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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

MARK JOHN SANTOS, individually, and on behalf of other members of the general public similarly situated; and SAMANTHA SANCHEZ, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, Plaintiffs, vs. MEDZED, LLC, a Georgia limited liability company; MEDZED PHYSICIAN SERVICES, INC., a California corporation; and DOES 1 through 100, inclusive, Defendants.	Case No. 22STCV15585 Related to Case No.: 22STCV38149 Honorable Stuart M. Rice Department SSC-1 **CLASS ACTION** **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CLASS COUNSEL FEES AND LITIGATION EXPENSES PAYMENTS AND SERVICE PAYMENTS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** [Declaration of Class Counsel (Yasmin Hosseini); Declaration of Class Representatives (Mark John Santos and Samantha Sanchez); Declaration of Settlement Administrator (Cassandra Polites); and [Proposed] Final Approval Order and Judgment filed concurrently herein] Date: November 1, 2024 Time: 10:30 a.m. Department: SSC-1 Complaint Filed: May 10, 2022 FAC Filed: December 27, 2023 Trial Date: None Set

PLEASE TAKE NOTICE that on November 1, 2024, at 10:30 a.m., in Department SSC-1 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs Mark John Santos and Samantha Sanchez (together, "Plaintiffs" or "Class Representatives") will and hereby do move for an order granting final approval of:

1. The Class Action and PAGA Settlement Agreement ("Settlement," "Agreement," or "Settlement Agreement") on the grounds that the Settlement is fair, adequate, and reasonable because:

- A Net Settlement Amount of approximately **$404,392.49** will be fully distributed to Class Members who do not submit a timely and valid Request for Exclusion ("Participating Class Members");
- **No Objections or Requests for Exclusion** were submitted to the settlement administrator, ILYM Group, Inc. ("ILYM" or "Administrator");

2. Payment in the amount of **$261,010.12** to Lawyers *for* Justice, PC ("Class Counsel"), representing one-third (1/3) of the Gross Settlement Amount, for the Class Counsel Fees Payment, which is reasonable and justified on a percentage-basis;

3. Payment in the amount of **$13,627.75** to Class Counsel for Class Counsel Litigation Expenses Payment;

4. Payment in the amount of **$9,000.00** to the Administrator for Administration Costs;

5. Payment in the amount of **$5,000.00** each to Plaintiffs Mark John Santos and Samantha Sanchez as Service Payments, for a total of $10,000.00, for their time and effort in representing the Class; and

6. Allocation of the penalties under the Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.*, in the amount of $85,000.00 ("PAGA Penalties"), of which seventy-five percent (75%), or **$63,750.00**, will be paid to the California Labor and Workforce Development Agency ("LWDA") ("LWDA PAGA Payment") and twenty-five percent (25%), or **$21,250.00**, will be distributed to Aggrieved Employees on a *pro rata* basis, based on PAGA Pay Periods during the PAGA Period (60% to PAG Group A, equal to $12,750, and 40% to PAGA Group B, equal to $8,500) ("Individual PAGA Payment").

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

This motion is based upon the following Memorandum of Points and Authorities; the Declarations of Class Counsel (Yasmin Hosseini), Class Representatives (Mark John Santos and Samantha Sanchez), Administrator (Cassandra Polites of ILYM Group, Inc.) in support thereof; the pleadings and other records on file with the Court in this matter; and such evidence and oral argument as may be presented at the hearing on this Motion.

Dated: October 10, 2024

LAWYERS *for* JUSTICE, PC

By: ______________________________
Yasmin Hosseini
Attorneys for Plaintiffs and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF MOTION

Plaintiffs Mark John Santos and Samantha Sanchez (together, "Plaintiffs" or "Class Representatives") seek final approval of: (1) the increased Gross Settlement Amount of $783,030.36[1]; (2) attorneys' fees in the amount of $261,010.12 which is one-third (1/3) of the Gross Settlement Amount ("Class Counsel Fees Payment")[2], and reimbursement of litigation costs and expenses in the amount of $13,627.75 ("Class Counsel Litigation Expenses Payment") to Lawyers *for* Justice, PC ("Class Counsel"); (3) Administration Costs in the amount of $9,000.00 to ILYM Group, Inc. ("ILYM" or "Administrator"); (4) Service Payments in the amount of $5,000.00 each to Plaintiffs Mark John Santos and Samantha Sanchez, for a combined amount of $10,000.00; and (5) allocation of $85,000.00 for penalties under the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA Penalties").

Plaintiffs seek relief on behalf of the following Class:

> All current and former hourly or non-exempt individuals who are or previously were employed by any of the Defendants in the State of California at any time during the Class Period ("Class" or "Class Members").[3]

This matter involved ongoing investigations, informal discovery, review and analysis of thousands of pages of documents and data prior to and during mediation conducted by the Jeffrey Krivis, Esq., and settlement negotiations thereafter. This matter has required 353.80 hours of attorney time by Class Counsel. As will be demonstrated herein, the request for attorneys' fees, which represents one-third (1/3) of the Gross Settlement Amount, is fully supported by the use of the percentage-fee method. Courts have historically awarded fees of up to fifty percent (50%) of the recovery. The requested attorneys' fees are also supported under the lodestar cross-check method.[4]

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[1] Class Action and PAGA Settlement Agreement ("Settlement Agreement"), ¶ 3.1; Based on its records, Defendants estimate that: (1) during the period from May 10, 2018 to May 17, 2023, there were 425 Class Members and 21,119 total Workweeks. *See id*. ¶ 8. Pursuant to the Declaration of Cassandra Polites of ILYM Group, Inc. Regarding Notice and Settlement Administration ("ILYM Declaration" or ILYM Decl."), based on the Class and PAGA Data received, there are 465 Class Member who worked 24, 254 Workweeks during the Class Period. Therefore, the escalator clause has been triggered and Defendants have elected to pay the increased Gross Settlement Amount of $783,030.36, ¶ 6.

[2] Settlement Agreement, ¶ 3.2.2.

[3] *Id.*, ¶ 1.5. "Class Period" means the period from May 18, 2018 through August 20, 2023. *See id*., ¶ 1.10.

[4] Applying a reasonable rate of $850 to 353.80 hours of work performed by Lawyers *for* Justice, PC would place a base lodestar value of $300,730.00 on Class Counsel's services, and Class Counsel seeks an attorneys' fees award of $261,010.12.

Plaintiffs move for final approval of the Service Payments in the amount of $5,000.00 each to Plaintiffs Mark John Santos and Samantha Sanchez, to compensate Plaintiffs for the time and effort that they expended spearheading the lawsuits on behalf of the Class, Aggrieved Employees, and the State of California. Plaintiffs also move for final approval of the payment to the Administrator in the amount of $9,000.00 for Administration Costs. Plaintiffs also move for final approval of the allocation of $85,000.00 for the PAGA Penalties, of which seventy-five percent (75%), i.e., $63,750.00, will be paid to the California Labor Workforce and Development Agency ("LWDA") for its portion of the PAGA Penalties ("LWDA PAGA Payment"), and twenty-five percent (25%), i.e., $21,250.00, will be distributed to (a) all current and former hourly-paid or non-exempt employees employed by any of the Defendants in the State of California at any time during the period from February 2, 2022 to August 20, 2023 (i.e., PAGA Period), including, but not limited to all current and former hourly-paid or non-exempt employees who earned shift differentials or non-discretionary bonuses or non-discretionary performance pay which was not used to calculate the correct regular rate of pay used to calculate the overtime rate ("PAGA Group A"); and (b) all salaried managers, or persons who held similar job titles and/or performed similar job duties, who are or previously were employed by any of the Defendants in the State of California in such positions during the PAGA Period, allegedly misclassified as exempt ("PAGA Group B") ("Aggrieved Employees").

The requests for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Service Payments, Administration Costs, and the allocation for PAGA Penalties were fully disclosed in the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") that was mailed to the Class Members. Most importantly, as of the date of this Motion, *not a single Class Member has objected to any aspect of the Class Settlement, including the requested Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Service Payments, Administration Costs or the allocation for PAGA Penalties.*

The Settlement is fair, adequate, and reasonable, and is the product of arm's-length, good-faith negotiations by experienced counsel presided over by a highly-regarded mediator who is experienced in mediating wage-and-hour class action lawsuits. Accordingly, the Court should

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grant final approval of the Settlement, and award Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Service Payments, Administration Costs, and the allocation for PAGA Penalties in the amounts as fully disclosed to the Class and as requested herein.

In order to efficiently present the Court with adequate information to determine whether to grant final approval of the Settlement and award Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Service Payments, Administration Costs, and the allocation for PAGA Penalties, Plaintiffs also move for an order permitting the filing of this single consolidated memorandum, although it exceeds the page limit established by California Rules of Court, Rule 3.1113(d), instead of filing several separate motions.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

Defendants are a telehealth company focused on delivering health care to the homes of patients and partners with health insurances to provide house calls to individuals with chronic conditions. Plaintiffs Mark John Santos and Samantha Sanchez are former employees of Defendants.

On May 10, 2022, Plaintiff Mark John Santos ("Plaintiff Santos") filed a Class Action Complaint for Damages, in the Los Angeles County Superior Court ("Court"), thereby commencing the above-captioned lawsuit.

On June 16, 2022, Defendant filed a Notice of Removal of Civil Action to Federal Court Pursuant to 28 U.S.C §§ 1332, 1441, and 1446.

On August 5, 2022, the Parties filed a Joint Rule 26(F) Report.

On September 9, 2022, the Parties filed a Joint Stipulation to Remand Case to State Court, which was granted by the Court on September 12, 2022.

On February 2, 2023, Plaintiff Samantha Sanchez ("Plaintiff Sanchez") submitted notice to the California Labor & Workforce Development Agency ("LWDA") and Defendants of her intent to pursue civil penalties under the Private Attorneys General Act, Cal. Labor Code § 2698, Et Seq. On April 10, 2023, Plaintiff Sanchez provided an amended written notice to the LWDA and Defendants ("Amended PAGA Notice").

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On December 27, 2023, Plaintiffs filed the First Amended Class Action Complaint for Damages and Enforcement Under the Private Attorneys General Act, California Labor Code § 2698, Et Seq., ("First Amended Complaint," or "Operative Complaint"), adding Samantha Sanchez as a named plaintiff and a cause of action to allege violation of PAGA.

Plaintiffs' core allegation is that Defendants have violated the California Labor Code by engaging in a uniform practice and procedure, with respect to Plaintiffs, the Class Members, and the Aggrieved Employees of, *inter alia*, failing to pay all overtime and minimum wages, failing to provide compliant meal and rest periods and associated premium pay, failing to timely pay wages during employment and upon termination of employment, failing to provide compliant wage statements, failing to maintain requisite payroll records, and failing to reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of California Business and Professions Code section 17200, *et seq.* and conduct that gives rise to penalties pursuant to PAGA. Plaintiffs contend that they, and the Class Members and Aggrieved Employees, are entitled to, *inter alia*, unpaid wages, penalties (including and not limited to, penalties pursuant to PAGA), and attorneys' fees.

Defendants have denied, and continue to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than settlement.

The Parties have actively litigated the Action since the Action was commenced on May 10, 2022. On May 17, 2023, the Parties participated in a formal, full-day mediation conducted by Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters,

On December 29, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement and supporting documents ("Motion for Preliminary Approval"). On June 10, 2024, the Court issued a Checklist for Preliminary Approval of Class Action Settlement ("Checklist").

On June 26, 2024, Plaintiffs filed supplemental documents in response to the Checklist.

On July 16, 2024, the Court issued an Order Granting Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), thereby preliminarily approving the terms

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of the Settlement, the Class Notice, and the proposed administration procedures and associated deadlines.

Plaintiffs now move for final approval of Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Service Payments, Administration Costs, and the allocation for PAGA Penalties.

III. SUMMARY OF THE SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendants have agreed to fully fund the increased Gross Settlement Amount of $783,030.36, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than thirty (30) calendar days after the Effective Date.[5] Subject to approval by the Court, the Net Settlement Amount will be calculated by deducting the following amounts from the Gross Settlement Amount: (1) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, consisting of attorneys' fees in the amount of $261,010.12 and reimbursement of litigation costs and expenses in the amount of $13,627.75, to Class Counsel; (2) Service Payments in the amount of $5,0000.00 each to Plaintiffs Mark John Santos and Samantha Sanchez, for a combined amount of $10,000.00; (3) Administration Costs in the amount of $9,000.00 to ILYM; and (4) PAGA Penalties in the amount of $85,000.00.[6] The Net Settlement Amount, which is estimated to be $404,392.49, will be distributed in accordance with the Settlement Agreement and there is no reversion to Defendants.[7]

The Administrator will determine each Participating Class Member's *pro rata* share of the Net Settlement Amount ("Individual Settlement Share"), according to the following methodology: After Final Approval of the Settlement, the Administrator will divide the final Net Settlement Amount by the Workweeks of all Participating Class Members to yield the "Final Workweek

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[5] Settlement Agreement, ¶ 4.3.

[6] *Id.*, ¶¶ 3.2.1, 3.2.2, 3.2.3 & 3.2.4.

[7] This amount is higher than the amount stated in Paragraph 15 of the accompanying ILYM Declaration because the Administrator's calculation assumes that Class Counsel will obtain litigation costs and expenses in the maximum amount of $20,000.00, which is allocated under the Settlement. However, Class Counsel seeks the amount of only $13,627.75 for reimbursement of litigation costs and expenses, and the difference of $6,372.25 will remain part of the Net Settlement Amount.

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Value," and multiply each Participating Class Member's individual Workweeks by the Final Workweek Value to yield his or her Individual Settlement Share.[8]

The Administrator will determine each Aggrieved Employee's *pro rata* share of 25% the PAGA Penalties ("Individual PAGA Payment"), according to the following methodology: the Administrator will divide 60% portion of the PAGA Penalties attributed to Aggrieved Employees in PAGA Group A by the PAGA Pay Periods worked by PAGA Group A employees and then multiplying the resulting value by the number of each PAGA Pay Period worked by each individual PAGA Group A member and the Administrator will divide the 40% portion of the PAGA Penalties attributed to Aggrieved Employees in PAGA Group B by the PAGA Pay Periods worked by PAGA Group B employees and then multiplying the resulting value by the number of each PAGA Pay Period worked by each individual PAGA Group Member.[9]

Class Members had sixty (60) calendar days from the initial mailing of the Class Notice ("Response Deadline") to submit a Request for Exclusion, Objection and/or dispute of the Workweeks and/or PAGA Pay Periods.[10] The Response Deadline was September 24, 2024.[11] ***As of the date of this Motion, the Administrator has not received any written objections to the Class Settlement ("Objection") or requests to be excluded from the Class Settlement ("Requests for Exclusion") from Class Members.*** [12]

Each Participating Class Member's Individual Settlement Payment will be allocated as follows: twenty percent (20%) as wages (the "Wages Portion"), which will be reported on an IRS Form W-2; and the remaining eighty percent (80%) as penalties, interest, and non-wage damages (the "Non-Wage Portion"), which will be reported on an IRS Form 1099.[13] Any payment for an Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on an IRS Form-1099, if necessary.[14] The Administrator will withhold the employee's share of taxes and withholdings with respect to the

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[8] Settlement Agreement, ¶ 3.2.5(b).
[9] *Id.*, ¶ 3.2.6.
[10] *Id.*, ¶ 1.45.
[11] ILYM Decl., ¶¶ 12, 13 & 14.
[12] *Id.*, ¶¶ 13 & 13.
[13] Settlement Agreement, ¶ 3.2.7.
[14] Ibid.

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Wage Portion of the Individual Settlement Shares, and issue checks to Participating Class members for their Individual Settlement Payments.[15] The employer's share of taxes and contributions on the Wages Portion of Individua; Settlement Shares will be paid separately and in addition to the Gross Settlement Amount.[16]

Individual Settlement Payment and Individual PAGA Payment check shall prominently state the date (not less than one hundred eighty (180) calendar days after the date of mailing) when the check will be voided.[17] For any Class Member or Aggrieved Employee whose Individual Settlement Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to Los Angeles Bar Association's Domestic Violence Project, a nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) (the "Cy Pres Recipient").[18]

IV. <u>THE SETTLEMENT ADMINISTRATION PROCESS</u>

The Court-appointed Administrator, ILYM Group, Inc. has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Court's Preliminary Approval Order.

On July 15, 2024, Defendants' counsel provided ILYM the Class and PAGA Data containing each Class Member's and Aggrieved Employee's full name, last-known mailing address, last-known telephone number, Social Security Number, and number of Workweeks and/or PAGA Pay Periods, ("Class and PAGA Data").[19] The Class and PAGA Data contained data for four hundred and eighty-seven (487) individuals who worked 24,254 Workweeks of which four hundred and sixty-five (465) were Class Members, two hundred ninety-one (291) are in PAGA Group A (Both Class and PAGA Members) and twenty-two (22) are PAGA Group B (PAGA only members).[20] All 465 names and addresses contained in the Class and PAGA Data were then processed against the National Change of Address ("NCOA") database, maintained by the United States Postal Service ("USPS"), for purposes of updating and confirming the mailing addresses of

[15] Settlement Agreement, ¶ 1.22.
[16] *Id.*, ¶ 3.1.
[17] *Id.*, ¶ 4.4.1.
[18] *Id.*, ¶ 4.3.3.
[19] ILYM Decl., ¶ 5.
[20] Ibid.

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the Class Members before mailing of the Class Notice.[21] The NCOA contains requested change of addresses filed with the USPS. To the extent that no updated address was found in the NCOA database, the original address provided by Counsel for Defendants was used for the mailing of the Class Notice.[22]

On July 26, 2024, ILYM mailed the Class Notice via U.S. First Class Mail to all four hundred and eighty-seven (487) individuals contained in the Class and PAGA Data.[23]

A total of thirty-five (35) Class Notices were returned to ILYM.[24] ILYM Group performed a computerized skip trace on the 35 returned Class Notice Packets that did not have a forwarding address, in an effort to obtain an updated address for the purpose of re-mailing the Class Notice.[25] As a result of this skip trace, twenty-three (23) updated addresses were obtained and the Class Notices were promptly re-mailed to those Class Members, via U.S. First Class Mail.[26] A total of twelve (12) Class Notices have been deemed undeliverable as no updated addresses were found notwithstanding the skip tracing.[27]

As of the date of this Motion, the Administrator has not received any written Objections to the Class Settlement.[28] As of the date of this Motion, the Administrator has not received any Requests for Exclusion from the Class Settlement from Class Members.[29]

To date, there are four hundred sixty-five (465) Class Members who did not submit a timely and valid Request for Exclusion from the Class Settlement ("Participating Class Members"), and who will be paid their portion of the Net Settlement Amount.[30] Pursuant to the terms of the Settlement, the Net Settlement Amount of approximately $404,392.49 will be distributed to Participating Class Members in accordance with the terms of the Settlement.[31] The highest Individual Settlement Payment is currently estimated to be $4,529.59 and the average Individual

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[21] ILYM Decl., ¶ 7.
[22] Ibid.
[23] *Id.*, ¶ 8.
[24] *Id.*, ¶ 9.
[25] *Id.*
[26] Ibid.
[27] *Id.*, ¶ 11.
[28] *Id.*, ¶ 13.
[29] *Id.*, ¶ 12.
[30] *Id.*, ¶ 16.
[31] *Id.*, ¶ 15.

Settlement Payment is currently estimated to be $856.01.[32] The highest Individual PAGA Group A Payment is currently estimated to be $90.61 and the average Individual PAGA Group A Payment is currently estimated to be $43.81.[33] The highest Individual PAGA Group B Payment is currently estimated to be $409.80 and the average Individual PAGA Group B Payment is currently estimated to be $386.36.[34]

V. <u>THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION AND PAGA SETTLEMENT.</u>

The trial court has broad discretion to determine whether a class action settlement is fair and reasonable. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 52. To determine whether the settlement is fair and reasonable, courts consider relevant factors such as:

> the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801. "The list of factors is not exclusive and the court is free to engage in a balancing and weighing of the factors depending on the circumstances of each case." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. "Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk*, *supra*, 48 Cal.App.4th at 1801.

The proponent of the settlement has the burden to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at 245. At the final approval stage, a presumption of fairness exists where, as here: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, *supra*, 48 Cal.App.4th at 1802. In reviewing a class settlement, the court need not reach any

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[32] ILYM Decl., ¶ 17. The actual average and highest Individual Settlement Payments will be larger than the amounts stated in the ILYM Declaration because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and expenses in an amount that is less than $20,000 (the difference between the amount sought and the amount authorized under the Settlement, $6,372.25, will be part of the Net Settlement Amount). See n.8, *supra*.

[33] *Id.*, ¶ 19.

[34] *Id.*, ¶ 21.

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ultimate conclusions on the issues of fact and law that underlie the merits of the dispute. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1146. The inquiry is not whether the settlement agreement is the best one that class members could have possibly obtained, but whether the settlement, taken as a whole, is "fair, adequate, and reasonable." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 55. A settlement need not obtain 100 percent of the damages sought in order to be fair, reasonable, and ultimately, meaningful. *Wershba, supra*, 91 Cal.App.4th at 251. Even if the proposed settlement affords relief that is substantially narrower than it would be if the case were to be successfully litigated, that is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding prolonged litigation. *Id*.

A. The Settlement Resulted from Arm's-Length Negotiations Based Upon Extensive Investigation and Informal Discovery.

The Parties actively litigated the case since the Action commenced on May 10, 2022 Class Counsel conducted significant investigation and informal discovery into the facts of the case, to assess the veracity, strength, and scope of the claims, and was preparing for class certification and trial prior to reaching the Settlement.[35]

The Parties conducted significant informal discovery and investigation into the facts of the case, and also informally exchanged thousands of pages of information, documents, and data throughout the course of the litigation and in connection with the mediation and settlement negotiations.[36] The volume of data and documents that Class Counsel reviewed and analyzed by Class Counsel included, and were not limited to: employment records of Plaintiff Mark John Santos, a detailed sampling of Class Members' time and pay data, Defendants' Employee Handbook, job descriptions, earning statements, company policy acknowledgements (Acknowledgment of Receipt Employee Notice of MPN California, Anti-Harassment Policy Acknowledgement of Receipt, Family and Medical Leave Policy Acknowledgement of Receipt, California Employee Notice and Acknowledgment), internal memoranda, operations and

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[35] Hosseini Decl., ¶ 6.
[36] Ibid.

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employment practices, forms (including but not limited to Direct Deposit Authorization and Agreement, California Meal and Rest Period Attestation Form, Employment Agreement, First Meal Period Waiver Agreement, Second Meal Period Waiver Agreement), procedures, and policies (including but not limited to Meal and Rest Break Policy), among other information and documents.[37] Class Counsel interviewed Plaintiffs and other Class Members to gather facts and to identify potential witnesses.[38] Class Counsel developed liability, damages, and penalties valuation models in the course of litigation and in connection with the mediation and settlement negotiations, and met and conferred with Defendants' counsel on numerous occasions, e.g., to discuss issues relating to the pleadings, and the production of information, documents, and data in the course of litigation and the mediation and settlement negotiations.[39] Class Counsel reviewed and analyzed information, documents, and data obtained from Plaintiffs, Defendants, and other sources.[40] Other work performed by Class Counsel included, and was not limited to, case strategy and analysis; drafting, reviewing, and revising the pleadings, motion-related papers, mediation brief, and settlement-related papers; and preparing for and attending court proceedings, settlement negotiations, and the mediations, among other tasks.[41]

After conducting informal discovery and investigation into the facts of the case, the Parties participated in a formal, full-day mediation conducted by the Jeffrey Krivis, Esq., a well-regarded mediator experienced in mediating complex labor and employment matters.[42] In the course of the mediation and settlement negotiations, the Parties exchanged class information, documents, and data, and discussed all aspects of the case, including and not limited to, the risks and delays of further litigation, the risks to the Parties of proceeding with class certification and trial, the law relating to class certification, off-the-clock theory, meal and rest periods, representative PAGA claims, and wage-and-hour enforcement, as well as the evidence produced and analyzed, and the possibility of appeals, among other things.[43] During all settlement discussions, the Parties

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[37] Ibid.
[38] Ibid.
[39] Hosseini Decl., ¶ 6.
[40] Ibid.
[41] Ibid.
[42] *Id.*, ¶ 8.
[43] Ibid.

conducted their negotiations at arm's length in an adversarial position.[44] Arriving at a settlement that was acceptable to the Parties was not easy.[45] Defendants and their counsel felt very strongly about Defendants ability to prevail on the merits and to avoid class certification.[46] Defendants and their counsel felt strongly about Defendants' ability to avoid class certification and representative adjudication and prevail on the merits, while Plaintiffs and Class Counsel believed that they would be able to obtain class certification and prevail at trial.[47] After conducting significant informal discovery and investigations, settlement negotiations, and with the aid of the mediator's evaluation, the Parties agreed that the case was well-suited for settlement given the legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to the Parties that would attend further litigation.[48]

The Settlement takes into account the strengths and weaknesses of each side's position and the uncertainty of how the case might have concluded at certification, trial, and/or appeals. Class Counsel analyzed thousands of pages of information, documents, and data obtained from Defendants, Plaintiffs, and other sources, and performed research regarding applicable law, which is evolving as it relates to certification, off-the-clock theory, meal and rest periods, representative PAGA claims, wage-and-hour enforcement, Plaintiffs' claims, and Defendants' defenses thereto, as well as facts discovered.[49] The Settlement was based on this large volume of facts, evidence, and investigation.[50] Additionally, Class Counsel has extensive experience in handling complex wage-and-hour actions, including significant experience in employment class action litigation.[51]

B. <u>The Risks Inherent in Continued Litigation Favor Final Approval of the Settlement.</u>

The Settlement, which provides for an increased Gross Settlement Amount of $783,030.36, represents a fair, adequate, and reasonable resolution of the case, given the risks inherent in

[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Ibid.
[48] Hosseini Decl., ¶ 8.
[49] Ibid.
[50] *Id.*, ¶¶ 6-8.
[51] *Id.*, ¶¶ 14-18.

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litigating class and representative claims through certification proceedings, trial, and/or appeals.[52] The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of mediation and ongoing settlement negotiations.[53] Had the action not settled, Defendants would have vigorously challenged class certification, manageability of representative adjudication, and liability. Defendants contended that individualized questions of fact predominated over any common issues, and these issues would pose challenges to certification and representative adjudication. Defendants would have likely argued again at trial, if any, that Plaintiffs' claims were not appropriate for class-wide and/or representative adjudication. On the other hand, Defendants also faced the risk of the Court certifying a class and allowing a jury to decide Plaintiffs' claims on a class-wide or representative basis. Additionally, preparation for trial would have been expensive for all parties.

It is preferable to reach an early resolution of a dispute because such resolutions save time and money that would otherwise go to litigation. If this matter had settled after further litigation, the settlement amount would have taken into account the additional costs incurred, and there might have been less money available for Class Members and Aggrieved Employees after all was said and done. This is not just an abstract contention. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. These risks of further litigation include a determination that the claims were unsuitable for class treatment and/or representative adjudication, failure to obtain certification, class de-certification after certification of a class, allowing a jury to decide the claims asserted in the case, and the real possibility of no recovery after years of litigation. Additionally, the Parties were moving into the phase of the litigation where they would have to conduct a significant amount of additional discovery, including and not limited to, depositions of Defendants' Person Most Knowledgeable designees, expert witnesses, and percipient witnesses, such as managers, supervisors, and other current and former employees throughout the State of California. Additional discovery would have certainly arisen, which would

[52] Hosseini Decl., ¶¶ 8 & 21.
[53] *Id.*, ¶¶ 8-11.

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have cost the Parties additional time and money. In contrast, the Settlement provides real and significant benefits for the Class here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery.

It would be grossly inefficient for such a large class of current and former employees to bring individual actions to recover from Defendants for the alleged violations of wage-and-hour laws. Moreover, the potential individual recovery that could be obtained by a Class Member would not be significant enough to provide him or her with the incentive to sue. By granting final approval of the Settlement, the Court can approve a resolution that provides a certain and substantial recovery for Class Members.

C. <u>The Settlement Is Fair, Reasonable, and Adequate.</u>

The Settlement, which provides for an increased Gross Settlement Amount of $783,030.36, represents a fair, reasonable, and adequate resolution of the case. The Settlement was calculated using information and data uncovered through extensive case investigation, informal discovery, and the exchange of information in the context of preparing for mediation and conducting ongoing settlement negotiations. The Settlement takes into account the potential risks and rewards inherent in any case and, in particular, in this matter. Moreover, considering all of the facts in the case, the Gross Settlement Amount represents a considerable recovery.

Even after deducting Class Counsel Fees Payment in the amount of $261,010.12, Class Counsel Litigation Expenses Payment in the amount of $13,627.75, Service Payments in the combined amount of $10,000.00, Administration Costs in the amount of $9,000.00, and the allocation of PAGA Penalties of $85,000.00 from the Gross Settlement Amount of $783,030.36, the Net Settlement Amount is currently estimated to be $404,392.49.[54] Under the Settlement Agreement, the Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement. As discussed in Section III, *supra*, each Participating Class Member will be paid a *pro rata* share of the Net Settlement Amount, based on the number of Workweeks credited to him or her, and each Aggrieved Employee will be paid a *pro rata* share of 25% of the PAGA Penalties,

[54] ILYM Decl., ¶ 15.

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based on the number of PAGA Pay Periods credited to him or her.[55] To date, there are four hundred and sixty-five (465) Participating Class Members, representing one hundred percent (100%) of the Class Members.[56] The highest Individual Settlement Payment is currently estimated to be $4,529.59 and the average Individual Settlement Payment is currently estimated to be $856.01.[57] The highest Individual PAGA Group A Payment is currently estimated to be $90.61 and the average Individual PAGA Group A Payment is currently estimated to be $43.81.[58] The highest Individual PAGA Group B Payment is currently estimated to be $409.80 and the average Individual PAGA Group B Payment is currently estimated to be $386.36.[59] These are significant individual recoveries, particularly in light of the risks of litigation.

At the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced and competent class counsel." *In re American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30. The *pro rata* allocation here is a fair and reasonable way to distribute the Net Settlement Amount. In light of the above considerations, Class Counsel believes that the Settlement as a whole is fair, reasonable, and adequate, and in the best interest of the Class Members, the State of California, and Aggrieved Employees.[60] Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appears to be competent, has experience with this type of litigation, and significant discovery and investigation have been completed, as is the case here. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 11.47. Accordingly, the Court should grant final approval of the Settlement.

D. <u>The Class Was Represented by Competent Counsel.</u>

Class Counsel has extensive experience in employment class action law and complex wage-and-hour litigation.[61] Lawyers *for* Justice, PC has been appointed class counsel in numerous

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[55] Settlement Agreement, ¶ 3.2.4.
[56] ILYM Decl., ¶ 16.
[57] *Id.*, ¶ 17.
[58] *Id.*, ¶ 19.
[59] *Id.*, ¶ 21.
[60] Hosseini Decl., ¶ 21.
[61] *Id.*, ¶¶ 14-18.

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complex wage-and-hour cases, and has recovered millions of dollars for individuals in California.[62] Both parties' counsel were capable of assessing the strengths and weaknesses of the Class Members' claims against Defendants and the benefits of the Settlement under the circumstances of the case and in the context of a private, consensual settlement agreement.

E. <u>There Are No Objections to the Class Settlement.</u>

The Settlement has been well received by the Class – ***not a single Class Member objected to the Class Settlement.***[63] Specifically, no objections have been made as to the Gross Settlement Amount or requested Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Service Payments, Administration Costs, or the allocation for PAGA Penalties. California courts have consistently found that a small number of objectors indicates the class' support for a settlement and strongly favors final approval. *Wershba*, *supra*, 91 Cal.App.4th at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners, supra*, 85 Cal.App.4th at 1152-53 (final approval granted despite 9 objectors).

Here, the lack of any objections speaks volumes about the fairness, reasonableness, and adequacy of this Settlement. Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk, supra*, 48 Cal.App.4th at 1802.

VI. <u>THE CLASS COUNSEL FEE PAYMENT REQUESTED IS FAIR AND REASONABLE AND SHOULD BE APPROVED.</u>

A. <u>Legal Standard for Attorneys' Fees in a Class Action Settlement.</u>

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "'not be disturbed on appeal absent a manifest abuse of discretion.'" *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 (The "experienced trial judge is the best judge of the value of professional services rendered in his court[.]"); *Cellphone Termination Fee Case*s (2009) 180 Cal.App.4th 1110, 1118. Where the amount of a settlement is a "certain easily calculable sum of money," California courts may

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[62] Ibid.

[63] ILYM Decl., ¶ 13.

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calculate attorneys' fees as a reasonable percentage of the settlement. Weil and Brown, California Practice Guide, *Civil Procedure Before Trial*, Chapter 14, § 14:145; *see also Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503; *Dunk*, *supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and representative actions because "it better approximates the workings of the marketplace than the lodestar approach." *Lealao*, *supra*, 82 Cal.App.4th at 49.

California law provides that an attorneys' fees award should be equivalent to fees paid in the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." *Lealao*, *supra*, 82 Cal.App.4th at 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Lealao*, *supra*, 82 Cal.App.4th at 53.

"The ultimate goal . . . is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court*, *supra*, 126 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Lealao*, *supra*, 82 Cal.App.4th at 32.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the settlement amount of $7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding

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approximately 53% of the settlement amount as attorneys' fees). California courts routinely approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions); *see also Laffitte*, 1 Cal.5th at 488 & 506 (approving fee award of 1/3 of common fund of $19 million).

B. <u>A Fee Award of a Percentage of the Entire Fund Is Appropriate.</u>

California and federal courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits made available to class members by the settlement. *Laffitte*, 1 Cal.5th at 503; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul, Johnson, Alston & Hunt v. Graulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34.[64] The purpose of this equitable doctrine is to spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone. See *Vincent, supra*, 557 F.2d at 769.

When a litigant's efforts result in a settlement from which others may derive benefits, the litigant may require the passive beneficiaries to compensate those whose efforts brought about the settlement. See, R. Pearle, *California Attorney Fee Awards* (CEB, 1993) § 7A, p. 5-7 (permitting attorneys' fees and costs to be paid out of the settlement or directly on behalf of the other parties enjoying the benefit of the settlement). Both state and federal courts have embraced this doctrine. See *Serrano, supra*, 20 Cal.3d at 35; *Crampton v. Takegoshi* (1993) 17 Cal.App.4th 308, 317; *Vincent, supra*, 557 F.2d at 769.

The propriety of calculating and awarding attorneys' fees as a percentage of a monetary settlement that has, by litigation, been preserved or recovered for the benefit of others, has been confirmed by the California Supreme Court. *Laffitte, supra*, 1 Cal.5th 480 at 486 & 506. The California Supreme Court has taken the position that "[t]rial courts have discretion to conduct a lodestar cross-check on a percentage fee," "they also retain the discretion to forgo a lodestar cross-

[64] The California Supreme Court has urged trial courts to consider class action federal authority. *Green v. Obledo* (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

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check and use other means to evaluate the reasonableness of a requested percentage fee[,]" and "[t]he percentage […] method survives in California." *Id*. (internal quotes omitted).

Courts have consistently recognized that class and representative action litigation is increasingly necessary to protect the rights of individuals whose injuries and/or damages are too small to economically justify legal action on an individual basis. Accordingly, in determining a reasonable fee award, courts award fees to serve as an economic incentive for lawyers to pursue such litigation in order to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. This is especially true in situations where multiple similar alleged wrongs would not be economically feasible to pursue individually, such as here. See A. Conte, *Attorney Fee Awards* (2d Ed., 1993) 104, at 6.

When the case was originally filed, not only was it inescapably contingent, but the prospect of a long, drawn-out battle with a defendant represented by experienced counsel, was almost a certainty. By taking on this "battle" on a contingency basis, Class Counsel risked substantial economic loss if the results were not successful. This substantial risk is the reason that the courts approve the use of the percentage method when a settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (discussing the risks of engaging in litigation without certainty of compensation).

Under the terms of the Settlement Agreement, Defendants will pay a Gross Settlement Amount of $783,030.36 on a non-reversionary basis. The requested attorneys' fees are one-third (1/3) of the total value of the monetary settlement. In light of Class Counsel's successful prosecution and resolution of the case, the requested attorneys' fees are appropriate and reasonable.

Compensating class counsel in class litigation on a percentage basis makes good sense because: (1) it is consistent with the private marketplace where contingent fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving the maximum possible resolution of the case; and (3) it encourages the most efficient and expeditious resolution of the litigation by providing an incentive for early, yet reasonable, settlement. The requested attorneys' fees in this matter satisfy all of those factors and should be approved on a percentage basis.

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The percentage method is consistent with, and is intended to mirror, the practice in the private marketplace where contingent-fee attorneys typically negotiate percentage-fee arrangements with their clients. The named plaintiffs' agreement to pay a contingent fee is powerful evidence of a reasonable fee. One of the best ways to demonstrate the value of counsel's work to the class is to review the consideration agreed to be paid by the named plaintiffs. If the named plaintiffs have employed counsel on a contingency-fee basis, it would indeed be inequitable for the members of the class, who will enjoy the benefits of the settlement without incurring the risks of bringing the claim, to pay less than the named plaintiffs. In this case, Plaintiffs have each agreed to contingency fees of one-third (1/3) of the recovery.[65]

Furthermore, a percentage-fee award is not dependent on a determination of the actual amount claimed by those entitled—it is the creation of the settlement that is the crucial fact. In *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that "it is equitable that [the attorney's] compensation and expenses should come from the entire fund saved for all classes concerned before it is distributed." *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly held that a percentage-based fee "may be calculated on the basis of the total fund made available rather than the actual payments made to the class." *Lealao*, *supra*, 82 Cal.App.4th at 51; *see also Boeing*, *supra*, 444 U.S. at 478 ("a litigant or a lawyer who recovers" a settlement "for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole").

In *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, in determining reasonable attorneys' fees, the Court of Appeal valued a settlement based on the total value of the settlement made available to class members by the efforts of counsel, decided in favor of granting fees as a percentage of the total value of the settlement, and rejected an objection that the fees be awarded based on the exact amount claimed by class members. *Id.* at 247.

Class Counsel has obtained a substantial recovery on behalf of Plaintiffs, the Class, Aggrieved Employees, and the State of California, and the results achieved justify an attorneys' fees award that is the equivalent of the standard market fee and that is consistent with the

[65] Hosseini Decl., ¶ 9.

contingency-fee agreement entered into by and between Plaintiffs and Class Counsel. Thus, the requested attorneys' fees are appropriate.

C. **<u>The Class Counsel Fees Payment Requested Is Reasonable Based on the Factors Considered in Determination of Fee Awards.</u>**

In *Camden I Condominium Association, Inc. v. Dunkel*, the court identified twelve factors to be considered in determining whether fee awards are reasonable: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitation imposed by the client or the circumstances; (8) the amount involved and results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Camden I Condominium Association, Inc. v. Dunkel* (11th Cir. 1991) 946 F.2d 768, 772.

Each and every one of these factors favors the attorneys' fees sought here; however, some of the most relevant factors to this Court's fee determination will be addressed herein. The Class Counsel Fees Payment in the amount of $261,010.12 (which is 1/3 of the Gross Settlement Amount) is commensurate with the time, effort, and expense dedicated to the case, the contingent nature of Class Counsel's fee and the risks taken in commencing the case, the skill and determination required, the results that Class Counsel have achieved, and the value of the settlement that Class Counsel have obtained for the Class Members.

1. Time & Labor.

Class Counsel used its experience and skills, and dedicated the full extent of resources, to litigate and bring this matter to a successful conclusion on behalf of the Class. Moreover, as demonstrated in the supporting declarations, Class Counsel have extensive experience in the handling of class actions and complex litigation cases.[66]

[66] Hosseini Decl., ¶¶ 14-18.

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As outlined in the Declaration of Yasmin Hosseini, Class Counsel has fully and actively participated in litigation of the case.[67] Prior to commencing the lawsuit, Class Counsel had conducted a significant amount of investigation into the factual and legal issues, Defendants' business, and its operations and employment policies, practices, and procedures.[68] During the litigation of the action, Class Counsel had the opportunity to interview Plaintiffs and other Class Members; reviewed and analyzed thousands of pages of information, documents and data obtained from Defendants, Plaintiffs, and other sources; and prepared liability, damages, penalties, and valuation calculations.[69] Class Counsel also met and conferred with Defendants' counsel over the issues relating to pleadings, and the production of information, documents and data, among other things; engaged in settlement negotiations with Defendants' counsel; and prepared for and attended court proceedings, mediation session, and settlement negotiations.[70]

Class Counsel has dedicated staffing and monetary resources necessary to prosecute this matter diligently and with maximum efficiency and has fully and actively participated in the litigation process. The Task and Time Chart, which is attached as EXHIBIT A to the accompanying Declaration of Yasmin Hosseini, sets forth in detail the hours that Lawyers *for* Justice, PC has spent performing tasks on behalf of Plaintiffs and the Class.[71] The Task and Time Chart is thorough and comprehensive, and was prepared so that the Court can peruse it without having to set forth each and every task in the body of this Motion. The Court is respectfully referred to the chart, which sets forth the history of the work performed by Class Counsel, commencing with the pre-filing analysis and research, and continuing up to settlement and final approval. Class Counsel has spent 353.80 hours performing tasks and to obtain a significant recovery on behalf of Plaintiffs, the Class, the Aggrieved Employees, and the State of California.[72] These hours were required to bring this matter to its successful conclusion. In light of the value of time expended and the carrying of costs involved in litigating this case, the requested attorneys' fees are fair, adequate, and reasonable.

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[67] Hosseini Decl., Exh. A.
[68] *Id.*, ¶ 7.
[69] *Id.*, ¶ 6.
[70] *Id.*, ¶ 6.
[71] *Id.*, Exh. A.
[72] *Id.*, ¶¶ 11-12.

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2. The Skill Required to Perform Legal Services Properly.

The skill required to properly litigate the case is evident not only in the results achieved, but in the steps necessary to reach those results. Defendants retained well-respected counsel to represent its defenses. More specifically, Defendants and their counsel felt very strongly about Defendants' ability to obtain a denial of certification and to prevail on the merits. Plaintiffs and Class Counsel believed that they would have obtained class certification and prevailed at trial.

Class Counsel undertook significant investigation, analysis, and research prior to filing this case, during the litigation, and prior to the mediation. Class Counsel took steps to prepare the matter for class certification and representative adjudication and had every intention of taking the case to trial on a class-wide basis if Defendants did not offer an appropriate class-wide settlement. Despite all of the obstacles that had to be overcome, as demonstrated in the Declaration of Yasmin Hosseini, Class Counsel used its extensive experience in the handling of class actions and complex wage-and-hour litigation matters in order to obtain the Settlement with maximum efficiency.[73]

3. The Value of the Settlement for the Class Members.

The Settlement represents an excellent resolution of the actions, given the risks inherent in litigating the case through certification proceedings, trial, and/or appeals. Had the case not settled, Defendants would have vigorously challenged certifiability, manageability of representative adjudication, and liability. Defendants, however, faced risks if the Court certified a class and allowed a jury to decide the claims. Additionally, preparing the case for trial would have been expensive for the Parties.

The Settlement at this stage is preferred over continued litigation because such resolutions save time and money that would otherwise go to litigation. The risks and expenses of further litigation outweighed any benefit that might have been gained otherwise. The Settlement provides an immediate recovery, as opposed to an uncertain result in the future after prolonged litigation involving expert discovery, trial preparation, class certification proceedings, and appellate review of those proceedings. The Settlement offers present relief and/or recovery to Participating Class

[73] Hosseini Decl., ¶¶ 14-18.

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Members, the State of California, and Aggrieved Employees while avoiding the further expense, risk, and delay in obtaining possible recovery at an unknown time in the future.

As a result of this litigation and settlement negotiations, Defendants agreed to pay a Gross Settlement Amount of $783,030.36 to settle the matter. After deducting the Class Counsel Fees Payment ($261,010.12), Class Counsel Litigation Expenses Payment ($13,627.75), Service Payments (combined, $10,000.00), Administration Costs ($9,000.00), and the allocation PAGA Penalties ($85,000.00) from the Gross Settlement Amount, it is currently estimated that the Net Settlement Amount is approximately $404,392.49.[74] The Net Settlement Amount will be fully distributed in accordance with the terms of the Settlement. The highest Individual Settlement Payment is currently estimated to be $4,529.59 and the average Individual Settlement Payment is currently estimated to be $856.01.[75] The highest Individual PAGA Group A Payment is currently estimated to be $90.61 and the average Individual PAGA Group A Payment is currently estimated to be $43.81.[76] The highest Individual PAGA Group B Payment is currently estimated to be $409.80 and the average Individual PAGA Group B Payment is currently estimated to be $386.36.[77] The Settlement offers significant monetary relief to the Participating Class Members, the State of California, and Aggrieved Employees.

4. Whether the Fee Is Fixed or Contingent.

Plaintiffs entered into contingency fee agreements with Class Counsel, and the representation of the Class provided by Class Counsel has been wholly contingent. Class Counsel took on the case without knowing whether any recovery would be obtained. Class Counsel has invested 353.80 hours of time to obtain relief on behalf of Plaintiffs, Class Members, the State of California, and Aggrieved Employees.[78] Class Counsel has also incurred litigation costs and expenses in the amount of $17,963.29.[79]

Class Counsel has borne all of the risks and costs of litigation and will not receive any

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[74] ILYM Decl., ¶ 15.
[75] *Id.*, ¶ 17.
[76] *Id.*, ¶ 19.
[77] *Id.*, ¶ 21.
[78] Hosseini Decl., ¶¶ 11, Exh. A.
[79] *Id.*, ¶ 19.

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compensation until recovery is obtained.[80] Class Counsel is well-experienced in wage-and-hour class action and complex litigation and used that experience to obtain a great result.[81] The skill and determination that Class Counsel has shown, along with the results obtained, justify the requested Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. Considering the amounts requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

In determining the reasonableness of a fee award in a class action settlement, whether or not representation is provided on a contingency basis is an important factor:

> A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

Cates v. Chiang (2013) 213 Cal.App.4th 791, 823 (internal quotes and citations omitted). Class Counsel litigated the case on a contingent basis with all of the concomitant risk factors inherent in such an uncertain undertaking. Had Class Counsel not been successful, the time that Class Counsel have devoted to litigating the case would have been for naught, and would not have produced any fee or any reimbursement of costs or expenses.

5. The Amount Involved and the Results Achieved.

The results achieved, in light of the difficulties inherent in similar cases and the specific difficulties faced in this matter, are considerable. The Settlement has yielded a positive response from the Class Members—no Class Members objected to the Class Settlement.[82]

The court in *Camden* noted that, "a key element of the common fund case is that fees are […] taken from the fund […] and a common fund is itself the measure of success … [and] represents the benchmark on which a reasonable fee will be awarded." *Camden*, 946 F. 2d 768, fn. 28 (citing *Court Awarded Attorney Fees*, *Report of the Third Circuit Task Force* (October 8, 1985) 108 F.R.D. 237 and Newberg, *Attorney Fee Awards* § 2.07 (1986)).

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[80] Ibid.
[81] Hosseini Decl., ¶¶ 14-18.
[82] ILYM Decl., ¶ 13.

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Here, the results achieved and obtained on behalf of Plaintiffs and the Class are reasonable in light of the risks inherent in further litigating this matter. Class Counsel's efforts have resulted in a settlement that provides for a Gross Settlement Amount of $783,030.36.[83] The Gross Settlement Amount will be fully paid out, in accordance with the terms of the Settlement Agreement. The highest Individual Settlement Payment is currently estimated to be $4,529.59 and the average Individual Settlement Payment is currently estimated to be $856.01.[84] The highest Individual PAGA Group A Payment is currently estimated to be $90.61 and the average Individual PAGA Group A Payment is currently estimated to be $43.81.[85] The highest Individual PAGA Group B Payment is currently estimated to be $409.80 and the average Individual PAGA Group B Payment is currently estimated to be $386.36.[86]

6. The Reputation and Ability of the Attorneys.

Lawyers *for* Justice, PC is a recognized class action law firm that employed its attorneys' knowledge, skills, and experience in bringing this matter to a successful conclusion. Class Counsel has years of complex and class action litigation experience, has recovered millions of dollars on behalf of thousands of individuals in California, and has successfully handled numerous significant wage-and-hour class action and complex cases.[87]

D. The Lodestar Methodology Also Justifies Approval of the Requested Fees, Because Class Counsel Has Performed Work That Is of Significant Value Based On Reasonable Hours and Prevailing Hourly Rates of Compensation.

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-check" the results of the other. See *Laffitte*, *supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination"); see also, e.g., *Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the

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[83] Hosseini Decl., ¶ 9.
[84] ILYM Decl., ¶ 17.
[85] *Id.*, ¶ 19.
[86] *Id.*, ¶ 21.
[87] Hosseini Decl., ¶¶ 14-18.

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lodestar may provide a useful perspective on the reasonableness of a given percentage award."). Importantly, "the lodestar calculation . . . does not override the trial court's primary determination of the fee as a percentage" of the settlement amount and "does not impose an absolute maximum or minimum on the potential fee award." *Laffitte*, *supra*, 1 Cal.5th at 505.

The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys. *Ketchum*, *supra*, 24 Cal.4th at 1131-32. Under California law, counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

1. The Number of Hours Spent on the Litigation was Reasonable.

The reasonableness of hours is assessed by "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

As discussed above, the case was highly contested and required a significant amount of time and labor. Defendants made it clear very early on that it disputed all of the allegations of the case and disputed that the matter was appropriate for class or representative treatment. Defendants raised affirmative defenses and denied liability, and the pursuit of this case involved gathering and analyzing data not only from Defendants but also from the Class Members. The handling of the case involved a great amount of effort, and also required and involved the exercise of a high level of skill, which Class Counsel has as a result of its extensive experience in employment class actions and complex wage-and-hour litigation. Long and difficult battles would have followed as the case moved toward certification and trial, including taking and defending depositions of Defendants' Person Most Knowledgeable designees, percipient witnesses, and experts, propounding additional discovery requests and conducting additional document production, and engaging in extensive motion practice. As Class Counsel geared up for these battles, Class Counsel undertook intense preparation in an attempt to resolve the entire matter through mediations.

Class Counsel had to bring together thousands of pages of information, documents and data that were obtained from Defendants, Plaintiffs, and through other sources. Class Counsel conducted extensive review and analysis of the information, documents and data to strategize the action and to prepare for mediation and engage in settlement discussions.

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As discussed above in Part VI.C.1, *infra*, attached to the Declaration of Yasmin Hosseini is a task and time chart that sets forth in detail the numerous tasks that Class Counsel performed on behalf of Plaintiffs and the Class, and the time required for completing those tasks.[88] The chart demonstrates that Class Counsel has spent a total of 353.80 hours litigating the case and finalizing the Settlement.[89] In light of the facts and circumstances of the case, as well as the results that Class Counsel has achieved in this case, Class Counsel has spent a reasonable number of hours on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement.

2. The Fees Requested Represent a Reasonable Hourly Rate of Compensation in Light of Class Counsel's Efforts and Experience.

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this action. See *Ketchum*, *supra*, 24 Cal.4th at 1132-33. In awarding attorneys' fees, the aim is to mirror "the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." See *id*.

Class Counsel has been actively involved in this matter, prior to its commencement and all the way up to the present, and Class Counsel's dedication to providing representation in this case has precluded other employment. Here, Class Counsel bore the risk that, despite all of its efforts and skills employed, there may be no recovery. Ultimately, Class Counsel was successful in reaching a settlement of $783,030.36.

As set forth in the Declaration of Yasmin Hosseini, the professional backgrounds and experience of Class Counsel support reasonable rates of compensation at least $850 per hour for services provided by Class Counsel.[90] Lawyers *for* Justice, PC has been awarded attorneys' fees, compensating the firm at the blended rate of at least $850 per hour for legal service performed, by

[88] Hosseini Decl., Exh. A.
[89] *Id.*, ¶¶ 11-12, Exh. A.
[90] *Id.*, ¶ 11 & 12.

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courts of this state.[91] While the circumstances of every case are unique, the fact remains that the work performed and efforts undertaken by Class Counsel on behalf of the Class Members justify the requested attorneys' fees.

Applying the rate of $850 per hour to 353.80 hours for services provided by Class Counsel would place a reasonable value of $300,730.00 based on lodestar, for the work performed by Class Counsel. However, Class Counsel only seeks attorneys' fees in the amount of $261,010.12 which is one-third (1/3) of the total recovery, as provided for by the Settlement Agreement.

It also bears noting that a court may apply a multiplier in consideration for risk, efficiency, and/or obtaining a substantial result, to enhance the lodestar for purpose of cross-check. See *Ketchum*, 24 Cal.4th at 1133-34 (holding that a risk multiplier may be applied to compensate contingency fee attorneys at a fair market rate). Such an enhancement "mirrors the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 290 F.3d at 1051; *accord Ketchum*, *supra*, 24 Cal.4th 1122, 1132-34. A risk multiplier also serves to bring the financial incentives for enforcing important rights "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-for-services basis." *Ketchum*, 24 Cal.4th at 1132. Courts have also approved fee awards with multipliers of 2 and even higher. See, e.g., *City of Oakland v. Oakland Raiders* (1988) 203 Cal.App.3d 78 (affirming a 2.34 multiplier without remand); *Wershba*, *supra*, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (applying a 2.52 multiplier on a lodestar cross-check); *Chavez*, *supra*, 162 Cal.App.4th at 66 (applying a 2.5 multiplier in a consumer class action).

The lodestar method as a cross-check to the percentage figure sought strongly supports the reasonableness of the requested attorneys' fees. Accordingly, Plaintiffs respectfully request that the Court grant final approval of, and award, attorneys' fees in the amount of $261,010.12 to Class Counsel.

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[91] Ibid.

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VII. CLASS COUNSEL LITIGATION EXPENSES PAYMENT IS FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement provides for a Class Counsel Litigations Expenses Payment of up to $20,000.00. As set forth in the Declaration of Yasmin Hosseini, Class Counsel seeks reimbursement of $13,627.75 in litigation costs and expenses incurred in this case.[92] This amount was reasonable and necessary in the prosecution of the case and to obtain the Settlement.[93] The cost savings of $6,372.75 will be part of the Net Settlement Amount, which will be distributed to Participating Class Members in accordance with the Settlement.[94] Accordingly, Plaintiffs request that the Court award litigation costs and expenses in the amount of $13,627.75 to Class Counsel.

VIII. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

As set forth in the accompanying ILYM Declaration, the total costs incurred and to be incurred by ILYM for the notice and settlement administration process are $9,000.00.[95] The costs incurred and to be incurred include, but are not limited to (a) printing and mailing the *Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval*, (referred to as "Class Notice"); (b) receiving and processing requests for exclusion and objections to the Settlement; (c) resolving Class Members' and Aggrieved Employees disputes over the number of Workweeks and/or PAGA Pay Periods Defendants have record of them working during the Class Period and/or PAGA Period, which was pre-printed on their individualized Class Notice; (d) establishing a QSF account and calculating individual settlement award amounts; (e) processing and mailing settlement award checks; (f) handling tax withholdings as required by the Settlement and the law; (g) preparing, issuing and filing tax returns and other applicable tax forms; (h) handling the distribution of any unclaimed funds pursuant to the terms of the Settlement; and (i) performing other tasks as the Parties mutually agree to and/or the Court orders ILYM Group to perform.[96]

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[92] Hosseini Decl., ¶ 19.
[93] Ibid.
[94] Ibid.
[95] ILYM Decl., ¶ 22.
[96] *Id.*, ¶ 3.

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Accordingly, the Court should grant final approval of payment to ILYM, a necessary third-party administrator, for its handling of the notice and settlement process, in the amount of $9,000.00.

IX. THE REQUESTED SERVICE PAYMENTS ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.

The Settlement provides for Service Payments in the amount of $5,000.00 each to Plaintiffs Mark John Santos and Samantha Sanchez (for a combined total of $10,000.00) to compensate Plaintiffs for the time and effort that they expended on behalf of the Class. The requested Service Payments are both common and reasonable and should be awarded.

In determining whether to make service payments, courts consider the following factors: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representatives; (3) the amount of time and efforts spent by the class representatives; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representatives as a result of the litigation. *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 299 (approving $50,000 participation award to a single class representative).

The requested Service Payments are fair and appropriate because Plaintiffs spent a substantial amount of time and effort producing relevant documents and past employment records, as well as providing the facts and evidence to support the prosecution of the claims.[97] Plaintiffs were available whenever Class Counsel needed them and actively tried to obtain, and gave, information to support the pursuit of the case.[98]

Accordingly, it is appropriate and just for Plaintiffs Mark John Santos and Samantha Sanchez to each receive $5,000.00, for a total of $10,000.00, as reasonable Service Payments in addition to their individual settlement payments.

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[97] Hosseini Decl., ¶ 20; Declaration of Mark John Santos (“Santos Decl.”), ¶¶ 3-5; Declaration of Samanthan Sanchez (“Sanchez Decl.”), ¶¶ 3-5.

[98] Hosseini Decl., ¶ 20; Santos Decl., ¶¶ 3-5; Sanchez Decl., ¶¶ 3-5.

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X. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement, and award Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Service Payments, Administration Costs, and the allocation for PAGA Penalties, in their entirety, as sought herein; and permit the filing of a memorandum that exceeds the page limit.

Dated: October 10, 2024

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By: ______________________________
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