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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

KEITH O'SHEA on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiffs, v. VECTOR LABORATORIES, INC.; and DOES 1-100, Defendants.	Case No. 23CV035196 [*Assigned for all purposes to the Honorable Patrick McKinney, Dept. 18*] **PLAINTIFF KEITH O'SHEA'S MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: March 25, 2025 Time: 1:30 p.m. Reservation ID: 229874284439 Complaint Filed: June 6, 2023 Trial Date: None Set

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I. INTRODUCTION

This motion seeks final approval of a non-reversionary $179,750 Gross Settlement Amount ("GSA") reached between Plaintiff Keith O'Shea (hereinafter "Plaintiff") and Defendant Vector Laboratories, Inc. (hereinafter "Defendant" or "Vector") (collectively Plaintiff and Defendant are referred to as the "Parties").[1] This settlement is on behalf of Plaintiff and a Class comprised of all hourly, non-exempt employees (a) who are or were employed by Defendant in California at any time from June 6, 2019, through the date the Court grants Preliminary Approval (the "Class Period"); and (b) and who did not already release all of their claims against Defendant during the Class Period. (Exhibit 1 at Section I, Paragraph 6, Page 2; Section I, Paragraph 11, Page 2). This motion also seeks an order entering judgment.

On January 15, 2026, the Settlement Administrator mailed the Court-approved Notice of Class Action Settlement ("Class Notice") to all 46 Class Members.[2] These Class Members have until March 16, 2026, to request to be excluded from the settlement or to object to it. To date, the Settlement Administrator has not received any disputes regarding the number of workweeks that Class Members were credited to have worked.[3] Currently, the Settlement Administrator has not received any objections to the settlement or requests for exclusion from the settlement.[4]

To date, this matter has required 357 hours of attorney time from Class Counsel. This litigation involved investigations into the claims asserted, discovery, the production and review of documents from Defendant, a full day of mediation, and evaluation of continuing litigation.

As will be demonstrated herein, the attorneys' fee request of $59,916 ("Attorney Fee Award"), which represents one-third of the GSA, is fully supported using the percentage fee method. The Attorney Fee Award is also supported under the lodestar cross-check method. Plaintiff further moves for reimbursement of litigation costs and expenses in the amount of $31,813.83 ("Cost Award"), originally estimated not to exceed $45,000, for costs incurred in

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[1] The Parties' Joint Stipulation and Settlement Agreement (hereinafter "Agreement") is attached to the Declaration of David Mara, Esq. ("Mara Dec.") as Exhibit 1. "Exhibit 1" herein refers to the Parties' Agreement.
[2] Declaration of Nathalie Hernandez of ILYM Group, Inc., in Support of Motion for Final Approval of Class Action Settlement ("Hernandez Dec.") ¶ 7.
[3] Hernandez Dec. ¶ 12.
[4] Hernandez Dec. ¶¶ 10-11.

litigating this matter. Plaintiff also moves for final approval of the payment in the amount of $10,000 to Plaintiff (this payment is referred to as the "Class Representative Enhancement Payment") to compensate him for agreeing to a general release of his claims against Defendant and his vital role in representing the Class Members and spearheading the case to seek actual and substantial monetary relief for the Class. Additionally, Plaintiff moves for final approval of Administration Costs in the amount of $5,450, originally estimated not to exceed $7,500, to the Settlement Administrator ILYM Group, Inc. (hereinafter "ILYM") for the costs and fees of administering settlement ("Administration Costs").

The requested Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, and Administration Costs were fully disclosed to the Class Members when the Class Notice was mailed to them. **Most importantly, to date, the settlement and all of its terms have received support from Class Members as not a single Class Member has objected to the settlement or requested to be excluded from it.** Currently, the estimated average and high payouts to Participating Class Members are $713.48 and $2,173.06. In addition, Aggrieved Employees are currently estimated to receive average and high payouts of $86.21 and $ 242.85.

The Court is, therefore, respectfully requested to consider the Class Members' endorsement of the settlement and grant final approval.

II. BACKGROUND

a. Litigation History

Plaintiff filed this wage and hour class action on June 6, 2023 (Case No. 23CV035196). (Mara Dec. ¶ 10). In addition, on June 6, 2023, Plaintiff provided notice to the Labor and Workforce Development Agency ("LWDA"). (*Id.* at ¶ 11). Plaintiff then filed a PAGA action on October 30, 2023 (Case No. 23CV049223). (*Id.* at ¶ 12).

b. Discovery and Investigation

The Parties engaged in both informal and formal discovery and engaged in extensive meet and confer efforts that led to two Informal Discovery Conferences with the Court. As a result of the Parties' discovery efforts, Defendant produced hundreds of pages of documents, including employee handbooks in place during the class period and Plaintiff's personnel file. Defendant also produced Excel files that contained time and pay records for all Class Members. Plaintiff had an expert conduct an analysis of these records. In addition, Plaintiff produced almost a hundred documents including wage statements, test messages and emails he received during his employment, and his bank records for the period of time he worked for Defendant in redacted format. Further, on March 28, 2025, Defendant took Plaintiff's deposition. (Mara Dec. ¶¶ 14-21).

c. Settlement Negotiations

The Parties attended an all-day mediation presided over by wage and hour mediator Kelly A. Knight on May 28, 2024. This mediation was unsuccessful. On or about April 7, 2025, Mr. Knight reengaged the Parties in settlement negotiations. By the end of May of 2025, the Parties reached a settlement-in-principle. The Parties then met and conferred over all the terms of the settlement and finalized their settlement in the Parties' Agreement. (*See* Mara Dec. ¶ 22; *see also* Exhibit 1 attached thereto). The Parties also entered into an Addendum to Joint Stipulation and Settlement Agreement ("Addendum"). (*See* Exhibit 2 to the Mara Dec.). The Parties seek final approval of the Agreement and Addendum in the instant motion.

III. TERMS OF THE PROPOSED SETTLEMENT

a. Deductions from the Settlement

The Parties have agreed, subject to and contingent upon the Court's approval, that this action be settled and compromised for the non-reversionary total sum of $179,750: (a) attorneys' fees of $59,916 (one third of the GSA); (b) litigation costs of $31,813.83 (originally estimated not to exceed $45,000); (c) a Class Representative Service Payment to the named class representative in the amount of $10,000; (d) settlement administration fees and expenses to ILYM Group, Inc. (hereinafter "ILYM") in the amount of $5,450 (originally estimated not to exceed $7,500);[5] and (e) $10,000 allocated to Plaintiff's claims under the PAGA. Of this payment, 75%, or $7,500 will be provided to the LWDA, and 25%, or $2,500, will be available for distribution to Aggrieved Employees. After these deductions from the GSA, the Net Settlement Amount ("NSA") is approximately $62,570.17. At the end of 2024, Defendant entered into individual settlement agreements with some of the Class Members in exchange for a release of claims. The settlement

[5] Hernandez Dec. ¶ 17.

funds that Defendant has already paid to Class Members will be a credit to Defendant. The employer's share of taxes will be paid in addition to and outside of the GSA. (*See* Exhibit 1 at Section I, Paragraph 21, Page 3).

b. Calculation of the Settlement Payments to Class Members

The Net Settlement Amount, less employee taxes on the "wage portion" of the settlement payment, will be distributed to Participating Class Members. Subject to the terms and conditions of the settlement, each Participating Class Member will receive a proportionate share of the Net Settlement Amount based upon the number of workweeks they worked for Defendant during the Class Period.[6] (*See* Exhibit 1 at Section III, Paragraph 77.1.1, Pages 12-23). In addition, each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount based upon the number of workweeks they worked for Defendant during the PAGA Period. (*See* Exhibit 1 at Section III, Paragraph 78.1, Pages 13-14).

c. Release of Claims

In exchange for an Individual Class Payment, Participating Class Members will release claims that were alleged or that could have been reasonably alleged based on the facts pleaded in the operative Class Action Complaint during the Class Period. (*See* Exhibit 1 at Section I, Paragraph 44, Page 6). In addition, in exchange for an Individual PAGA Payment, all Aggrieved Employees will release claims any and all claims for civil penalties under the California Labor Code and the Private Attorneys General Act of 2004 that were or could have been reasonably alleged based on the facts pleaded the PAGA Notice during the PAGA Period. (*See* Exhibit 1 at Section I, Paragraph 45, Pages 6-7). In addition, Plaintiff has agreed to a general release of his claims. (*See* Exhibit 1 at Section III, Paragraph 82.1, Page 26).

d. Notice to the Class

On December 23, 2025, ILYM received the class data from Counsel for Defendant. The Class List contained 46 individuals with 3,806 workweeks during the Class Period and 29 Aggrieved Employees with 1,853 workweeks during the PAGA Period. (Hernandez Dec. ¶ 5).

[6] For Class Members who previously released claims against Defendant during the Class Period, the settlement calculation will be based on the number of workweeks worked after these Class Members signed the releases to the end of their employment in the Class Period or the end of the Class Period, whichever is earlier.

As part of the preparation for mailing, all 46 names and addresses contained in the Class List were then processed against the National Change of Address ("NCOA") database, maintained by the United States Postal Service ("USPS"), for purposes of updating and confirming the mailing addresses of the Class Members before mailing of the Class Notice. The NCOA contains requested change of addresses filed with the USPS. To the extent that an updated address was found in the NCOA database, the updated address was used for the mailing of the Class Notice. To the extent that no updated address was found in the NCOA database, the original address provided by Counsel for Defendants was used for the mailing of the Class Notice. (Hernandez Dec. ¶ 6).

On January 15, 2026, the Class Notice was mailed, via U.S First Class Mail, to all 46 individuals contained in the Class List. (Hernandez Dec. ¶ 7). To date, two Class Notices have been returned to ILYM as undeliverable. ILYM performed a computerized skip trace on the two returned Class Notices that did not have a forwarding address, in an effort to obtain an updated address for purpose of re-mailing the Class Notice. As a result of this skip trace, two updated addresses were obtained and the Class Notices were promptly re-mailed to those Class Members, via U.S First Class Mail. (Hernandez Dec. ¶¶ 8-9).

Class Members had until March 16, 2026, to respond to the settlement. To date, ILYM has not received any workweek disputes from Class Members. (Hernandez Dec. ¶ 12). In addition, to date, the settlement has received support from the Class Members. Not a single Class Member has submitted an objection or request for exclusion from the settlement. (Hernandez Dec. ¶¶ 10, 11). Therefore, to date, all 46 Class Members are participating in the settlement, meaning 100% of the Class Members are Participating Class Members. (Hernandez Dec. ¶ 13).

e. Distribution of Funds

Defendant shall wire or otherwise provide to the Settlement Administrator the GSA no later fifteen (15) calendar days after the Effective Final Settlement Date. (Exhibit 1 at Section I, Paragraph 25, Page 4; *see also* Section III, Paragraph 81.11.1, Page 24). Within ten (10) calendar days after the Settlement Administrator's receipt of the GSA, the Settlement Administrator shall disburse the settlement funds. (Exhibit 1 at Section I, Paragraph 19, Page 3; *see also* Section III, Paragraph 81.11.2, Page 24). Participating Class Members must cash or otherwise deposit their

Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. (Exhibit 1 at Section III, Paragraph 81.13, Pages 25-26). All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be tendered to Legal Aid at Work.[7] (*Id.*).

f. Final Judgment

Notice of the final judgment will be posted on the settlement administrator's website.

IV. ARGUMENT

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

California Rule of Court, Rule 3.769, requires court approval for class action settlements. Cal. R. Ct. 3.769(g). In deciding whether to approve a class settlement, a court evaluates whether the proposed settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co*. (1996) 48 Cal. App. 4th 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of S.F.* (9th Cir. 1982) 688 F.2d 615, 625); *Cho v. Seagate Tech. Holdings, Inc*. (2009) 177 Cal. App. 4th 734, 742 43. A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801. However, "a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal. App. 4th at 1802; accord *Wershba*, 91 Cal. App. 4th at 245.

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the settlement.[8] Subject only to the Class's reaction to the settlement, the Court preliminarily presumed the settlement was fair, adequate and

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[7] Legal Aid at Work is a nonprofit legal services organization that has been assisting low-income, working families for more than 100 years. Legal Aid at Work's Wage Protection Program represents low-wage workers who are the victims of wage violations. The wage claims made by Legal Aid at Work's clients are often the same type of claims made in wage-and-hour class actions brought by workers under the federal Fair Labor Standards Act and under California wage-and-hour laws.

[8] *See* Memorandum of Points and Authorities in Support of Motion for Preliminary Approval, pages 11-14. 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.

reasonable. To date, not a single objection to the settlement has been submitted by any Class Member to the Settlement Administrator. Thus, the settlement is entitled to the presumption that it is fair and in all other respects proper and should be finally approved.

b. The Court Should Approve the Requested Fees and Costs

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

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

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

"The ultimate goal . . . is the award of a 'reasonable' fee to compensate counsel for their efforts, irrespective of the method of calculation." *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270). It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases where class members present claims against a settlement amount and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of that percentage method is appropriate. *Lealao*, *supra*, 82 Cal.App.4th at 32.

Historically, courts have awarded fees as high as fifty percent (50%) of the settlement, depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F. Supp. 494 (awarding attorneys' fees in the amount of 45% of the settlement amount of $7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195 (awarding approximately 53% of the settlement amount as attorneys' fees). California courts routinely approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions). The Supreme Court has explained that "percentage of the fund method more accurately reflects the results achieved." *Laffitte*, 1 Cal. 5th at 439. In a similar wage and hour class action, *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal. 5th 480, the California Supreme Court affirmed an award of attorneys' fees equal to 1/3 of the common fund. Here, the requested fee is at this same percentage, and evidences all of the same considerations which warranted the one-third fee in *Laffitte.*

In short, Class Counsel's fee request of $59,916 (which represents one-third of the GSA) is in line with awards in similar cases in California and nationwide and demonstrates that Class Counsel's fee request is consistent with market rates and is reasonable.

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

Class Counsel applies for an award of attorneys' fees in the sum of $59,916 (one-third of the GSA), and litigation costs of $31,813.83. (Mara Dec. ¶ 23). California state and federal courts have recognized that an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits made available to Class Members by the settlement, also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc*. (9th Cir. 1977) 557 F.2d 759, 769.[9] Where the amount of a settlement is a "certain easily calculable

[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.

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

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

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

Under the terms of the Agreement, Defendant will pay a Gross Settlement Amount of $179,750. An award of attorneys' fees is to be calculated as a percentage of the total value of benefits made available to the Class Members under the settlement. In light of Class Counsel's prosecution and resolution of the case, the requested Attorneys' Fees are appropriate and reasonable.

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iii. Class Counsel's Request for Fees in the Amount of One-Third of the GSA is Reasonable and Justified

This was a highly contested matter which required a significant amount of time and labor. Class Counsel had to investigate and analyze documents and data. There were multiple discovery disputes that led to two Informal Discovery Conferences. These discovery disputes included Defendant's attempts to obtain Plaintiff's medical, phone, and bank records which Class Counsel had to conduct research on and meet and confer with Defendant over. Class Counsel also had to prepare Plaintiff for his deposition and travel to Plaintiff's in-person deposition in San Francisco. Class Counsel further worked with an expert who analyzed the time and wage records produced for Class Members. Moreover, Class Counsel filed an ex parte application with the Court, which Defendant opposed. The Court granted this ex parte application in part. (Mara Dec. ¶ 26).

In addition, as part of the above investigation and analysis, Class Counsel had to marshal the evidence in a manner in which it could be adjudicated on a class-wide basis. So often, lawyers unskilled in the class action aspect of wage and hour cases do not pay attention to or put the work into how the evidence must be presented for class-wide adjudication. Strong class-wide cases perish in the hands of inexperienced counsel because the case has not been worked up to succeed at certification. Class Counsel here has considerable experience in class litigation and, from the beginning of the case, is marshalling the evidence with a sharp focus on class-wide proof needed for the matter to get certified. This case was no different. This filtering of voluminous evidence into class-wide proof while keeping an eye on the merits of the litigation required a considerable amount of attorney time and skill. (Mara Dec. ¶ 27).

For these reasons, Class Counsel's request for $59,916 (which represents one-third of the GSA) is reasonable and justified in this case.

iv. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

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

Class Counsel has worked 357 hours to date on this case and have calculated the lodestar fee on those hours at $266,450 at rates reflecting those currently earned in the marketplace. (Mara Dec. ¶ 24, Exhibit 5 Summary of Time and Costs). Class Counsel respectfully requests attorneys' fees in the amount of $59,916 (one-third of the GSA). As Class Counsel's lodestar fee is in excess of their fee request, a multiplier on their lodestar fee is not sought herein. In fact, the requested fee results in a so-called "negative multiplier" which suggests the percentage of the fund amount is reasonable and fair. *See Chun-Hoon v. McKee Foods Corp*. (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc. Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886 at *16.

v. Class Counsel's Hourly Rates Are Reasonable

Class Counsel's hourly rates are between $650 and $850 and are in line with rates typically approved in wage and hour class action litigation and which rates have been approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County Superior Courts. (Mara Dec. ¶ 29; Exhibit 3, Westlaw Court Express's Legal Billing Report, Volume 14, Number 3, California Region for December 2012; Exhibit 4, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exhibit 5, 2012 National Law Journal Survey of Hourly Billing Rates for Partners and Associates).

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson v. Hanesbrands Inc*. (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining a reasonable hourly rate, courts may consider factors such as the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patro* (1998) 61 Cal. App. 4th 629, 632.

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

vi. Class Counsels' Total Hours are Reasonable

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

Class Counsel has expended a total of 357 hours on this case. The work performed by Class Counsel in order to achieve a settlement that will provide valuable consideration to the Class, averaging a $713.48 settlement payment per Class Member, with the highest estimated award being $2,173.06, is outlined by Class Counsel in the declaration submitted herewith. (Mara Dec. ¶¶ 30,35). Class Counsel have been actively involved in this case, prior to the commencement of this action and all the way up to the present, and Class Counsel's dedication to providing representation in the case has precluded other employment.

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

vii. Costs of Litigation

Class Counsel seeks reimbursement of the litigation costs and expenses of $31,813.83. (Mara Dec. ¶ 37). These costs were all reasonable and necessary to the prosecution of this.

c. The Class Representative Enhancement Payments are Reasonable

Class Counsel seeks approval of a Class Representative Enhancement Payment to the named Plaintiff in the sum of $10,000. Since the inception of this case, Plaintiff has put the Class's interests ahead of his own. This is evidenced by the work he has done in this case. For example, Plaintiff worked with his attorneys to respond to written discovery that was propounded on him and provided two sets of amended responses. Plaintiff also had his deposition taken in person all day in San Francisco, California. In addition, Plaintiff's private records were put at issue in this case. Plaintiff obtained his bank statements from his time working for Defendant and produced them to Defendant. Although Plaintiff was unable to obtain them, Plaintiff took extensive efforts to obtain his phone records. Defendant also attempted to obtain Plaintiff's medical records.

In addition, in agreeing to the settlement, Plaintiff has agreed to a general release of his claims against Defendant. This general release is far greater than the release being given by other Class Members. This payment not only compensates Plaintiff for the work he undertook in this case, but also for the claims and potential claims he may have against Defendant that he is releasing. There are also other factors supporting the request that Plaintiff receive $10,000. The requested Class Representative Enhancement Payment is reasonable in light of the benefits Plaintiff has conferred upon the entire Class, resulting in payments averaging at approximately $713.48 with a high payment of approximately $2,173.06. The requested award is appropriate and reasonable based upon Plaintiff's time and effort expended on this case, the risks he faced, and the outcome of this case. Plaintiff has submitted a declaration detailing the efforts and time he expended on behalf of the Class in order to advance this case to its successful conclusion. There is no question that this case would not have reached the same result but for Plaintiff's involvement and input at all stages of the litigation.

It should be noted that service awards are particularly important to plaintiffs in wage and hour cases because they promote the important public policies underlying the wage and hour laws.[10] In addition, there are few individuals that are willing to act as a class representative and provide the work, diligence, and willingness to assume a substantial financial risk should Defendant have prevailed in this case. Plaintiff's willingness to assume the financial risk is significant. Plaintiff risked a potential judgment taken against him for attorneys' fees and costs if this matter had not been successfully concluded.[11] The risk of payment of Defendant's costs, in itself alone, is a sufficient basis for an award of the requested enhancement sum. Few individuals are willing to take this risk, and it is clear that Plaintiff, here, championed a cause on behalf of others with potentially huge monetary risks.

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.

Courts routinely approve service payments, or incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class litigation.[12] Based on

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[10] This strong policy is codified in California Labor Code section 90.5, which provides that "[i]t is the policy of this state to vigorously enforce minimum labor standards in order to ensure employees are not required or permitted to work under substandard unlawful conditions . . ." Cal. Lab. Code § 90.5. Nonetheless, the California Supreme Court has noted that "retaliation against employees for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61. In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake of class members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

[11] Case law holds that a losing party is liable for the prevailing party's costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in some wage and hour actions, such as this case, pursuant to California Labor Code § 218.5, for attorneys' fees as well. Though the fee agreement provides that Class Counsel would pay such costs, Plaintiff would nevertheless have had a cost bill entered against him leaving him ultimately liable for potentially hundreds of thousands of dollars in the unexpected possibility that Class Counsel did not meet their obligation to cover those costs. Unfortunately, there have been several judgments entered against class representatives, e.g. *Koehl v. Verio, Inc.* 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action where Defendant prevailed at trial, the named plaintiffs were held liable, jointly and severally for the Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office & Print Services, Inc.,* 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and hour misclassification case lost on summary judgment, after the case was certified, the named Plaintiff was assessed costs in the sum of $56,788.).

[12] *See In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers Ins.*

the foregoing, the $10,000 Class Representative Enhancement 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 $5,450 to ILYM 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.

V. CONCLUSION

Based on the foregoing, Class Counsel respectfully requests the Court grant final approval of the settlement, and award Class Counsel attorneys' fees in the sum of $59,916 and litigation expenses of $31,813.83 to Class Counsel, a Class Representative Enhancement Payment in the sum of $10,000 to Plaintiff, Administration Costs in the amount of $5,450 to ILYM, and a payment to the LWDA in the amount of $7,500.

MARA LAW FIRM, PC

Date: March 2, 2026

Signed: ______________________

Jill Vecchi, Esq.

Exch. (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives); Manual § 21.62 n.971 (noting that service payments are warranted); *Cook v. Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y. 1997) ("present or past employee whose present position or employment credentials or recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his or her name and efforts to the prosecution of litigation at some personal peril, a substantial enhancement award is justified"); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) ("We also think there is something to be said for rewarding those drivers who protect and help to bring rights to a group of employees who have been the victims of discrimination.").