

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

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

Attorneys for WILLIAM GIRON, on behalf of himself,
all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

WILLIAM GIRON on behalf of himself,
all others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

ACCENT BUILDING RESTORATION,
INC.; and DOES 1-100,

Defendants.

Case No. 23STCV08941

*[Assigned for All Purposes to the
Hon. Elihu M. Berle; Dept. 6]*

**PLAINTIFF WILLIAM GIRON'S MOTION
FOR FINAL APPROVAL OF CLASS AND
PAGA ACTION SETTLEMENT**

Date: September 24, 2024
Time: 10:00 a.m.

Complaint Filed: April 21, 2023
Trial Date: None Set

1	TABLE OF CONTENTS	
2	I. INTRODUCTION.....	1
3	II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY	3
4	a. Litigation History	3
5	b. Discovery and Investigation	3
6	c. Settlement Negotiations.....	4
7	III. TERMS OF THE PROPOSED SETTLEMENT	4
8	a. Deductions from the Settlement	4
9	b. Calculation of the Settlement Payments to Class Members	4
10	c. Release of Claims	6
11	d. Notice to the Class.....	7
12	e. Distribution of Funds.....	8
13	f. Final Judgment	9
14	IV. ARGUMENT	9
15	a. The Settlement is Fair, Reasonable, and Adequate and Satisfies the Standard for Final	
16	Approval	9
17	b. The Court Should Approve the Requested Fees and Costs	10
18	i. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage of a	
19	Common Fund	10
20	ii. The Requested Attorneys’ Fee and Cost Award is Within the Range of Fees Approved	
21	in Comparable Common Fund Cases	12
22	iii. A Lodestar Cross-Check with a Modest Multiplier Confirms the Reasonableness of	
23	the Requested Fee	14
24	iv. Class Counsel’s Hourly Rates Are Reasonable	16
25	v. Class Counsels’ Total Hours are Reasonable.....	17
26	vi. Costs of Litigation	18
27	c. The Class Representative Service Payment is Reasonable	18
28	d. The Administration Costs are Reasonable	21

1	V. CONCLUSION	22
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Cases

1		
2	Cases	
3	<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i> (S.D.N.Y. 1979) 480 F.Supp. 1195 ..	11
4	<i>Bell v. Farmers Ins. Exch.</i> (2004) 115 Cal. App. 4th 715	20
5	<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	12
6	<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F. Supp. 610	10
7	<i>Cates v. Chiang</i> (2013) 213 Cal. App. 4th 791	15
8	<i>Cellphone Termination Fee Cases</i> (2009) 180 Cal.App.4th 1110	11
9	<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43.....	12
10	<i>Cho v. Seagate Tech. Holdings, Inc.</i> (2009) 177 Cal. App. 4th 734	10
11	<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105	13
12	<i>Consumer Privacy Cases</i> (2009) 175 Cal.App.4th 545	11
13	<i>Cook v. Niedert</i> (7th Cir. 1998) 142 F.3d 1004.....	20
14	<i>Craft v. County of San Bernardino</i> (C.D. Cal. 2008) 624 F. Supp. 2d 1113.....	16
15	<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal. App. 4th 1794.....	10
16	<i>Early v. Superior Court</i> (2000) 79 Cal.App.4th 1420	20
17	<i>Flannery v. California Highway Patrol</i> (1998) 61 Cal. App. 4th 629	17
18	<i>Frank v. Eastman Kodak Co.</i> (W.D.N.Y. 2005) 228 F.R.D. 174.....	19
19	<i>Glendora Community Redevelopment Agency v. Demeter</i> (1984) 155 Cal.App.3d 465.....	16
20	<i>Graham v. DaimlerChrysler Corp.</i> (2004) 34 Cal.4th 553	14
21	<i>Green v. Obledo</i> (1981) 29 Cal.3d 126	12
22	<i>Hopson v. Hanesbrands Inc.</i> (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900	16
23	<i>In Quinn v. State of California</i> (1995) 15 Cal.3d 162	13
24	<i>In re Ampicillin Antitrust Litigation</i> (D. D.C. 1981) 526 F.Supp. 494	11
25	<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal. App. 4th 1380	20
26	<i>In re Microsoft I-V Cases</i> (2006) 135 Cal. App. 4th 706	10
27	<i>Ketchum v. Moses</i> (2001) 24 Cal.4th 1122.....	10, 14, 17
28	<i>Koehl v. Verio, Inc.</i> (2006) 142 Cal.App.4th 1313.....	20

1	Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116	10
2	Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480	11
3	Lealao v. Beneficial Cal., Inc. (2000) 82 Cal.App.4th 19	10, 11, 12
4	New York Gaslight Club, Inc. v. Carey (1980) 447 U.S. 54	17
5	Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of S.F. (9th Cir. 1982) 688 F.2d 615	10
6	PLCM Group, Inc. v. Drexler (2000) 22 Cal.4th 1084	14, 16
7	Potter v. Pacific Coast Lumber Co. of Cal. (1951) 37 Cal. 2d 592	9
8	Roberts v. Texaco (S.D.N.Y. 1997) 979 F. Supp. 185	20
9	Serrano v. Priest (1977) 20 Cal.3d 25	12, 14
10	Serrano v. Priest (1982) 32 Cal.3d 621	17
11	Stambaugh v. Superior Court (1976) 62 Cal. App. 3d 231	9
12	Thayer v. Wells Fargo Bank (2001) 92 Cal.App.4th 819	14
13	Thornton v. East Texas Motor Freight (6th Cir. 1974) 497 F.2d 416	21
14	Vasquez v. Superior Court (1971) 4 Cal.3d 800	12
15	Vincent v. Hughes Air West, Inc. (9th Cir. 1977) 557 F.2d 759	12
16	Vizcaino v. Microsoft (9th Cir. 2002) 290 F.3d 1043	13
17	Vizcaino v. Microsoft Corp. (9th Cir. 2002) 290 F.3d 1043	14, 15, 16
18	Vo v. Las Virgenes Municipal Water Dist. (2000) 79 Cal.App.4th 440	17
19	Wal-Mart Stores, Inc. v. Visa U.S.A., Inc. (2d Cir. 2005) 396 F.3d 96	16
20	Wershba v. Apple Computer, Inc. (2001) 91 Cal. App. 4th 224	9, 10, 16
21	Whiteway v. Fedex Kinkos Office & Print Services, Inc. (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS	
22	95398	20
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 This motion seeks approval of a non-reversionary \$800,000 proposed wage and hour class
3 action settlement reached between Plaintiff William Giron (hereinafter “Plaintiff” or “Mr. Giron”)
4 and Defendant Accent Building Restoration (hereinafter “Defendant” or “ABR”) (hereinafter
5 Plaintiff and Defendant are collectively referred to as the “Parties”).¹ The settlement is on behalf
6 of Plaintiff and a Class comprised of all current and former non-exempt hourly, employees who
7 were employed by Defendant in California at any time from April 21, 2019, through November
8 16, 2023.² This motion also seeks an order entering judgment.

9 On June 19, 2024, the Settlement Administrator mailed Class Notices to all 101 Class
10 Members.³ These Class Members have until August 19, 2024, to request to be excluded from the
11 settlement or to object to it. As of the date of this filing, the Settlement Administrator has not
12 received any disputes regarding the number of workweeks that Class Members were credited to
13 have worked.⁴ Currently, the Settlement Administrator has not received any objections to the
14 settlement or requests for exclusion from the settlement.⁵ The Settlement Administrator will
15 provide the Court with the final Class response on September 13, 2024.

16 To date, this matter has required 313.6 hours of attorney time from Class Counsel. This
17 litigation involved investigations into the claims asserted, discovery, the production and review of
18 documents from ABR, a full day of mediation, and evaluation of continuing litigation.

19 As will be demonstrated herein, the attorneys’ fee request of \$266,640 (“Attorney Fee
20 Award”), which represents 33.33% of the Gross Settlement Amount (“GSA”), is fully supported
21 using the percentage fee method. The Attorney Fee Award is also supported under the lodestar
22 cross-check method. Plaintiff further moves for reimbursement of litigation costs and expenses in
23 the amount of \$16,764.40 (“Cost Award”), originally estimated not to exceed \$30,000, for costs
24

25 ¹ The Parties’ Class Action and PAGA Settlement Agreement (“Agreement”) is attached to the
26 Declaration of David Mara, Esq. as Exhibit 1. “Exhibit 1” herein refers to the Parties’ Agreement.

26 ² Exhibit 1 at Paragraph 1.5.

27 ³ Declaration of Nick Castro of ILYM Group, Inc., in Support of Motion for Final Approval of
28 Class Action Settlement (“Castro Dec.”) ¶ 7.

28 ⁴ Castro Dec. ¶ 13.

⁵ Castro Dec. ¶¶ 11-12.

1 incurred in litigating this matter. Plaintiff also moves for final approval of the payment in the
2 amount of \$15,000 to Plaintiff (this payment is referred to as the “Class Representative Service
3 Payment”) to compensate him for agreeing to a general release of his claims against ABR and his
4 vital role in representing the Class Members and spearheading the case to seek actual and
5 substantial monetary relief for the Class. Additionally, Plaintiff moves for final approval of
6 Administration Costs in the amount of \$6,950, originally estimated not to exceed \$15,000, to the
7 Settlement Administrator, ILYM Group, Inc. (hereinafter “ILYM”) for the costs and fees of
8 administering settlement (“Administration Costs”).

9 The requested Attorney Fee Award, Cost Award, Class Representative Service Payment,
10 and Administration Costs were fully disclosed to the Class Members when the Class Notice was
11 mailed to them. Most importantly, to date, the settlement and all of its terms have received support
12 from Class Members as not a single Class Member has objected to the settlement or requested to
13 be excluded from it. With a currently estimated average and high payout to Settlement Class
14 Members of \$4,402.43 and \$14,293.04, respectively, the settlement is fair, adequate, and
15 reasonable. The Court is, therefore, respectfully requested to consider the Class Members’
16 endorsement of the settlement and grant final approval of the settlement, and approve of the
17 Attorney Fee Award, Cost Award, Class Representative Service Payment, and Administration
18 Costs in the amounts as preliminarily approved of by this Court and disclosed to the Class
19 Members, and as requested herein.

20 As demonstrated herein, Class Counsel is convinced that the proposed settlement is in the
21 best interest of the Class based on the negotiations and a detailed knowledge of the issues present
22 in this matter. The length and risks of trial and perils of litigation that affect the value of the claims
23 were all carefully weighed by Class Counsel. In addition, the affirmative defenses asserted by
24 ABR, ABR’s contentions that Class Members were compensated for all wages due and provided
25 lawful meal and rest breaks, the uncertainty of class certification, the difficulties of complex
26 litigation, the lengthy process of establishing specific damages, and various possible delays and
27 appeals were all carefully considered by Class Counsel in arriving at the proposed settlement.

28 ///

II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY

a. Litigation History

Defendant offers a wide variety of property improvement services. On April 21, 2023, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay all straight time wages, failure to pay all overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to adopt a compliant sick pay policy, knowing and intentional failure to comply with itemized employee wage statement provisions, failure to pay all wages due at the time of termination of employment, failure to reimburse/illegal deductions, and violation of the Unfair Competition Law. (Mara Dec. ¶ 12).

On April 19, 2023, Plaintiff provided notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant in accordance with the Private Attorneys General Act of 2004 (“PAGA”). On August 14, 2023, Plaintiff filed a First Amended Complaint adding a cause of action against ABR for violation of the PAGA. The First Amended Complaint is the operative complaint in the Action. (Mara Dec. ¶ 13).

b. Discovery and Investigation

After filing, the Parties engaged in informal discovery. These discovery efforts led to Defendant producing policy documents that covered employees’ employment with Defendant, and time and wage records. Included within these documents were Defendant’s wage and hour policies, including its meal and rest period policies. Defendant also produced time and wage records for a 20% random sampling of the Class Members which Plaintiff’s Counsel analyzed. The sampling should be reflective of the entire Class as the employees included in it were selected at random. Defendant further produced Plaintiff’s personnel file and time and pay records. Plaintiff also requested, and Defendant produced, data surrounding the number of current and former employees, as well as the number of workweeks worked by Class Members during the relevant time period, to establish a potential exposure model in preparation for mediation. From this discovery, Plaintiff and his Counsel were able to analyze Defendant’s liability in this action and prepare a realistic damage model. (Mara Dec. ¶ 14).

///

1 **c. Settlement Negotiations**

2 The Parties attended an all-day mediation presided over by respected wage and hour
3 mediator Jeffrey Ross on November 14, 2023. This mediation was ultimately successful. The
4 Parties then met and conferred over all the terms of the settlement and finalized their settlement in
5 the Parties' Agreement. The Parties seek final approval of the Agreement in the instant motion.
6 (*See* Mara Dec. ¶ 15; *see also* Exhibit 1 attached thereto).

7 **III. TERMS OF THE PROPOSED SETTLEMENT**

8 Under the terms of the settlement, Defendant will create a settlement fund of \$800,000.

9 **a. Deductions from the Settlement**

10 The Parties have agreed, subject to and contingent upon the Court's approval, that this
11 action be settled and compromised for the non-reversionary total sum of \$800,000 ("Gross
12 Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of
13 \$266,640 (33.33% of the GSA) to compensate Class Counsel for work already performed and all
14 work remaining to be performed in documenting the settlement, administering the settlement, and
15 securing Court approval; (b) litigation costs of \$16,764.40 (originally estimated not to exceed
16 \$30,000); (c) a Class Representative Service Payment to the named class representative, William
17 Giron, in the sum of \$15,000 in consideration for prosecuting this class action, serving as Class
18 Representative, work performed, and risks undertaken for the payment of attorneys' fees and costs
19 in the event he had been unsuccessful in the matter; (d) settlement administration fees and expenses
20 to ILYM in the amount of \$6,950 (estimated not to exceed approximately \$15,000); and (e)
21 \$50,000 allocated to Plaintiff's claims under the PAGA. Of this payment, 75%, or \$37,500 will be
22 provided to the LWDA, and 25%, or \$12,500, will be available for distribution to Aggrieved
23 Employees.⁶

24 **b. Calculation of the Settlement Payments to Class Members**

25 After all Court-approved deductions from the GSA, it is estimated that \$444,645.60 ("Net
26 Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement
27

28 ⁶ Aggrieved Employees are all Class Members who worked for ABR from April 19, 2022, through
November 16, 2023. (Exhibit 1 at Paragraph 1.4).

1 payment, will be distributed to Participating Class Members.⁷ Subject to the terms and conditions
2 of the settlement, each Participating Class Member will receive a portion of the Net Class
3 Settlement Amount called their “Individual Class Payment.” An Individual Class Payment will be
4 calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked
5 by all Participating Class Members during the Class Period and (b) multiplying the result by each
6 Participating Class Member’s Workweeks. (Exhibit 1 at Paragraph 3.2.4). Therefore, the value of
7 each Class Member’s Individual Settlement Share ties directly to the amount of weeks that he or
8 she worked.

9 The Individual Class Payment will be divided into a “wage portion” to compensate
10 Participating Class Members for alleged unpaid wages and a “non-wage portion” to compensate
11 Participating Class Members for alleged interest and penalties. The wage portion will make up
12 40% of each Participating Class Members’ Individual Class Payment, and the non-wage portion
13 will make up 60% of each Participating Class Members’ Individual Class Payment. (Exhibit 1 at
14 Paragraph 3.2.4.1).

15 In addition, each Aggrieved Employee will receive a will receive a proportionate share of
16 the PAGA Payment that is allocated for distribution to PAGA Aggrieved Employees (i.e., 25% of
17 the PAGA Payment). The Administrator will calculate each Individual PAGA Payment by (a)
18 dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties (\$12,500) by the
19 total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA
20 Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Period Pay Periods.
21 Aggrieved Employees assume full responsibility and liability for any taxes owed on their
22 Individual PAGA Payment. (Exhibit 1 at Paragraph 3.2.5.1). Therefore, the value of each PAGA
23 Aggrieved Employees’ PAGA Settlement Share ties directly to the amount of pay periods that the
24 PAGA Aggrieved Employees worked during the PAGA Period.

25 Under no circumstances will any portion of the \$800,000 settlement revert to Defendant
26 and 100% of the NSA will be paid out to Participating Class Members. In addition, the employer’s
27

28 ⁷ Participating Class Members are all Class Members who do not submit a valid and timely
Request for Exclusion from the Settlement. (Exhibit 1 at Paragraph 1.35).

1 share of taxes will be paid in addition to and outside of the GSA.

2 **c. Release of Claims**

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

5 All Participating Class Members, on behalf of themselves and their respective
6 former and present representatives, agents, attorneys, heirs, administrators,
7 successors and assigns, release Released Parties from (i) all claims that were
8 alleged, or reasonably could have been alleged, based on the Class Period facts
9 stated in the Operative Complaint and ascertained in the course of the Action
10 including, e.g., failure to pay all straight time wages, failure to pay all overtime
11 wages, failure to provide meal periods, failure to authorize and permit rest periods,
12 failure to adopt a compliant sick pay policy, failure to comply with itemized
13 employee wage statement provisions, failure to pay all wages due at the time of
14 termination, failure to reimburse/illegal deductions, and violation of the Unfair
Competition Law. This release will be for the Class Period. Except as set forth in
Section 5.3 of this Agreement, Participating Class Members do not release any
other claims, including claims for vested benefits, wrongful termination, violation
of the Fair Employment and Housing Act, unemployment insurance, disability,
social security, workers' compensation or claims based on facts occurring outside
the Class Period.

15 (Exhibit 1 at Paragraph 5.2).

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

18 All Non-Participating Class Members who are Aggrieved Employees are deemed
19 to release, on behalf of themselves and their respective former and present
20 representatives, agents, attorneys, heirs, administrators, successors and assigns, the
21 Released Parties from all claims for PAGA penalties that were alleged, or
22 reasonably could have been alleged, based on the PAGA Period facts stated in the
23 Operative Complaint, and the PAGA Notice and ascertained in the Action
24 including, e.g., failure to pay all straight time wages, failure to pay all overtime
wages, failure to provide meal periods, failure to authorize and permit rest periods,
failure to adopt a compliant sick pay policy, failure to comply with itemized
employee wage statement provisions, failure to pay all wages due at the time of
termination, and failure to reimburse/illegal deductions. This release will be for the
PAGA Period.

25 (Exhibit 1 at Paragraph 5.3).

26 In addition, Plaintiff has agreed to a general release of his claims. (*See* Exhibit 1 at
27 Paragraph 5.1).
28

1 **d. Notice to the Class**

2 On June 13, 2024, ILYM Group received the class data file from Counsel for ABR, which
3 contained the name, social security number, last known mailing address, class workweeks, PAGA
4 pay periods for each Settlement Class Member. (Castro Dec. ¶ 5). The Class List contained 101
5 individuals who worked 7,404 work weeks. (*Id.*). As part of the preparation for mailing, all 101
6 names and addresses contained in the Class List were then processed against the National Change
7 of Address (“NCOA”) database, maintained by the United States Postal Service (“USPS”), for
8 purposes of updating and confirming the mailing addresses of the Class Members before mailing
9 of the Class Notice. (Castro Dec. ¶ 6). The NCOA contains requested change of addresses filed
10 with the USPS. (*Id.*). To the extent that an updated address was found in the NCOA database, the
11 updated address was used for the mailing of the Class Notice. (*Id.*). To the extent that no updated
12 address was found in the NCOA database, the original address provided by Counsel for Defendant
13 was used for the mailing of the Class Notices. (*Id.*). On June 19, 2024, the Class Notice was mailed,
14 via U.S First Class Mail, to all 101 individuals contained in the Class List. (Castro Dec. ¶ 7).

15 After mailing, as of the filing of this motion, eight (8) Class Notices were returned to the
16 Settlement Administrator. (Castro Dec. ¶ 8). Of the returned Class Notices, none were returned
17 with a forwarding address. (*Id.*). Therefore, the Settlement Administrator conducted a
18 computerized skip trace on the returned Class Notices in order to acquire updated addresses for
19 the purpose of re-mailing the Class Notices. (*Id.*). This skip trace effort resulted in obtaining two
20 (2) updated address, to which Settlement Administrator re-mailed the Class Notice via U.S. First
21 Class Mail. (*Id.*). As such, to date, six (6) Class Notices are considered undeliverable. (Castro Dec.
22 ¶ 10).

23 Class Members have until August 19, 2024, to respond to the settlement. To date, the
24 settlement has received support from the Class Members. Not a single Class Member has submitted
25 an objection or request for exclusion from the settlement. (*See* Castro Dec. ¶¶ 11-12). In addition,
26 no Class Member has submitted a dispute as to the workweeks attributed to him or her. (*See* Castro
27 Dec. ¶ 13). Therefore, currently, all 101 Class Members are participating in the settlement,
28 meaning 100% of the Class Members are Participating Class Members. The Settlement

1 Administrator will provide the final statistics from the Class Notice process and the Class
2 Members' Response on September 13, 2024.

3 **e. Distribution of Funds**

4 Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts
5 necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the
6 Administrator no later than 14 days after the Effective Date. (Exhibit 1 at Paragraph 4.3). The
7 Effective Date is the date by when both of the following have occurred: (a) the Court enters a
8 Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final.
9 The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class
10 Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more
11 Participating Class Members objects to the Settlement, the day after the deadline for filing a notice
12 of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the
13 appellate court affirms the Judgment and issues a remittitur. (Exhibit 1 at Paragraph 1.18).

14 Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will
15 mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA
16 Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class
17 Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
18 Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment
19 and the Class Representative Service Payment shall not precede disbursement of Individual Class
20 Payments and Individual PAGA Payments. (Exhibit 1 at Paragraph 4.4).

21 The Administrator will issue checks for the Individual Class Payments and/or Individual
22 PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid.
23 The face of each check shall prominently state the date (not less than 180 days after the date of
24 mailing) when the check will be voided. The Administrator will cancel all checks not cashed by
25 the void date. The Administrator will send checks for Individual Settlement Payments to all
26 Participating Class Members (including those for whom Class Notice was returned undelivered).
27 The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees
28 including Non-Participating Class Members who qualify as Aggrieved Employees (including

1 those for whom Class Notice was returned undelivered). The Administrator may send Participating
2 Class Members a single check combining the Individual Class Payment and the Individual PAGA
3 Payment. Before mailing any checks, the Settlement Administrator must update the recipients'
4 mailing addresses using the National Change of Address Database. (Exhibit 1 at Paragraph 4.4.1).

5 The Administrator must conduct a Class Member Address Search for all other Class
6 Members whose checks are returned undelivered without United States Postal Service ("USPS")
7 forwarding address. Within seven (7) days of receiving a returned check the Administrator must
8 re-mail checks to the USPS forwarding address provided or to an address ascertained through the
9 Class Member Address Search. The Administrator need not take further steps to deliver checks to
10 Class Members whose re-mailed checks are returned as undelivered. The Administrator shall
11 promptly send a replacement check to any Class Member whose original check was lost or
12 misplaced, requested by the Class Member prior to the void date. (Exhibit 1 at Paragraph 4.4.2).

13 For any Class Member whose Individual Class Payment check or Individual PAGA
14 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
15 funds represented by such checks to the California Controller's Unclaimed Property Fund in the
16 name of the Class Member. (Exhibit 1 at Paragraph 4.4.3).

17 **f. Final Judgment**

18 Pursuant to Cal. Rules of Court, Rule 3.771(b), notice of the final judgment will be posted
19 on the Settlement Administrator's website. (See Exhibit 1 at Paragraph 7.8.1).

20 **IV. ARGUMENT**

21 **a. The Settlement is Fair, Reasonable, and Adequate and Satisfies the Standard 22 for Final Approval**

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

In deciding whether to approve a class settlement, a court evaluates whether the proposed

1 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
2 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.* (9th Cir. 1982)
3 688 F.2d 615, 625); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742 43. A
4 court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801.
5 However, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-
6 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
7 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
8 is small.” *Dunk*, 48 Cal. App. 4th at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a
9 court should consider additional relevant factors, including the strength of the plaintiff’s case
10 compared to the settlement amount; the risk, expenses, complexity, and likely duration of further
11 litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th
12 at 1802; see also *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723; see also *Boyd v.*
13 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

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

21 **b. The Court Should Approve the Requested Fees and Costs**

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

24 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
25 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
26 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,

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

1 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
2 in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.

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

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

22 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
23 depending on the circumstances of the case. *Conte & Newberg, Newberg on Class Actions* (4th
24 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F. Supp. 494
25 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
26 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195 (awarding
27 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely
28 approve class action attorneys’ fees awards “averag[ing] around one-third of the recovery.” *Chavez*

1 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of
2 contingency fee in marketplace was appropriate in class actions). The Supreme Court has explained
3 that “percentage of the fund method more accurately reflects the results achieved.” *Laffitte*, 1 Cal.
4 5th at 439. In a similar wage and hour class action, *Laffitte v. Robert Half International, Inc.*, 1
5 Cal. 5th 480 (2016), the California Supreme Court affirmed an award of attorneys’ fees equal to
6 1/3 of the common fund. Here, the requested fee is at this same percentage, and evidences all of
7 the same considerations which warranted the one-third fee in *Laffitte*.

8 In short, Class Counsel’s fee request of \$266,640 (which represents 33.33% of the GSA)
9 is in line with awards in similar cases in California and nationwide and demonstrates that Class
10 Counsel’s fee request is consistent with market rates and is reasonable.

11 **ii. The Requested Attorneys’ Fee and Cost Award is Within the Range of**
12 **Fees Approved in Comparable Common Fund Cases**

13 Class Counsel applies for an award of attorneys’ fees in the sum of \$266,640 (33.33% of
14 the GSA), and litigation costs of \$16,764.40. (Mara Dec. ¶ 16). California state and federal courts
15 have recognized that an appropriate method for determining an award of attorneys’ fees is based
16 on a percentage of the total value of benefits made available to Class Members by the settlement,
17 also known as the “common fund” method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano*
18 *III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th
19 Cir. 1977) 557 F.2d 759, 769.⁹ Where the amount of a settlement is a “certain easily calculable
20 sum of money,” California courts may calculate attorneys’ fees as a reasonable percentage of the
21 settlement. Weil and Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14,
22 § 14:145; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is
23 preferred in class and representative actions because “it better approximates the workings of the
24 marketplace than the lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49. The purpose of
25 the common fund/percentage approach is to “spread litigation costs proportionally among all the
26 beneficiaries so that the active beneficiary does not bear the entire burden alone.” *Vincent, supra*,
27 557 F.2d at 769.

28 ⁹ The California Supreme Court has urged trial courts to consider class action federal authority.
Green v. Obledo (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

1 *In Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: “[O]ne who
2 expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits
3 may require those passive beneficiaries to bear a fair share of the litigation costs.” Similarly, in
4 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme
5 Court recognized that the percentage-of-the-benefit approach has been applied “consistently in
6 California when an action brought by one party creates a fund in which other persons are entitled
7 to share.” The reasons for applying this equitable doctrine include: “...fairness to the successful
8 litigant, who might otherwise receive no benefit because his recovery might be consumed by the
9 expenses; correlative prevention of an unfair advantage to the others who are entitled to share in
10 the fund and who should bear their share of the burden of its recovery; encouragement of the
11 attorney for the successful litigant, who will be more willing to undertake and diligently prosecute
12 proper litigation for the protection or recovery of the fund if he is assured that he will be properly
13 and directly compensated should his efforts be successful.” *Id.*

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

22 When the lawsuit was originally filed, the prospect of a long, drawn-out battle with a
23 defendant represented by experienced counsel, was almost a certainty. By taking on this “battle”
24 on a contingency basis, Class Counsel risked substantial economic loss if the results were not
25 successful. This substantial risk is the reason that the courts approve the use of the percentage
26 method when a settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft*
27 (9th Cir. 2002) 290 F.3d 1043, 1048-49 (quotations omitted) (discussing the risks of engaging in
28 litigation without certainty of compensation).

 Under the terms of the Agreement, ABR will pay a Gross Settlement Amount of \$800,000.

1 An award of attorneys' fees is to be calculated as a percentage of the total value of benefits made
2 available to the Class Members under the settlement. In light of Class Counsel's prosecution and
3 resolution of the case, the requested Attorneys' Fees are appropriate and reasonable.

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

11 Class Counsel have obtained a substantial recovery on behalf of Plaintiff and the Class.
12 Thus, the requested Attorney Fee Award is appropriate.

13 **iii. A Lodestar Cross-Check with a Modest Multiplier Confirms the Reasonableness of the Requested Fee**

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

23 Courts "routinely enhance[] the lodestar to reflect the risk of non-payment in common fund
24 cases." *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051; *Graham v.*
25 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 ("One of the most common fee enhancers [...] is for contingency risk."). Such an enhancement "mirrors the established practice in the private
26 legal market of rewarding attorneys' fees for taking the risk of nonpayment by paying them a
27 premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 220 F.3d at
28

1 1051. A risk multiplier also serves to bring the financial incentives for enforcing important rights
2 “into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-
3 for-service basis.” *Ketchum*, 24 Cal.4th at 1132. In determining whether or not to enhance or
4 reduce the lodestar, California courts take into account multiple factors, including: the time and
5 labor required; the skill requisite to perform the legal services properly; the preclusion of other
6 employment by the attorney due to the acceptance of the case; the contingent nature of the fee; the
7 amount involved and results obtained; the experience, reputation, and ability of the attorney; and
8 awards in similar cases. *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 822.

9 Class Counsel has worked 313.6 hours to date on this case and have calculated the lodestar
10 fee on those hours at \$215,426.50 at rates reflecting those currently earned in the marketplace.
11 (Mara Dec. ¶ 17, Exhibit 5; Declaration of Peter Horton, Esq. (“Horton Dec.”) ¶ 7). All of the work
12 and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this
13 case and are reflected in the result achieved. (Mara Dec. ¶ 18).

14 This was a highly contested matter which required a significant amount of time and labor.
15 Class Counsel had to investigate and analyze documents and data for Plaintiff and a sampling of
16 Class Members. In addition, as part of the above investigation and analysis, Plaintiff had to marshal
17 the evidence in a manner in which it could be adjudicated on a class-wide basis. So often, lawyers
18 unskilled in the class action aspect of wage and hour cases do not pay attention to or put the work
19 into how the evidence must be presented for class-wide adjudication. Strong class-wide cases
20 perish in the hands of inexperienced counsel because the case has not been worked up to succeed
21 at certification. Class Counsel here has considerable experience in class litigation and, from the
22 beginning of the case, is marshalling the evidence with a sharp focus on class-wide proof needed
23 for the matter to get certified. This case was no different. This filtering of voluminous evidence
24 into class-wide proof while keeping an eye on the merits of the litigation required a considerable
25 amount of attorney time and skill. (Mara Decl. ¶ 19).

26 Most importantly, all services were performed by Class Counsel on a contingent basis.
27 (Mara Dec. ¶ 20). Both California and federal courts recognize that attorneys should be
28 compensated for taking on such contingent risks and provided with financial incentives to enforce

1 important rights and protections like those at issue in this case. See, e.g., *Vizcaino*, 290 F.3d at
2 1051; *Ketchum*, 24 Cal.4th at 1132-33. Here, Class Counsel bore the risk that, in spite of all of
3 their efforts and skill employed, there may be no recovery.

4 Class Counsel respectfully requests a fee of \$266,640, which, based on the total attorney
5 hours expended and rates, would require a modest 1.24 multiplier to raise the generated fees of
6 \$215,426.50 to the requested amount. Far greater multipliers have been awarded in similar cases,
7 and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded
8 in like cases. Courts routinely enhance lodestar amounts based on multipliers that “range from 2
9 to 4 or even higher.”¹⁰ Thus, consideration of the lodestar method as a cross-check to the
10 percentage figure sought strongly supports the reasonableness of the requested fee award. Class
11 Counsel moves for and respectfully requests that the Court grant attorneys’ fees in the amount of
12 \$266,640.

13 **iv. Class Counsel’s Hourly Rates Are Reasonable**

14 Class Counsel’s hourly rates are between \$340 and \$800 and are in line with rates typically
15 approved in wage and hour class action litigation and which rates have been approved by Courts
16 in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego
17 County Superior Courts. (Mara Dec. ¶ 21; Exhibit 2, Westlaw Court Express’s Legal Billing
18 Report, Volume 14, Number 3, California Region for December 2012; Exhibit 3, 2014 Declaration
19 of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exhibit 4, 2012
20 National Law Journal Survey of Hourly Billing Rates for Partners and Associates).

21 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
22 experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson*
23 *v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining a
24 reasonable hourly rate, courts may consider factors such as the attorney’s skill and experience, the

25 ¹⁰ *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 255 (2001); see, e.g., *Vizcaino*, 290 F.3d
26 at 1051 (approving multiplier of 3.65); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123
27 (2d Cir. 2005) (approving multiplier of 3.5); *Craft v. County of San Bernardino*, 624 F. Supp. 2d
28 1113, 1125 (C.D. Cal. 2008) (awarding multiplier of 5.2 and collecting cases with cross-check
multipliers ranging from 4.5 to 19.6); *Glendora Community Redevelopment Agency v. Demeter*,
155 Cal.App.3d 465, 479-80 (1984) (approving fee award with multiplier of 12).

1 nature of the work performed, the relevant area of expertise and the attorney's customary billing
2 rates. *Flannery v. California Highway Patro* (1998) 61 Cal. App. 4th 629, 632.

3 Class Counsel's skill and experience support their hourly rates. Their practice is limited
4 exclusively to litigation, focusing on the representation of employees in wage and hour and
5 consumer class action matters. (Mara Dec. ¶¶ 2-11; Horton Dec. ¶¶ 2-5). As leading attorneys in
6 the field of wage and hour class action litigation, Plaintiff's counsel continually monitors the
7 prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of
8 their attorneys and paralegals/law clerks to be consistent with the prevailing market rates in the
9 private sector for attorneys and staff of comparable skill, qualifications and experience. Other wage
10 and hour attorneys working as class counsel before California courts charge comparable if not
11 higher rates. (Mara Dec., Exh. 2, Westlaw Court Express's Legal Billing Report, Volume 14,
12 Number 3, California Region for December 2012; Exh. 3, 2014 Declaration of Richard M. Pearl
13 in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exh. 4, 2012 National Law Journal
14 Survey of Hourly Billing Rates for Partners and Associates). Therefore, as they are in line with
15 those of the relevant community, Class Counsel's hourly rates are reasonable.

16 **v. Class Counsels' Total Hours are Reasonable**

17 In determining a lodestar fee, reasonable hours include, in addition to time spent during
18 litigation, the time spent before the action was filed, including time spent interviewing clients,
19 investigating the facts and law, and preparing the pleadings. See *New York Gaslight Club, Inc. v.*
20 *Carey* (1980) 447 U.S. 54, 62; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th
21 440, 447. Further, the fee award should include fees incurred to establish and defend the attorneys'
22 fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). Under California law,
23 counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

24 Class Counsel has expended a total of 319.6 hours on this case. The work performed by
25 Class Counsel in order to achieve a settlement that will provide valuable consideration to the Class,
26 averaging a \$4,402.43 settlement payment per Class Member, with the highest estimated award
27 being \$14,293.04, is outlined by Class Counsel in the declarations submitted herewith. (Mara Dec.
28 ¶¶ 22, 27; Horton Dec. ¶¶ 12, 15). Class Counsel have been actively involved in this case, prior to

1 the commencement of this action and all the way up to the present, and Class Counsel's dedication
2 to providing representation in the case has precluded other employment. Here, Class Counsel's
3 many tasks, in summary form, included the following: pre-filing investigation and legal research;
4 communicating with the Class Representative; discussions with Class Members; researching and
5 investigating California's ever-evolving wage and hour laws regarding compensation, overtime,
6 meal and rest periods, itemized wage statements, waiting time penalties, and California's Unfair
7 Competition Law; conducting investigation into Defendant's pay-structures, policies for its non-
8 exempt employees; drafting and filing pleadings; engaging in conferences with Defense Counsel
9 regarding a variety of issues throughout the litigation and settlement; analyzing records produced
10 by Defendant; drafting the mediation brief and performing mediation damages and exposure
11 models; preparing for and attending mediation; drafting and revising the settlement agreement and
12 the Notice to the Class; drafting preliminary approval papers; working with Settlement
13 Administrator on the notice process; reviewing, revising, and proofing Notice papers from the
14 Settlement Administrator; reviewing settlement website; reviewing weekly status reports from the
15 Settlement Administrator regarding Class participation; reviewing and editing the Settlement
16 Administrator's declaration; drafting final approval papers, and preparing for and appearing at the
17 Final Approval Hearing. (Mara Dec. ¶¶ 22, 27; Horton Dec. ¶¶ 12, 15).

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

21 **vi. Costs of Litigation**

22 Class Counsel seeks reimbursement of the litigation costs and expenses of \$16,764.40.
23 (Mara Dec. ¶ 29). These costs were all reasonable and necessary to the prosecution of this case
24 and the results achieved and are fair and reasonable.

25 **c. The Class Representative Service Payment is Reasonable**

26 Class Counsel seeks approval of a Class Representative Service Payment to the named
27 Plaintiff in the sum of \$15,000. In agreeing to the settlement, Plaintiff has agreed to a general
28 release of his claims against Defendant. This general release is far greater than the release being

1 given by other Class Members. This payment not only compensates Plaintiff for the work he
2 undertook in this case, but also for the claims and potential claims he may have against Defendant
3 that he is releasing. For example, Plaintiff brought this class action lawsuit to seek recourse for
4 other employees instead of filing an individual case on behalf of merely himself. He also brought
5 this case instead of pursuing claims he believed he had against Defendant for wrongful/constructive
6 termination and/or harassment. Since the inception of this case, Plaintiff has put the Class's
7 interests ahead of his own. This payment compensates Plaintiff for the claims that he forwent
8 bringing for the betterment of the Class Members.

9 There are also other factors supporting the request that Plaintiff receive \$15,000. The
10 requested Class Representative Service Payment is reasonable in light of the benefits Plaintiff has
11 conferred upon the entire Class, resulting in substantial payments averaging at \$4,402.43 with a
12 high payment of \$14,293.04. The requested award is appropriate and reasonable based upon
13 Plaintiff's time and effort expended on this case, the risks he faced, and the outcome of this case.
14 Plaintiff has submitted a declaration detailing the efforts and time he expended on behalf of the
15 Class in order to advance this case to its successful conclusion. There is no question that this case
16 would not have reached the same result but for Plaintiff's involvement and input at all stages of
17 the litigation.

18 It should be noted that service awards are particularly important to plaintiffs in wage and hour
19 cases because they promote the important public policies underlying the wage and hour laws. This
20 strong policy is codified in California Labor Code section 90.5, which provides that "[i]t is the
21 policy of this state to vigorously enforce minimum labor standards in order to ensure employees
22 are not required or permitted to work under substandard unlawful conditions . . ." Cal. Lab. Code
23 § 90.5. Nonetheless, the California Supreme Court has noted that "retaliation against employees
24 for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes
25 designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61. In this context,
26 class representatives should be rewarded for assuming the risk of retaliation for the sake of class
27 members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

28 In addition, there are few individuals that are willing to act as a class representative and

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

20 Courts routinely approve service payments, or incentive awards, to compensate named
21 plaintiffs for the services they provide and the risks they incur during class litigation. See *In re*
22 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers*
23 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
24 representatives); Manual § 21.62 n.971 (noting that service payments are warranted); *Cook v.*
25 *Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y.
26 1997) ("present or past employee whose present position or employment credentials or
27 recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his
28 or her name and efforts to the prosecution of litigation at some personal peril, a substantial

enhancement award is justified”); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) (“We also think there is something to be said for rewarding those drivers who protect and help to bring rights to a group of employees who have been the victims of discrimination.”).

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

Based on the foregoing, the \$15,000 Class Representative Service Payment to the named Class Representative is fair, appropriate, and justified in light of the work performed, risks undertaken for payment of fees and costs if this case had not been successfully concluded, stigma on future employment opportunities, and the benefits all Class Members.

d. The Administration Costs are Reasonable

The Court-approved Settlement Administrator was responsible for formatting, printing and mailing the Class Notices. The Settlement Administrator was responsible for responding to Class Member inquiries, providing weekly status reports, answering questions from Counsel for the Parties, and providing a declaration to document its duties and responsibilities under the settlement. Plaintiff now requests that the Court finally approve the Settlement Administration Costs in the amount of \$6,950 to ILYM Group, Inc. for services rendered and to be rendered for the notice and settlement administration process.

Following the grant of final approval, the Settlement Administrator’s duties will continue in order to calculate and mail the individual settlement payments to Participating Class Members, perform tax reporting obligations, disburse other payments as ordered by the Court, and perform such other duties as set forth in the Agreement. Administration Costs in the amount of \$6,950 to ILYM Group, Inc. for services rendered and to be rendered is fair and reasonable and should be

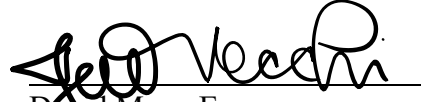
1 granted.

2 **V. CONCLUSION¹¹**

3 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
4 of the settlement, and award Class Counsel attorneys' fees in the sum of \$266,640 and litigation
5 expenses of \$16,764.40 to Class Counsel, Class Representative Service Payment in the sum of
6 \$15,000 to Plaintiff, Administration Costs in the amount of \$6,950 to ILYM Group, Inc., and a
7 payment to the LWDA in the amount of \$37,500 (which is 75% of \$50,000 allocated to Plaintiff's
8 claims under PAGA).

9
10 Dated: July 17, 2024

MARA LAW FIRM, PC

11
12 

13 David Mara, Esq.

14 Jill Vecchi, Esq.

15 Attorneys for Plaintiff William Giron on behalf of
16 himself, all others similarly situated, and on behalf of
17 the general public
18
19
20
21
22
23
24
25
26
27

28 ¹¹ Attached hereto as Exhibit A is proof of submission of the proposed settlement agreement to the LWDA.

Exhibit *A*