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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SUTTER**

ISMAEL VILLEGAS-SANCHEZ, individually,
and on behalf of all others similarly situated,

Plaintiff,

v.

COE ORCHARD EQUIPMENT, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No. CVCS22-0002261

CLASS ACTION

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

*[Filed concurrently with: Declaration of John
G. Yslas, Declaration of Cassandra Polites,
and Proposed Order]*

FINAL APPROVAL HEARING

Date: September 9, 2024

Time: 9:00 a.m.

Dept: Dept. 7

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

2 **PLEASE TAKE NOTICE** that on September 9, 2024, at 9:00 a.m., in Department 7 of the
3 Sutter County Superior Court, pursuant to Code of Civil Procedure § 382 and California Rules of
4 Court 3.769 *et seq.*, Plaintiff Ismael Villegas-Sanchez (“Plaintiff”) will and hereby does move the
5 Court for an Order granting final approval of the proposed class action settlement between Plaintiff
6 and Defendant Coe Orchard Equipment, Inc. (“Defendant”). Plaintiff further moves the Court for
7 an Order:

- 8 1. Certifying a Class for settlement purposes;
- 9 2. Approving the settlement as fair and reasonable and finding that class members were
10 given notice of the settlement, and advised of their right to participate in the
11 settlement, object to the settlement, or exclude themselves from the settlement, in a
12 reasonable manner;
- 13 3. Appointing Plaintiff as Class Representative for settlement purposes;
- 14 4. Appointing Plaintiff’s Counsel, John G. Yslas, Jeffrey C. Bils, Aram Boyadjian, and
15 Andrew Sandoval, Wilshire Law Firm, PLC, as Class Counsel for settlement
16 purposes;
- 17 5. Approving payment of administrative expenses to ILYM Group, Inc. as the Settlement
18 Administrator in the amount of \$8,750.00;
- 19 6. Approving payment of \$150,000.00 in attorney’s fees, which is 33 1/3% of the
20 Maximum Settlement Amount, and costs in the amount of \$12,500.00 for litigating
21 this action to Class Counsel;
- 22 7. Approving the payment to the California Labor Workforce Development Agency in
23 the amount of \$15,000.00;
- 24 8. Approving an enhancement award to Plaintiff Ismael Villegas-Sanchez of \$10,000.00;
- 25 9. Directing that the clerk of the Court enter the Court’s order as a final judgment; and,
- 26 10. Without affecting the finality of the final judgment, reserving continuing jurisdiction
27 over the parties for the purposes of implementing, enforcing and/or administering the
28 Settlement or enforcing the terms of the judgment.

The motion will be based upon this notice, the attached memorandum of points and authorities, the Declarations of John G. Yslas and Cassandra Polites filed concurrently herewith, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: August 15, 2024

WILSHIRE LAW FIRM

By:

John G. Yslas
Jeffrey C. Bills
Aram Boyadjian
Andrew Sandoval

Attorneys for Plaintiff

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I. INTRODUCTION

Plaintiff's request for attorneys' fees in the amount of \$150,000.00, reimbursement of attorney costs and expenses in the amount of up to \$12,500.00, an incentive award for Plaintiff in the amount of \$10,000.00, Settlement Administration Costs of \$8,750.00; and payment to the California Labor Workforce Development Agency "LWDA") in the amount of \$15,000.00 are also reasonable and thus should be approved by the Court.

¹ In Plaintiff's Motion for Preliminary Approval of the Settlement, Plaintiff indicated that there were approximately 307 class members at that time based on the initial information provided by Defendant for the class period. In the final class mailing list provided to the Settlement Administrator by Defendant, the list states that there are 314 class members in the class period. (Declaration of Cassandra Polites ("Admin Decl."), ¶ 6.)

1 Accordingly, Plaintiff respectfully requests that the Court grant final approval of the
2 Settlement.

3 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

4 **A. Plaintiff's Claims**

5 This is a wage and hour class and Labor Code Private Attorneys General Act
6 (“PAGA”) (Cal. Lab. Code §§ 2699, *et seq.*) representative action. Plaintiff and putative class
7 members worked in California as hourly-paid or non-exempt employees for Coe Orchard
8 Equipment, Inc. (“Defendant”) during the class period. Defendant is based in Sutter County,
9 California and operates a factory where it manufactures equipment to harvest tree fruit, nuts and
10 olive crops. (Declaration of John G. Yslas [“Yslas Decl.”], ¶ 2.)

11 Plaintiff alleges that Defendant’s wage and hour practices resulted in Labor Code
12 violations. Plaintiff alleges that Defendant failed to provide legally required meal and rest
13 breaks and failed to pay for all hours worked. Plaintiff further alleges that Defendant failed to
14 provide employees with legally compliant meal and rest periods, and Defendant failed to
15 reimburse business expenses. Based on these allegations, Plaintiff asserts related claims for
16 failure to provide accurate wage statements, failure to pay all final wages at termination, unfair
17 business practices, and civil penalties under PAGA. (*Id.* at ¶ 3.)

18 Plaintiff sent a notice to Defendant and the California Labor & Workforce Development
19 Agency (“LWDA”) alleging similar wage and hour violations pursuant to the PAGA (Labor
20 Code §§ 2699, *et seq.*) on March 23, 2023. On December 30, 2022, Plaintiff commenced this
21 Action by filing the class action Complaint in Sutter County Superior Court, Case No. CVCS22-
22 0002261, alleging causes of action against COE for failure to pay minimum and straight time
23 wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and
24 permit rest periods, failure to timely pay final wages at termination, failure to provide accurate
25 itemized wage statements, and unfair business practices. (*Id.* at ¶ 4.) On August 1, 2023,
26 Plaintiff filed the PAGA representative Action in Sutter County Superior Court, Case No.
27 CVCS23-0001484, seeking civil penalties stemming from Defendant’s failure to pay for all
28 hours worked (minimum, straight, and overtime wages), failure to provide meal periods, failure

1 to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to
2 maintain accurate records of hours worked and meal periods, failure to timely pay final wages,
3 failure to furnish accurate wage statements, failure to indemnify employees for expenditures,
4 and failure to produce requested employment records. Defendant will stipulate to the
5 consolidation of the PAGA action and the class action, with the class action as the lead case,
6 for the purpose of having the Settlement filed in one combined action. Both the class action and
7 PAGA representative action Complaints are the operative complaints in the Action (the
8 “Operative Complaints”). (*Id.*)

9 **B. Discovery and Investigation**

10 Following the filing of the Complaint, the Parties exchanged documents and information
11 before mediating this action. Prior to mediation, Plaintiff obtained, through informal discovery,
12 personnel records pertaining to Plaintiff; class data including total number of current and former
13 hourly paid and non-exempt employees during the statutory period; total number of workweeks
14 and pay periods; average and median hourly rates of pay; a sampling of timekeeping and payroll
15 records for Class Members; employee handbooks; and other wage and hour policy documents.
16 (*Id.* at ¶ 5.)

17 After reviewing documents regarding Defendant’s wage and hour policies and practices,
18 and analyzing Defendant’s timekeeping and payroll records, Class Counsel was able to evaluate
19 the probability of class certification, success on the merits, and Defendant’s maximum monetary
20 exposure for all claims. Class Counsel also investigated the applicable law regarding the claims
21 and defenses asserted in the Litigation. Class Counsel reviewed these records and utilized an
22 expert to prepare a damages analysis prior to mediation. (*Id.* at ¶ 6.)

23 **C. Settlement Negotiations, Preliminary Approval, and Class Size.**

24 On August 4, 2023, the parties participated in private mediation with experienced class action
25 mediator Russ J. Wunderli. (*Id.* at ¶ 7.) The settlement negotiations were at arm’s length and,
26 although conducted in a professional manner, were adversarial. The Parties went into the
27 mediation willing to explore the potential for a settlement of the dispute, but each side was also
28 prepared to litigate their position through trial and appeal if a settlement had not been reached.

1 (Id.)

2 After extensive negotiations and discussions regarding the strengths and weaknesses of
3 Plaintiff's claims and Defendants' defenses, the Parties were able to reach a resolution, the
4 material terms of which were encompassed within a settlement. (Id. at ¶ 8; Ex. 1 [Class Action
5 and PAGA Settlement Agreement and Class Notice ("Settlement" or "Settlement
6 Agreement")].) The Court granted preliminary approval on April 29, 2024. (Id. at ¶ 8.)

7 Class Counsel has conducted a thorough investigation into the facts of this case. Based
8 on the foregoing discovery and their own independent investigation and evaluation, Class
9 Counsel is of the opinion that the Settlement is fair, reasonable, and adequate and is in the best
10 interests of the Settlement Class Members in light of all known facts and circumstances, the risk
11 of significant delay, the defenses that could be asserted by Defendants both to certification and
12 on the merits, trial risk, and appellate risk. (Yslas Decl., ¶ 12.) Indeed, because of the proposed
13 Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an
14 unfavorable judgment.

15 **D. Key Terms of the Proposed Settlement**

16 Under the Settlement, Defendants will pay \$450,000.00 to resolve this Litigation. This
17 amount is all-inclusive. The Settlement's key terms include:

18 1. Class: For settlement purposes only, the Parties agree to the certification of a class
19 pursuant to California Code of Civil Procedure § 382 defined as: all non-exempt, hourly employees
20 who have, or continue to, work for Defendant in California from July 5, 2018, up to the date a
21 signed order preliminary approving the class settlement is filed. (Settlement, § 1.5.)

22 2. Class Period: means the period from July 5, 2018 up to the date a signed Court order
23 preliminarily approving the class settlement is filed or November 1, 2023, whichever is sooner.
24 (Settlement, § 1.12.)

25 3. Participating Class Member: Participating Class Members means a Class Member who
26 does not submit a valid and timely Request for Exclusion from the Settlement. (Settlement, 1.35.)

27 4. Aggrieved Employee: "Aggrieved Employee" means all non-exempt, hourly employees
28 who have, or continue to, work for Defendant in California from March 23, 2022 up to the date a

signed order preliminarily approving the settlement is filed. (Settlement, § 1.4.)

5. PAGA Period: means the period from March 23, 2022 up to the date a signed order preliminarily approving the settlement is filed. (Settlement, § 1.31.)

6. Gross Settlement Amount: This amount is \$450,000.00, for all claims, including wages, interest, the Class Counsel Award, Litigation costs, Settlement Administration Costs, payment to the Labor and Workforce Development Agency (“LWDA”) for the alleged PAGA penalties, all other penalties, and the Class Representative Service Payment. (Settlement, § 3.)

7. Uncashed Checks & Cy Pres: For any Class Member whose Individual Class 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 a Court approved nonprofit organization or foundation consistent with Code of Civil Procedure section 384, subdivision (b) (“Cy Pres Recipient”). The intended Cy Pres is Legal Aid At Work. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. (Settlement, § 4.4.3.)

8. Release by Participating Class Members: All Participating Class Members release any and all claims contained in the Operative Complaints, and any additional wage and hour claims that could have been brought based on the facts alleged in the Operative Complaints, during employment in an hourly, non-exempt position in California during the Class Period. Except as set forth in Section 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period. (Settlement, § 5.2.)

9. Release by Non-Participating Class Members Who Are Aggrieved Employees: All Non-Participating Class Members who are Aggrieved Employees are deemed to release any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 et seq., contained in Plaintiff’s Operative Complaints and any additional wage and hour claims under PAGA that could have been brought based on the facts alleged in the Operative

1 Complaints during employment in a non-exempt position in California during the PAGA Claim
2 Period. (Settlement, § 5.3.)

3 10. PAGA Allocation: The settlement includes \$20,000.00 allocated to Plaintiff's claims
4 under PAGA, with 75% of which (\$15,000.00) being paid to the LWDA and 25% (\$5,000.00)
5 being paid to the PAGA Members. (Settlement, § 3.2.5.) Class Counsel submitted the proposed
6 settlement to the LWDA before filing the Motion for Preliminary Approval. (Yslas Decl., ¶ 9.)

7 11. Net Settlement Amount: means the Gross Settlement Amount, less the following
8 payments in the amounts approved by the Court: attorneys' fees and costs, any enhancement
9 payment to the Class Representative, the Settlement Administrator Costs, and the PAGA Payment.
10 (Settlement, § 1.28.)

11 12. Distribution Formula: Each Class Member's share will be determined by dividing their
12 total weeks worked within the Class Period by the total weeks worked by all Class Members within
13 the Class Period. That fraction will then be multiplied by the Net Settlement Amount to arrive at
14 the Class Member's individual share of the Net Settlement Amount. (Settlement, § 3.2.4.)

15 13. Tax Allocation: Any settlement money paid to Participating Class Members will be
16 allocated as 20% wages and 80% penalties/interest. (Settlement, § 3.2.4.1.)

17 14. Class Representative Service Award: Subject to Court approval, Plaintiff shall be paid
18 a Class Representative Service Payment not to exceed \$10,000.00. (Settlement, § 3.2.1) This
19 amount is for Plaintiff's time and effort in bringing and presenting the action, and in exchange for
20 a general release of all claims, known or unknown, pursuant to Civil Code Section 1542.
21 (Settlement, §§ 5.1, 5.1.1.) If the Court approves a Class Representative Service Payment less than
22 the amount requested, the Administrator will retain the remainder in the Net Settlement Amount.
23 (Settlement, § 3.2.1.)

24 15. Attorneys' Fees and Costs: The Settlement provides that Defendants will not oppose a
25 fee application of up to 33 and 1/3% (\$150,000.00) of the Gross Settlement Amount, plus a Class
26 Counsel Litigation Expenses Payment not to exceed \$12,500.00, subject to Court approval at the
27 Final Approval. (Settlement, § 3.2.2.) At this time, Class Counsel's costs are approximately
28 \$13,490.62. (Yslas Decl., ¶ 28.)

1 16. Notice of Proposed Class Action Settlement: The Notice set forth in plain terms, a
2 statement of the case, the terms of the Settlement Agreement, the approximate amount of attorneys’
3 fees, costs, and service award being sought, and an explanation of how the settlement allocations
4 are calculated. (Admin Decl., Ex. A.) The Notice also included an opt-out form that class members
5 could complete in the event they decide to not participate in the settlement. (*Id.*) Class Members
6 were notified by first-class mail of the settlement. (Settlement, § 7.4.2.) ILYM Group, Inc., the
7 Settlement Administrator, undertook its best efforts to ensure that the notice was provided to the
8 current addresses of class members, including conducting a skip trace when needed and re-mailing
9 the notice to updated addresses. (Admin Decl., ¶¶ 6-9.)

10 **E. Class Notice and Settlement Administration.**

11 This Court granted preliminary approval on April 29, 2024. (Yslas Decl., ¶ 8.) Notices
12 explaining class member rights were mailed out to all 314 class members in the mailing list
13 provided by Defendant. (Admin Decl., ¶ 8.) To date, 20 notice packets remain undeliverable
14 after re-mailing attempts were made. (*Id.* at ¶ 10.) ***There were zero requests for exclusion and***
15 ***zero objections to the settlement.*** (*Id.* at ¶¶ 11, 12.)

16 **III. THE SETTLEMENT MERITS FINAL APPROVAL**

17 The law favors the settlement of lawsuits, particularly in class actions and other complex
18 cases. (*See e.g., Neary v. Regents of Univ. of California* (1992) 3 Cal.4th 272, 277-81.) Factors
19 to be considered in evaluating a class action settlement include “the strength of plaintiffs’ case, the
20 risk, expense, complexity and likely duration of further litigation, the risk of maintaining class
21 action status through proceedings, the experience and views of counsel, the presence of a
22 government participant, and the reaction of the class members to the proposed settlement.” (*Kullar*
23 *v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) A presumption that a settlement is
24 fair and reasonable exists where, as here, the following four factors are present: “(1) the settlement
25 is reached through arm’s length bargaining; (2) investigation and discovery are sufficient to allow
26 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
27 the percentage of objectors is small.” (*Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th
28 224, 245.)

Whether a class action settlement should be approved is a question committed to the trial court's broad discretion. (*Id.* at pp. 234-35.) In exercising its discretion, the Court should give "[d]ue regard ... to what is otherwise a private consensual agreement between the parties." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) "The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.'" (*Id.* [internal citations omitted].)

A. The Settlement Reflects a Reasonable Compromise.

A settlement is not judged against what the plaintiff might recover had she prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba, supra*, 91 Cal.App.4th at pp. 246, 250 ["Compromise is inherent and necessary in the settlement process...even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this 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 litigation."].)

The settlement obviates the significant risk that this Court may deny certification of all or some of Plaintiff's claims. (Yslas Decl., ¶ 12.) While Plaintiff is confident in the merits of their claims, a legitimate controversy exists as to each cause of action. (*Id.*) Plaintiff also recognizes that proving the amount of wages due to each class member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the class. (*Id.*)

Because of the proposed Settlement, class members will receive timely, guaranteed relief and will avoid the risk of an unfavorable judgment. When considering the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, the probability of appeal of a favorable judgment, it is clear that the settlement amount of \$450,000.00 is well within the "ballpark" of reasonableness, and final settlement approval is appropriate. (*Id.*) ***Indeed, each Settlement Class Member is eligible to receive an average net***

1 *benefit of approximately \$792.20, and the highest estimated net payout is expected to be*
2 *approximately \$2,247.54.* (Admin Decl., ¶ 15.)

3 **B. The Settlement was Reached After Arms-Length Negotiations Following**
4 **Informal Discovery.**

5 The Settlement was reached over the course of a full-day mediation with experienced class
6 action mediator, Russ J. Wunderli. (Yslas Decl. ¶ 7.) The settlement negotiations were at arm's
7 length and, although conducted in a professional manner, were adversarial. (*Id.*) The parties went
8 into the mediation willing to explore the potential for a settlement of the dispute, but each side was
9 also prepared to litigate their or its position through trial and appeal if a settlement had not been
10 reached. (*Id.*)

11 Prior to reaching this settlement, Class Counsel conducted informal discovery concerning
12 the claims set forth in the Litigation, such as personnel records pertaining to Plaintiff; class data
13 including total number of current and former hourly paid and non-exempt employees during the
14 statutory period; total number of workweeks and pay periods; average and median hourly rates of
15 pay; all timekeeping and payroll records for Class Members; employee handbooks; and other wage
16 and hour policy documents. (*Id.* at ¶¶ 5-6.) In conjunction with their extensive factual
17 investigation, Class Counsel investigated the applicable law regarding the claims and defenses
18 asserted in the Litigation. (*Id.*) Thus, Plaintiff and his counsel were able to act intelligently and
19 effectively in negotiating the proposed Settlement.

20 **C. Plaintiff's Counsel Has Substantial Class Action Experience.**

21 Class Counsel also has considerable experience and has demonstrated competence with
22 litigating wage and hour class actions. (*Id.* at ¶¶ 29-40.) Class Counsel has substantial experience
23 in all facets of litigation in state and federal court, including discovery, law and motion, trial,
24 appeals, arbitration and mediation. Class Counsel has litigated numerous class actions on behalf
25 of plaintiffs and have been lead counsel or otherwise exercised significant case handling
26 responsibilities in numerous cases resulting in millions of dollars in class action settlements. (*Id.*)

27 Based on Class Counsel's experience as employment and class action attorneys, Class
28 Counsel is eminently qualified to evaluate the strength of Plaintiff's claims, the strength of

1 Defendants’ defenses against certification, the strength of Defendants’ defenses on the merits, and
2 the fairness of the Settlement. Their opinion that final approval of the Settlement would be in the
3 best interests of class members in light of the significant risks of litigation is entitled to great
4 weight. (*See Kullar, supra*, 168 Cal.App.4th at 129 [“The court undoubtedly should give
5 considerable weight to the competency and integrity of counsel and the involvement of a neutral
6 mediator in assuring itself that a settlement agreement represents an arms’ length transaction
7 entered without self-dealing or other potential misconduct”].)

8 **D. There Are No Objections to the Settlement.**

9 No class member has objected to the Settlement, and no class members have requested
10 exclusion from the Settlement. (Admin Decl., ¶¶ 11, 12.) The overwhelmingly positive response
11 of the class strongly supports final approval of the Settlement. (*See, e.g., In re Lifelock, Inc.*
12 *Marketing and Sales Practices Litigation* (D. Ariz. 2010) 2010 WL 3715138, *6 [relatively few
13 objections and requests for exclusion support approval].)

14 Factors to be considered in evaluating a class action settlement include “the reaction of the
15 class members to the proposed settlement.” (*Kullar, supra*, 168 Cal.App.4th at p. 128.) The
16 reaction here has been overwhelmingly positive. Courts have approved class action settlements in
17 lesser circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D.Wash. 2001) 2001 U.S. Dist.
18 LEXIS 5976, 2001 WL 34089697, *8 [court found that the “class members overwhelmingly
19 support[ed] the settlement” where there were over 37,000 notices sent out, 2,745 class members
20 participated in the settlement, “only nine objections were submitted”, and there were 86 timely
21 opt-outs and over 20 additional defective or untimely opt-outs, “these indicia of the approval of
22 the class of the terms of the settlement support a finding of fairness under Rule 23”], *citing Hanlon*
23 *v. Chrysler Corp.* (9th Cir.1998) 150 F.3d 1011, 1027 [despite vigorous objections and appeal by
24 objectors, “fact that the overwhelming majority of the class willingly approved the offer and stayed
25 in the class presents at least some objective positive commentary as to its fairness”, court did not
26 abuse its discretion in approving settlement].)

1 **IV. THE COURT SHOULD AWARD PLAINTIFF THE REQUESTED AMOUNTS OF**
2 **FEES, COSTS AND AN ENHANCEMENT PAYMENT.**

3 Under the Settlement, subject to the Court's approval, Defendant has agreed to pay Class
4 Counsel reasonable attorneys' fees in the amount of \$150,000.00, which is 33 and 1/3% of the
5 Maximum Settlement Amount, and costs up to \$12,500.00 for litigating this Action. In addition,
6 Defendants will not oppose an application for the payment of Settlement Administration Costs and
7 a Class Representative Enhancement Award. Settlement Administration Costs are \$8,750.00, and
8 Plaintiff will apply for an Enhancement Award in the amount of \$10,000.00. The proposed
9 attorneys' fees and expenses, as well as the requested Enhancement Award, were disclosed to the
10 Class Members in the proposed Notice of Proposed Class Action Settlement.

11 "In general, questions whether a settlement was fair and reasonable, whether certification
12 of the class was proper, and whether the attorney fee award was proper are matters addressed to
13 the trial court's broad discretion." (*Wershba, supra*, 91 Cal.App.4th at pp. 234-235.) "Courts
14 recognize two methods for calculating attorney fees in civil class actions: the lodestar/multiplier
15 method and the percentage of recovery method." (*Id.* at p. 254; *Vincent v. Hughes Air West, Inc.*
16 (9th Cir. 1977) 557 F.2d 759, 769.)

17 **A. Counsel Requests an Award of Fees Based on the "Common Fund" Method.**

18 California courts have long awarded attorneys' fees as a percentage of the benefit created
19 by counsel in pursuing claims on behalf of a class. The California Supreme Court held that "when
20 a number of persons is entitled in common to a specific fund, and an action brought by a plaintiff
21 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff
22 or plaintiffs may be awarded attorneys' fees out of the fund." (*Serrano v. Priest* (1977) 20 Cal.3d
23 25, 34 [quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal. 3d 1.]

24 Class Counsel intends to seek an award of attorneys' fees on the "percentage of recovery/
25 common fund" theory. The purpose of the common fund/percentage approach is to "spread
26 litigation costs proportionally among all the beneficiaries so that the active beneficiary does not
27 bear the entire burden alone." (*Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)
28 In *Quinn v. State of California* (1995) 15 Cal. 3d 162, 167, the California Supreme Court stated:

1 “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others
2 derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.”
3 Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California
4 Supreme Court recognized that the common fund doctrine has been applied “consistently in
5 California when an action brought by one party creates a fund in which other persons are entitled
6 to share.”

7 The California Supreme Court affirmed in *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal.5th
8 480 that, “when class action litigation establishes a monetary fund for the benefit of the class
9 members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the
10 court may determine the amount of a reasonable fee by choosing an appropriate percentage of the
11 fund created.” (*Id.* at p. 503.) The court explained: “The recognized advantages of the percentage
12 method—including relative ease of calculation, alignment of incentives between counsel and the
13 class, a better approximation of market conditions in a contingency case, and the encouragement
14 it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—
15 convince us the percentage method is a valuable tool that should not be denied our trial courts.”
16 (*Id.* [internal citations omitted].)

17 Several courts have expressed frustration with the alternative “lodestar” approach for
18 deciding fee awards, which usually involves wading through voluminous and often indecipherable
19 time records. Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote: “This
20 court is compelled to ask, ‘Is this process necessary?’ Under a cost-benefit analysis, the answer
21 would be a resounding, ‘No!’” (*In re Activision Securities Litigation* (N.D. Cal 1989) 723 F. Supp.
22 1373, 1375.) The percentage approach is preferable to the lodestar because: (1) it aligns the
23 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
24 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
25 demands on judicial resources. (*Id.* at pp. 1378-79.) The Ninth Circuit now routinely uses the
26 percentage of the common fund approach to determine the award of attorney’s fees. (*See, e.g. In*
27 *re Pacific Enterprises Securities City and County of San Francisco Litigation* (9th Cir. 1994) 47
28 F.3d 373, 378-79 [approving attorney’s fee of 33 1/3%].)

1 **1. The Standard Fee Award in Class Actions Has Resolved Itself As One-**
2 **Third Of The Recovery In Common Fund Cases.**

3 According to a leading treatise on class actions, “No general rule can be articulated on what
4 is a reasonable percentage of a common fund. Usually, 50% of the fund is the upper limit on a
5 reasonable fee award from a common fund in order to assure that the fees do not consume a
6 disproportionate part of the recovery obtained for the class, although somewhat larger percentages
7 are not unprecedented.” (*See* Conte & Newberg, Newberg on Class Actions (3rd Ed.) § 14.03.)
8 Attorneys’ fees that are fifty percent of the fund are typically considered the upper limit, with *thirty*
9 *to forty percent commonly awarded in cases where the settlement is relatively small.* (*See Id.*;
10 *see also, Van Vranken v. Atlantic Richfield Company* (N.D. Cal. 1995) 901 F. Supp. 294 [stating
11 that most cases where 30-50 percent was awarded involved “smaller” settlement funds of under
12 \$10 million].)

13 The settled-for 33 and 1/3% fee award is consistent with the average fee award in class
14 actions. Indeed, the custom and practice in class actions is to award approximately one-third of a
15 fund as a fee award. (*See Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11 [“Empirical
16 studies show that, regardless whether the percentage method or the lodestar method is used, fee
17 awards in class actions average around one-third of the recovery.”].) Thus, Plaintiff’s fee request
18 is in line with the prevailing guidelines established in California case law and academic literature
19 and is consistent with awards in California. Accordingly, Plaintiff requests that the Court approve
20 the attorneys’ fees requested herein.

21 **2. This Matter Involves A “Fee-Shifting” Provision of the Labor Code.**

22 Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:
23 [A]ny employee receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil action the
25 unpaid balance of the full amount of this minimum wage or overtime compensation,
(Cal. Lab. Code § 1194.)

26 As this litigation culminated in a settlement that provided for a recovery of unpaid wages,
27 including unpaid minimum wages and overtime compensation, Plaintiff is entitled to recover
28 reasonable attorneys’ fees and costs under the California Labor Code.

1 Class Counsel is also entitled to a fee award under California’s private attorney general
2 statute, Code of Civil Procedure § 1021.5. “The award of attorneys’ fees is proper under Section
3 1021.5 if ‘(1) plaintiffs’ action ‘has resulted in the enforcement of an important right affecting the
4 public interest,’ (2) ‘a significant benefit, whether pecuniary or nonpecuniary, has been conferred
5 on the general public or a large class of persons’ and (3) ‘the necessity and financial burden of
6 private enforcement are such as to make the award appropriate.’” (*Press v. Lucky Stores* (1983)
7 34 Cal.3d 311, 317-318.) The fundamental objective of the statute is “to encourage suits enforcing
8 public policies by providing substantial attorneys’ fees to successful litigants in such cases.”
9 (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.)

10 This action resulted in the enforcement of an important right affecting the public interest,
11 as Plaintiff sought to enforce Settlement Class Members’ rights to recover statutory wages arising
12 from Defendants’ failure to pay all wages and failure to provide meal and rest breaks. (*See Murphy*
13 *v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1113 [noting that “health and safety
14 concerns” are what motivated the Industrial Wage Commission to adopt mandatory meal and rest
15 periods].)

16 This action also conferred a significant benefit on a large class of persons. Notice was sent
17 to 314 Settlement Class Members, and no Settlement Class Members requested exclusion. The
18 Settlement provides a significant monetary benefit, in that it permits all persons who worked for
19 Defendants during the applicable class period to obtain compensation for unpaid wages and missed
20 meal and rest periods.

21 Finally, the necessity and financial burden of private enforcement render an award
22 appropriate. Without the incentive of an attorneys’ fee award, Plaintiff could not have afforded to
23 hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff’s
24 potential recovery. (*See Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th
25 1033, 1044 [“As to the necessity and financial burden of private enforcement, an award is
26 appropriate where the cost of the legal victory transcends the claimants’ personal interest; in other
27 words, where the burden of pursuing the litigation is out of proportion to the plaintiff’s individual
28 stake in the matter.”].)

1 **3. The Experience, Reputation and Ability of Class Counsel Support the**
2 **Fee Award.**

3 As demonstrated by their past experience in pursuing class actions on behalf of consumers
4 and employees, Class Counsel possesses considerable expertise in litigating class action matters.
5 Class Counsel has been involved as lead counsel or co-counsel in dozens of class actions resulting
6 in a multitude of beneficial results to class members in California. Because it is reasonable to
7 compensate class counsel commensurate with their skill, reputation and experience, a fee award of
8 33 and 1/3% of the Maximum Settlement Amount, a percentage considered within the norm in
9 class action practice, is certainly justified here.

10 Class Counsel's experience in wage and hour class actions was integral in evaluating the
11 strengths and weaknesses of the case against Defendants and the reasonableness of the settlement.
12 Practice in the narrow field of wage and hour litigation requires skill and knowledge concerning
13 the rapidly evolving substantive law (state and federal), as well as the procedural law of class
14 action litigation. Based on these and other factors, Class Counsel has frequently received fee
15 awards amounting to 33 and 1/3% of the recovery for the class. Therefore, the requested fee award
16 is reasonable and fair.

17 **B. While the Lodestar Method is Not Necessary in Common Fund Cases, Courts**
18 **May Perform a Cross-Check to Award Fees.**

19 Although California supports the common fund doctrine, the lodestar method can be used
20 to cross-check fee awards. "It may be appropriate in some cases, assuming the class benefit can
21 be monetized with a reasonable degree of certainty, to "cross-check" or adjust the lodestar in
22 comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and
23 within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*In re*
24 *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557.)

25 Applying the lodestar method requires a two-step process. The first step is to multiply the
26 number of hours reasonably expended by a reasonable hourly rate. The second step is to apply a
27 multiplier to the lodestar to take into account various factors. "The purpose of such adjustment is
28 to fix a fee at the fair market value for the particular action. In effect, the court determines,

1 retrospectively, whether the litigation involved a contingent risk or required extraordinary legal
2 skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate
3 for such services.” (*Id.* at pp. 556-57.) “Under certain circumstances, a lodestar calculation may
4 be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id.* at p. 557.)

5 Wilshire Law Firm’s current lodestar is at least \$148,105 based on approximately 247.9
6 hours of work performed by Class Counsel thus far. (Yslas Decl., ¶¶ 19-20.) Accordingly, the
7 requested fee of \$150,000.00 is reasonable and fair as it is based on a multiplier of 1.01 (that is,
8 near parity). To be sure, trial courts have substantial discretion in adjusting the lodestar to account
9 for various factors. (*See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26, 39-
10 45; *see also Serrano, supra*, 20 Cal.3d at p. 49.) In addition, it has been held that “[m]ultipliers
11 can range from 2 to 4 or even higher.” (*See Wershba*, 91 Cal.App.4th at p. 255; *see also Van*
12 *Vranken, supra*, 901 F. Supp. At p. 298 “[m]ultipliers in the 3-4 range are common in lodestar
13 awards for lengthy and complex class action litigation”].)

14 **1. Class Counsel’s Rates Have Been Approved by Several Courts.**

15 Class Counsel provides a declaration to support their lodestar hourly rates. “Affidavits of
16 the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate
17 determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are
18 satisfactory evidence of the prevailing market rate.” (*United Steelworkers of America v. Phelps*
19 *Dodge Corp.* (9th Cir. 1990) 896 F.2d 403, 407.) Class Counsel has received final approval of
20 their hourly rates in other wage and hour class action settlements. These rates are not opposed or
21 challenged.

22 **2. The Lawsuit Provided a Public Benefit.**

23 Class Counsel’s choice to litigate this matter provided a public benefit to 830 California
24 employees. Moreover, the California Supreme Court stated that “Labor Code section 1194 confirms
25 “a clear public policy ... that is specifically directed at the enforcement of California’s minimum wage
26 and overtime laws for the benefit of workers.” [citation omitted].” (*Sav-on Drug Stores, Inc. v.*
27 *Super. Ct.* (2004) 34 Cal.4th 319, 340.) Given the financial risks and numerous attorney hours
28

1 attendant to the litigation of Plaintiff's claims, this factor supports Class Counsel's fee request and
2 encourages the private enforcement of legal rights for the general good.

3 **3. Applying a Positive Multiplier Is Appropriate.**

4 Once this lodestar figure has been determined, the Court may take into account other
5 "enhancement" factors to adjust the lodestar award. While Plaintiff seeks a modest multiplier
6 of 1.01 here, the overall reasonableness of Plaintiff's request is underscored by the fact that a
7 significantly higher multiplier would be justified under applicable law.

8 Contingency fees should be higher than fees for the same legal services paid concurrently
9 with the provision of the services. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33.) "A
10 lawyer who both bears the risk of not being paid and provides legal services is not receiving the
11 fair market value of his work if he is paid only for the second of these functions. If he is paid
12 no more, competent counsel will be reluctant to accept fee award cases." (*Id.* at p. 1133.)
13 Application of that rule is particularly appropriate where the case is brought to redress important
14 rights of vulnerable persons. (*Id.*) A risk enhancement is "earned compensation; unlike a
15 windfall, it is neither unexpected nor fortuitous. Rather it is intended to approximate market-
16 level compensation for such services which typically pay a premium for the risk of nonpayment
17 or delay in payment of attorney's fees." (*Id.* at p. 1138.)

18 "Multipliers can range from 2 to 4 or even higher." (*Wershba, supra*, 91 Cal.App.4th at
19 p. 255; *see also Sutter Health Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512
20 [applying a 2.52 multiplier on a cross-check in an antitrust class action]; *Chavez, supra*, 162
21 Cal. App. 4th at p. 60 [applying a 2.5 multiplier on a lodestar cross-check]; *Vizcaino v. Microsoft*
22 *Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 n.6 ["most" common fund cases apply a multiplier
23 of 1.0-4.0]; *Been v. O.K. Industries Inc.* (E.D. Okla. 2011) 2011 WL 4478766, *11 [citing a
24 study "reporting [an] average multiplier of 3.89 in survey of 1,120 class action cases" and
25 finding that a multiplier of 2.43 would be "per se reasonable"].) The intermediate court in
26 *Laffitte*, after finding that "2 to 4" is a reasonable range for multipliers on a cross-check,
27 affirmed a 2.13 multiplier. (*Laffitte v. Robert Half Int'l* (2014) 231 Cal. App. 4th 860, 881-82.)
28 The intermediate court opinion was affirmed in full by the California Supreme Court in its new

1 decision guiding lower courts on assessing fees.

2 Factors considered in determining whether a lodestar multiplier is appropriate generally
3 include: (1) the risks presented by the contingent nature of the case; (2) the novelty and difficulty
4 of the questions involved and the skill requisite to perform the legal service properly; (3) the
5 nature of the opposition; (4) the preclusion of other employment by the attorney due to
6 acceptance of the case; and (5) the result obtained and the importance of the lawsuit to the
7 public. (*Serrano, supra*, 20 Cal. 3d at pp. 48-49.) All of these factors favor approval of a
8 multiplier along the lines of those approved in the cases above.

9 The major consideration in determining the necessity of a multiplier is the contingent nature
10 of the award. (*Ketchum, supra*, 24 Cal.4th at pp. 1132-33.) Further, the possibility of no recovery
11 is only one of the uncertainties involved in taking on such a case. Other uncertainties are the
12 amount that will be recovered, uncertainty as to the cost, both in effort and expenses, and
13 uncertainty about how much time will pass before the recovery is obtained. (*Id.* at pp. 1132-1133,
14 1138.) Here, Class Counsel have been the only counsel to represent Class Members in this matter
15 and have borne the entire risk and costs of litigation purely on a contingency basis. Class Counsel's
16 outlay of time and money in this case has been significant.

17 The other factors are also present here. Class Counsel are skilled attorneys who have
18 had success in wage-and-hour class actions. This case required experienced and competent
19 lawyers and expertise in the issues presented herein. Defendant's contentions underscore the
20 risk of prevailing at class certification and trial, and any of these obstacles could have prevented
21 recovery completely. Further, proceeding to trial would have added years to the resolution of
22 this case because of the difficult legal and factual issues raised and the likelihood of appeals.
23 Despite these risks, Class Counsel took this case on a contingency basis. The contingent risk
24 in these types of cases is very real and they do occur regularly. Furthermore, we were precluded
25 from focusing on, or taking on, other cases which could have resulted in a larger, and less risky,
26 monetary gain. (Yslas Decl., ¶ 26.) Considered against the risks of continued litigation, and
27 the importance of the employment rights and a speedy recovery, the relief provided under the
28 Settlement represents a very strong result for the Class.

1 **C. Costs Are Reasonable.**

2 As of the date of filing this Motion, Class Counsel has incurred around \$13,490.62 in costs,
3 and they anticipate incurring additional costs up to the time the Court enters a judgment in this
4 action and schedules a hearing on distribution. (*Id. at* ¶¶ 10, 28, Ex. 4.) Accordingly, and as
5 provided in the Settlement Agreement, Class Counsel respectfully requests reimbursement of up
6 to \$12,500 in costs. Notably, Defendant has agreed that it will not oppose any cost award request
7 up to \$12,500.00. The categories of costs are set forth in the accompanying Declaration of John
8 G. Yslas, and these costs are easily seen to be both reasonable and necessary.

9 **D. The Enhancement Payment to the Plaintiff Is Reasonable.**

10 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
11 compensate them for the expense or risk they have incurred in conferring a benefit on other
12 members of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412.) Courts routinely grant approval
13 of class action settlement agreements containing enhancements for the class representatives, which
14 are necessary to provide incentive to represent the class, and are appropriate given the benefit the
15 class representatives help to bring about for the class. (*See Rodriguez v. W. Publ'g Corp.* (9th Cir.
16 2009) 563 F.3d 948, 958-59.) The California Supreme Court has also noted that “retaliation against
17 employees for asserting statutory rights under the Labor Code is widespread,” despite anti-
18 retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443,
19 460-61.) Plaintiffs should therefore be rewarded for assuming the risk of retaliation for the sake
20 of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

21 Under the settlement agreement, subject to the Court’s approval, Defendant agreed to pay
22 a Service Award in the amount of \$10,000.00 to Plaintiff. (Settlement, § 3.2.1.) This amount is
23 also in exchange for Plaintiff’s general release of all claims against Defendant. Plaintiff has
24 submitted a declaration demonstrating that he devoted at least **45 hours** of time and work assisting
25 counsel in the case, communicated with counsel very frequently for litigation and to prepare for
26 mediation. (*See, generally*, Declaration of Plaintiff Ismael Villegas-Sanchez filed in Support of
27 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement; *see also* Yslas Decl., ¶¶
28 13-17.)

1 When compared with the amounts awarded in typical class action cases, the amount
2 requested here is particularly reasonable. Indeed, a **2006** study examining the average incentive
3 award given to class action plaintiffs from **1993 to 2002** found that the “average award per class
4 representative was \$15,992 and the median award per class representative was \$4,357.” (Theodore
5 Eisenberg & Jeffrey P. Miller, “Incentive Awards to Class Action Plaintiffs: An Empirical Study”,
6 53 UCLA L. Rev. 1303, 1308 (2006).)

7 **E. Administration Expenses Should be Approved.**

8 ILYM Group, Inc., the Settlement Administrator, estimates that it will incur a total of
9 \$8,750.00 in costs associated with the administration of this Settlement. ([Administrator] Decl., ¶
10 18.) These expenses are reasonable, based upon the size of the class, claim and exclusion tracking,
11 and Class Member payment processing.

12 **V. CONCLUSION**

13 For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval
14 of the proposed settlement.

15 Respectfully submitted,

16 Dated: August 15, 2024

WILSHIRE LAW FIRM

17
18 By:  _____

19 John G. Yslas
20 Jeffrey C. Bils
21 Aram Boyadjian
22 Andrew Sandoval

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