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6
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**

9 ANGEL RIVERA, individually and on behalf
10 of all others similarly situated,

11 Plaintiff,

12 v.

13 MEKANISM, INC., a domestic corporation;
and DOES 1 through 50, inclusive,

14 Defendants.

Case No.: 23STCV05698
The Hon. Laura A. Seigle, Dept 17

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: April 4, 2025
Time: 9:00 AM
Dept.: SS-17

Complaint Filed: March 15, 2023
Trial Date: None Set

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on April 4, 2025, at 9:00 AM in Department 17 of the above-
3 entitled court, Plaintiff Angel Rivera (“Plaintiff”) will, and hereby does, move the Court for an
4 Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for an order:

5 1. Granting final approval of the settlement in the case pursuant to the Class Action and
6 PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-filed
7 Declaration of Frank H. Kim as Exhibit “1”;

8 2. Affirming Kim Legal APC as Class Counsel;

9 3. Affirming Angel Rivera as Class Representative and awarding an enhancement award
10 of \$10,0000.00;

11 4. Awarding ILYM Group, Inc. claims administration fees of \$7,450.00 for its services as
12 Administrator; and,

13 5. Entering judgment.

14 This Motion will be made pursuant to Code of Civil Procedure section 382 and California
15 Rule of Court, rule 3.769 on the grounds that the proposed Agreement is fair, adequate, reasonable,
16 and in the best interest of the Class Members and the parties.

17 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
18 and Authorities, the Declarations of Frank H. Kim, Angel Rivera, Amanda Howard, all other
19 papers and records on file in this action, and on such oral and documentary evidence as may be
20 presented at the hearing on this Motion.

21 DATED: March 7, 2025

KIM LEGAL, APC

22
23 By: /s/ Frank H. Kim

24 Frank H. Kim
25 Attorneys for Plaintiff Angel Rivera and the
26 Proposed Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Angel Rivera (“Plaintiff”) submits this Motion for Final Approval of Class
4 Settlement and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Class Action and
6 PAGA Settlement Agreement (“Agreement”), a copy of which is attached to the concurrently-filed
7 Declaration of Frank H. Kim as Exhibit “1”;

8 2. Award attorneys’ fees and costs as detailed in the concurrently-filed Motion for
9 Attorneys’ Fees and Costs;

10 3. Award ILYM Group, Inc. claims administration fees of \$7,450.00 for its services as
11 Administrator;

12 4. Affirm named Plaintiff Angel Rivera as Class Representative and award a Class
13 Representative payment of \$10,000.00; and

14 5. Enter judgment.

15 **II. FACTUAL BACKGROUND**

16 **A. Litigation Overview and Procedural History**

17 On or about April 14, 2022, Plaintiff worked as a background model for an advertising
18 campaign for Proximo Spirits, Inc./Jose Cuervo entitled “Cinco Tip It Forward” in exchange for
19 \$50 for the fitting day, \$150 for a COVID test, and \$375 for 12 hours of work on the shooting day.
20 (Declaration of Frank H. Kim [“Kim Decl.”] ¶ 4.) Plaintiff alleges that Defendant failed to pay his
21 overtime wages at the appropriate rate of pay, failed to pay premium wages for missed meal and
22 rest periods at the appropriate rate of pay, and related claims. (Kim Decl. ¶ 5.)

23 On March 15, 2023, Plaintiff filed a Class Action Complaint alleging causes of action
24 against Defendant for (1) Failure to pay all overtime wages, (2) Failure to pay premium wages, (3)
25 Failure to provide accurate wage statements, (4) Failure to pay all wages due and owing on
26 separation) and (5) Unfair Business Practices. (Kim Decl. ¶ 6.)

27 On May 19, 2023, Plaintiff amended his Complaint against Defendant to add a claim under
28

1 PAGA. (Kim Decl. ¶ 7.)

2 **1. Mediation and Settlement**

3 Shortly after the case was at issue, the Parties agreed to early mediation with Jonathan D.
4 Andrews for March 21, 2024. (Kim Decl. ¶ 8.)

5 In advance of mediation, Defendant provided Plaintiff's counsel with pertinent data for the
6 Class Members so that the Parties could fully investigate the claims at issue and understand their
7 strengths and weaknesses. (Kim Decl. ¶ 9.) Defendant provided the number of class members and
8 PAGA members and documents pertinent to Plaintiff's allegations that all the background extras
9 were misclassified as independent contractors. (Kim Decl. ¶ 10.) Plaintiff's counsel also served
10 formal discovery and noticed the deposition of Defendant's corporate representative but agreed to
11 stay that discovery pending settlement negotiations. (Kim Decl. ¶ 11.) Plaintiff's counsel had
12 mediation data analyzed by an expert to prepare a damage model for mediation. (Kim Decl. ¶ 12.)

13 On March 21, 2024, the Parties attended an all-day mediation before Mr. Andrews, which
14 resulted in a fully executed Memorandum of Understanding settling the Action. (Kim Decl. ¶ 13.)
15 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the
16 Action, dispute the damages and penalties claimed by Plaintiff, and further contend that, for any
17 purpose other than settlement, Plaintiff's claims are not appropriate for class or representative
18 action treatment. (Kim Decl. ¶ 14.) Defendant contends, among other things, that, at all times, they
19 have complied with the California Labor Code, and the Industrial Wage Commission Orders. (Kim
20 Decl. ¶ 15.)

21 Based on their own independent investigation and evaluation, Class Counsel is of the
22 opinion that the Settlement Agreement with Defendant is fair, reasonable and adequate, and in the
23 best interest of the settlement classes in light of all known facts and circumstances, including the
24 risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
25 representative action trial on the merits, and numerous potential appellate issues. (Kim Decl. ¶ 16.)
26 Although Defendant denies any liability, Defendant is agreeing to this Settlement Agreement
27 solely to avoid the cost of litigation. (Kim Decl. ¶ 17.) Accordingly, the Parties and their counsel
28

1 desire to settle, compromise and discharge all disputes and claims arising from or relating to the
2 Action on the terms set forth here fully, finally, and forever. (Kim Decl. ¶ 18.)

3 **B. Preliminary Approval**

4 On November 25, 2024, the Court issued an Order preliminarily approving the settlement
5 in this case, approving the proposed Class Notice, ordering that the Administrator send notice to
6 the Class, and setting a date for the Final Approval and Fairness Hearing (Kim Decl. ¶ 19.)

7 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

8 **A. The Settlement Class**

9 For purposes of Settlement Agreement, the Settlement Class consists of approximately 337
10 individuals and three non-overlapping classes: (1) the 203 Regular Rate Class, (2) the 203 Waiting
11 Time Class, and (3) the Wage Only Class. (Kim Decl. ¶ 20.)

12 The 203 Regular Rate Class consists of about 196 individuals and includes all non-exempt
13 background actors and models who worked for Defendant from September 16, 2019 through the
14 date of Preliminary Approval, were paid a flat daily rate, and worked more than six hours without
15 a recorded meal period and/or worked more than 8 hours in one day. (Kim Decl. ¶ 21.)

16 The 203 Waiting Time Class consists of at least 77 individuals and includes all performers
17 who worked for Defendant from September 16, 2019 through the date of Preliminary Approval,
18 who are not members of the 203 Regular Rate Class, and their first wage payment for a day worked
19 in the 203 Regular Rate Class Period was issued after the scheduled pay day. (Kim Decl. ¶ 22.)

20 The Wage Only Class consists of approximately 64 individuals and includes all nonexempt
21 background actors and models who worked for Defendant from September 16, 2018 through the
22 date of Preliminary Approval, were paid a flat daily rate, worked more than six hours without a
23 recorded meal period and/or worked more than 8 hours in one day, and are not part of the 203
24 Regular Rate or 203 Waiting Time Class. (Kim Decl. ¶ 23.)

25 **B. The Aggrieved Employees**

26 For purposes of Settlement Agreement, the definition of the PAGA settlement group is
27 defined as: “non-exempt background actors and models who worked for Defendant, were paid flat
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daily rate, and worked more than six hours without a recorded meal period and/or worked more than 8 hours in one day in the PAGA Period [the PAGA Period is from March 14, 2022 through the date of Preliminary Approval], and all performers who worked for Defendant and their first wage payment for a day worked in the PAGA Period was issued after the scheduled pay day.” (“Aggrieved Employees”) (Kim Decl. ¶ 24; Settlement Agreement, Ex. 1 at ¶1.8.)

C. Gross Settlement Amount

As detailed fully in the Settlement Agreement, the Settlement provides for the Defendant to pay a Gross Settlement Amount of \$385,000.00, which includes the sum of the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administrator’s Expenses. (Kim Decl. ¶ 25; Ex. 1 at ¶ 1.25.)

The Net Settlement Amount is the Gross Settlement Amount, less the Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (Kim Decl. ¶ 26; Ex. 1 ¶ 1.31.)

Plaintiff now requests final approval of the allocation of the Gross Settlement Amount to determine the Net Settlement Amount for distribution to the Class as follows:

Gross Settlement Amount	\$385,000.00
Less Class Representative Enhancement	\$10,000.00
Less Class Counsel Fees	\$128,320.50
Less Class Counsel’s Litigation Expenses	\$13,001.88
Less PAGA Payment	\$6,000.00
	<i>(\$4,500 to the LWDA and \$1,500 to remain in the Net Settlement Fund for PAGA Settlement Group)</i>
<u>Less Administrator Costs</u>	<u>\$7,450.00</u>
Net Settlement Amount	\$ 220,227.62

D. Individual Settlement Payments

Each Participating Class Member will be allocated an equal pro rata share of the Net Settlement Amount allocated to their Class. Each Class will be allocated a portion of the Net

Settlement Allocation, which are listed below.

a. The 203 Regular Rate Class is allocated \$155,103.14 of the Net Settlement Amount, or 72.74%.

b. The 203 Waiting Time Class is allocated \$53,243.41 of the Net Settlement Amount, or 24.97%.

c. Wage Only Class Allocation is allocated \$4,882.96 of the Net Settlement Amount, or 2.29%.

(Kim Decl. ¶ 27; Ex. 1 ¶ 3.2.4.1; see also Ex. A to the Settlement Agreement [Class Notice]; Declaration of Amanda Howard (“Howard Decl.”) ¶15.)

The Individual PAGA Payment will be paid on a pro-rata basis. All Class Members who are Aggrieved Employees will receive an equal pro rata share of 25% of the PAGA Penalties. (Kim Decl. ¶ 28; see Ex. 1 at ¶ 3.2.4.2.)

A portion of each Participating Class Member’s Individual Class Payment will be allocated to settlement of wage claims (the “Wage Portion”). The Wage Portion allocation are: 203 Regular Rate Class (1%), 203 Waiting Time Claims (1%), Wage Only Class (25%). The Wage Portions are subject to tax withholding calculated and made by the Settlement Administrator. (Ex. 1 at ¶3.2.5.) The remainder of each Participating Class Member’s Individual Class Payment will be allocated to settlement of claims for interest, reimbursements, and penalties (the “Non-Wage Portion”). The Non-Wage Portions are not subject to wage withholdings. (Id.) All Individual Settlement Payments to PAGA Settlement Group Members shall be allocated as 100% non-wage payment for civil penalties. (Kim Decl. ¶ 29; Ex. 1 at ¶ 3.2.5.)

Based on these calculations, the equal pro rata share is \$795.40 for the 203 Regular Rate Class, \$619.11 for the 203 Waiting Time Class, and \$76.30 for the Wage Only Class. (Howard Decl.” ¶¶ 16-18.)

E. Class Notice

The Court approved the proposed Class Notice and directed the mailing of the Notice by first-class mail to Class Members in accordance with the proposed implementation schedule. (Kim

1 Decl. ¶ 31.) The procedures for giving notice to the Class Members, as set forth in the Agreement
2 and Plaintiffs’ Motion for Preliminary Approval and approved by the Court, have been fully and
3 properly carried out. (Howard Decl. ¶¶ 3-10.)

4 ILYM Group, Inc. received one (1) request to be excluded (“opt-outs”) from the proposed
5 Agreement and zero (0) objections. (Howard Decl. ¶¶ 11-12.)

6 **F. Check Mailed Settlement – No Reversion**

7 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
8 without the possibility of reversion of settlement funds to Defendant. (Kim Decl. ¶ 32.) Under the
9 Agreement, every Class Member will receive a settlement check and Class Members do not need
10 to submit a claim in order to receive a settlement check. (Kim Decl. ¶ 33.) Any funds that remain
11 uncashed after the void date shall be turned over by the Administrator, with information for each
12 Class Member who failed to timely cash his/her settlement check, to the Motion Picture &
13 Television Fund. (Kim Decl. ¶ 34; Ex. 1 at ¶ 4.4.3.)

14 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

15 Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be
16 dismissed or compromised without the approval of the court, and notice of the proposed dismissal
17 or compromise shall be given to all members of the Class in such manner as the court directs”
18 In deciding whether to grant final approval to a proposed class action settlement under Code of
19 Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair,
20 adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

21 **A. The Settlement is Entitled to a Presumption of Fairness**

22 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
23 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
24 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
25 small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case
26 meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

27 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
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1 arm's-length negotiations overseen by an experienced mediator. All settlement discussions were
2 made by experienced and informed counsel, who believe that this settlement represents a favorable
3 resolution for the Class Members. (Kim Decl. ¶ 35.) The settlement negotiations have been, at all
4 times, adversarial and non-collusive, with the aid of a mediator, and no self-dealing or other type
5 of misconduct by either side has taken place. (Kim Decl. ¶ 36.)

6 Second, the Parties engaged in formal discovery that permitted Class Counsel to fairly
7 evaluate the strength of the case and the risks associated with ongoing litigation. (Kim Decl. ¶ 37.)
8 Specifically, Defendant produced all the relevant pay and time records for the class members prior
9 to mediation, and all applicable policy documents. (*Id.*) Receipt of appropriate discovery allowed
10 Class Counsel to fairly evaluate the exposure and risks associated with each claim alleged in the
11 lawsuit. (Kim Decl. ¶ 38.)

12 Third, Class Counsel have significant experience in cases of this type, including several
13 years prosecuting wage, hour, and working condition violations. (Kim Decl. ¶ 39.) Class Counsel
14 is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes
15 that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the
16 equal pro rata share recovery of approximately \$795.40 for the 203 Regular Rate Class, \$619.11
17 for the 203 Waiting Time Class, and \$76.30 for the Wage Only Class is substantial given that they
18 worked only one day and earned \$375 for a "12 hour shoot day" and also given the risks inherent
19 in litigation and the defenses asserted. (Kim Decl. ¶ 40.)

20 Finally, the fourth *Dunk* factor considers the percentage of objectors. To date, there was
21 one (1) request to be excluded and no objectors. (Howard Decl. ¶¶ 11-12.) As all of the *Dunk*
22 factors are satisfied, this settlement is entitled to a presumption of fairness.

23 **B. The Court Should Approve This Class Action Settlement Because it Satisfies**
24 **Each of the *Kullar* Factors**

25 The case of *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, set forth
26 several factors that the Court should analyze in determining whether to approve a class action
27 settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
28 complexity and likely duration of further litigation; (3) the risk of maintaining class action status

1 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage
2 of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
3 participant; and (8) the reaction of the class members to the proposed settlement.

4 In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399,
5 409, the court clarified that a Kullar showing does not require the parties to submit the outer
6 reaches of maximum possible recovery without taking into account the actual risks of certification,
7 decertification, dispositive motions, and trial, so long as there is a record which allows “an
8 understanding of the amount that is in controversy and the realistic range of outcomes of the
9 litigation.” *Munoz*, 186 Cal. App. 4th at 409.

10 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
11 formal and informal discovery before entering into meaningful settlement negotiations in this
12 matter. (Kim Decl. ¶ 41.) This discovery permitted Class Counsel to fairly evaluate the strength of
13 the case and the risks associated with ongoing litigation. (*Id.*) Class Counsel is experienced in
14 handling wage and hour class actions and, after weighing all of the following factors, supports this
15 Agreement. (Kim Decl. ¶ 42.)

16 **C. The Strength of Plaintiff’s Case**

17 **a. The Risks Associated with Unpaid Wages/Overtime Claim**

18 Plaintiff’s recovery for unpaid overtime faces significant risks. In order to prevail, Plaintiff
19 must establish that his payment of \$375 for a “12 hour shoot day” was a “fixed salary” under Labor
20 Code § 515(d)(2), and therefore that the \$375 payment is only for his non-overtime hours and that
21 he is entitled to a separate payment for his overtime hours. (Kim Decl. ¶ 43.) (Cal. Lab. Code §
22 515(d)(2).) In opposition, Defendants would argue that Section 515(d)(2) applies only to “weekly”
23 salaries, not a daily salary, that the term “salary” is not defined in the Labor Code or the Wage
24 Orders, and that Plaintiff was not paid a salary under the recent Supreme Court case of *Helix*
25 *Energy Solutions Group, Inc. v. Hewitt* (2023) 598 U.S. 39 (holding that a “daily rate” worker did
26 not meet the “salary basis test” under the FSLA). (Kim Decl. ¶ 44.) If Defendant prevails on one
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of these arguments, Plaintiff's entire claim for unpaid wages would fail. Accounting for such risks required a significant reduction in Plaintiff's initial demand. (Kim Decl. ¶ 45.)

b. The Risks Associated with the Meal and Rest Break Claims

Employers must pay one hour at the employee's "regular rate of compensation" as a penalty when they fail to provide a thirty-minute uninterrupted meal period as required by Labor Code section 512. (*See* Labor Code § 226.7(b).) They must also authorize and permit non-exempt employees covered by the wage orders to take a 10-minute rest break every four hours of work or major fraction thereof. (*Id.*; *see also* 8 Cal. Code Regs. § 11120.)

Plaintiff claims that Defendant improperly failed to pay him and the Settlement Class premium wages as a result of misclassifying them as independent contractors. (Kim Decl. ¶ 46.) Accordingly, success on these claims is contingent on the Court finding that Defendants misclassified Plaintiff and the Settlement Class and failed to authorize and permit meal and rest breaks. (Kim Decl. ¶ 47.)

Moreover, Defendant will contend that, in order to establish a violation for missed meal periods, a plaintiff must do more than show that a meal break was not taken. (Kim Decl. ¶ 48.) (*Brinker*, 53 Cal.4th at 1004.) So long as an employer provides employees with a "reasonable opportunity" to take a duty-free meal period, it has no further duty to "police meal breaks and ensure no work thereafter is performed." (*Id.* at 1040-41.) Instead, a plaintiff must show the employer impeded, discouraged, or prohibited the employee from taking a proper break, or otherwise failed to release the employee of all control. (*Id.*) "Thus, the crucial issue with regard to the meal break claim is the reason that a particular employee may have failed to take a meal break." (*Washington v. Joe's Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641.)

There are also risks to Plaintiff's rest period claim. Employers are not required to record rest periods and such rest periods are paid. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. Managing such claims at trial may be exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove

1 the claims. (Kim Decl. ¶ 49.) While a victory with such evidence is certainly possible, relevant
2 caselaw makes such claims risky from a trial management and due process perspective. (*See Duran*
3 *v. U.S. Bank National Assn.*, 59 Cal.4th 1, 31 (2014) (explaining “[I]f sufficient common questions
4 exist to support class certification, it may be possible to manage individual issues through the use
5 of surveys and statistical sampling”).)

6 Risks to the both the meal and rest period claims arise from fact that Defendant engaged
7 the Class Members to rehearse and perform in the advertising campaign (Kim Decl. ¶ 50.) Unlike
8 a workforce in a factory that are under the direct and constant supervision of their managers, the
9 Class Members spent a significant amount of time on their own while they waited for instruction
10 from Defendant (Kim Decl. ¶ 51.) Defendant will argue that this freedom of movement and lack
11 of oversight will inhibit any claim that they prevented the Class Members from taking duty-free
12 rest and meal periods – to the extent that they were entitled to any such meal or rest periods. (Kim
13 Decl. ¶ 52.)

14 **c. The Risks Associated with the Wage Statement Claim**

15 Labor Code § 226(a)(2) requires that every employer shall furnish each of his or her
16 employees an accurate itemized statement in writing showing total hours worked by the employee.
17 Labor Code § 226(a)(9) requires the wage statement to display all applicable hourly rates in effect
18 during the pay period and the corresponding number of hours worked at each hourly rate by the
19 employee.

20 Plaintiff acknowledged risk posed by Defendant’s argument that he was not misclassified
21 as an independent contractor under the ABC test, which would completely bar any recovery under
22 this claim. (Kim Decl. ¶ 53.) While Plaintiff believed his wage statement claim was relatively
23 strong given that he did not receive any statement associated with his payment, there was still risk
24 that a Court would find no liability as to this issue.¹ (Kim Decl. ¶ 54.)

25
26 ¹ Although neither party contemplated this risk at the time of settlement, there is additional
27 risk posed by *Naranjo v. Spectrum Security Services, Inc.* (Cal., May 6, 2024) 2024 Daily Journal
28 D.A.R. 3799, where the California Supreme Court recently upheld a “good faith” defense to a
wage statement claim under Labor Code § 226.

1 **d. The Risks Associated with the Waiting Time Penalty Claim**

2 Under Labor Code § 203, if an employer fails to provide wages at the time of an employee’s
3 termination or within 72 hours of resignation, then the employee’s wages shall continue as a
4 penalty for up to 30 days. Section 203 reflects a public policy that favors the full and prompt
5 payment of earned wages. (*See Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7;
6 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) Similarly, under Labor Code §§ 204 and 210,
7 an employee may seek a penalty for not being paid timely after the close of a payroll period.

8 Here, Plaintiff provided services as a model for one day on April 14, 2022 and argues that
9 he is owed waiting time penalties due to Defendants’ failure to pay appropriate overtime wages
10 and meal period premiums. (*See Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859.)
11 (Kim Decl. ¶ 55.)

12 In evaluating settlement, Plaintiff considered Defendant’s argument that it had a good faith
13 belief that (1) Plaintiff’s overtime wages were included in his daily salary (2) Plaintiff was
14 provided his meal and rest breaks. (*See, e.g., Hill v. Walmart Inc.*, 32 F.4th 811 (9th Cir. 2022)
15 (finding that a good faith belief precluded waiting time penalties as a matter of law.) Since the
16 waiting time penalties amount to a majority of class damages, Plaintiff believed that a significant
17 discount on this claim was reasonable given the attendant risks. (Kim Decl. ¶ 56.)

18 **e. The Risks Associated with the PAGA Claim**

19 Plaintiff is cognizant of risks associated with his PAGA claim and have therefore agreed
20 to discount this claim for multiple reasons. (Kim Decl. ¶ 57.) First, the aggrieved employees’
21 PAGA claims arise from the same violations as the foregoing class claims and bear the same risks
22 on the merits. (Kim Decl. ¶ 58.) Second, the Court has discretion to award less than the maximum
23 penalty, which Defendant argued would be appropriate considering the low amount of direct wage
24 damages, even if Plaintiff prevails. (*See Labor Code § 2699(e)(2)* [“a court may award a lesser
25 amount than the maximum civil penalty amount specified by this part if, based on the facts and
26 circumstances of the particular case, to do otherwise would result in an award that is unjust,
27 arbitrary and oppressive, or confiscatory”]; *Carrington v. Starbucks Corporation* (2018) 30
28

1 Cal.App.5th 504, 529 [affirming award of 10% of maximum PAGA penalty].) Finally, the
2 Settlement Class is compensated for these violations in the proposed Settlement Agreement, and
3 thus any PAGA recovery for these same violations would be duplicative. Thus, PAGA did not
4 make up a significant percentage of the overall potential liability compared to other claims. (Kim
5 Decl. ¶ 59.) As such, the Settlement Agreement’s contemplated PAGA payment of \$6,000 is
6 appropriate. (*Id.*)

7 **D. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

8 There is significant expense associated with the class certification process, which the
9 Parties can avoid by entering into the contemplated Settlement Agreement now. (Kim Decl. ¶ 60.)
10 If the Court did eventually certify a class, trial of a case involving approximately 327 Settlement
11 Class Members would require the retention of expensive expert witnesses, the accrual of extensive
12 litigation costs, and a significant time overlay by the Parties. (Kim Decl. ¶ 61.) Moreover, given
13 the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial
14 would have resulted in a lengthy and costly appeal. (Kim Decl. ¶ 62.) An appeal would result in
15 further delay for the Settlement Class Members who are waiting for a resolution in this matter.
16 (*Id.*)

17 **E. The Risk Associated With a Potential *Pick-Up Stix* Campaign**

18 There is also a risk that Defendants could engage in an individual settlement campaign
19 pursuant to *Chindarah v. Pick Up Stix, Inc.* (2009), 171 Cal.App.4th 796. Given the financial strain
20 that Defendant’s workers are no doubt experiencing due to the COVID-19 pandemic, there is a
21 significant risk that, if Defendant were to engage in such a campaign, many if not all of the
22 performers would choose to accept Defendant’s individual settlement offers. (Kim Decl. ¶ 64.) If
23 this were to occur, Plaintiff could be left without a sufficiently numerous class to represent a class
24 action. (*Id.*)

25 **F. The Risk of Maintaining Class Action Status through Trial**

26 This case has not yet been certified to be tried as a class action. (Kim Decl. ¶ 66.) While
27 Plaintiff believes there is strong evidence to support certification of several possible subclasses,
28

1 certification is always hard fought and subject to judicial discretion. Moreover, in class actions,
2 decertification is always a possibility. (*Id.*) In attempting to certify a class, the Parties would need
3 to conduct multiple depositions regarding Defendants' policies. (*Id.*) There is a risk for both sides
4 as to what these depositions will reveal and whether they will support class certification to the
5 extent expected. (*Id.*)

6 **G. The Amount Offered in Settlement**

7 It was very difficult for the Parties to reach this Settlement of \$385,000.00. (Kim Decl. ¶
8 67.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (*Id.*)
9 The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law,
10 risks, and all information substantiating the amount of penalties reasonably likely to be awarded
11 to the class were the trier of fact to find Defendant liable, and the assistance of an experienced
12 mediator, Jonathan Andrews, Esq. (*Id.*)

13 **a. Plaintiff's Assessment of Defendants' Maximum Exposure**

14 Plaintiff assessed full value of the Unpaid Overtime Wages claim, without any discount, at
15 approximately \$36,465. (Kim Decl. ¶ 68.) Plaintiff used an hourly average rate of \$46.75 and
16 assumed that the 260 individuals in the Regular Rate Class and the Wage Only Class worked a 10
17 hour shift with no premium pay. (*Id.*)

18 The full value of the Meal Period claim and Rest Period claim, without any discount, was
19 each approximately \$12,155. (Kim Decl. ¶ 69.)

20 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
21 to value the potential reimbursement at \$5 per Class Member, for reimbursement of the cost of
22 using one's personal device for communicating with Defendant on April 14, 2022. This brought
23 the damages for this claim to \$1,300. (Kim Decl. ¶ 70.)

24 Plaintiff valued the Wage Statement Claim, without discount, at approximately \$600. (Kim
25 Decl. ¶ 71.) This is based on 12 workweeks within the applicable limitations period for the Regular
26 Rate Class and the Wage Only Class. (Kim Decl. ¶ 72.)

27 Plaintiff valued the Waiting Time Claim, tied to the claims for unpaid wages, at
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1 \$3,359,310. (Kim Decl. ¶ 73.) This was based on the full amount of waiting time penalties due
2 to Defendant's failure to pay overtime and premium wages for the 203 Regular Rate Class
3 (\$3,304,560) and Defendant's failure to pay timely wages for 10 days for the 203 Waiting Time
4 Class (\$288,750). (*Id.*) Considering the derivative nature of Labor Code section 203 for the 203
5 Regular Rate Class and the disputes over willfulness, Plaintiff determined that accepting a steep
6 discount on this claim was appropriate. (Kim Decl. ¶ 74.)

7 Finally, Plaintiff calculated the value of the PAGA claim at \$6,000 for the PAGA Period,
8 which consists of at least 12 individuals who worked one Workweek. (Kim Decl. ¶ 75.) The main
9 risk taken into account with PAGA is the discretionary nature of the penalty award. (*Id.*) The court
10 could award the statutory maximum of one hundred (\$100) dollars for the initial violation and two
11 hundred (\$200) dollars thereafter or – in theory – one cent per wage statement. (Kim Decl. ¶ 76.)
12 While there is a dearth of available authority, in Plaintiff's view, were they to succeed on any of
13 the underlying Labor Code violations (especially waiting time penalties), it is not likely that the
14 Court would also award a large amount of PAGA penalties on top of damages. (Kim Decl. ¶ 77.)

15 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
16 Settlement Class Members' claims was approximately \$3,649,830 (of which \$3,539,310 or about
17 98% consist of Waiting Time Penalties). (Kim Decl. ¶ 78.) However, as a result of the forgoing
18 risks on the merits, Class Counsel believes the Gross Settlement Fund of \$385,000 is fair and
19 reasonable. (*Id.*)

20 **H. The Experience and Views of Counsel**

21 Finally, counsel's experience and success in similar class actions also weigh in favor of
22 preliminary approval. (*See Wershba, supra*, 91 Cal.App.4th at 245.) Class Counsel is very
23 experienced in prosecuting complex employment litigation and have focused their practice on
24 complex wage, hour, and working condition violations. (Kim Decl. ¶¶ 83-87.) Class Counsel is
25 well versed in class action litigation and has diligently and aggressively pursued this action. (Kim
26 Decl. ¶ 84.) Class Counsel currently serves as Class Counsel for multiple pending class action
27 lawsuits throughout California. (Kim Decl. ¶ 87.) After factoring in the risks explained above,
28

1 Class Counsel believes that the proposed settlement is fair and reasonable. (Kim Decl. ¶ 84.)

2 **I. The PAGA Allocation is Reasonable**

3 The “trial court should evaluate a PAGA settlement to determine whether it is fair,
4 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
5 deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*
6 (2021) 72 Cal.App.5th 56, 76.) A PAGA allocation, even if a small portion of the gross settlement,
7 could be reasonable if the settlement of the underlying wage and hour claims is robust and serves
8 the deterrent purpose of the PAGA statute. (*O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)
9 201 F.Supp.3d 1110, 1135.)

10 Here, \$6,000.00 is allocated to PAGA Penalties. (Kim Decl. ¶ 79.) Given that Defendant
11 will pay a total of \$385,000.00 as a result of the alleged violations, the class and PAGA settlement
12 is a large disincentive for Defendants to engage in similar Labor Code violations in the future. (*Id.*)
13 And, because all Class Members will receive a Class Notice with contact information for Class
14 Counsel, those employees will know to contact Class Counsel in the future if Defendant attempts
15 to engage in similar practices. (*Id.*) These factors – the payment of a large sum and employee
16 notice of violations and potential violations – serve to maximize enforcement of state labor
17 laws. (Kim Decl. ¶ 80.) Also, unlike in *Moniz*, here there is no unsubstantiated and
18 disproportionate allocation of civil penalties between different groups of employees. (Kim Decl. ¶
19 81.) Each Aggrieved Employee will receive the same amount of civil penalty because each worked
20 one Workweek during the PAGA Period. (*Id.*) Based on the foregoing, the PAGA allocation and
21 the individual PAGA payment satisfies policies underlying California’s wage and hour laws. (Kim
22 Decl. ¶ 82.)

23 **J. The Class Payment Allocation Is Fair and Reasonable**

24 Plans of allocation are subject to the same standard of review as class action settlements;
25 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
26 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, each Participating Class
27 Member will be allocated an equal share of their Class’s Allocation of the Net Settlement. The
28

1 Class Allocations are: 203 Regular Rate Class Allocation (72.74%), 203 Waiting Time Class
2 Allocation (24.97%), Wage Only Class Allocation (2.29%). This allocation distributes Settlement
3 funds proportionally to each class member's damages, and should therefore be approved as fair,
4 adequate, and reasonable. (Ex. 1 at ¶ 3.2.4.1)

5 **V. THE SERVICE AWARD TO THE NAMED PLAINTIFF**

6 Plaintiff's Counsel request an enhancement of \$10,000.00 to the Class Representative
7 Angel Rivera for his work on behalf of the Class. (Kim Decl. ¶ 83.) "Courts routinely approve
8 incentive awards to compensate named plaintiffs for the services they provide and the risks they
9 incurred during the course of the class action litigation." (*Ingram v. The Coca-Cola Company*, 200
10 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken*
11 *v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).) In *Coca-Cola*, the Court
12 approved service awards of \$300,000 to each named plaintiff in recognition of the services they
13 provided to the class by responding to discovery, participating in the mediation process, and taking
14 the risk of stepping forward on behalf of the class. *Coca-Cola*, 200 F.R.D. at 694; *see also, e.g.*
15 *Van Vranken*, 901 F. Supp. at 299 (approving \$50,000 participation award to plaintiffs); *Glass v.*
16 *UBS Financial Services, Inc.*, Case No. C-06-4068 MMC, 2007 WL 227862, at *17 (N.D. Cal.
17 Jan. 26, 2007) (approving \$25,000 enhancement to each named plaintiff).

18 Mr. Rivera is an adequate class representative because he has diligently, adequately and
19 fairly represented the Class and has not placed his interests above any member of the Class. (Rivera
20 Decl. ¶¶ 5-7; Kim Decl. ¶ 84.)

21 Here, Class Counsel requests an enhancement for Mr. Rivera's valiant effort and time
22 expended in this matter. Mr. Rivera dedicated approximately 35 hours in this litigation, which
23 includes researching and retaining competent counsel; providing information to Class Counsel
24 regarding the nature of the work for Defendants; compiling relevant documents; working closely
25 with Class Counsel to develop the theories of liability and marshal relevant evidence; regularly
26 discussing the status of the case with Class Counsel; discussing the case via telephone with many
27 Settlement Class Members; and responding promptly to Class Counsel's communications

1 regarding settlement. (Kim Decl. ¶ 85; Rivera Decl. ¶¶ 9-13.)

2 Class Counsel considers this to be a fair and reasonable enhancement. (Kim Decl. ¶ 86.)
3 The enhancement takes into consideration the time, effort, and expense incurred by Mr. Rivera in
4 coming forward to litigate this matter on behalf of all Class Members. (*Id.*) Additionally, the Class
5 Representative was at risk for paying for Defendants' legal fees and costs in the event that
6 Defendants prevailed at trial. (*Id.*)

7 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT**
8 **AGENCY**

9 As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action
10 Settlement will be concurrently uploaded to the Labor and Workforce Development Agency's
11 ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of
12 Plaintiff's Motion, a copy of the email from the LWDA confirming receipt, is attached to the
13 Declaration Frank H. Kim as Exhibit 6. (Kim Decl. ¶ 127.)

14 **VII. CONCLUSION**

15 Plaintiff respectfully submits that the proposed Settlement Agreement is fair, adequate,
16 reasonable, and in the best interest of the Settlement Class Members. Therefore, the Parties
17 respectfully request that the Court (1) grant final approval of the Joint Stipulation of Class Action
18 Settlement and Release of Claims, and all of its terms; (2) award attorneys' fees and costs; (3)
19 award ILYM Group, Inc. claims administration fees of \$7,450.00; (4) award the Class
20 Representative an enhancement of \$10,000.00; and (5) enter judgment.

21
22 DATED: March 14, 2025

KIM LEGAL, APC

23
24 By: /s/ Frank H. Kim
25 Frank H. Kim
26 Attorneys for Plaintiff Angel Rivera and the
27 Proposed Class
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