

David Mara, Esq. (230498)
Jill Vecchi, Esq. (299333)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, California 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048
Email: dmara@maralawfirm.com
jvecchi@maralawfirm.com

Peter Horton, Esq. (227678)
LAWYERS FOR EMPLOYEE AND CONSUMER RIGHTS
4100 West Alameda Avenue, Third Floor
Burbank, California 91505
Telephone: (323) 486-5101
Facsimile: (323) 306-5571
Email: phorton@lfecr.com

Attorneys for Plaintiff ERIC CALDERON, on behalf of himself,
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

ERIC CALDERON on behalf of himself,
all others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

CELS ENTERPRISES, INC. DBA
CHINESE LAUNDRY; and DOES 1-100,

Defendants.

Case No. CIVSB2308785

*[Assigned for All Purposes to the
Hon. Christian Towns, Dept. S26]*

**PLAINTIFF ERIC CALDERON'S
MEMORANDUM OF POINTS AND
AUTHORITY IN SUPPORT OF HIS
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION SETTLEMENT**

Date: April 3, 2025
Time: 8:30 a.m.

Complaint Filed: April 14, 2023
Trial Date: None Set

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1 **I. INTRODUCTION**

2 This motion seeks final approval of a non-reversionary \$500,000 proposed wage and hour
3 class action settlement by Plaintiff Eric Calderon (hereinafter “Plaintiff”) on behalf of himself and
4 all individuals who are employed or have been employed by Defendant CELS Enterprises, Inc.
5 dba Chinese Laundry (“Defendant”) (hereinafter, Plaintiff and Defendant are collectively referred
6 to as the “Parties”)¹ in the State of California as hourly non-exempt employees and worked at one
7 of Defendant’s warehouses in California at any time from April 14, 2019 to October 12, 2024.² To
8 date, there is a 100% participation rate amongst Class Members—that is, there were no objections,
9 no disputes, and no requests for exclusion. **The proposed settlement is projected to pay an**
10 **average estimated payment of \$1,017.76 per Class Member, with a high payment of**
11 **\$4,463.43.**³

12 This case required 267.5 hours of attorney time from Class Counsel and sought relief for
13 275 individuals. This litigation involved significant investigation, extensive discovery, the
14 production of hundreds of documents and thousands of lines of data by Defendant, and a full day
15 of mediation.

16 Plaintiff moves for final approval of attorneys’ fees in the amount of \$166,666.67, which
17 represents 33% of the Gross Settlement Amount (“GSA”). As will be demonstrated herein,
18 Plaintiff’s attorney fee request is supported using the percentage fee method and the lodestar
19 method. Second, Plaintiff moves for final approval of litigation costs in the amount of \$23,242.33
20 incurred in litigating this matter. Third, Plaintiff moves for final approval of the Class
21 Representative Enhancement Payment in the amount of \$7,500 to compensate the Class
22 Representative for a general release of his claims against Defendant and for the time he spent on
23 and the risks absorbed in undertaking this case. Plaintiff played a vital role in representing the
24 other individuals in this case and spearheading the lawsuits to seek monetary relief for them.
25 Fourth, Plaintiff moves for final approval of payment of \$5,950 to the Settlement Administrator,

26
27 ¹ The Parties’ Agreement is attached to the Declaration of David Mara, Esq. (Mara Dec.) as Exhibit 1. “Exhibit 1”
herein refers to the Parties’ Agreement.

28 ² Exhibit 1 at Paragraph 4, Page 1.

³ Declaration of Nick Castro (“Castro Dec.”) ¶ 14.

1 ILYM Group, Inc. (“ILYM”) for the costs and fees of administering settlement. Fifth, Plaintiff
2 moves for final approval of payment to the Labor and Workforce Development Agency
3 (“LWDA”) under the Private Attorneys’ General Act of 2004 (“PAGA”) in the amount of \$7,500
4 (75% of the \$10,000 allocated to PAGA penalties).

5 The requested amounts of attorneys’ fees, litigation costs, class representative
6 enhancement payment, settlement administration costs, and PAGA payment were fully disclosed
7 to the Class Members when the Class Notice was mailed to them on January 22, 2025. **Most**
8 **importantly, the Settlement and all its terms received universal support from Class Members**
9 **as there were no objections, no disputes, and no requests for exclusion.**⁴ The Court is therefore
10 respectfully requested to honor the Class Members’ endorsement of the settlement and grant final
11 approval of the settlement, attorneys’ fees, litigation costs, class representative enhancement
12 payment, costs of settlement administration, and payment to the LWDA pursuant to PAGA in the
13 amounts as preliminarily approved by this Court, as fully disclosed to the Class Members, and as
14 requested herein.

15 **II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY**

16 **A. Background and Litigation History**

17 Defendant designs, manufactures, and retails women’s shoes. Defendant operates out of a
18 warehouse in Ontario, California. In order to carry out its business, Defendant employs hourly
19 non-exempt employees, like Plaintiff, in California.

20 On February 15, 2023, Plaintiff sent notice to the LWDA of his intent to pursue various
21 wage and hour claims against Defendant on behalf of similarly situated aggrieved employees.
22 (Mara Dec. ¶ 12).

23 Shortly thereafter, on April 14, 2023, Plaintiff filed this wage and hour class action lawsuit
24 in the San Bernardino Superior Court (Case No. CIVSB2308785), alleging causes of action against
25 Defendant for (1) failure to pay all straight time wages; (2) failure to pay all overtime wages; (3)
26 failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to adopt
27 a compliant sick pay/paid time off policy; (6) knowing and intentional failure to comply with

28 ⁴ See Castro Dec. ¶¶ 11-13.

1 itemized employee wage statement provisions; (7) failure to pay all wages due at the time of and
2 (8) violation of the Unfair Competition Law. (Mara Dec. ¶ 13).

3 On May 1, 2023, Plaintiff filed a PAGA Action in the San Bernardino Superior Court (Case
4 No. CIVSB2312110) asserting the same allegations as in the wage and hour class action lawsuit.
5 (Mara Dec. ¶ 14). On July 17, 2023, the Parties stipulated to consolidate the class and PAGA
6 actions, with CIVSB2308785 as the lead case. (Mara Dec. ¶ 15).

7 **B. Discovery and Investigation**

8 The Parties conducted significant investigation and discovery of the facts and law both
9 before and after this action was filed. Through informal discovery, Defendant produced hundreds
10 of pages of documents, including policy documents that covered employees' employment with
11 Defendant, such as employee handbooks. Included within these documents were Defendant's wage
12 and hour policies, including its meal and rest period policies. Defendant also produced time and
13 wage records for a 20% sampling of Class Members. Plaintiff also requested, and Defendant
14 produced, data surrounding the number of current and former employees, as well as the number of
15 workweeks worked by Class Members during the relevant time period, to establish a potential
16 exposure model in preparation for mediation. From this discovery, Plaintiff and his Counsel were
17 able to analyze Defendant's liability in this action and prepare a realistic damage model. (Mara
18 Dec. ¶ 16).

19 **C. The Parties Agreed to Attend Mediation**

20 The Parties attended an all-day mediation presided over by wage and hour mediator Tagore
21 Subramaniam on August 12, 2024. This mediation was successful. The Parties then met and
22 conferred over all the terms of the settlement and finalized their settlement in the Parties'
23 Agreement. The Parties seek final approval of the Agreement in the instant motion. (Mara Dec. ¶
24 17).

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1 **III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE**

2 Under the terms of the settlement, Defendant will create a settlement fund of \$500,000.

3 **A. Deductions from the Settlement**

4 The Parties have agreed (subject to and contingent upon the Court's approval) that this
5 action be settled and compromised for the non-reversionary total sum of \$500,000 ("Gross
6 Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of
7 up to \$166,666.67 (33% of the GSA) to compensate Class Counsel for work already performed
8 and all work remaining to be performed in documenting the settlement, administering the
9 settlement, and securing Court approval; (b) litigation expenses in the amount of \$23,242.33
10 (originally estimated not to exceed \$30,000); (c) a Class Representative Enhancement Payment to
11 the named class representative in the amount of \$7,500 in consideration for prosecuting this class
12 action, serving as Class Representative, work performed, and risks undertaken for the payment of
13 attorneys' fees and costs in the event he had been unsuccessful in the matter; (d) settlement
14 administration fees and expenses to ILYM in the amount of \$5,950 (estimated not to exceed
15 approximately \$10,000); and (e) \$10,000 allocated to Plaintiff's claims under the PAGA. Of this
16 payment, 75%, or \$7,500, will be provided to the LWDA, and 25%, or \$2,500, will be available
17 for distribution to PAGA Aggrieved Employees.⁵

18 **B. Calculation of Settlement Payments to Class Members**

19 After all Court-approved deductions from the GSA, it is estimated that \$286,641 ("Net
20 Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement
21 payment, will be distributed to Participating Class Members.⁶ Subject to the terms and conditions
22 of the settlement, each Participating Class Member will receive a proportionate share of the Net
23 Settlement Amount that is equal to (i) the number of weeks he or she worked for Defendant, based
24 on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all
25 Participating Class Members based on the same Class Data, which is then multiplied by the Net

26 ⁵ PAGA Aggrieved Employees are all Class Members who worked at least one pay period for Defendant between
27 February 15, 2022, to October 12, 2024. (Exhibit 1 at Paragraph 28, Page 4).

28 ⁶ Participating Class Members are all Class Members who do not submit a valid and timely request to exclude
themselves from this Settlement. (Exhibit 1 at Paragraph 33, Page 5).

1 Settlement Amount. Therefore, the value of each Class Member's Individual Settlement Share ties
2 directly to the amount of weeks that he or she worked. (Exhibit 1 at Paragraph 58.1.1, Page 9).
3 This payment will be divided into a "wage portion" to compensate Participating Class Members
4 for alleged unpaid wages and a "non-wage portion" to compensate Participating Class Members
5 for alleged interest and penalties. The wage portion will make up 33.33% of each Participating
6 Class Members' individual settlement payment, and the non-wage portion will make up 66.66%
7 of each Participating Class Members' individual settlement payment. (Exhibit 1 at Paragraph 58.2,
8 Page 10).

9 In addition, each PAGA Aggrieved Employee will receive a proportionate share of the Net
10 PAGA Settlement Amount that is equal to (i) the number of workweeks he or she worked for
11 Defendant, based on the PAGA Data provided by Defendant, divided by (ii) the total number of
12 workweeks worked by all Aggrieved Employees based on the same PAGA data, which is then
13 multiplied by the Net PAGA Settlement Amount (\$2,500). Therefore, the value of each Aggrieved
14 Employee's Individual PAGA Settlement Share ties directly to the amount of workweeks that he
15 or she worked during the PAGA Period.⁷ (Exhibit 1 at Paragraph 59.1.1, Page 10). This payment
16 will be treated as 100% penalties. (Exhibit 1 at Paragraph 59.2, Page 11).

17 Under no circumstances will any portion of the \$500,000 settlement revert to Defendant.

18 **C. Release of Claims**

19 In exchange for an Individual Class Payment, Participating Class Members will agree to
20 the following release:

21 The Released Class Claims include any and all claims that were asserted in the
22 Class Action Complaint or could have arisen out of the allegations made in the
23 Class Action Complaint. This release shall also apply to any amended complaint
24 which is filed with the Court after August 12, 2024, i.e., the date of the mediation.
25 This release shall be for the Class Period.

26 (Exhibit 1 at Paragraph 36, Page 5).

27 In addition, all PAGA Aggrieved Employees will agree to the following release in
28 exchange for an Individual PAGA Payment:

⁷ The "PAGA Period" is February 15, 2022, to October 12, 2024. (Exhibit 1 at Paragraph 31, Page 5).

1 The Released PAGA Claims include any and all claims that were asserted in the
2 PAGA Complaint or could have arisen out of the allegations made in the PAGA
3 Complaint. PAGA Aggrieved Employees are deemed to release all claims that were
asserted or could reasonably have asserted based on the facts alleged in the Actions
and/or the LWDA letter. This release shall be for the PAGA Period.

4 (Exhibit 1 at Paragraph 37, Page 5).

5 In addition, Plaintiff has agreed to a general release of his claims. (*See* Exhibit 1 at
6 Paragraph 77, Page 22).

7 **D. Notice to the Class**

8 On November 27, 2024, ILYM received the Class Data, which contained the name, social
9 security number, last known mailing address, class workweeks, PAGA pay periods, and
10 employment dates for each Class Member. The data file was uploaded to ILYM's database and
11 checked for duplicates and other possible discrepancies. The Class List contained 275 individuals
12 who worked 11,985.61 work weeks and 126 PAGA aggrieved employees who worked 3,067 pay
13 periods. (Castro Dec. ¶ 5).

14 As part of the preparation for mailing, all 275 names and addresses contained in the Class
15 Data were then processed against the National Change of Address ("NCOA") database,
16 maintained by the United States Postal Service ("USPS"), for purposes of updating and
17 confirming the mailing addresses of the Class Members before mailing of the Class Notice. The
18 NCOA contains requested change of addresses filed with the USPS. To the extent that an updated
19 address was found in the NCOA database, the updated address was used for the mailing of the
20 Notice Packet. To the extent that no updated address was found in the NCOA database, the
21 original address provided was used for the mailing of the Class Notice. (Castro Dec. ¶ 6).

22 On January 22, 2025, the Class Notice was mailed, via U.S First Class Mail, to all 275
23 individuals contained in the Class List. (Castro Dec. ¶ 7). Class Members had until February 21,
24 2025, to respond to the settlement. (Castro Dec. ¶¶ 11-13).

25 Forty-five (45) Class Notices were returned to ILYM as undeliverable. Of the 45 returned
26 Class Notices, none were returned with a forwarding address. ILYM performed a computerized
27 skip trace on the 45 returned Class Notices that did not have a forwarding address in an effort to
28 obtain an updated address for the purpose of re-mailing the Class Notice. As a result of this skip

1 trace, 28 updated addresses were obtained and the Class Notices were promptly re-mailed to those
2 Class Members, via U.S First Class Mail. (Castro Dec. ¶ 8). A total of 28 Notice Packets have
3 been re-mailed. Specifically, 28 have been re-mailed as a result of ILYM's skip tracing efforts.
4 (Castro Dec. ¶ 9). A total of 17 Class Notices have been deemed undeliverable as no updated
5 address was found notwithstanding the skip tracing. (Castro Dec. ¶ 10).

6 The settlement received overwhelming support from the Class Members. Not a single Class
7 Member has objected to the settlement. (Castro Dec. ¶ 12). In addition, no Class Members
8 requested to be excluded from the settlement or submitted a dispute regarding the number of
9 workweeks attributed to them. (Castro Dec. ¶¶ 11, 13). Therefore, currently, all Class Members
10 are participating in the settlement, meaning 100% of the Class Members are Participating Class
11 Members.

12 **E. Distribution of Funds**

13 Defendant shall wire or otherwise provide to the Settlement Administrator the Gross
14 Settlement Amount no later than thirty (30) days of the Effective Final Settlement Date. (Exhibit
15 1 at Paragraph 20, Page 3 and Paragraph 72.1, Page 20). The Effective Final Settlement Date is
16 the date when the final approval of the settlement can no longer be appealed, or, if there are no
17 objectors and no plaintiffs in intervention at the time the Court grants final approval of the
18 settlement, the date the Court enters judgment granting final approval of the settlement. (Exhibit
19 1 at Paragraph 17, Page 3).

20 Within fourteen (14) days after the Settlement Administrator's receipt of the Gross
21 Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount
22 to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved
23 Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and
24 costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the
25 Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the
26 Court; and (6) the LWDA Payment to the LWDA. (Exhibit 1 at Paragraph 16, Page 3 and
27 Paragraph 72.2, Page 20).

28 Participating Class Members and Aggrieved Employees must cash or deposit their

1 Individual Settlement Share checks within one hundred and eighty (180) calendar days after the
2 checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar
3 days after mailing, the Settlement Administrator will send a reminder postcard indicating that
4 unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become
5 non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain
6 uncashed or not deposited by the expiration of the ninety (90) day period after mailing the reminder
7 notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks
8 are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks
9 returned as undeliverable and funds associated with those checks remaining un-cashed shall be
10 sent to the California Controller's Unclaimed Property Fund in the name of the Class Member
11 thereby leaving no "unpaid residue" subject to the requirements of Code of Civil Procedure section
12 384, subdivision (b). (Exhibit 1 at Paragraph 74, Page 21).

13 **IV. ARGUMENT**

14 **A. The Settlement is Fair, Reasonable, and Adequate and Satisfies the Standard for** 15 **Final Approval.**

16 California Rule of Court, Rule 3.769, requires court approval for class action settlements.
17 Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62
18 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602
19 ("[T]he law wisely favors settlements"). Accordingly, the Court must give "[due] regard to what
20 is otherwise a private consensual agreement between the parties." *Wershba v. Apple Computer,*
21 *Inc.* (2001) 91 Cal. App. 4th 224, 245.

22 In deciding whether to approve a class settlement, a court evaluates whether the proposed
23 settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
24 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of S.F.* (9th Cir. 1982)
25 688 F.2d 615, 625); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742 43. A
26 court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801.
27 However, "a presumption of fairness exists where: (1) the settlement is reached through arm's-
28 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*, 48 Cal. App. 4th at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider additional relevant factors, including the strength of the plaintiff’s case compared to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802; see also *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723; see also *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the settlement.⁸ Subject only to the Class’s reaction to the settlement, the Court preliminarily presumed the settlement was fair, adequate and reasonable. Not a single objection to the settlement has been submitted by any Class Member to the Settlement Administrator. Thus, the settlement is entitled to the presumption that it is fair and in all other respects proper and should be finally approved.

B. The Court Should Approve the Requested Fees and Costs

i. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage of a Common Fund

Class Counsel applies for an award of attorneys’ fees in the sum of \$166,666.67 (33% of the GSA), and litigation costs of \$23,242.33 (originally estimated not to exceed \$30,000). (Mara Dec. ¶ 18). California courts have recognized an appropriate method for determining an award of attorneys’ fees is based on a percentage of the total value of benefits to Class Members by the settlement, also known as the “common fund” method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano III*) 34 (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano*

⁸ See Memorandum of Points and Authorities in Support of Motion for Preliminary Approval, pages 15-22. In addition to the *Dunk* factors, Class Counsel also detailed the other factors such as the strengths of Plaintiff’s case, risks and costs of further litigation, as well as the reasonableness of the GSA amount in light of *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

1 *v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the
2 benefit of all parties, the trial court acts within its equitable power to prevent the other parties'
3 unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir.
4 1993) (the percentage of the fund method for calculating attorney's fees more accurately reflects
5 the results achieved for the putative class than the lodestar method and "establishes reasonable
6 expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages
7 early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*,
8 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in
9 common fund cases because it allows courts to award fees from the fund 'in a manner that rewards
10 counsel for success and penalizes it for failure.'").

11 The purpose of the common fund/percentage approach is to "spread litigation costs
12 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
13 burden alone." *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. In *Quinn v.*
14 *State of California* (1995) 15 Cal.3d 162, 167, the Court stated: "[O]ne who expends attorneys'
15 fees in winning a suit which creates a fund from which others derive benefits may require those
16 passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of*
17 *San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that
18 the common fund doctrine has been applied "consistently in California when an action brought by
19 one party creates a fund in which other persons are entitled to share." The reasons for applying the
20 common fund doctrine include: "...fairness to the successful litigant, who might otherwise receive
21 no benefit because his recovery might be consumed by the expenses; correlative prevention of an
22 unfair advantage to the others who are entitled to share in the fund and who should bear their share
23 of the burden of its recovery; encouragement of the attorney for the successful litigant, who will
24 be more willing to undertake and diligently prosecute proper litigation for the protection or
25 recovery of the fund if he is assured that he will be properly and directly compensated should his
26 efforts be successful." *Id.*

27 Indeed, the California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* that
28 using the percentage method has many advantages:

1 The recognized advantages of the percentage method - including relative ease of
2 calculation, alignment of incentives between counsel and the class, a better
3 approximation of market conditions in a contingency case, and the encouragement
4 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
the litigation—convince us the percentage method is a valuable tool that should not
be denied our trial courts.

5 *Id.* at 503 (internal citation omitted).⁹ Because there is a defined and traceable benefit to the Class,
6 the Court can base an award of attorneys’ fees using a ‘common fund’ approach.

7 Moreover, trial courts have “wide latitude” in assessing the value of attorneys’ fees and
8 their decisions will “‘not be disturbed on appeal absent a manifest abuse of discretion.’” *Lealao*
9 *v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
10 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
11 in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.

12 California law provides that an attorneys’ fee award should be equivalent to fees paid in
13 the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half*
14 *Int’l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a
15 recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
16 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
17 in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will
18 “chill the private enforcement essential to the vindication of many legal rights and obstruct the
19 representative actions that often relieve the courts of the need to separately adjudicate numerous
20 claims.” *Lealao, supra*, 82 Cal.App.4th at 53. Therefore, fees in class and representative actions
21 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
22 attorney and client in comparable litigation. *Id.* at 48.

23 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
24 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
25 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th

26
27 ⁹ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar
28 cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further that trial courts have discretion
to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-check
and use other means to evaluate the reasonableness of a requested percentage fee”).

1 at 1270). It is not an abuse of discretion to choose one method over another as long as the method
2 chosen is applied consistently using percentage figures and/or rates that accurately reflect the
3 marketplace. In cases where class members present claims against a settlement amount and the
4 settlement agreement provides that the defendant agrees to paying the attorneys a percentage of
5 the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

6 Where the amount of a settlement is a “certain easily calculable sum of money,” California
7 courts may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown,
8 California Practice Guide, Civil Procedure Before Trial, Chapter 14, § 14:145; *Dunk, supra*, 48
9 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and
10 representative actions because “it better approximates the workings of the marketplace than the
11 lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49. The purpose of the common
12 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries
13 so that the active beneficiary does not bear the entire burden alone.” *Vincent, supra*, 557 F.2d at
14 769.

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

23 When the lawsuit was originally filed, the prospect of a long, drawn-out battle with a
24 defendant represented by experienced counsel, was almost a certainty. By taking on this “battle”
25 on a contingency basis, Class Counsel risked substantial economic loss if the results were not
26 successful. This substantial risk is the reason that the courts approve the use of the percentage
27 method when a settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft*
28 (9th Cir. 2002) 290 F.3d 1043, 1048-49 (quotations omitted) (discussing the risks of engaging in

1 litigation without certainty of compensation).

2 Under the terms of the Agreement, Defendant will pay a Gross Settlement Amount of
3 \$500,000. An award of attorneys' fees is to be calculated as a percentage of the total value of
4 benefits made available to the Class Members under the settlement. In light of Class Counsel's
5 prosecution and resolution of the case, the requested Attorneys' Fees are appropriate and
6 reasonable.

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

14 Class Counsel have obtained a substantial recovery on behalf of Plaintiff and the Class.
15 Thus, the requested Class Counsel Fees Payment is appropriate. In short, Class Counsel's fee
16 request of \$166,666.67 (which represents 33% of the GSA) is in line with awards in similar cases
17 in California and nationwide and demonstrates that Class Counsel's fee request is consistent with
18 market rates and is reasonable.

19 **ii. The Requested Attorney's Fee and Cost Award is Within the Range of Fees**
20 **Approved in Comparable Common Fund Cases**

21 Several studies of class action fee awards have found that the median common fund fee
22 award is approximately one-third of the total settlement fund.¹⁰ The requested fee of 1/3 of the
23 gross settlement amount falls within that median common fund fee award, and it constitutes fair
24 compensation for undertaking complex, risky, expensive, uncertain, and time-consuming litigation

25
26 ¹⁰See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that "fee
27 awards in class actions average around one-third of the recovery."); Reagan W. Silber and Frank E. Goodrich,
28 *Common Funds and Common Problems: Fee Objections and Class Counsel's Response*, 17 Rev. Litig. 525, 546 ; T.
Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report*
to the Advisory Committee on Civil Rules, 90 (1996) (finding that attorneys' fees in class litigation "were generally in
the traditional range of approximately one-third of the total settlement").

1 on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved
2 for the benefit of the Class. Numerous state and federal courts in California routinely approve fee
3 requests equal to or greater than 33% of the common fund. Indeed, courts have found that an award
4 of 33% of the common fund represents the “benchmark” in California.¹¹ In short, Class Counsel’s
5 fee request of \$166,666.67 (which represents 33% of the GSA) is in line with awards in similar
6 cases in California and nationwide and demonstrates that Class Counsel’s fee request is consistent
7 with market rates and is reasonable.

8 **iii. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee**

9 Class Counsel’s fee request is reasonable when calculated using the lodestar method. Under
10 the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent
11 on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20
12 Cal. 3d 25, 48. The court then enhances this lodestar figure by a “multiplier” to account for a range
13 of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
14 success achieved. *Id.* at 49; see also *Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM*
15 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92
16 Cal.App.4th 819, 834, (“[t]here is no ... rule limiting the factors that may justify an exercise of
17 judicial discretion to [adjust the] lodestar”).

18 Class Counsel has worked 267.5 hours to date on this case and have calculated the
19 lodestar fee on those hours at \$188,632.50 at rates reflecting those currently earned in the
20 marketplace. (Mara Dec. ¶ 19, Exhibit 5 Summary of Time and Costs; Declaration of Peter Horton
21 in Support of Motion for Final Approval of Class Action Settlement (“Horton Dec.”) ¶¶ 11-13).
22 Class Counsel respectfully requests attorneys’ fees in the amount of \$166,666.67 (33% of the
23 GSA). As Class Counsel’s lodestar fee is in excess of their fee request, a multiplier on their lodestar
24 fee is not sought herein. In fact, the requested fee results in a so-called “negative multiplier” which
25 suggests the percentage of the fund amount is reasonable and fair. *See Chun-Hoon v. McKee Foods*

26 ¹¹ *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 U.S. Dist. LEXIS 6049,
27 *14 (“These percentages compare favorably with both California (33%) and federal (25%) benchmarks.”); *Dennis v.*
28 *Kellogg Co.* (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 U.S. Dist. LEXIS 163118, at *22 (“This percentage
compares favorably with both California (33%) and federal (25%) benchmarks and the requested fee compares well
with a lodestar cross-check as well.”).

1 Corp. (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc. Securities Litigation*
2 (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886 at *16.

3 **iv. Class Counsel's Hourly Rates are Reasonable**

4 Class Counsel's hourly rates are between \$600 and \$800 and are in line with rates typically
5 approved in wage and hour class action litigation and which rates have been approved by Courts
6 in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego
7 County Superior Courts. (Mara Dec. ¶ 22; Exhibit 2, Westlaw Court Express's Legal Billing
8 Report, Volume 14, Number 3, California Region for December 2012; Exhibit 3, 2014 Declaration
9 of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exhibit 4, 2012
10 National Law Journal Survey of Hourly Billing Rates for Partners and Associates; Horton Dec. ¶
11 11).

12 Class Counsel's skill and experience support their hourly rates. Their practice is limited
13 exclusively to litigation, focusing on the representation of employees in wage and hour and
14 consumer class action matters. (Mara Dec. ¶¶ 2-11; Horton Dec. ¶¶ 2-5). As leading attorneys in
15 the field of wage and hour class action litigation, Plaintiff's counsel continually monitors the
16 prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of
17 their attorneys and paralegals/law clerks to be consistent with the prevailing market rates in the
18 private sector for attorneys and staff of comparable skill, qualifications and experience. Therefore,
19 as they are in line with those of the relevant community, Class Counsel's hourly rates are
20 reasonable.

21 **v. Class Counsel's Total Hours are Reasonable**

22 In determining a lodestar fee, reasonable hours include, in addition to time spent during
23 litigation, the time spent before the action was filed, including time spent interviewing clients,
24 investigating the facts and law, and preparing the pleadings. See *New York Gaslight Club, Inc. v.*
25 *Carey* (1980) 447 U.S. 54, 62; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th
26 440, 447. Further, the fee award should include fees incurred to establish and defend the attorneys'
27 fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). Under California law,
28 counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

1 Class Counsel has expended a total of 267.5 hours on this case. The work performed by
2 Class Counsel in order to achieve a settlement that will provide valuable consideration to the Class,
3 averaging a \$1,017.76 settlement payment per Class Member, with the highest estimated award
4 being \$4,463.43, is outlined by Class Counsel in the declarations submitted herewith. (Mara Dec.
5 ¶¶ 23, 28, Horton Dec. ¶ 12). Class Counsel have been actively involved in this case, prior to the
6 commencement of this action and all the way up to the present, and Class Counsel's dedication to
7 providing representation in the case has precluded other employment. Here, Class Counsel's many
8 tasks, in summary form, included the following: pre-filing investigation and legal research;
9 communicating with the Class Representative; discussions with Class Members; communications
10 with co-counsel; researching and investigating California's ever-evolving wage and hour laws
11 regarding compensation, overtime, meal and rest periods, itemized wage statements, waiting time
12 penalties, and California's Unfair Competition Law; conducting investigation into Defendant's
13 pay-structures, policies for its non-exempt employees; drafting and filing pleadings; drafting and
14 uploading notice to the Labor and Workforce Development Agency; drafting stipulations;
15 engaging in conferences with Defense Counsel; appearing at Case Management Conferences;
16 analyzing records produced by Defendant including a sampling of Class Member time and pay
17 records; working with expert; drafting the mediation brief and performing mediation damages and
18 exposure models; preparing for and attending mediation; drafting and revising the settlement
19 agreement and the Notice to the Class; drafting preliminary approval papers; working with
20 Settlement Administrator on the notice process; reviewing, revising, and proofing Notice papers
21 from the Settlement Administrator; preparing for and appearing at preliminary approval hearing;
22 reviewing weekly status reports from the Settlement Administrator regarding Class participation;
23 reviewing and editing the Settlement Administrator's declaration; drafting final approval papers,
24 and preparing for and appearing at the Final Approval Hearing. (Mara Dec. ¶¶ 23, 28, Horton Dec.
25 ¶ 12).

26 Class Counsel bore the risk that, despite all of their efforts and skills employed, there may
27 be no recovery. All of the work performed was reasonable and necessary to the prosecution of this
28 case. The work performed was particularly justified, in light of the result achieved.

1 **vi. Costs of Litigation**

2 Class Counsel seeks reimbursement of the litigation costs and expenses of \$23,242.33.
3 (Mara Dec. ¶ 30, Exhibit 5). These costs were all reasonable and necessary to the prosecution of
4 this case and the results achieved and are fair and reasonable.

5 **C. The Class Representative Enhancement Payment is Reasonable**

6 Class Counsel seeks approval of the Class Representative Enhancement Payment to the
7 named Plaintiff in the sum of \$7,500. In agreeing to the settlement, Plaintiff has agreed to a general
8 release of his claims against Defendant. This general release is far greater than the release being
9 given by other Class Members. This payment not only compensates Plaintiff for the work he
10 undertook in this case, but also for the claims and potential claims he may have against Defendant
11 that he is releasing. Since the inception of this case, Plaintiff has put the Class's interests ahead of
12 his own. This payment compensates Plaintiff for the claims that he forwent bringing for the
13 betterment of the Class Members.

14 There are also other factors supporting the request that Plaintiff receive \$7,500. The
15 requested Class Representative Enhancement Payment is reasonable in light of the benefits
16 Plaintiff has conferred upon the entire Class, resulting in payments averaging at \$1,017.76 with a
17 high payment of \$4,463.43. The requested award is appropriate and reasonable based upon
18 Plaintiff's time and effort expended on this case, the risks he faced, and the outcome of this case.
19 Plaintiff has submitted declarations detailing the efforts and time he expended on behalf of the
20 Class in order to advance this case to its successful conclusion. There is no question that this case
21 would not have reached the same result but for Plaintiff's involvement and input at all stages of
22 the litigation.

23 It should be noted that service awards are particularly important to plaintiffs in wage and
24 hour cases because they promote the important public policies underlying the wage and hour laws.
25 This strong policy is codified in California Labor Code § 90.5, which provides that "[i]t is the
26 policy of this state to vigorously enforce minimum labor standards in order to ensure employees
27 are not required or permitted to work under substandard unlawful conditions . . ." Cal. Lab. Code
28 § 90.5. Nonetheless, the California Supreme Court has noted that "retaliation against employees

1 for asserting statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes
2 designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61. In this context,
3 class representatives should be rewarded for assuming the risk of retaliation for the sake of class
4 members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

5 In addition, there are few individuals that are willing to act as a class representative and
6 provide the work, diligence, and willingness to assume a substantial financial risk should
7 Defendant have prevailed in this case. Plaintiff’s willingness to assume the financial risk is
8 significant. Plaintiff risked a potential judgment taken against him for attorneys’ fees and costs if
9 this matter had not been successfully concluded. Case law holds that a losing party is liable for the
10 prevailing party’s costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in some
11 wage and hour actions, such as this case, pursuant to California Labor Code § 218.5, for attorneys’
12 fees as well. Though the fee agreement provides that Class Counsel would pay such costs, Plaintiff
13 would nevertheless have had a cost bill entered against him leaving him ultimately liable for
14 potentially hundreds of thousands of dollars in the unexpected possibility that Class Counsel did
15 not meet their obligation to cover those costs. Unfortunately, there have been several judgments
16 entered against class representatives, e.g. *Koehl v. Verio, Inc.* 142 Cal.App.4th 1313, 1328 (2006)
17 (a wage and hour class action where Defendant prevailed at trial, the named plaintiffs were held
18 liable, jointly and severally for the Defendant’s attorneys’ fees); *Whiteway v. Fedex Kinkos Office*
19 *& Print Services, Inc.*, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and hour
20 misclassification case lost on summary judgment, after the case was certified, the named Plaintiff
21 was assessed costs in the sum of \$56,788.). The risk of payment of Defendant’s costs, in itself
22 alone, is a sufficient basis for an award of the requested enhancement sum. Few individuals are
23 willing to take this risk, and it is clear that Plaintiff, here, championed a cause on behalf of others
24 with potentially huge monetary risks.

25 Courts routinely approve service payments, or incentive awards, to compensate named
26 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
27 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers*
28 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class

representatives); Manual § 21.62 n.971 (noting that service payments are warranted); *Cook v. Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y. 1997) (“present or past employee whose present position or employment credentials or recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his or her name and efforts to the prosecution of litigation at some personal peril, a substantial enhancement award is justified”); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) (“We also think there is something to be said for rewarding those drivers who protect and help to bring rights to a group of employees who have been the victims of discrimination.”).

Moreover, the modern-day work force is mobile, with employees holding several jobs over the span of their career. It is also true that prospective employers in this computer, high-tech age “Google” and/or do extensive background checks and have access to court databases to see if applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiff’s conduct will not be lost on a prospective employer who has to choose between an applicant who has never sued an employer and one who has done so. The requested award far from compensates Plaintiff for opportunities he may lose in the future because of the exercise of a Constitutional right to Petition the Courts for redress of a grievance.

Based on the foregoing, the \$7,500 Class Representative Enhancement Payment to the Class Representative is fair, appropriate, and justified in light of the work performed, risks undertaken for payment of fees and costs if this case had not been successfully concluded, stigma on future employment opportunities, and the benefits all Class Members.

D. The Administration Costs are Reasonable

The Court-approved Settlement Administrator was responsible for formatting, printing and mailing the Class Notices. The Settlement Administrator was responsible for responding to Class Member inquiries, providing weekly status reports, answering questions from Counsel for the Parties, and providing a declaration to document its duties and responsibilities under the settlement. Plaintiffs now request that the Court finally approve the Settlement Administration Costs in the amount of \$5,950 to ILYM for services rendered and to be rendered for the notice and settlement administration process.

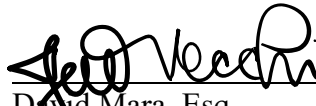
1 Following the grant of final approval, the Settlement Administrator's duties will continue
2 in order to calculate and mail the individual settlement payments to Participating Class Members,
3 perform tax reporting obligations, disburse other payments as ordered by the Court, and perform
4 such other duties as set forth in the Agreement. Administration Costs in the amount of \$5,950 to
5 ILYM for services rendered and to be rendered is fair and reasonable and should be granted.

6 **V. CONCLUSION**

7 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
8 of the settlement, and award Class Counsel attorneys' fees in the sum of \$166,666.67 and litigation
9 expenses of \$23,242.33 to Class Counsel, Class Representative Enhancement Payment in the sum
10 of \$7,500 to Plaintiff, Administration Costs in the amount of \$5,950 to ILYM, and a payment to
11 the LWDA in the amount of \$7,500 (which is 75% of \$10,000 allocated to Plaintiff's claims under
12 PAGA).

13
14 **MARA LAW FIRM, PC**

15 Date: March 11, 2025

16 
17 David Mara, Esq.
18 Jill Vecchi, Esq.
19 Attorneys for Plaintiff
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