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employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ELIM BAZAN, as an individual and on behalf
of all employees similarly situated,

Plaintiff,

v.

CASA MARTIN, LLC, a Limited Liability
Company; CASA MARTIN PROMENADE,
LLC, a Limited Liability Company; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 23STCV04670

[Assigned to Hon. Elihu M. Berle, Dept.6]

**CLASS AND PAGA REPRESENTATIVE
ACTION**

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

Date: February 21, 2025
Time: 10 a.m.
Courtroom: Dept. 6
Judge: Hon. Elihu M. Berle

Action Filed: March 2, 2023
Trial Date: Not Set

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

2 PLEASE TAKE NOTICE that on February 21, 2025, at 10 a.m., or as soon thereafter as the
3 matter may be heard, in Department 6 of the above-captioned Court, located at 312 North Spring Street,
4 Los Angeles, California 90012, Plaintiff ELIM BAZAN (“Plaintiff”) will and hereby does move this
5 Court for an order:

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

8 2. Finally approving the CLASS ACTION AND PAGA SETTLEMENT
9 AGREEMENT (“Settlement” or “Agreement”);

10 3. Appointing counsel for Plaintiff, Tunyan Law, APC, as Class Counsel;

11 4. Appointing Plaintiff Elim Bazan as the Class Representative;

12 5. Approving the use of the proposed notice procedure and related notice form;

13 6. Approving ILYM GROUP, Inc. as the third-party administrator;

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

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

20 9. Awarding the sums requested in the Motion;

21 10. Entering a Final Judgment; and,

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

25 Good cause exists to grant this Motion because:

26 1. The Class meets all of the requirements for class certification for settlement
27 purposes under Code of Civil Procedure § 382;

28 2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the

disputed wage and hour claims asserted by Plaintiff;

3. Plaintiff and Class Counsel are adequate to represent the Class;

4. The notice procedures and related forms complied with California Rules of Court 3.766(d) and (e), and adequately apprised Class Members of their rights and fully comport with due process.

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

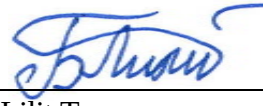
This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Lilit Tunyan, Plaintiff and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: December 23, 2024

TUNYAN LAW, APC

By: _____


Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff ELIM BAZAN

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1 **I. INTRODUCTION**

2 Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff respectfully requests that
3 this Court finally approve the proposed class action settlement set forth in the AMENDED CLASS
4 ACTION AND PAGA SETTLEMENT AGREEMENT (“Settlement” or “Agreement”) with CASA
5 MARTIN, LLC and CASA MARTIN PROMENADE LLC (“Defendants”). The AMENDED CLASS
6 ACTION AND PAGA SETTLEMENT AGREEMENT used by the Parties is based upon the model
7 agreement template made available by the Los Angeles Superior Court.

8 After informal discovery, the exchange of documents, and arm’s-length settlement negotiations,
9 Plaintiff and Defendants (collectively referred to herein as the “Parties”) reached a proposed class action
10 settlement with a gross settlement amount (“GSA”) of **\$102,500.00** in compromise of disputed claims
11 asserted on behalf of the below-defined Class consisting of **184** class members. Plaintiff believes that
12 this settlement is a fair, adequate, and reasonable compromise of the disputed claims for alleged unpaid
13 wage and hour violations and penalties asserted in this case.

14 Plaintiff now submits this Motion for Final Approval of Class Action Settlement, along with the
15 Settlement (attached to the Declaration of Lilit Tunyan [“Tunyan Decl.”], Exhibit 1 thereto).

16 **II. THE NOTICE PROCESS IS BEING SUCCESSFULLY IMPLEMENTED AFTER**
17 **PRELIMINARY APPROVAL**

18 Plaintiff and Defendants have initiated the class notice procedures set forth in the Settlement. The
19 Settlement Administrator, ILYM Group, Inc., sent individual Notices to 184 Class Members on
20 November 26, 2024. (Declaration of Makenna Snow [“Snow Decl.”], ¶¶ 5-7.) As of December 13, 2024,
21 16 notices were returned after mailing. Skip tracing found new addresses for 6 Class Members. 6
22 Notices were remailed with updated addresses. (Snow Decl., ¶¶ 8-10.) As of December 13, 2024 no Class
23 Members requested to be excluded from the Settlement, and no Class Members objected or disputed
24 Workweeks in writing. (Snow Decl., ¶¶ 11-13.) In accordance with this Court’s order granting
25 preliminary approval of the Settlement dated October 25, 2024, the deadline for Class Members to
26 submit requests for exclusion, objections and workweeks’ disputes is January 27, 2025. In accordance
27 with the same Court order Plaintiff intends to file the updated Settlement Administrator’s report
28 regarding the class notices administration process and received objections, exclusion requests and

workweeks' disputes by February 10, 2025.

PAYMENTS: For 184 Settlement Class Members, the average gross payment per Class Member is **\$557.06**. The Net Settlement Amount (including both Class and PAGA Settlement payments) is estimated to be at least **\$31,402.61**, resulting in an average net payment per Class Member of at least **\$170.67** (including PAGA Settlement payments) (Snow Decl., ¶¶15, 17.) The highest net payment (including PAGA Settlement payments) is estimated to be **\$976.85** (Snow Decl., ¶17.) For the Court's convenience, below is a summary of the key provisions of the Settlement.

III. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendants agree not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 11.1);
- Class: All non-exempt, hourly employees of Defendants who worked for Defendants in California during the Class Period (the "Class Period" is March 2, 2019 through March 22, 2024). (Settlement, ¶ 1.5, 1.12.) "Participating Class Members" are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶ 1.9, 1.35);
- Settlement Amount: Defendants will pay a maximum of **\$102,500.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **\$557.06** (Settlement, ¶ 1.22);
- Class Size: **184** individuals who worked **8,156** workweeks during Class Period;
- PAGA Group Size: **58** individuals, who worked **1,200** pay periods during PAGA Period;
- PAGA Period: March 2, 2022 through March 22, 2024. (Settlement, ¶ 1.31);
- Escalator Clause: Based on its records, Defendants estimate that, as of May 31, 2023, there are 175 Class Members. If the estimated number of Class Members increase by more than 10% during the Class Period, i.e. the total number of Class Members as of March 22, 2024 is more than 192, Defendants will increase the Gross Settlement Amount by a pro-rata dollar value equal to the number of employees in excess of 192 employees. (Settlement, ¶ 8); ***The escalator clause was not triggered.***

- Kullar/Munoz Analysis: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Lilit Tunyan, at Paragraph 18;
- No Reversion: The Settlement is a **non-reversionary** settlement (Settlement, ¶ 3.1);
- Certification: Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Lilit Tunyan, at Paragraphs 34-40;
- No Claim Form: No claim form is required (Settlement., ¶ 3.1);
- Class Release: The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) (Settlement, ¶¶ 1.39, 5.2);
- PAGA Release: The Class Members will release the PAGA Claims set forth in this Action, that were identified in the First Amended Complaint and Plaintiff's LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶¶ 1.40, 5.3);
- Release Effective Date: The Release is not active until Defendants tender all payments required under the Settlement to the Settlement Administrator (Settlement, ¶ 5);
- Net Settlement Amount Available to the Class: After deducting Class Counsel's attorneys' fees and costs, service payment to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be available for distribution to Class Members who do not opt out, with each Class Member receiving a share based on the number of workweeks each Class Member worked for Defendants within the Class Period. The Net Settlement Amount is estimated to be at least **\$31,402.61**, resulting in an average **net** payment per Class Member of at least **\$170.67** before any tax withholdings. (Settlement, ¶ 3);
- Tax Allocation: The amounts distributed to Class Members will be characterized as 20% alleged unpaid wages, 80% to penalties and interest, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 3.2.4.1, 3.2.5.2);
- Employer's Portion of Payroll Taxes Paid Separately: Defendants' portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 3.1);

- Settlement Administrator: The notice portion of the Settlement will be administered by a third-party Administrator, ILYM GROUP, Inc., and the Parties estimated that the costs of administration should not reasonably exceed \$10,000.00. ILYM GROUP, Inc.’s low bid for settlement administration services in the amount of **\$9,850.00** was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 3.2.3);
- Class Data for Administration: The Settlement Administrator will receive the Class List within 30 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 4.2);
- Notice: The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion (Settlement, ¶¶ 7.4 – 7.7);
- Notice Language: Notice will issue in English and Spanish (Settlement, ¶ 1.11);
- Objections: Objections can be submitted in person, through an attorney, or in writing to the Settlement Administrator, with no pre-requisite to being heard (Settlement, ¶ 7.7);
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Settlement, ¶¶ 7.5 and 7.7);
- PAGA Allocation: From the GSA, **\$15,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq.* (“PAGA”), and seventy-five percent (75%), or **\$11,250.00**, will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶¶ 1.34, 3.2.5.);
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Declaration of Lilit Tunyan;
- Enhancement/Service Award to Plaintiff: Defendants will not oppose the application for Class Representative Service Payment of up to **\$7,500.00** for Plaintiff, to be paid from the GSA (Settlement, ¶ 3.2.1);
- Fees and Costs: Defendants will not oppose Class Counsel’s application for fees not to exceed 33 1/3% of the GSA (**\$34,166.67**), and actual costs, in an amount not to exceed

1 **\$10,000.00**, to be paid out of the GSA (Settlement, ¶ 3.2.2);

- 2 • Check Void Period: Settlement checks will be valid for 180 days (Settlement, ¶ 4.4.3);
- 3 • Uncashed Checks: Any settlement checks that are mailed to the Class Members and remain
- 4 uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be
- 5 directed to the California Controller's Unclaimed Property Fund (Settlement, ¶ 4.4.3);
- 6 • Judgment Notice: Judgment will be posted on the Settlement Administrator's website after
- 7 entry (Settlement, ¶ 7.8.1);
- 8 • Confidentiality Provisions: The Settlement permits Class Counsel to discuss the Settlement
- 9 with Class Members (Settlement ¶ 11.3).

10 (Tunyan Decl., ¶¶ 10-11 and Exhibit 1 thereto.)

11 **IV. FACTUAL AND PROCEDURAL BACKGROUND**

12 **A. Plaintiff's Claims**

13 On March 2, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of
14 action against Defendants for: (1) Violation of Labor Code §§ 204, 510, 1194, 1198 (Failure to Pay All
15 Wages; (2) Violation of Labor Code §§ 226.7, 512 (Failure to Provide Meal Periods); (3) Violation of
16 Labor Code § 226.7 (Failure to Provide Rest Periods); (4) Violation of Labor Code § 226, (Failure to
17 Keep Accurate Itemized Wage Statements); (5) Violation of Labor Code §§ 201-203 (Failure to Pay
18 Wages Upon Termination of Employment); (6) Violation of Labor Code § 2802 (Failure to Reimburse
19 For Necessary Expenditures); (7) Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business
20 Practices). On May 8, 2023, Plaintiff filed a First Amended Complaint adding a cause of action for Civil
21 Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]. The First Amended Complaint is the operative
22 complaint in the Action (the "Operative Complaint.") (Tunyan Decl., ¶ 3.)

23 Pursuant to Labor Code § 2699.3(a), Plaintiff gave timely written notice to Defendants and the
24 LWDA by sending the PAGA Notice and the amended PAGA Notice. (Tunyan Decl., ¶ 4.)

25 **B. Pre-Settlement Data Production and Analysis**

26 The Parties have conducted informal discovery and investigation of the facts and law. Such
27 discovery and investigation have included, inter alia, the exchange of informal data and discoverable
28 information in preparation for the settlement negotiations. (Tunyan Decl., ¶ 5.) The Parties have

analyzed payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of the Class, average workweeks, sample size time and pay records and average rate of hourly pay, wage and hour policies. (*Id.*) Prior to engaging in settlement negotiations Defendants also produced Defendants’ financial records to include 2021 and 2022 tax returns; January 2022 – December 2022 loss and profit statements; and January 2023 – September 2023 loss and profit statements. (*Id.*)

After reviewing documents regarding Defendants’ wage and hour policies and practices and other information obtained during the informal exchange of discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to engaging in settlement negotiations. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (Tunyan Decl., ¶ 6.)

C. Settlement

Prior to settlement the Parties engaged in arm’s-length settlement negotiations, which led to this Agreement to settle the Action. (Tunyan Decl., ¶ 7.) During settlement negotiations, the Parties discussed at length the burdens and risks of continuing with the litigation considering Defendants’ financial condition as well as the merits of the claims and defenses. After successful negotiations, the Parties then signed a long form settlement agreement (“Agreement”). (*Id.*)

Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendants’ defenses thereto. Plaintiff and Class Counsel have also taken into account Defendants’ financial condition and Defendants’ agreement to enter into a Settlement that confers substantial relief upon the Class. (Tunyan Decl., ¶8.)

Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Tunyan Decl., ¶ 9.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. (*Id.*) If this Settlement is not approved by the Court for any reason, Defendants reserve their right to contest

class certification. (*Id.*) This Settlement, if approved by the Court, will result in the termination with prejudice of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

V. CLASS DEFINITION

The Class is defined as follows:

All non-exempt, hourly employees of Defendants who worked for Defendants in California during the Class Period (the “Class Period” is March 2, 2019 through March 22, 2024.) “Participating Class Members” are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶ 1.35.)(Tunyan Decl., ¶ 34 and Exhibit 1.)

The Aggrieved Employees are defined as follows:

All non-exempt, hourly employees of Defendants who worked for Defendants in California during the PAGA Period (the “PAGA Period” is March 2, 2022 through March 22, 2024.) Aggrieved Employees cannot opt out of the settlement of the PAGA claim. (Settlement, ¶ 7.5.4.)

VI. DISCUSSION

A. The Court Should Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and a “class action proceeding is superior to other means for a fair and efficient adjudication of the litigation.” *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this Settlement *only*, Defendants stipulated to conditional certification. (Settlement ¶ 12.1.)

“The certification question is ‘essentially a procedural one that does not ask whether an action is legally or factually meritorious.’” *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal.

1 App. 4th 1286, 1298 (2010). In ruling on certification, a trial court’s task is to determine “whether ... the
2 issues which may be jointly tried, when compared with those requiring separate adjudication, are so
3 numerous or substantial that the maintenance of a class action would be advantageous to the judicial
4 process and to the litigants.” *Id.* Thus, “[t]he relevant comparison lies between the costs and benefits of
5 adjudicating plaintiffs’ claims in a class action and the costs and benefits of proceeding by numerous
6 separate actions” *See, e.g., id.*

7 “[I]t is also well established that trial courts should use different standards to determine the
8 propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard
9 of scrutiny is used for settlement cases.” *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal.
10 App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As
11 the court noted in *Dunk*, although certification requirements are intended “to protect the interests of the
12 non-representative class members,” that concern is “protected by the trial court’s fairness review of the
13 settlement.” *Dunk*, 48 Cal. App. 4th at 1807 n.19.

14 Indeed, numerous courts have certified settlement classes. For example, the court in *In re Drexel*
15 *Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 122 L. Ed.
16 497, 113 S. Ct 1070 (1993), addressed settlement before a class was certified. After a hearing, the
17 “district court issued an order certifying the class and approving the settlement agreement.” *Id.* at 289;
18 *see also Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D. Cal. 1976) (“the use of the
19 tentative settlement class procedure was appropriate in this case”), *aff’d*, 572 F.2d 657 (9th Cir.), cert.
20 denied, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action
21 litigation and an approved procedure which ought to be followed in this case. *See Newberg on Class*
22 *Actions* (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; *Manual for Complex Litigation*, 2d (1993) § 30.45.

23 In view of these standards, **as discussed more thoroughly as part of the preliminary approval**
24 **motion already granted by the Court**, the Settlement Class should be certified for purposes of
25 settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

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1 **B. The Court Should Finally Approve the Settlement Because It Is a Fair, Adequate,**
2 **and Reasonable Compromise of Disputed Wage Claims in View of Defendants’**
3 **Potential Liability Exposure and the Risks of Continued Litigation**

4 California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231,
5 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists
6 to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v.*
7 *Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary
8 settlement approval, notice being given to class members, and a final fairness and approval hearing being
9 held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed
10 below, this Court should finally approve the Settlement and enter Judgment.

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

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

17 To evaluate a settlement, the trial court must receive “basic information about the nature and
18 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
19 release of those claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.
20 App. 4th 116, 133 (2008). However, the record need *not* contain an explicit statement of the maximum
21 theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
22 186 Cal. App. 4th 399, 409 (2010).

23 **2. The Parties Reached the Settlement Through Arms’ Length Negotiations**
24 **Between Experienced Counsel After Sufficient Data Was Exchanged to**
25 **Evaluate Settlement.**

26 A settlement is presumptively fair where it is reached through arms’ length bargaining, based on
27 sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is
28

1 experienced in similar litigation, and the percentage of objectors is small.¹ *Dunk*, 48 Cal.App.4th at 1802;
2 *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v.*
3 *Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a
4 trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.,*
5 *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding
6 concern is to ensure that a proposed settlement is “fair, adequate, and reasonable.” *Dunk*, at 1801,
7 quoting *Officers for Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

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

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

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

15 Here, the Settlement resulted from thorough, arms’ length negotiations between experienced
16 counsel. (Tunyan Decl., ¶¶ 7-9.) With respect to the claims at issue in this case, Plaintiff obtained
17 employees’ pay and time data from Defendants and then carefully reviewed that information. Counsel
18 for Plaintiff also examined relevant policies and Defendants’ financial data.

19 Based on the totality of that review, Plaintiff estimated the potential exposure and then estimated
20 risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiff’s
21 counsel conducted were sufficient to provide them with enough information to intelligently evaluate the
22 estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed
23 below and are also sufficient to allow this Court to do the same. *See, e.g., Wershba v. Apple Computer,*
24 *Inc.*, 91 Cal. App. 4th 224, 245 (2001).

27 ¹ Because the fourth prerequisite for the presumption to arise cannot be addressed until the final
28 approval hearing, only the first three prerequisites are relevant at this preliminary stage of the settlement
approval process.

1 **3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise**
2 **of Class Members’ Claims Based on Defendants’ Estimated Liability**
3 **Exposure Given the Risks Continued Litigation Would Entail.**

4 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
5 trial and does not have to provide 100% of damages sought to be fair and reasonable. “In the context of a
6 settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the
7 complaint, but rather whether the settlement is reasonable under all of the circumstances.” *Wershba*, 91
8 Cal. App. 4th at 250. Accordingly, because settlements involve compromise, even one that provides for
9 substantially narrower relief than would likely be obtained if the suit were successfully litigated can be
10 reasonable given that “the public interest may indeed be served by a voluntary settlement in which each
11 side gives ground in the interest of avoiding litigation.” *Id.*, quoting *Air Line Stewards & Stewardesses*
12 *Ass’n, Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 109 (7th Cir. 1972).

13 With respect to the claims asserted on behalf of the Class in this case, there are serious risks that
14 support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that
15 Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v.*
16 *US Bank Nat’l Ass’n*, 59 Cal. 4th 1, 39 & n. 33 (2014) (“*Duran*”), citing *Dilts v. Penske Logistics, LLC*
17 2014 WL 205039 (S.D. Cal. 2014) (dismissing certified off-the-clock claims based on proof at trial); (ii)
18 the risk that Defendants’ meal and rest period policies might not ultimately support class certification or
19 a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions
20 favorable on class certification issue without expressing opinion as to ultimate viability of proposition);
21 (iii) the risk that uncertainties pertaining to the ultimate legality of Defendants’ policies and practices
22 could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the
23 risk that individual differences between Class Members could be construed as pertaining to liability and
24 not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk that any civil penalties award under the
25 PAGA could be reduced by the Court in its discretion, *see Labor Code § 2699(e)(1)*; (vi) the risk that
26 class treatment could be deemed improper as to one or more claims, except for settlement purposes; and,
27 (vii) the risk that appellate litigation could ensue; (viii) the risk that violation rate estimates would prove
28 much lower than expected; (ix) the risk that pursuing the matter further in litigation can result in a

smaller settlement amount and less benefit to Class Members if Defendants' financial condition worsens. (Tunyan Decl., ¶ 15.) These risks are non-exhaustive.

In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Class Members. (Tunyan Decl. ¶¶ 12-19.) The settlement amount is, of course, a compromise figure. (Tunyan Decl. ¶ 16.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendants. (*Id.*)

Also by necessity, consideration was given to Defendants' financial condition and the realities that Defendants continue to be impacted by the COVID-19 pandemic with a downturn in business and increasing operations costs.

Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. (Tunyan Decl. ¶ 16.) For the approximately **184** members of the Class, the average **gross** recovery is at least **\$557.06** per class member, and the estimated average **net** recovery for each Class Member is approximately **\$170.6** (*Id.*) Given that Defendants could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, a Class Member who worked a greater number of weeks for Defendants will receive a larger share of the Settlement than a Class Member who worked for a shorter amount of time during the class period. (*Id.*)

After analyzing the claims in this matter, Plaintiff has concluded that the Gross Settlement Amount of **\$102,500.00** is about 59% of the **\$173,441.60** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (Tunyan Decl., ¶ 17.) This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*) The maximum calculated reasonable exposure is **\$907,507.00**, including PAGA penalties. (*Id.*)

- A reasonably estimated exposure for unpaid wages for unlawful rounding was calculated, with the assistance of an expert, to be approximately **\$2,722.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$1,524.32**, assuming certification probability of **80%** and merits success at **70%**.

- A reasonably estimated exposure for unpaid off-the-clock work and unpaid cash tips was calculated, with the assistance of an expert, to be approximately **\$54,513.00**. However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **\$10,902.60**, assuming certification probability of 50% and merits success at 40%.
- A reasonably estimated exposure for rest break violations over the class period was calculated at **\$227,585.00**, but with chances of certification and proof of liability (40% and 40% respectively) for a risk-adjusted exposure of **\$36,413.60**.
- A reasonably estimated exposure for meal break violations over the class period was calculated at **\$127,446.00** with chances of certification and liability risks (40% and 40% respectively) resulting in a risk-adjusted exposure of **\$20,391.36**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties were estimated to be approximately **\$3,712.50** and **\$19,186.90**, respectively, on maximum exposures of **\$37,125.00** and **\$191,869.00**, respectively (50% and 20% respectively).
- A reasonably estimated exposure for unreimbursed expenses was calculated at **\$77,947.00**, with chances of certification and liability risks (80% and 70% respectively) resulting in a risk-adjusted exposure of **\$43,650.32**.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **\$135,781.60**, excluding PAGA. (*Id.*)
- PAGA penalties were calculated as having a maximum realistic exposure of **\$188,300.00**, but a risk adjusted value of **\$37,660.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently-filed Declaration of Lilit Tunyan sets forth claim valuation in additional detail. (*See*, Tunyan Decl., ¶ 17.)

This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Tunyan Decl., ¶ 18.) Second, rest break and meal period claims have been challenging to certify for many years, even

1 after *Brinker*. (Tunyan Decl., ¶ 18.) Third, the certification rates in California are lower than
2 conventional wisdom holds. See, H. Scott Leviant, *Second Interim Report on class actions in California*
3 *sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at
4 [http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html)
5 [california-sheds-n.html](http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html); see also, *Findings of the Study of California Class Action Litigation, 2000-2006*,
6 available at <http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf> (finding, at page
7 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a
8 settlement **or** as part of a contested certification motion).

9 Here, the estimated certification probabilities are **above** the average rate at which cases were
10 certified in California over the study years, based upon data available through the California Courts
11 websites. (Tunyan Decl., ¶ 18.) In sum, well *under* 20% of all cases filed as proposed class actions are
12 ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly 11% of the maximum
13 plausible recovery (estimated to be approximately \$907,507.00, including PAGA), which falls within the
14 expected outcome under the likelihood of success metric. (*Id.*) It would also be appropriate to evaluate
15 the result by examining only the premium wages at issue (approximately \$412,266.00, with no risk
16 reduction), excluding penalties and interest; the settlement is about 25% of the premium wages (unpaid
17 wages, meal period premiums, and rest break premiums) at maximum realistic exposure value.² This
18 Settlement achieves the goals of the litigation.

19 **4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate,** 20 **and Reasonable.**

21 The proposed method of allocating the Settlement Fund to Class Members also is fair and
22 reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members
23 based on time worked by the Class Member during the Class Period, in relation to the total amount of
24

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

time worked by all participating Class Members collectively during the class period. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of weeks for Defendants will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Tunyan Decl., ¶¶ 11, 17.)

5. The Proposed Enhancement Award to Plaintiff Is Fair, Adequate, and Reasonable and Warrants Final Approval.

The proposed enhancement payment to Plaintiff is intended to recognize the substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294 (N.D.Cal. 1995) (approving a \$50,000 enhancement award). Plaintiff contributed time to the prosecution of this matter, including assistance prior to the settlement negotiations and during settlement negotiations with information and substantial time conferring with counsel over the course of this litigation and before it was filed. Most importantly, \$7,500.00 as an Enhancement Award is very reasonable given that in addition to the standard risks undertaken by Plaintiff for involvement in the Action as any class representative in class cases, Plaintiff has given up his right to sue Defendants for non-wage-and-hour related potential claims of wrongful termination, harassment, retaliation and defamation not to create any conflicts of interest as a class representative and put Class Members' interests above his own interests. Indeed, instead of filing a separate lawsuit or a settlement demand for his individual non-wage related claims against Defendants and/or entering into separate undisclosed individual agreements with Defendants for settlement and release of his non-wage related claims, Plaintiff has chosen to forego his right to enter into undisclosed individual settlement agreements and filed this class and PAGA action only. Therefore, an Enhancement Award of \$7,500.00 is also reasonable given Plaintiff provides a general release of all potential claims

1 and a waiver pursuant to Section 1542 of the California Civil Code which class members do not provide.
2 (Bazan Decl., ¶¶ 4-21; Tunyan Decl., ¶ 35.) The enhancement also recognizes the considerable risks
3 Plaintiff undertook on behalf of the Class to be personally liable for all costs incurred regardless of the
4 success of the litigation or class certification, as well as the personal risk of facing intrusive discovery
5 and potential disclosure to future employers that Plaintiff sued a former employer, making future
6 employment prospects uncertain.

7 **6. The Proposed Award of Attorneys’ Fees and Costs Is Also Fair, Adequate,**
8 **and Reasonable and Merits Final Approval.**

9 *a) Plaintiff’s Counsel Should be Awarded Fees Based on a Percentage of*
10 *the Fund Recovered, Consistent with the Common Fund Method*

11 The request for attorneys’ fees as a percentage of the settlement fund is supported by the
12 “common fund theory,” where “one who expends attorneys’ fees in winning a suit which creates a fund
13 from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
14 litigation costs.” *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The lodestar may be cross-checked against
15 the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

16 The purpose of the common fund approach is to “spread litigation costs proportionally among all
17 the beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent v. Hughes*
18 *Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund doctrine has been applied
19 “consistently in California when an action brought by one party creates a fund in which other persons are
20 entitled to share.” *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995); *see Quinn v.*
21 *State of California*, 15 Cal. 3d 162, 167 (1975) (“[O]ne who expends attorneys’ fees in winning a suit
22 which creates a fund from which others derive benefits may require those passive beneficiaries to bear a
23 fair share of the litigation costs.”).

24 The California Supreme Court removed any lingering doubt about the use of the percentage of
25 the fund method to award attorney’s fees in California Courts:

26 We join the overwhelming majority of federal and state courts in holding that when
27 class action litigation establishes a monetary fund for the benefit of the class members,
28 and the trial court in its equitable powers awards class counsel a fee out of that fund, the
court may determine the amount of a reasonable fee by choosing an appropriate
percentage of the fund created. The recognized advantages of the percentage method—
including relative ease of calculation, alignment of incentives between counsel and the

1 class, a better approximation of market conditions in a contingency case, and the
2 encouragement it provides counsel to seek an early settlement and avoid unnecessarily
3 prolonging the litigation (See pt. I, *ante*; *Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97
4 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p.
5 516)—convince us the percentage method is a valuable tool that should not be denied
6 our trial courts.

7 *Laffitte v. Robert Half Intern. Inc.*, 1 Cal. 5th 480, 503 (2016).³ Thus, this Court may and, as strongly
8 encouraged by the California Supreme Court, *should* award attorney’s fees to Plaintiff’s counsel based
9 upon the percentage of the fund methodology.

10 “Empirical studies show that, regardless whether the percentage method or the lodestar method is
11 used, fee awards in class actions average around one-third of the recovery.” *Chavez v. Netflix, Inc.*, 162
12 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent with Plaintiff’s counsels’ experience in these
13 types of cases. Here, Plaintiff’s attorneys request attorneys’ fees of up to **\$34,166.67** (one-third of the
14 GSA), and costs of **\$8,330.72** (below the cap or \$10,000), which includes payment for filing fees and
15 other standard expenses. (Tunyan Decl., ¶¶ 31-34.) Given the efforts and risks involved in this case, as
16 well as the results achieved, these amounts are within the range of reasonableness and warrant *final*
17 *approval*.

18 *b) Class Counsel Is Entitled to Attorneys’ Fees and Costs under the*
19 *California Labor Code and California’s Private Attorney General Statute*

20 Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

21 [A]ny employee receiving less than the legal minimum wage or the legal overtime
22 compensation applicable to the employee is entitled to recover in a civil action the
23 unpaid balance of the full amount of this minimum wage or overtime compensation,
24 including interest thereon, reasonable attorney’s fees, and costs of suit.

25 Lab. Code § 1194. As this litigation culminated in a Settlement that provides for a recovery of unpaid
26 wages, including unpaid minimum and overtimes wages, Plaintiff is entitled to recover reasonable
27 attorneys’ fees and costs under the Labor Code.

28 Class Counsel is also entitled to a fee under California’s private attorney general statute, Code of

³ The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing
doubt about the use of the percentage method: “The *Dunk* court, while finding the percentage method
inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport
to bar its usage generally in common fund cases.” *Laffitte*, 1 Cal. 5th at 501.

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

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

The Action also conferred a significant benefit on a class of persons who worked for Defendants during the Class Period and were, according to allegations, not properly compensated for all hours worked and were not provided meal and rest periods or compensation therefor.

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

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

Plaintiff’s fee application is also reasonable based on Class Counsel’s lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden in

1 this regard by submitting “declarations evidencing the reasonable hourly rate for their services and
2 establishing the number of hours spent working on the case” as “California case law permits fee awards
3 in the absence of detailed time sheets.” *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at
4 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and
5 the reasonable hourly compensation are computed to arrive at a “lodestar” figure which may then be
6 augmented or diminished by the court taking into account various “multiplier” factors. *See Ramos*, 82
7 Cal. App. 4th at 622 (citing *Serrano*, 20 Cal. 3d at 48-49).

8 Here, Class Counsel’s billed lodestar exceeds \$71,770.00 which is based on approximately **131.2**
9 *billed* hours (not including final estimated hours) at the attorneys’ customary hourly rates. (Tunyan
10 Decl., ¶¶ 31-32.) The actual lodestar is estimated to be **\$74,520.00**. (Tunyan Decl., ¶ 33.) Thus, the
11 request for \$34,166.67 represents a **negative lodestar multiplier of 2.2**, when compared to the recorded
12 and estimated future lodestar of counsel, totaling \$74,520.00 (\$71,770.00 + \$2,750.00) and a **negative**
13 **lodestar multiplier of 2.1**, when compared to the recorded lodestar of counsel, totaling \$71,770.00 is
14 reasonable under the lodestar method.

15 (1) Class Counsel’s Hours Are Reasonable

16 In determining whether the number of hours expended on the litigation was reasonable, the court
17 must determine that “the time spent was reasonably necessary and that [] counsel made ‘a good faith
18 effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.’”
19 *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court “should defer to the
20 winning lawyer’s professional judgment as to how much time he was required to spend on the case.”
21 *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (noting that “[l]awyers are not likely
22 to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too
23 uncertain, as to both the result and the amount of the fee.”).

24 Here, Class Counsel expended a prudent amount of time litigating the case to achieve the
25 excellent result on behalf of the class. (Tunyan Decl. ¶ 31.)

26 (2) Class Counsel’s Hourly Rates Are Reasonable

27 The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group,*
28 *Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). “[I]n assessing a reasonable hourly rate, the trial court is

1 allowed to consider the attorneys' skill as reflected in the quality of work, as well as the attorneys'
2 reputation and status." *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial
3 court may also "find hourly rates reasonable based on evidence of other courts approving similar rates."
4 *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

5 Class Counsel are experienced litigators who specialize in employment law, with a substantial
6 wage and hour class action practice. (Tunyan Decl. ¶¶ 20-26.) A number of courts, including this Court,
7 have approved Class Counsel's hourly rates which are consistent with her practice area, legal market.
8 (Tunyan Decl. ¶ 26.) Given the skill and experience of Class Counsel, and the excellent result achieved,
9 Class Counsel's hourly rates are reasonable.

10 *d) Class Counsel's Costs Are Reasonable*

11 The Settlement Agreement provides for reimbursement of costs not to exceed \$10,000.00. To
12 date, Tunyan Law, APC has already incurred actual costs in the amount of at least \$8,330.72 which
13 include future final approval motion filing, the administrator's updated report and final report filing and
14 CaseAnywhere future fees. (Tunyan Decl., ¶ 34.) These costs were reasonably incurred in prosecuting
15 the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class
16 Counsel respectfully requests the Court approve costs in the amount of **\$8,330.72**. (Tunyan Decl., ¶ 34.)

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

18 In deciding whether to approve a proposed settlement, a trial court must determine if the
19 proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In
20 exercising this power, the overriding concern is to ensure that a proposed settlement is "fair, adequate,
21 and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). ILYM GROUP, Inc.,
22 which has been selected due to its competitive bid, estimates that administration can be performed for
23 **\$9,850.00**. In counsel's experience, based on similar wage-and-hour actions, an estimated cost of
24 **\$9,850.00** is a fair and reasonable amount for administration fees and should be finally approved.
25 (Tunyan Decl., ¶ 36.)

26 **8. The PAGA Allocation is Reasonable**

27 The ultimate decision as to the amount of penalties is always up to the discretion of the Court.
28 Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil

penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”

Prior to the issuance of *Moniz v. Adecco USA, Inc.*, 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions addressing that question. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O’Connor v. Uber Technologies, Inc.*, 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) (“By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA.”); *see also Visceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) (“Applying O’Connor’s sliding scale approach, settlement of the PAGA claim may be substantially reduced below its standalone settlement value without sacrificing its statutory purposes because the non PAGA settlement is relatively substantial.”)

Moniz then provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz* said:

[W]hile PAGA does not require the trial court to act as a fiduciary for aggrieved employees, adoption of a standard of review for settlements that prevents “ ‘ ‘ ‘fraud, collusion or unfairness’ ” (Dunk, *supra*, 48 Cal.App.4th at pp. 1800–1801, 56 Cal.Rptr.2d 483), and protects the interests of the public and the LWDA in the enforcement of state labor laws is warranted. Because many of the factors used to evaluate class action settlements bear on a settlement’s fairness—including the strength of the plaintiff’s case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement.

Given PAGA’s purpose to protect the public interest, we also agree with the LWDA and federal district courts that have found it appropriate to review a PAGA settlement to ascertain whether a settlement is fair in view of PAGA’s purposes and policies. (*O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132–1134; *Jordan v. NCI Group, Inc.* (Jan. 5, 2018, No. EDCV 16-1701-JVS) 2018 WL 1409590, at *1–*2, 2018 U.S. Dist. Lexis 25297, at *3–*4; *Chamberlain v. Baker Hughes, a GE Co., LLC*, *supra*, 2020 WL 4350207 at *3–*4, 2020 U.S. Dist. Lexis 134582 at *10–*11; *see Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 59, 61–62, 45 Cal.Rptr.3d 647 [where the Legislature required court approval of private settlements of Proposition 65 actions brought to vindicate the public interest, court must evaluate the resulting consent decree to determine if it is “just” and “serves the public interest”].) We therefore hold that a

1 trial court should evaluate a PAGA settlement to determine whether it is fair,
2 reasonable, and adequate in view of PAGA's purposes to remediate present labor law
3 violations, deter future ones, and to maximize enforcement of state labor laws. (*See*
4 *Williams, supra*, 3 Cal.5th at p. 546, 220 Cal.Rptr.3d 472, 398 P.3d 69 [PAGA "sought
5 to remediate present violations and deter future ones"]; *Arias, supra*, 46 Cal.4th at p.
6 980, 95 Cal.Rptr.3d 588, 209 P.3d 923 [the declared purpose of PAGA was to augment
7 state enforcement efforts to achieve maximum compliance with labor laws].) The trial
8 court below used this standard.

9 *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with the federal courts that have considered how to
10 evaluate a PAGA settlement, concluded that the class action factors are appropriately considered, along
11 with a consideration of whether the settlement furthers "PAGA's purposes to remediate present labor law
12 violations, deter future ones, and to maximize enforcement of state labor laws."

13 As to the first set of elements (the class-type analysis), it is embodied in Plaintiff's discussion of
14 the adequacy of the settlement generally. To assess the fairness, adequacy, and reasonableness of a class
15 action settlement, the court should also consider the expense, complexity and likely duration of further
16 litigation. *Dunk*, 48 Cal. App. 4th at 1801. Here, the expense, complexity and likely duration of future
17 litigation was to some extent an unknown. However, what is certain is that to adequately establish the
18 foundational violations that would support a substantial penalty award, tremendous time and expense
19 would be invested. To adequately establish that aggrieved employees experience the alleged violations,
20 and at what frequency, most of the aggrieved employees would need to be interviewed in a systematic
21 fashion and their testimony cataloged in way sufficiently meaningful to permit the submission of
22 summary evidence at trial, such as via survey. *First*, the burdensome nature of such a process would be
23 expensive and time-consuming. *Second*, the individuals already interviewed confirmed substantial risk
24 that the Court would either substantially reduce any penalty ultimately awarded *or* conclude that the
25 conduct was insufficient to support a penalty award. *Third*, it would be essentially impossible to
26 formulate an objectively reliable means of summarizing testimonial experiences, other than by an
27 extraordinarily detailed survey. And formulating such a survey would have been important, since
28 frequency of violations would need to be established before any penalties could be recovered. At least as
to claims such as meal period and rest break violations, the decisions of aggrieved employees are a major
factor in assessing liability. Direct testimony would have been required from as many of the 58
aggrieved employees as could be obtained, which would be, at best, very difficult.

1 The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*,
2 PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future
3 violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major
4 portion of settlement funds to class members still advances the goal of labor law violation remediation.
5 Class members benefit from payments intended to offset the harm of alleged violations of wage and hour
6 requirements. The allocation of a major portion of settlement funds to class members also deters future
7 violations, since, from the perspective of an employer, where settlement funds go is less significant than
8 the fact that settlement funds are issuing at all. Finally, allocation of a major portion of settlement funds
9 to class members still advances the goal of enforcement of state labor law. This settlement is, by
10 definition, a response to alleged violations of state labor laws, balanced against the competing factors of
11 uncertainty of proof and other risks.

12 In addition, there is no evidence that a court or a commissioner had informed Defendant that its
13 conduct violated the Labor Code. *Amaral v. Cintas Corp.*, 163 Cal. App. 4th 1157, 1209 (2008); *Willis v.*
14 *Xerox Bus. Servs., LLC*, 2013 WL 6053831, *7-8 (E.D. Cal. 2013) ("Under California law, courts have
15 held that employers are not subject to heightened penalties for subsequent violations until and unless a
16 court or commissioner notified the employer that it is in violation of the Labor Code.") And in *Cotter*,
17 the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not
18 appear to be a case where a company has deliberately sought to evade the law." *Cotter v. Lyft, Inc.*, 176
19 F. Supp. 3d at 941. Here, Defendant can state a strong case that, as the Court concluded in *Cotter*, its
20 efforts to devise compliant operational policies do not indicate an organization that has deliberately
21 sought to evade the law. This is a very significant risk factor.

22 Finally, the PAGA allocation is fair. The LWDA is receiving **\$11,250.00**. The Class is
23 receiving, net, an estimated **\$31,402.61** for the releases for eight theories of recovery (including the
24 **\$3,250.00** as the aggrieved employees' share of the PAGA Allocation). An allocation to the LWDA
25 equal to approximately **35.8%** of the Net Settlement Amount is not unfair and satisfies the policies
26 underlying California's wage and hour laws. The allocation to the LWDA is not unfair and satisfies the
27 policies underlying California's wage and hour laws.
28

1 **VII. CONCLUSION**

2 For all the foregoing reasons, because the Class meets the requirements for certification, because
3 the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the
4 proposed notice procedure and forms comport with Rule 3.766 and due process, this Court should grant
5 this Motion for Final Approval.
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7

8 Respectfully submitted,

9 Dated: December 23, 2024

TUNYAN LAW, APC

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11 By: _____

Lilit Tunyan

Artur Tunyan

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13 Attorneys for Plaintiff ELIM BAZAN
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STATE OF CALIFORNIA)
) ss
 COUNTY OF LOS ANGELES)

On the date indicated below, I served the document described as: **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

Attorneys for Defendants Casa Martin, LLC and Casa Martin Promenade, LLC

Executed on December 23, 2024 at Glendale, California.

Frank

Signature