of \$5,275.10 in costs to Class Counsel;
7. Approving an award of \$4,500.00 in costs to ILYM Group, Inc. 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 \$22,500.00 to the Labor & Workforce Development Agency ("LWDA"); and
10. Entering final judgment in the form of the [Proposed] Judgment and Order Granting Final Approval of Class Action Settlement filed herewith.

This Motion is made on the following grounds: (1) the Settlement Class continues to meet the requirements for class certification for settlement purposes under Cal. Code of Civil Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed wage and hour claims; (4) the requested amounts for Class Counsel's attorneys' fees and costs,

1 settlement administration costs, and the Class Representative's incentive payment are all fair,
2 adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Judgment and Order
3 Granting Final Approval of Class Action Settlement submitted herewith should be entered so as
4 to give finality to, and allow for disbursements from, the Settlement.

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

10
11 Respectfully Submitted,

12 Dated: April 15, 2024

ABRAMSON LABOR GROUP

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14 Neil Larsen

15 Neil M. Larsen

16 Attorneys for Plaintiff
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ernest Rabelas (“Plaintiff”) submits this memorandum of points and authorities
4 in support of his motion for final approval of the class action settlement (the “Settlement”) with
5 Defendant Aram Logistics, Inc. (“ALI” or “Defendant”) (together with Plaintiff, the “Parties”).
6 Under the Settlement, ALI has agreed to pay \$120,000.00 to the following Settlement Class,
7 which consists of 33 individuals:

8 All current and former employees who worked for ALI in California at any time
9 from January 22, 2022 through August 4, 2023 (the “Class Period”).

10 In this non-revisionary Settlement, all Participating Class Members will receive automatic
11 payments without the need to submit a claim form, resulting in an average payment (“Settlement
12 Award”) of approximately **\$924.24** to Participating Class Members. This is a favorable resolution
13 of the highly disputed wage and hour claims in this case, especially in light of the significant
14 litigation risks that Plaintiff faced as well as ALI’s financial condition. Moreover, after receiving
15 notice of the proposed Settlement and projected estimated settlement payments, **not a single**
16 **Settlement Class member has objected to the Settlement or elected to opt-out of the**
17 **Settlement, resulting in a 100% participation rate.**

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

24 **II. SUMMARY OF THE LITIGATION**

25 **A. FACTUAL AND PROCEDURAL BACKGROUND**

26 ALI is a third-party consulting and logistics service provider, with operations in Chula
27 Vista and other cities in California. See Declaration of Neil M. Larsen (“Larsen Decl.”), ¶ 7.
28 Plaintiff is a former Assistant Operations Manager who worked for ALI in California during the
Class Period. *Id.* On January 24, 2023, Plaintiff, through my office, filed this Action, alleging that

ALI failed to include its complete address on employee wage statements, and provided written notice to the Labor & Workforce Development Agency (LWDA) and ALI of his intent to pursue PAGA civil penalties for alleged violations of the California Labor Code for the wage statement violation and for ALI's failure to timely pay its employees. *Id.*, ¶ 10. ALI subsequently submitted a cure letter, which Plaintiff disputed, and after reviewing the evidence, the LWDA concluded that ALI had cured the alleged wage statement violations. *Id.*, ¶ 10. Plaintiff then filed a First Amended Complaint adding a claim for PAGA civil penalties based on ALI's alleged failure to timely pay employees on April 3, 2023. *Id.*, ¶ 11.

B. DISCOVERY, MEDIATION, AND SETTLEMENT

After ALI appeared in the Action and after the LWDA made its decision on the cure dispute, the Parties agreed to attend an early private mediation with Hon. Steven R. Denton (Ret.). *Id.*, ¶ 11. In advance of mediation, ALI produced a class list with the pay periods and pay dates applicable to each putative class member, sample wage statements which demonstrated that employee wage statements contained ALI's full address since ALI received Plaintiff's PAGA notice letter, and a sample arbitration agreement that it contends was signed by approximately two-thirds of the putative class. *Id.*, ¶ 11. This discovery allowed the Parties to assess the merits and value of Plaintiff's claims and ALI's defenses, as well as the chances for class certification. *Id.*

The Parties attended a mediation with Judge Denton on July 31, 2023, at which they vigorously debated Plaintiff's claims and ALI's defenses, and the chances of certification. Larsen Decl., ¶ 12. 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. PRELIMINARY APPROVAL AND MAILING OF NOTICES

On November 28, 2023, through my office, Plaintiff submitted the proposed Settlement to this Court with his Motion for Preliminary Approval of Class Action Settlement. Larsen Decl., ¶ 13. On December 15, 2023, this Court granted preliminary approval, and on December 22, 2023, it issued its Order Granting Preliminary Approval. *Id.* & Exhibit A (Order Granting Preliminary

Approval). *Id.*

On January 29, 2024, the Court-approved Class Notice was mailed to Settlement Class members, who had until March 29, 2024, to submit objections, requests for exclusion, or workweek disputes. *See* Declaration of Tracy Dantema (“Dantema Decl.”), ¶¶ 7-13. As of the date of this filing, ILYM Group, Inc. (“ILYM”) received no objections, no requests for exclusion, and no workweek disputes. *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 employees who worked for ALI in California at any time from January 24, 2022 through August 4, 2023 (the “Class Period”).” *See* Exhibit A to Larsen Decl.

B. Monetary terms

The Settlement provides for ALI to pay a non-reversionary Gross Settlement Amount (“GSA”) of \$120,000.00. *See* Settlement, § 4. After deducting requested attorneys’ fees (\$40,000.00) and litigation costs (\$5,275.10), Class Representative Incentive Payment (\$7,500.00), settlement administration costs (\$4,500.00), and the amount set aside as PAGA penalties (\$30,000.00), the Net Settlement Amount (“NSA”) is estimated at \$32,724.90. *See* Settlement, § 4(C)-(D); Larsen Decl., ¶ 17 & Exh. B; Dantema Decl., ¶ 15. Together with the \$7,500.00 PAGA Amount, the total amount to be paid to Settlement Class members equals \$40,224.90. Dantema Decl., ¶ 15.

The NSA shall be distributed to Participating Class Members (i.e., those Settlement Class members who do not opt out of the Settlement) proportionately, based on each Participating Class Member’s number of workweeks worked for ALI during the Class Period. *See* Settlement, § 5(B). In addition, all Settlement Class members (regardless whether they opt out) will receive a portion of the \$7,500.00 PAGA Amount, based on their proportionate number of pay periods worked during the Class Period. *See* Settlement, § 5(C).

1 Settlement payments will be treated as penalties and reported on a Form 1099, as all of
2 the alleged damages in this case are either PAGA civil penalties or statutory penalties pursuant to
3 Labor Code § 226(e). *See* Settlement, § 5(E). Settlement Class members will have 60 days from
4 the Notice mailing to opt out of or object to the Settlement, or submit disputes, thereby providing
5 ample time to review the Notice without unduly delaying the Settlement. *See id.*, § 10(C)-(E).

6 **C. Summary of Notice Process**

7 On January 9, 2024, ILYM received a data file from Defense Counsel that contained
8 names, last known mailing addresses, Social Security numbers, dates of employment, and
9 workweek information for each Settlement Class member (“Class Data”), which contained 33
10 Settlement Class members. Dantema Decl., ¶ 5. ILYM conducted a National Change of Address
11 (“NCOA”) search in an attempt to update Settlement Class members’ addresses as accurately as
12 possible. *Id.*, ¶ 6.

13 On January 29, 2024, ILYM mailed the Notice Packet via U.S. first class mail, in English
14 and Spanish, to all 33 Settlement Class members. Dantema Decl., ¶ 7. Following the initial
15 mailing, 2 Notice Packets were returned to ILYM. *Id.*, ¶ 8. Neither were returned with forwarding
16 addresses. *Id.* ILYM obtained 2 updated addresses through a skip trace, and promptly remailed
17 the Notice Packets to those individuals. *Id.* To ILYM’s best knowledge, each of the 2 remailed
18 Notice Packets were delivered to those Settlement Class members who required updated
19 addresses. *Id.*, at ¶ 9.

20 Settlement Class members had until March 29, 2024 to submit objections, disputes, or
21 requests for exclusion. Dantema Decl., ¶¶ 7-13. ILYM received no objections from Class
22 Members, no requests for exclusion, and no workweek disputes. *Id.* The average estimated
23 payment is \$924.24, with the highest estimated payment being \$1,249.24. *Id.*, ¶ 16.

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

25 The Settlement will be funded over two (2) payments of \$60,000 each. Defendant will
26 deposit the first payment of \$60,000.00 on or before May 31, 2024 (within 14 days of the date the
27 Court grants final approval), and the second payment of \$60,000 on or before September 30, 2024
28 (i.e. within 120 days after the first payment). *See* Settlement § 4(B). Within fifteen (15) business

1 days of Defendant's deposit of the GSA, and after approval by counsel of the individual
2 Settlement Award calculations, ILYM will prepare and mail individual Settlement Awards, to
3 Participating Class Members. *Id.*, § 5(D).

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

8 **IV. ARGUMENT**

9 **A. This Court Should Confirm its Conditional Certification of the Settlement Class** 10 **for Settlement Purposes Because it Meets All of the Requirements for Class** 11 **Certification Under Code of Civil Procedure § 382**

12 Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable
13 and its members are too numerous for joinder to be practical; (2) the representative and absent
14 class members share a community of interest, and questions of law and fact common to the class
15 predominate over questions unique to individual class members; (3) the representative's claims
16 are typical of the classes' claims; and (4) the representative will fairly and adequately represent
17 the class's interests. See *Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 470 (1981).

18 Here, this Court found that the Settlement Class meets all the requirements for class
19 certification for settlement purposes when it granted preliminary approval of the Settlement on
20 December 22, 2023. See generally Larsen Decl., Exh. A. No subsequent events have cast doubt
21 on the propriety of this determination, and in fact, the reaction of the Settlement Class has been
22 overwhelmingly positive, with not a single objection or request for exclusion. See Dantema Decl.,
23 ¶¶ 10-13. This Court should therefore confirm its conditional certification of the Settlement Class.

24 **B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate,** 25 **and Reasonable Compromise of Disputed Wage and Hour Claims**

26 Rule of Court 3.769 conditions class settlements on court approval, which is generally
27 evaluated under the same standards as Fed. R. Civ. Proc. 23. See *Reed v. United Teachers Los*
28 *Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine "that the

1 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d
2 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed settlement
3 is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of dispute
4 resolution, particularly in class actions. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th
5 Cir. 2008). There is a presumption of fairness when a settlement is negotiated at arm’s length by
6 counsel. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

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

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

17 To make a fairness determination, the Court should consider several factors, including:
18 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
19 litigation, the risk of maintaining class action status through trial, the amount offered in
20 settlement, the extent of discovery completed and the stage of the proceedings, [and] the
21 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
22 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
23 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
24 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate,
25 and reasonable in light of the overall balance of factors in this case.

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

28 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 his claims are meritorious,

1 Plaintiff acknowledges his position included substantial risks and uncertainty, which justifies a
2 downward departure from the maximum exposure each claim potentially carried.

3 As detailed in Plaintiff's Motion for Preliminary Approval, there was a significant risk of
4 non-certification and/or not prevailing on the merits with respect to each of Plaintiff's claims.
5 Larsen Decl., ¶ 18. For example, with respect to Plaintiff's claim that ALI failed to include its full
6 address on employee wage statements, in that it wrote "Aram Logistics – Chula Vista CA 91911"
7 on employee wage statements but did not include ALI's street address, ALI contends that this was
8 the result of a payroll error that has since been corrected, and that neither Plaintiff nor any
9 employees suffered any actual "injury" as a result of this alleged failure.

10 With respect to Plaintiff's claim that that ALI failed to timely pay employee wages, as it
11 paid employees weekly but paid them 10 days after the end of the pay period, ALI contends that
12 it has always paid employees timely, as it pays them weekly "on a regular day designated by the
13 employer in advance of the rendition of services as the regular payday" (see Labor Code § 204b),
14 and that Labor Code § 204 therefore does not apply. ALI further contends that even if the Court
15 were to find ALI in violation of the payment timing requirements, only PAGA penalties are
16 available for such violations, and the Court would utilize its discretion under the PAGA to reduce
17 penalties drastically. This is particularly true, ALI argues, in light of ALI's good-faith attempts
18 to comply with the law and given that no employees were underpaid as a result of the alleged
19 violation. Finally, ALI produced an arbitration agreement that it asserted was signed by
20 approximately two-thirds of the putative class, and argued that Plaintiff would not be able to
21 certify a class – or would only certify a much smaller class – in light of these agreements.

22 These considerations not only bore heavily on the negotiations leading to the Settlement,
23 but they also confirm that the Settlement is a fair, adequate, and reasonable compromise in view
24 of the risks of further litigation. Larsen Decl., ¶ 18. Thus, while these risks are far from exhaustive,
25 they demonstrate that the Settlement is fair, adequate, and reasonable. *Id.*

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

Each individual Settlement Award will be calculated based on the proportionate number
of workweeks worked by each Settlement Class member during the Class Period, and whether

1 the Settlement Class member is also entitled to a portion of the PAGA Amount. *See* Settlement,
2 § 5(B). This method of distribution compensates Settlement Class members based on the
3 estimated extent of their injuries, as those who worked more workweeks would have been subject
4 to more of the alleged wage and hour violations than those who worked fewer workweeks, and
5 those who are eligible for a portion of the PAGA Amount would be entitled to additional
6 penalties. Thus, the formula for compensating Settlement Class members is fair, adequate, and
7 reasonable, as it is tethered to the damages and penalties that could be recovered by them.

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

10 Class members' response to a settlement is relevant in evaluating whether it merits final
11 approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The absence of objections and requests for
12 exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v.*
13 *Southland Corp.*, 85 Cal.App.4th 1135, 1152-53 (2000) (finding 9 objections and 80 opt-outs
14 from a class of 5,454 showed a "particularly impressive" favorable response from class
15 members). Here, not a single Settlement Class member has objected to the Settlement, nor has
16 any Settlement Class member elected to opt-out of the Settlement, resulting in a 100%
17 participation rate. Dantema Decl., ¶¶ 10-14. The extremely favorable response of the Settlement
18 Class further confirms that the Settlement is fair, adequate, and reasonable.

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

20 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to
21 recover their attorneys' fees and costs for their wage claims. *See* Labor Code §§ 226(e), 1194,
22 2699(g), and 2802(c). A fee award is justified where the legal action has produced its benefits by
23 way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987);
24 *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 352-53 (1983).

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

27 When a settlement results in a common fund for the benefit of a class, class counsel may
28 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

1 of fund method survives in California class action cases.” Specifically, the *Laffitte* Court held:

2 The recognized advantages of the percentage method—including relative
3 ease of calculation, alignment of incentives between counsel and the class,
4 a better approximation of market conditions in a contingency case, and the
5 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.”

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

18 Here, Class Counsel’s fee request of \$40,000.00 (one-third of the Gross Settlement
19 Amount) is fair and reasonable based on a percentage of the recovery confirmed with a lodestar
20 cross-check. First, “regardless whether the percentage method or the lodestar method is used, fee
21 awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162
22 Cal.App.4th 43, 66, fn. 11 (2008). This is also consistent with Class Counsel’s experience in
23 similar wage and hour class action matters. *See* Larsen Decl., ¶¶ 3-4; 19-21. Thus, the percentage
24 sought by Class Counsel here (the same percentage approved in *Laffitte*) is reasonable.

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

26 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards
27 with tools such as the “lodestar cross-check,” whereby the trial court calculates class counsel’s
28 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.

1 *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.*,
2 at 506 (“[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a
3 percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-
4 check and use other means to evaluate the reasonableness of a requested percentage fee.”)

5 Under the lodestar method, the court computes the “lodestar” amount by multiplying the
6 number of hours reasonably expended by each attorney or legal staff member by their reasonable
7 hourly rates. *See, e.g., Serrano*, 20 Cal.3d at 48. The court then enhances the lodestar by a
8 “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its
9 contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24 Cal.4th
10 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
11 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to
12 increase or decrease a lodestar calculation”).

13 Under California law, lodestar multipliers can range from 2 to 3 or even higher. *See, e.g.,*
14 *Chavez, supra*, 162 Cal.App.4th at 49-50, 62 (approving multiplier of approximately 2.5); *City*
15 *of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34);
16 *Coalition for Los Angeles County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d
17 241, 251 (1977) (approving multiplier of ~2.04); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
18 1050-51 (9th Cir. 2002) (upholding multiplier of 3.65). In class actions such as this one, where
19 the value of the benefit conferred to the class “can be monetized with a reasonable degree of
20 certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund
21 to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the
22 legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557
23 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a
24 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned
25 lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte,*
supra, 1 Cal.5th at 503-05.

26 In this case, Class Counsel have a lodestar of approximately \$63,835 without the use of
27 any multiplier, compared to the \$40,000 fee request. Larsen Decl., ¶ 22. A general summary
28 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 ¶¶ 19-21; Exh. C (*Laffey Matrix*).

Name	Rate	Hours	Pre-Multiplier Lodestar
Tuvia Korobkin (15th Year Attorney)	\$675	48.5	\$32,737.50
Neil Larsen (14th Year Attorney)	\$650	18.3	\$11,895.00
Rijenea Appling (2nd Year Attorney)	\$325	36.7	\$11,927.50
Meghan McNally (1st Year Attorney)	\$325	13.4	\$4,355.00
Paralegals	\$200	14.6	\$2,920.00
Total Lodestar			\$63,835.00

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 objected to the Settlement or to Class Counsel's requested fees. *See* Dantema Decl., ¶ 12.

Additionally, the average settlement payment in this case of approximately \$924.24 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.

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1 As discussed above, this case presented significant risk as to both class certification and
2 merits considerations. Accordingly, it is fair and reasonable to account for these risks in
3 compensating Class Counsel. Class Counsel should also be compensated for the risks involved
4 in undertaking this litigation and expending considerable effort, all while working on a pure
5 contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all
6 the costs of litigation without receiving any compensation. Larsen Decl., ¶¶ 16-18. During this
7 time, Class Counsel have expended \$5,275.10 in costs and have devoted substantial time to this
8 litigation. *Id.* & Exh. B.

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

20 Class Counsel's previous experience in litigating wage and hour class actions also
21 supports the reasonableness of the fee request. Class Counsel are well-versed in wage and hour
22 class action litigation, with substantial experience litigating claims for unpaid wages, meal and
23 rest period violations, and related penalties, and have been certified as class counsel in numerous
24 other cases. *See* Larsen Decl., ¶¶ 2-5. Their experience in similar matters was integral in
25 evaluating the strengths and weaknesses of the case against ALI, and the reasonableness of the
26 Settlement. *Id.* Practice in the narrow field of wage and hour litigation requires skill and
27 knowledge concerning the rapidly evolving substantive state and federal law, as well as the
28 procedural law of class action litigation. *Id.* Because it is reasonable to compensate Class Counsel

1 commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross
2 Settlement Amount is reasonable as the California Supreme Court held in *Laffitte*.

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

5 Class Counsel request \$5,275.10 in litigation costs. Larsen Decl., ¶ 17 & Exh. B. The cost
6 request is fair, adequate, and reasonable, as the costs were reasonably incurred, and the costs
7 Plaintiff seeks are routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19
8 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be
9 charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3
10 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and exhibits are typically billed by
11 attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry &*
12 *Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006)
13 (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F.
14 Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
15 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
16 Because the expense reimbursements requested by Class Counsel were reasonably incurred, and
17 no Class member has objected to them, this Court should grant the request for costs.

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

19 Plaintiff also requests that this Court approve \$4,500.00 in settlement administration costs
20 to the Settlement Administrator, ILYM. As detailed in the declaration of Tracy Dantema
21 submitted herewith, ILYM performed duties in connection with this Settlement that were integral
22 in effectuating the Settlement and the Notice process. Among other things, ILYM calculated each
23 Settlement Class member’s individual payment, updated addresses contained in the class data
24 supplied by ALI, translated and formatted Notices for mailing, mailed Notice Packets to all 33
25 Settlement Class members, kept the parties informed of any objections or requests for exclusion,
26 and have otherwise administered the Settlement. *See* Dantema Decl., ¶¶ 3-14. ILYM’s requested
27 costs are fair, reasonable, and adequate, and should be finally approved.

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1 **F. This Court Should Approve Plaintiff's Requested Class Representative**
2 **Service Award**

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

8 Here, Plaintiff seeks a Class Representative Service Award of \$7,500, and believes this
9 request is reasonable given his efforts in this case and the risks he undertook on behalf of Class
10 members. *See* Rabelas Decl. ¶¶ 4-6. Plaintiff gathered documents for use in the lawsuit, reviewed
11 and analyzed documents related to the claims in this case and the policies produced by ALI, and
12 discussed case strategy and ALI’s wage and hour practices and policies with Class Counsel on
13 numerous occasions. *Id.*.

14 Plaintiff also undertook the risk of being liable for ALI’s costs if this case were lost, as
15 well as the reputational risk of being the named plaintiff in a wage and hour class action against
16 an employer. *See, e.g., Deaver v. Compass Bank*, 2015 WL 8526982 at **14-15 (N.D. Cal. Dec.
17 11, 2015) (approving \$7,500 incentive payment in \$500,000 wage and hour settlement, finding
18 the award “particularly appropriate in this wage and hour class action, where Plaintiff undertook
19 a significant ‘reputational risk’ in bringing this action against his former employer”). *See*
20 *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving \$15,000
21 total award to named plaintiff in wage and hour class action settlement, including \$10,000
22 incentive award plus an additional \$5,000 for plaintiff’s release of claims). Moreover, after
23 receiving notice of the proposed Service Award for Plaintiff, no Settlement Class member has
24 requested exclusion or objected to the settlement. *See* Dantema Decl., ¶¶ 11-12. Thus, the service
25 award to Plaintiff is appropriate and justified as part of the Settlement and should be finally
26 approved.

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28 ///

I. 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: April 15, 2024

ABRAMSON LABOR GROUP

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