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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF YOLO – CIVIL DIVISION

JORDON NORRIS, VERONICA GARCIA, and
JAMIL JOHNSON, individually on behalf of
themselves, and on behalf of all others similarly
situated and aggrieved,

Plaintiffs,

vs.

SCHILLING ROBOTICS, LLC, a limited
liability company; FMC TECHNOLOGIES,
INC., a Delaware corporation; EQ TALENT
SOLUTIONS, LLC, a limited liability company;
ROBERT GLOVER, a natural person
(previously identified as DOE 1), and DOES 2
through 10, inclusive,

Defendants.

Case No.: CV2021-2251

*[Assigned for All Purposes to the Honorable
Samuel T. McAdam, Department 14]*

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS AND REPRESENTATIVE ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: May 22, 2025
Time: 9:00 a.m.
Courtroom: Dept. 14
Judge: Hon. Samuel T. McAdam

Action Filed: December 29, 2021
Trial Date: Not Set

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that at 9:00 a.m., on May 22, 2025, or as soon thereafter as this
3 matter may be heard in Department 14 of the above-captioned Court, located at 1000 Main Street,
4 Woodland, California 95695, plaintiffs Veronica Garcia and Jamil Johnson (“Plaintiffs”), will and
5 hereby do move this Court for an order:

6 1. Granting class certification of the Class, solely for settlement purposes pursuant to
7 Code of Civil Procedure § 382;

8 2. Finally approving the JOINT STIPULATION OF CLASS AND PAGA
9 REPRESENTATIVE ACTION SETTLEMENT AND RELEASE (“Settlement” or
10 “Agreement”);

11 3. Appointing counsel for Plaintiffs, Moon Law Group, PC, as Class Counsel;

12 4. Appointing Plaintiffs as the Class Representatives;

13 5. Ruling that Settlement Class Members who did not timely submit requests for
14 exclusion from the settlement as set forth in the Agreement have released their claims against
15 Defendants and the other releasees as set forth in the Agreement;

16 6. Ruling that Settlement Class Members who did not timely object to the settlement
17 pursuant to the terms set forth in the Agreement are barred from prosecuting or pursuing any
18 appeal of the Court’s Order;

19 7. Awarding the sums requested in the Motion;

20 8. Entering a Final Judgment; and,

21 9. Without affecting the finality of the final judgment, reserving continuing
22 jurisdiction over the parties for the purposes of implementing, enforcing and/or administering
23 the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

24 Good cause exists to grant this Motion because: (1) the Class meets all of the requirements for
25 class certification for settlement purposes under Code of Civil Procedure § 382; (2) the Settlement
26 Agreement is a fair, adequate, and reasonable compromise of the highly disputed wage and hour claims
27 asserted by Plaintiffs; (3) Plaintiffs contend that Plaintiffs and Class Counsel are adequate to represent
28 the Class; (4) the notice procedures and related forms comply with California Rules of Court 3.766(d)

1 and this Court's Order granting preliminary approval of the Settlement, and adequately apprised Class
2 Members of their rights and fully comport with due process.

3 This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court,
4 which require approval by the Court of a class action settlement and permit the Court to extend the page
5 limit for memoranda.

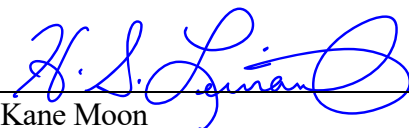
6 **TENTATIVE RULINGS:** Pursuant to Local Rule 11.2, the Court will issue a tentative ruling on
7 the merits of the matter by 3:00 p.m. on the court day before the hearing. The tentative rulings are
8 available by phone at (530) 406-6806 and on the Court's web site after 3:00 p.m. The tentative ruling
9 shall become the ruling of the court, unless a party desiring to be heard so advises the courtroom clerk of
10 the designated department no later than 4:00 p.m. on the court day preceding the hearing, and further
11 advises the courtroom clerk that such party has notified the other party(s) of its intention to appear.

12 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of
13 Points and Authorities, the Declarations of H. Scott Leviant, Plaintiffs, and the Settlement
14 Administrator in support hereof, all papers and pleadings on file with the Court in this action, all
15 matters judicially noticeable, and on such oral and documentary evidence as may be presented in
16 connection with the hearing on the Motion.

17 Respectfully submitted,

18 Dated: April 21, 2025

MOON LAW GROUP, PC

19 By: 
20 Kane Moon
21 H. Scott Leviant
22 Sandy Pham

23 Attorneys for Plaintiffs
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27
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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769, Plaintiffs request that this Court grant final
3 approval of the class action settlement set forth in the JOINT STIPULATION OF CLASS AND PAGA
4 REPRESENTATIVE ACTION SETTLEMENT AND RELEASE (“Settlement” or “Agreement”) with
5 Defendant Schilling Robotics, LLC (“Defendant”).

6 After the exchange of substantial discovery, and the exchange of documents and data, and
7 following an arm’s-length mediation session with mediator Marc Feder, Esq., Plaintiffs and Defendant
8 (collectively referred to herein as the “Parties”) reached a proposed class and representative PAGA
9 action settlement with a gross settlement amount (“GSA”) of **\$575,000.00** in compromise of disputed
10 claims asserted on behalf of the below-defined Class consisting of **229** Participating Class Members.
11 Plaintiffs and Class Counsel believe this settlement is a fair, adequate, and reasonable compromise of
12 highly disputed claims for alleged wage and hour violations and penalties asserted in this case.

13 Plaintiffs now submit this Motion for Final Approval of Class Action Settlement, along with the
14 Settlement (attached to the Declaration of H. Scott Leviant [“Leviant Decl.”], Exhibit 1 thereto). For the
15 Court’s convenience, below is a summary of the key provisions of the Settlement.

16 **II. THE NOTICE PROCESS WAS COMPLETED WITHOUT ISSUE**

17 Plaintiffs and Defendant have fulfilled the class notice procedures set forth in the Settlement and
18 as dictated by the Court’s preliminary approval Order. The Administrator, ILYM Group, Inc. (“ILYM”),
19 sent individual Notices to 230 Class Members on January 3, 2025. (Declaration of Nick Castro, ¶ 6.)
20 There has been only one opt out from the Settlement, **zero** objections, and **zero** workweek disputes
21 received. (*Id.*, at ¶¶ 11-12.) There are 229 Participating Class Members. (*Id.*, at ¶ 13.)

22 **III. THE MATERIAL TERMS OF SETTLEMENT**

23 The provisions of the proposed Settlement include the following:

- 24 • Defendant agrees not to oppose certification, solely for purposes of Settlement. (Settlement,
25 ¶ 20.)
- 26 • Class Definition: All individuals employed by Schilling Robotics, LLC in non-exempt
27 positions in California, and all individuals employed by EQ Talent Solutions, LLC who were
28 assigned to work at Schilling Robotics, LLC’s California locations, at any time during the

Class Period. (the “Class Period” is the period from December 29, 2017, to August 27, 2024). “Participating Class Member” means a Class Member who did not return a valid and timely request to be excluded from the non-PAGA portion of the Settlement. (Settlement, ¶¶ 1.d, 1.f, 1.w.)

- Settlement Amount: Defendant will pay a maximum of **\$575,000.00**, referred to as the Gross Settlement Amount (“GSA”), resulting in an estimated average **gross** benefit per Class Member of about **\$2,510.92**. (Settlement, ¶ 1.i; Leviant Decl., ¶ 17.)
- Funding of Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant’s share of payroll taxes by transmitting the funds to the Administrator no later than 15 business days after the Effective Date. (Settlement, ¶ 39.)
- Class Size: **229** individuals who worked 30,992 work weeks during the Class Period. (Castro Decl., ¶ 13.)
- PAGA Group Size: **188** aggrieved employees who worked 9,525 pay periods during the PAGA Period. (Castro Decl., ¶ 13.)
- PAGA Period: December 29, 2020, to August 27, 2024. (Settlement, ¶ 1.v.)
- Kullar/Munoz Analysis: Plaintiffs address the claims analysis herein, at Part VI.B.3, and in the Declaration of Leviant, at Paragraph 18.
- No Reversion: The Settlement is a **non-reversionary** settlement (Settlement, ¶ 17.)
- Certification: Plaintiff addresses certification requisites herein, at Part VI.A. Certification was addressed in greater detail in the Motion for Preliminary Approval, which the Court previously granted.
- No Claim Form: No claim form is required. (Settlement., ¶ 1.w.)
- Class Release: The Settlement will release wage-and-hour claims for Participating Class Members (those Class Members who did not validly opt out of the Settlement), including all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint. (Settlement, ¶¶ 1.z, 48.)

- 1 • PAGA Release: Plaintiffs, PAGA Members, and the State of California, and anyone
2 purporting to act on its behalf, will release all claims for civil penalties under the PAGA,
3 based on the facts and Labor Code sections that were alleged or reasonably could have been
4 alleged in Plaintiffs' PAGA letters or amended PAGA letters. (Settlement, ¶¶ 1.aa, 48.)
- 5 • Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys'
6 fees and costs, service payment to Plaintiffs, administration costs, and the PAGA penalty
7 payment amount, the remainder will be available for distribution to participating Class
8 Members who did not validly opt out of the Settlement, with each participating Class
9 Member receiving a share based on their pro rata number of Workweeks that Class Member
10 worked for Defendant(s) within the Class Period. The Net Settlement Amount is estimated
11 to be at least **\$194,796.68**, resulting in an average **net** payment per Class Member of
12 approximately **\$850.64**, before any tax withholdings. (Settlement, ¶¶ 1.m, 15-18.)
- 13 • Tax Allocation: The amounts distributed to Participating Class Members will be
14 characterized as 20% alleged unpaid wages and 80% to interest and penalties, and PAGA
15 Settlement payments to PAGA Members will be allocated as 100% penalties. (Settlement, ¶
16 45.)
- 17 • Employer's Portion of Payroll Taxes Paid Separately: Defendant's portion of payroll taxes
18 (e.g., FICA, FUTA, etc.) owed on any settlement payments to Participating Class Members
19 that constitute wages will be paid separate and apart from the GSA. (Settlement, ¶ 1.k.)
- 20 • Settlement Administrator: The notice portion of the Settlement will be administered by a
21 third-party Administrator, ILYM Group, Inc. Administration is estimated not to exceed
22 \$9,000.00. ILYM's bid for settlement administration services in the not-to-exceed amount
23 of **\$7,450.00** was chosen from a competitive bidding process. (Settlement, ¶¶ 16.b, 26;
24 Castro Decl., ¶ 15.)
- 25 • Class Data for Administration: Pursuant to the preliminary approval Order, the Settlement
26 Administrator received the Class Data within 14 calendar days of the Order granting
27 Preliminary Approval, used the National Change of Address ("NCOA") database to update
28 the Class Data, and then used skip tracing on returned Notices. (Settlement, ¶¶ 23, 25.)

- 1 • Notice: The Notice issued within 14 days of receipt of the Class List. (Settlement, ¶ 26).
2 The Notice described how to dispute workweeks, submit an objection in writing, in person,
3 or through an attorney, or request exclusion. (Settlement, ¶ 26.)
- 4 • Notice Language: Notice issued in English only, since translation was not required based
5 on the makeup of the Class.
- 6 • Objections: Objections could be submitted in person, by attorney, or in writing to the
7 Administrator, with no pre-requisite to being heard. (Settlement, ¶ 30.)
- 8 • Exclusion Requests: The procedure for exclusion requests, mailing a request to the
9 Settlement Administrator, is the same as the procedure for submitting a written objection.
10 (Settlement, ¶ 28.)
- 11 • PAGA Allocation: From the GSA, **\$40,000.00** will be allocated to settle claims brought
12 pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.*
13 (“PAGA”), and seventy-five percent (75%), or **\$30,000.00**, will be paid to the California
14 Labor & Workforce Development Agency. (Settlement, ¶ 16.e.)
- 15 • Notice to LWDA: Notice was provided to the LWDA of the Settlement and the settlement
16 of the PAGA claims prior to the filing of this Motion. Evidence is attached to the Leviant
17 Declaration.
- 18 • Enhancement/Service Award to Plaintiffs: Defendant will not and has not opposed the
19 application for Class Representative Service Payments of up to **\$7,500.00** each for Plaintiffs
20 Johnson and Garcia, each to be paid from the GSA (Settlement, ¶ 16.a.)
- 21 • Class Counsel Fees and Costs: Defendant will not and has not opposed Class Counsel’s
22 application for fees not to exceed 33 1/3% of the GSA (**\$191,666.00**), and actual costs, in
23 the amount of **\$126,086.65**, to be paid out of the GSA. (Settlement, ¶¶ 16.c, 16.d.)
- 24 • Check Void Period: Settlement checks will be valid for 180 days from issuance.
25 (Settlement, ¶ 43.)
- 26 • Uncashed Checks: Any settlement checks that are mailed to the Participating Class
27 Members that remain uncashed after 180 days of the date of issuance will be cancelled, and
28 the monies will be directed to the State Controller’s Office, Unclaimed Property Division in

the name of that Participating Class Member. (Settlement, ¶ 43.)

- Judgment Notice: Judgment will be posted on the Settlement Administrator’s website after entry. (Settlement, ¶ 36.)
- Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement with Class Members. (Settlement, ¶ 53).

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff’s Claims

On December 29, 2021, plaintiff Jordon Norris originally filed a representative wage and hour class action lawsuit against Schilling Robotics, LLC, FMC Technologies, Inc. and EQ Talent Solutions, LLC. for failure to pay minimum and regular rate wages, failure to pay overtime compensation, failure to provide meal periods, failure to authorize and provide rest breaks, failure to timely pay final wages at termination, failure to provide accurate itemized wage statements, failure to indemnify for necessary business expenses, and unfair business practices. (Leviant Decl., ¶ 4.)

Plaintiff Jordon Norris sent a letter to the Labor and Workforce Development Agency (“LWDA”), pursuant to California Labor Code § 2699.3, providing notice of his intent to seek civil penalties under the Private Attorneys General Act, California Labor Code § 2698, *et seq.*, LWDA Case No. LWDA-CM-859553-21. (Leviant Decl., ¶ 5.) The LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter, and the 65-day time period permitted for the LWDA to provide such a notification expired. On May 24, 2022, plaintiff Jordon Norris filed a First Amended Complaint alleging an additional cause of action against Defendant for civil penalties under the Private Attorneys General Act (“PAGA”). On November 7, 2022, plaintiff Jordon Norris filed an Amendment to the First Amended Class and Representative Action Complaint naming Robert Glover as Doe Defendant 1.

On December 9, 2022, Plaintiff Veronica Garcia submitted a letter to the LWDA notifying it of her intent to seek civil penalties from Schilling Robotics, LLC and FMC Technologies, Inc., LWDA Case No LWDA-CM-923697-22. On January 9, 2023, Plaintiff Jamil Johnson submitted a letter to the LWDA notifying it of his intent to seek civil penalties from EQ Talent Solutions, LLC, Schilling

1 Robotics, LLC, FMC Technologies, Inc. and Robert Glover, LWDA Case No LWDA-CM-923697-22.
2 Also on January 9, 2023, plaintiffs Jordon Norris, Jamil Johnson and Veronica Garcia sent an amended
3 letter to the LWDA in Case No. LWDA-CM-859553-21. On January 16, 2023, plaintiff Jordon Norris
4 filed a Second Amended Class and Representative Action Complaint adding Veronica Garcia and Jamil
5 Johnson as named Plaintiffs and putative class representatives in the case. On August 9, 2023, the Court
6 later entered an Order dismissing Jordon Norris as a named plaintiff in the Action. The Second Amended
7 Complaint is the operative complaint in the Action (the “Operative Complaint.”). (*Id.*)

8 **B. Pre-Mediation Discovery, Data Production and Analysis**

9 The Parties conducted extensive formal discovery and investigation of the facts and law in the
10 Action. Such investigation included, *inter alia*, the exchange of extensive data and discoverable
11 information in preparation for the mediation session. (Leviant Decl., ¶ 6.) The Parties have analyzed
12 time clock, pay and other data pertaining to Plaintiffs and the Class during the relevant Class Period,
13 including but not limited to the numbers of former and current members of the Class, average
14 workweeks and pay periods worked, and average rate of hourly pay. (*Id.*) Data for the full Class was
15 analyzed. (*Id.*) In addition, Defendant also provided other data pertaining to Plaintiffs and the Class
16 during the relevant Class Period, including but not limited documents reflecting wage and hour policies
17 and practices during the Class Period. (*Id.*) On April 27, 2023, Plaintiffs filed a Motion for Class
18 Certification. On September 21, 2023, the Court entered an Order denying Plaintiffs’ Motion for Class
19 Certification, without prejudice. (*Id.*)

20 After further reviewing documents regarding Defendant’s wage and hour policies and practices
21 and other information obtained during the exchange of discovery, Class Counsel were able to further
22 evaluate the probability of class certification, success on the merits, and the reasonably obtainable
23 maximum monetary exposure for all claims from Plaintiffs’ perspective. Class Counsel reviewed these
24 records and prepared a damage analysis prior to mediation. Class Counsel also investigated the
25 applicable law regarding the claims and defenses asserted in the litigation. (Leviant Decl., ¶ 7.)

26 **C. Settlement**

27 On June 13, 2024, the Parties participated in a full-day arm’s length mediation with experienced
28 wage and hour mediator Marc Feder, Esq., which ultimately led to a proposed settlement. (Leviant

Decl., ¶ 8.) The Parties discussed at length the burdens and risks of continuing with the litigation as well as the merits of the Parties’ respective claims and defenses. (*Id.*) After the mediation, the Parties prepared and signed a long form settlement agreement (the “Agreement”). (*Id.*)

Plaintiffs and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant’s defenses thereto. (Leviant Decl., ¶ 9.) Plaintiffs and Class Counsel have also taken into account Defendant’s agreement to enter into a Settlement that confers substantial relief upon the Class. (*Id.*)

Based on the foregoing, Plaintiffs and Class Counsel have determined and contend that the Settlement set forth in the Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Leviant Decl., ¶ 10.) Solely for the purpose of settling this case, the Parties agree that the requirements for establishing class action certification with respect to this Class have been met and are met. (*Id.*) If this Settlement is not approved by the Court for any reason, however, Defendant reserves the right to contest class certification on all grounds. (*Id.*) This Settlement, if approved, will result in the termination of the litigation through the entry of the proposed Judgment and the release of all Released Claims for all Participating Class Members, including all within the class definition who have not validly elected to exclude themselves from the Class, as well as the release of all Released PAGA Claims for all PAGA Members who worked for Defendant(s) during the PAGA Period. (*Id.*)

V. CLASS DEFINITION

The Class is defined as follows:

All individuals employed by Schilling Robotics, LLC in non-exempt positions in California, and all individuals employed by EQ Talent Solutions, LLC who were assigned to work at Schilling Robotics, LLC’s California locations, at any time during the Class Period. (the “Class Period” is the period from December 29, 2017, to August 27, 2024). “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.d, 1.f, 1.w.)

(Leviant Decl., Exhibit 1.)

VI. DISCUSSION

A. Consistent with the Court’s Findings at the Time of Preliminary Approval, the Court Should Certify the Class for Settlement Purposes

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a

1 numerous and ascertainable class with a well-defined community of interest and that a “class action
2 proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-*
3 *on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). For purposes of this Settlement
4 only, Defendant stipulated to conditional certification. (Settlement ¶ 12.1.)

5 “The certification question is ‘essentially a procedural one that does not ask whether an action is
6 legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440
7 (2000). The certification question asks whether the theory of recovery advanced by the plaintiff is likely
8 to prove amenable to class treatment. *See, e.g., Jaimez v. Daihatsu USA, Inc.*, 181 Cal. App. 4th 1286,
9 1298 (2010). As the court noted in *Dunk*, although certification requirements are intended “to protect the
10 interests of the non-representative class members,” that concern is “protected by the trial court’s fairness
11 review of the settlement.” *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). In view
12 of these standards, *as discussed more thoroughly as part of the preliminary approval motion*, the
13 Settlement Class should be certified for settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

14 **B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and**
15 **Reasonable Compromise of Disputed Wage Claims**

16 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
17 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
18 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
19 *Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). This approval process consists of preliminary
20 settlement approval, notice being given to class members, and a final fairness and approval hearing being
21 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
22 below, this Court should finally approve the Settlement and enter Judgment.

23 **1. Class Action Settlements Are Subject to Review and Approval.**

24 Any settlement of class litigation must be reviewed and approved by the presiding court. Rules
25 of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review and (2) a
26 subsequent (final) review after notice has been distributed to the class members. The Preliminary
27 Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks
28 *final approval* and the entry of a Judgment.

1 To evaluate a settlement, a court must receive “basic information about the nature and magnitude
2 of the claims in question and the basis for concluding that the consideration being paid for the release of
3 those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th
4 116, 133 (2008). But the record need **not** contain an explicit statement of the maximum theoretical
5 recovery. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

6 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
7 **Between Experienced Counsel with the Assistance of a Highly Qualified**
8 **Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.**

9 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
10 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
11 experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802;
12 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
13 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In exercising these powers, the overriding concern
14 is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801, quoting
15 *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

16 Relevant factors in making this determination, include, but are not limited to:

17 [T]he complexity and likely duration of further litigation, the risk of maintaining class
18 action status through trial, the amount offered in settlement, the extent of discovery
19 completed and the state of the proceedings, the experience and views of counsel, the
20 presence of a governmental participant, and the reaction of the class members to the
21 proposed settlement.

22 *Id.* These factors require balancing, are non-exhaustive, and, trial courts should tailor the factors to each
23 case and give due regard to “what is otherwise a private consensual agreement between the parties.” *Id.*

24 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
25 counsel with the assistance of a skilled mediator, Marc Feder, Esq. (Leviant Decl., ¶¶ 8-10.) Plaintiffs
26 obtained data from Defendant through extensive formal discovery and then carefully reviewed that
27 information. Counsel for Plaintiffs also examined relevant policies and interviewed witnesses in detail
28 about their work experiences and Defendant’s practices.

Based on the review of data, Plaintiffs estimated potential exposure and estimated risk factors to

1 adjust the reasonable expected outcome. The investigation that Plaintiffs’ counsel conducted was
2 sufficient to provide them with enough information to intelligently evaluate the estimated exposure for
3 purposes of negotiating the Settlement in view of the risks discussed below and was sufficient to allow
4 this Court to do the same. *See, e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

5 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
6 **of Class Members’ Claims Based on Defendant’s Estimated Liability**
7 **Exposure Given the Risks Continued Litigation Would Entail.**

8 *a) The Class Settlement is Fair, Adequate and Reasonable*

9 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
10 trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a
11 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
12 complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91
13 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for
14 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
15 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each
16 side gives ground in the interest of avoiding litigation.” *Id.*

17 With respect to the claims asserted on behalf of the Class, there are serious risks that support this
18 compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiffs would be
19 unable to establish liability for unpaid wages, *see Duran v. US Bank Nat’l Ass’n*, 59 Cal. 4th 1, 39 & n.
20 33 (2014) (“*Duran*”); (ii) the risk that Defendant’s meal and rest period policies might not support class
21 certification or a class-wide liability finding; (iii) the risk that uncertainties about the legality of
22 Defendant’s policies and practices could preclude class-wide awards of statutory penalties; (iv) the risk
23 that individual differences between Class Members could be construed as pertaining to liability and not
24 just damages; (v) the risk that any penalty award under PAGA could be reduced by the Court in its
25 discretion; (vi) the risk that lengthy trial or appellate litigation could ensue; and, (vi) the risk that
26 violation rates could prove lower than expected. (Leviant Decl., ¶ 16.) These risks are non-exhaustive.

27 In light of the uncertainties of protracted litigation, Plaintiffs contend the settlement amount
28 reflects a fair and reasonable recovery for the Class Members. (Leviant Decl. ¶¶ 13-20.) The settlement

amount is, of course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. (*Id.*) Moreover, each Class Member will be and has been given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they would otherwise receive under this Settlement to pursue their own claims. (*Id.*) For the approximately **229** members of the Class as of September 2023, the average **gross** benefit is **\$2,662.04** per class member, and the estimated average **net** recovery for each Class Member would be approximately **\$876.54**. (*Id.*) Given that Defendant could and would aggressively challenge certification and liability, this is the best result that could have been achieved in settlement. Moreover, a Class Member who worked a greater number of workweeks will receive a larger Settlement share than a Class Member who worked for a shorter time during the class period. (*Id.*)

After analyzing the claims in this matter, Plaintiffs have concluded that the Gross Settlement Amount of **\$575,000** is just above the **\$571,304.93** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (Leviant Decl., ¶ 18.) This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*)

- A reasonably estimated exposure for unpaid wages was calculated by Plaintiffs, with the assistance of an expert, to be approximately **\$24,943.10**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiffs' counsel to be approximately **\$15,963.58**, assuming certification probability of 80% and merits success at 80%. Plaintiffs contend the unpaid wages resulted from a variety of alleged issues associated with Defendant's proprietary timeclock system. The majority of the work performed by Plaintiffs' expert consultant concerned preparation of custom programming tools to deconstruct the time data from its native format into one that could be analyzed effectively. Despite this effort, there were a large percentage of consistency errors in the timeclock data, creating some risk when making exposure calculations. Even with the errors, it appeared to Plaintiffs that some evidently unpaid wages were potentially related to possible errors caused by the way that Class Members recorded time and to the fact that the pay period end fell in the middle of the Friday workday (an uncommon choice for a pay period end time).
- A reasonably estimated maximum exposure for rest break violations over the Class Period was calculated by Plaintiffs at **\$528,538.90**, based on the legal argument that an earlier rest break policy apparently did not permit employees to leave the work premises, with a current value exposure of **\$21,141.16**, assuming certification probability of 20% and merits success at 20%. This claim is factually and legally disputed, and some inconsistent information from Class Members indicates that this theory carries the potential for high risk. Plaintiffs calculated the exposure assuming one missed break per week for 100% of the Class, a very optimistic assumption.
- A reasonably calculated exposure for meal break violations over the Class Period was

calculated by Plaintiffs at **\$685,509.78**, with chances of certification and liability risks (50% and 50% respectively) resulting in a risk-adjusted exposure of **\$171,377.45**. This exposure is based upon alleged facial violations of short, missed, or late meal periods identified by Plaintiffs. The exposure valuation by Plaintiffs was still susceptible to attack. Employee choice is a serious issue in the context of a meal period claim. So long as an employee has the opportunity to take a lawful meal period, an employee can choose to take it late, cut it short, or skip it. In addition, many of the “late” meal periods were entered as starting exactly at the beginning of the sixth hour of work, leading to the legal issue of whether “before the end of the fifth hour of work” means that four hours and 59 minutes is timely, but a meal period starting at the five hour mark is untimely.

- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated by Plaintiffs to be approximately **\$60,000.00** and **\$79,447.75**, respectively, on maximum exposures calculated by Plaintiffs of **\$150,000.00** and **\$198,619.37**, respectively (with certification and merits success chances of 80% and 50% respectively, based on unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim and assuming that Defendant had a good faith belief that it was providing accurate wage statements and paying all wages due at the time of termination.
- Performing risk-adjusted valuations for all claims yields a total value calculated by Plaintiffs in the range of **\$347,929.93**, excluding PAGA.¹
- PAGA penalties exposure was calculated by Plaintiffs to be **\$893,500.00**, using the more expedient method of assuming a single \$100 penalty for every pay period, a somewhat generous assumption. But, assuming issues with proof and cooperation of aggrieved employees, along with the Court’s power to reduce penalties, the realistic exposure was calculated by Plaintiffs to be **\$223,375.00**.

(See, Leviant Decl., ¶ 18.)

Based on the foregoing, Plaintiffs contend the result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Leviant Decl., ¶ 19.) The Judicial Council’s Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 (“Second Interim Report”), at page 5, states that “less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification or as part of a classwide settlement agreement.” See, Second Interim

¹ It is difficult to assign specific percentages to future events, but it does provide a specific method for attempting to reduce the concept of “very high risk” or “high risk” to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel. The numbers explain with math what can also be described conceptually in words.

1 Report, at 5 (emphasis added).² That “*or*” is significant. The certification rate of less than 25%
2 identified in the study includes *both* contested certifications and settlement certifications, which are the
3 majority of certifications. In other words, one must assume in any wage and hour class action prior to
4 certification that a contested certification motion will have a success rate of well under 25%, and
5 probably closer to 10% as a starting point for risk evaluation. The facts of each case have significant
6 bearing on these percentages. But it cannot be disputed that certification is an exceptionally difficult
7 procedural hurdle to successfully overcome. Therefore, it is not unreasonable to start from the
8 proposition that a pre-certification settlement that is 10% to 15% of the maximum plausible exposure is a
9 valid starting point for valuation. If roughly 10% of class actions are certified on a contested basis, then,
10 on average, 90% of the time a class will not be certified and the result for the class is *zero* dollars.

11 Here, the estimated certification probabilities calculated by Plaintiffs are *above* the average rate
12 at which cases were certified in California over the study years, based upon data available through the
13 California Courts websites. (Leviant Decl., ¶ 19.) Summarizing the above, well *under* 20% of all cases
14 filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) Thus, the
15 recovery falls within the expected outcome under the likelihood of success metric. (*Id.*) It would also be
16 appropriate to evaluate the result by examining only the premium wages at issue (approximately
17 \$1,238,981.77, with no risk reduction), excluding penalties and interest; the settlement is about 47% of
18 the premium wages (unpaid wages, meal period premiums, and rest break premiums) at maximum
19 realistic exposure value.³ Plaintiffs contend this Settlement achieves the goals of the litigation.

20 *b) The PAGA Allocation is Reasonable.*

21 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.

23 ² The report is available at <https://www.courts.ca.gov/documents/classaction-certification.pdf> (last
24 viewed March 12, 2024).

25 ³ The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA
26 penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion “may award a lesser
27 amount than the maximum civil penalty amount specified by this part...”), and, second, courts evaluate
28 the strength of a proposed settlement without taking potential penalties or interest into consideration. *See*
Rodriguez v. West Publishing Corp., 563 F.3d 948, 955 (9th Cir. 2000); *see also* *Miller v. CEVA*
Logistics U.S.A., Inc., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a
defendant’s exposure exclusive of interest and penalties to determine whether the settlement fell within
the range of possible approval).

1 Labor Code § 2699(e)(2) states: “In any action by an aggrieved employee seeking recovery of a civil
2 penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil
3 penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do
4 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

5 Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources
6 of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in
7 federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement,
8 could be reasonable if the settlement of the wage and hour claims is robust and serves the deterrent
9 purpose of PAGA. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016)
10 (“By providing fair compensation to the class members as employees and substantial monetary relief, a
11 settlement not only vindicates the rights of class members as employees, but may have a deterrent effect
12 upon the defendant employer and other employers, an objective of PAGA.”). *Moniz* provided explicit
13 confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA
14 settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that have considered
15 how to evaluate a PAGA settlement, concluded that the class action factors are appropriately considered,
16 along with a consideration of whether the settlement furthers “PAGA’s purposes to remediate present
17 labor law violations, deter future ones, and to maximize enforcement of state labor laws.”

18 As to the first set of elements (the class-type analysis), it is embodied in Plaintiffs’ discussion of
19 the adequacy of the settlement generally. Here, the expense, complexity and likely duration of future
20 litigation was to some extent an unknown. However, what is certain is that to adequately establish the
21 violations that would support a substantial penalty, tremendous time and expense would be invested.

22 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
23 PAGA’s purposes include (1) remediation of present labor law violations, (2) deterrence of future
24 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
25 portion of settlement funds to class members still advances the goal of labor law violation remediation.
26 The allocation of a major portion of settlement funds to class members also deters future violations. This
27 is a \$575,000.00 settlement, a good result for the Class size. Deterrence is fulfilled. Finally, allocation of
28 a major portion of settlement funds to class members advances the goal of enforcement of state labor

1 law. This settlement is, by definition, a response to alleged labor code violations, balanced against risks.

2 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
3 conduct allegedly violated the Labor Code in the first instance. *Amaral v. Cintas Corp.*, 163 Cal. App.
4 4th 1157, 1209 (2008); *Willis v. Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013). And
5 in *Cotter*, the court found a significant reduction of the PAGA claim would be appropriate because
6 “[t]his does not appear to be a case where a company has deliberately sought to evade the law.” *Cotter*,
7 176 F. Supp. 3d at 941.

8 Finally, the PAGA allocation is fair. The LWDA is receiving \$30,000.00. The Class is
9 receiving, net, an estimated \$194,796.68 for the releases of *all* other claims. While the proportion is
10 tipped slightly in favor of the employees, the allocation is not unfair because it satisfies California’s wage
11 and hour policies.

12 **4. The Proposed Method for Allocating Settlement Funds Is Fair.**

13 The proposed method of allocating the Settlement Fund to Participating Class Members and
14 PAGA Members also is fair and reasonable. The Settlement Fund is to be allocated between all
15 Participating Class Members, based on time worked by the Participating Class Member during the Class
16 Period, in relation to the total amount of time worked by all Participating Class Members. This proposed
17 method is fair and reasonable because each Class Member’s actual potential damages vary based on the
18 number of workweeks he or she worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the
19 employee’s regular rate of pay for each violation, resulting in a higher potential damage when a higher
20 number of incidents occur). A Participating Class Member who worked a greater number of workweeks
21 will receive a larger payment under the Settlement than a Participating Class Member who worked for a
22 shorter amount of time. (Leviant Decl., ¶¶ 13, 17.)

23 **5. The Proposed Enhancement Awards to Plaintiffs Warrant Approval.**

24 The proposed enhancement of \$7,500.00 to each remaining named Plaintiff is intended to
25 recognize substantial initiative and significant efforts on behalf of the Class. Courts routinely approve
26 incentive awards to compensate named plaintiffs for the services they provide and the risks they incur
27 during class action litigation, often in much higher amounts than those sought here. Factors considered
28 when awarding an incentive include the actions the plaintiff has taken to protect the class, the degree to

1 which the class has benefitted, the amount of time and effort the plaintiff expended in the litigation, the
2 risk to the class representative in commencing suit (financial and otherwise), the notoriety and personal
3 difficulties encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed
4 by the plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785,
5 804 (2009). Here, taking the risk of participating in a lawsuit against an employer deserves recognition,
6 especially in light of the settlement achieved by Plaintiffs, who participated in discovery and were
7 deposed. (Garcia Decl., ¶¶ 5-21; Johnson Decl., ¶¶ 5-21; Leviant Decl., ¶ 33.) The enhancement also
8 recognizes risks Plaintiffs took to be personally liable for costs regardless of the success of the litigation,
9 as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that
10 Plaintiffs sued employers, making future employment less certain. Plaintiffs' Declarations support the
11 requested enhancements and confirm Plaintiffs were active participants in the settlement of this case.

12 **6. The Proposed Award of Class Counsel Attorneys' Fees and Costs Is Also**
13 **Fair, Adequate, and Reasonable and Merits Approval.**

14 *a) Plaintiffs' Counsel Should be Awarded Fees Based on a Percentage of*
15 *the Fund Recovered, Consistent with the Common Fund Method*

16 The request for fees as a percentage of a settlement is supported by the "common fund theory,"
17 where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive
18 benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v.*
19 *Priest*, 20 Cal. 3d 25, 35 (1977). The common fund doctrine has been applied "consistently in California
20 when an action brought by one party creates a fund in which other persons are entitled to share." *City*
21 *and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995). The lodestar may be cross-checked
22 against the percentage. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

23 The California Supreme Court removed any lingering doubt about the use of the percentage of
24 the fund method to award attorney's fees in California Courts. *Laffitte v. Robert Half Intern. Inc.*, 1 Cal.
25 5th 480, 503 (2016).⁴ Thus, this Court may and, as strongly encouraged by the California Supreme
26

27 ⁴ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
28 doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method

1 Court, *should* award fees to Class Counsel based upon the percentage of the fund methodology.

2 “Empirical studies show that, regardless whether the percentage method or the lodestar method is
3 used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162
4 Cal. App. 4th 43, 47 n. 11 (2008). This is consistent with counsels’ experience in class cases. Here,
5 Plaintiffs’ attorneys request attorneys’ fees of **\$191,666.00** (33 and 1/3% of the GSA), and costs of
6 **\$126,086.65** (which includes payment for mediation, filing fees, service of process fees, and other
7 standard expenses). (Leviant Decl., ¶ 32.) Given the efforts and risks involved in this case, as well as the
8 results achieved, these amounts are within the range of reasonableness and warrant *final approval*.

9 *b) A Lodestar Cross Check Confirms that Class Counsel’s Requested*
10 *Attorneys’ Fees Are Reasonable*

11 Plaintiffs’ fee application is also reasonable based on lodestar. Under the lodestar method, the
12 court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to
13 evaluate the reasonableness of the fee. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615,
14 622 (2000). The moving party meets its burden by submitting “declarations evidencing the reasonable
15 hourly rate for their services and establishing the number of hours spent working on the case” as
16 “California case law permits fee awards in the absence of detailed time sheets.” *Wershba*, 91 Cal. App.
17 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App.
18 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are used to arrive at a
19 “lodestar” figure which may then be augmented or diminished taking into account various “multiplier”
20 factors. *See Ramos*, 82 Cal. App. 4th at 622 (*citing Serrano*, 20 Cal. 3d at 48-49).

21 Here, Class Counsel’s *total* lodestar is **\$369,367.50** (including about 10 hours of past and future
22 time not billed by Mr. Leviant). (Leviant Decl., ¶ 32.) The billed lodestar to date is **\$359,617.50**.
23 (Leviant Decl., ¶ 32.) Plaintiffs contend the request for **\$191,666.00** in attorneys’ fees, which is **0.51**
24 times the estimated total lodestar, is reasonable under the lodestar method.

25
26
27
28 inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve total costs in the amount of **\$126,086.65**. (*Ibid.*)

7. The Proposed Payment to the Administrator Is Fair and Reasonable.

ILYM Group, Inc., which has been selected due to its competitive bid, states that administration can be performed for a flat rate of **\$7,450.00**. In counsel's experience, based on similar wage-and-hour actions, an estimated cost of **\$7,450.00** is a fair and reasonable amount for administration fees and should be preliminarily approved. (Leviant Decl., ¶ 34.) ILYM has also confirmed its capabilities and security protocols in the accompanying declaration. (*See*, Mullins Decl.)

VII. CONCLUSION

For all the foregoing reasons, because the Class meets the requirements for certification for settlement purposes, only, because the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the proposed notice procedure and forms comport with Rule 3.766 and Due Process, this Court should grant this Motion for Final Approval, adopt the [Proposed] Order Granting Final Approval of Class Action Settlement submitted herewith, and enter the [Proposed] Judgment.

Respectfully submitted,

Dated: April 21, 2025

MOON LAW GROUP, PC

By: 
H. Scott Leviant

Attorneys for Plaintiffs

for class certification that Plaintiffs were preparing when the case resolved at mediation. Without that substantial contribution from Plaintiffs' expert, the matter would not have resolved, and the likelihood for certification on a renewed motion would have been even lower than the already daunting challenge that all motions for class certification pose. (Leviant Decl., ¶ 32.)