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7 individually and on behalf of all others similarly situated

8 **IN THE SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF BUTTE**

10 SALVADOR ANTHONY RODRIGUEZ JR,
11 individually and on behalf of all others similarly
situated,

12 Plaintiff,

13 v.
14

15 RGIS, LLC AND WIS IVS, LLC; and DOES 1
through 100,

16 Defendant.
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18
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Case No. 23CV01731

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF MANNY STARR;
DECLARATION OF SALVADOR
RODRIGUEZ; DECLARATION OF
CASSANDRA POLITES; [PROPOSED]
ORDER**

Date: February 19, 2025

Time: 9:00 a.m.

Dept: 6

20
21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

22 **PLEASE TAKE NOTICE** that on February 19, 2025, at 9:00 a.m. or as soon thereafter as
23 the matter may be heard in Department 6 of the Butte County Superior Court located at 1775
24 Concord Avenue Chico, CA 95928, Plaintiff Salvador Anthony Rodriguez Jr will move the Court
25 for an order and judgement for final approval of a class action settlement. Through this Motion,
26 Plaintiff seeks entry of an Order:

- 27 (1) Approving the parties' class and representative action settlement in the amount of
28 \$2,400,000;

- 1 (2) Approving the requested Class Representative Service Award of \$10,000 to Plaintiff;
2 (3) Approving the payment of \$800,000 (or approximately 1/3 of the Gross Settlement
3 Fund) to Class Counsel as reasonable attorney's fees;
4 (4) Approving the payment of \$25,049.67 to Class Counsel for reimbursement of reasonably
5 incurred litigation expenses;
6 (5) Approving the payment of \$39,550 to the Claims Administrator, ILYM Group, Inc., for
7 its services in administering the settlement; and
8 (6) Approving the payment of the \$120,000 the parties set aside from the Gross Settlement
9 Amount as PAGA civil penalties, \$90,000 of which is to be paid to the Labor &
10 Workforce Development Agency ("LWDA"), and \$30,000 of which is to be paid to the
11 Aggrieved Employees on a pro rata basis.

12 This motion is based upon this Notice of Motion, the Memorandum of Points and
13 Authorities, the Joint Stipulation Of Class Action And Private Attorney General Act Settlement
14 And Release, the Amendment To Joint Stipulation Of Class Action And Private Attorney General
15 Act Settlement And Release, the proposed Notice Packet, the supporting Declarations of Class
16 Counsel Manny Starr, Plaintiff Salvador Rodriguez, and Cassandra Polites of ILYM Group, Inc.,
17 the [Proposed] Order of Final Approval and Judgment, as well as all pleadings and documents filed
18 in this action, and any other matters as may be presented at or before the final approval hearing.

19
20 DATED: January 27, 2025

21 /s/ Manny Starr

22 MANNY STARR

23 Attorney for Plaintiff and the Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Salvador Rodriguez (“Plaintiff”) seeks final approval of a \$2,400,000 **non-**
4 **reversionary** settlement of wage and hour claims on behalf of 7,215 current and former non-
5 exempt employees of Defendant WIS IVS, LLC, formerly RGIS, LLC (“Defendant”). The
6 settlement provides substantial relief to class members, with an average recovery of approximately
7 \$194.10 per class member, while avoiding the risks and delays of continued litigation.

8 On November 6, 2024, this Court granted preliminary approval of the settlement. Plaintiff
9 now seeks final approval of the settlement. As demonstrated below, the settlement is fair,
10 reasonable, and adequate under Rule 23(e) and warrants final approval. Accordingly, Plaintiff
11 respectfully requests that the Court: (1) grant final approval of the settlement; (2) approve Class
12 Counsel’s request for attorneys’ fees of \$800,000 (one-third of the gross settlement amount) and
13 costs of \$25,049.67; (3) approve the service award of \$10,000 to Plaintiff; and (4) approve the
14 PAGA allocation of \$120,000.

15 **II. BACKGROUND OF THE SETTLEMENT**

16 On July 6, 2023, Plaintiff uploaded a PAGA letter to the LWDA website and sent the letter
17 by certified mail to Defendant, alleging that Defendant violated the Labor Code with regard to
18 minimum wage violations, overtime violations, meal break violations, rest break violations, wage
19 statement violations, and waiting time penalties. (Declaration of Manny Starr in Support of Motion
20 for Final Approval (“Starr Decl.”), ¶ 9)

21 On June 29, 2023, Plaintiff filed the original class action complaint against Defendant,
22 alleging minimum wage violations, overtime violations, meal period violations, rest period
23 violations, wage statement penalties, waiting time penalties, and violation of Unfair Competition
24 Law. (*Id.* at ¶ 8.). On November 9, 2023, Plaintiff filed an amended complaint adding a PAGA
25 cause of action. (*Id.* at ¶ 10.).

26 Thereafter, the parties agreed to mediate the case with experienced employment law
27 mediator Lisa Klerman on April 11, 2024. (*Id.*). Prior to the mediation, Plaintiff requested, and
28 Defendant produced Plaintiff’s employee file, relevant company policies, and a 20% sampling of

1 time and payroll data. (*Id.* at ¶ 11.). The case ultimately settled at mediation for \$2.4 million. (*Id.* at
2 ¶ 13.). The fully executed settlement agreement is attached to the Declaration of Manny Starr,
3 **Exhibit A.**

4 Leading up to the mediation, and further discussed during mediation, Plaintiff discovered
5 additional theories of liability and further developed the facts and theories underpinning Plaintiff's
6 existing claims. (*Id.* at ¶ 12.). During the negotiations, and ultimately as part of the settlement,
7 Plaintiff agreed to supplement his PAGA letter and amend his complaint to include these additional
8 facts and theories. (*Id.* at ¶ 14.). Thus, on May 10, 2024, Plaintiff sent a supplemental PAGA letter
9 alleging these additional violations, and on June 27, 2024, Plaintiff sent a second amended PAGA
10 letter which provided further factual details in order to ensure that Plaintiff properly exhausted the
11 notice requirements under PAGA. (*Id.* at ¶ 12.).

12 On September 30, 2024, Plaintiff filed a Stipulation and Order for Leave to File Second
13 Amended Complaint. (*Id.* at ¶ 15.). After the Court signed the order granting leave to file the
14 Second Amended Complaint, Plaintiff inadvertently filed an incorrect version of the Second
15 Amended Complaint. (*Id.*). Upon discovering this error, Plaintiff contacted the clerk on November
16 13, 2024, who cancelled the incorrect filing. (*Id.*). Plaintiff filed the correct version of the Second
17 Amended Complaint on November 14, 2024. (*Id.*).

18 On December 9, 2024, the parties executed an Amendment to Joint Stipulation of Class
19 Action and Private Attorney General Act Settlement and Release to accurately reflect the filing date
20 of the Second Amended Complaint and to explicitly include reporting time pay and split shift
21 premium claims in the PAGA release section, ensuring consistency with the Second Amended
22 Complaint and PAGA letters. (*Id.* at ¶ 16.). The fully executed amendment to the settlement
23 agreement is attached to the Declaration of Manny Starr, **Exhibit B.**

24 Plaintiff filed his motion for preliminary approval on October 1, 2024. (*Id.* at ¶ 17.). On
25 November 6, 2024, this Court granted preliminary approval. (*Id.*). The settlement administration has
26 proceeded according to the Court's preliminary approval order, and Plaintiff now seeks final
27 approval of the settlement.

28 ///

1 **a. Terms of the Settlement**

2 The Class consists of the following: “All current and former non-exempt California
3 employees of Defendant who worked during the Class Period [June 29, 2019 through May 31,
4 2024].” (Starr Decl. ¶ 18.). As of this date, there are 7,215 Class Members who did not submit a
5 timely and valid Request for Exclusion and are therefore deemed to be Participating Class
6 Members. (Declaration of Cassandra Polites in Support of Motion for Final Approval (“Polites
7 Decl.”) ¶ 15.).

8 The Gross Settlement amount is \$2,400,000. (Starr Decl. ¶ 20.). The gross settlement
9 amount will be allocated as follows:

- 10 - \$800,000 for attorneys’ fees (33 1/3% of the gross settlement amount)
11 - \$25,049.67 for litigation costs
12 - \$10,000 for a service enhancement payment to the class representative
13 - \$120,000 for PAGA penalties, with \$90,000 (75%) to the LWDA and \$30,000 (25%)
14 to aggrieved employees
15 - \$39,550 for settlement administration costs
16 - \$1,405,400.33 estimated net settlement amount for distribution to class members
17 (*Id.*).

18 For tax purposes, 20% of each class member’s payment will be allocated as wages (reported
19 on W-2 forms) and 80% will be allocated as penalties and interest (reported on 1099 forms). (*Id.* at
20 ¶ 21.). Defendant shall fund the settlement within 30 calendar days of the Effective Date, which is
21 the date the Court finally approves the settlement, has entered judgement, and the judgement
22 becomes final, or by April 30, 2025, whichever is later. (*Id.* at ¶ 22.).

23 The release language is as follows:

24 Release of Class Claims By Participating Class Members. Upon the Effective Date,
25 Defendant and the other Released Parties shall be entitled to a release from the Plaintiff
26 and the Class Members who do not opt, for all of the Released Claims, defined below,
27 which occurred during the Class Period. Plaintiff, and all other Participating Class
28 Members including, but not limited to, their heirs, executors, attorneys, agents,
representatives, successors, and assigns (“Releasing Parties”), shall and will release
Defendant and all of their respective former, present, and future owners, parents,
subsidiaries, shareholders, and related entities and all of Defendant’s respective
current, former, and future officers, directors, supervisors, employees, representatives,
members, managers, partners, shareholders, joint venturers, accountants, insurers,

representatives, agents, predecessors, successors, and assigns (collectively, the “Released Parties”) from the Released Claims means all claims for violations of the following Labor Code sections, as well as civil penalties under PAGA, that were actually alleged or that could have been alleged in the Action by Plaintiff, on behalf of the Class Employees and the State of California, himself and the PAGA Employees for the entire Class Period and the entire PAGA Period, as well as any and all wage and hour claims and that were asserted or could have been asserted based on the factual or legal allegations contained in Plaintiff’s June 29, 2023 Complaint, the November 9, 2023 First Amended Complaint, and the November of 2024 Second Amended Complaint, arising at any time during the Class Period, including but not limited to: (a) failure to pay all wages owed, whether due to alleged off the clock work, failure to correctly calculate the regular rate or any other theory of liability for the underpayment of the minimum wage or overtime (b) failure to provide duty-free meal periods or pay premiums at the regular rate of pay in lieu thereof; (c) failure to provide duty-free rest breaks or failure to pay premiums at the regular rate of pay in lieu thereof; (d) failure to reimburse expenses; (e) waiting time penalties; (f) failure to timely pay wages during employment; (g) failure to provide accurate wage statements; (h) failure to provide sick pay and/or pay it at the correct rate; (i) unfair business practices; (j) claims for the attorney’s fees and costs incurred in the prosecution of this Action on behalf of the Class Employees and PAGA Employees; (k) any other claims, remedies, penalties, or interest that could have been plead based on the facts alleged in the Complaint; and (l) all claims that Plaintiff, the Class Employees may have against the Released Parties relating to: (i) the payment, taxation, and allocation of attorney’s fees and costs to Plaintiff’s Counsel pursuant to this Settlement Agreement; and (ii) the payment, taxation, and allocation of Plaintiff’s Payment pursuant to this Settlement Agreement. The release of the Released Claims shall be effective as to the entire Class Period, defined above. It is the intent of the Parties that the Judgment entered by the Court shall have full res judicata effect and be final and binding upon Participating Class Members regarding the Released Claims.

Release of PAGA Claims By State of California and PAGA Employees. Upon the Effective Date, Defendant and the other Released Parties shall be entitled to a release from the Plaintiff, the LWDA, the state of California, and the PAGA Employees, but not limited to, their heirs, executors, attorneys, agents, representatives, successors, and assigns (“Releasing Parties”), shall and will release Defendant and the Released Parties for the “PAGA Released Claims” which includes: (a) all PAGA penalty claims alleged in Plaintiff PAGA letters as well as his Second Amended Complaint, which seeks penalties under PAGA for alleged violations of Labor Code sections 201, 201.3, 202, 203, 204, 204b, 210, 221, 223, 223.5, 224, 225.5, 226, 226.3, 226.7, 245.5, 246, 246.5, 247, 247.5, 248.5, 249, 510, 512, 516, 551, 552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 2810.5, and 2699 et. seq., claims for violation of the provisions of the applicable Wage Orders regarding minimum wage, overtime, meal periods and rest periods, reporting time pay, split shift premiums, as well as allegations regarding the late payment of wages during employment and of final wages, inaccurate wage statements, failure to provide sick pay and/or pay it at the correct rate, and failure to reimburse business expenses; (b) claims for the attorney’s fees and costs incurred in the prosecution of this Action on behalf of the PAGA Employees; (c) any other claims for PAGA penalties that could have been plead based on the facts alleged in the Action; and (d) all claims that Plaintiff, and/or the PAGA Employees may have against the Released Parties relating to: (i) the payment, taxation, and allocation of attorney’s fees and costs to Plaintiff’s Counsel pursuant to this Settlement Agreement; and (ii) the payment, taxation, and allocation of PAGA Payments pursuant to this Settlement Agreement. The Release Period shall be the designated and court approved PAGA Period. The release of the PAGA Released Claims shall be effective as to the entire PAGA Period defined above. It is the intent of the Parties that the Judgment entered by the Court shall have full res

1 judicata effect and be final and binding upon Plaintiff, the state of California, the
2 LWDA and the PAGA Employees regarding the PAGA Released Claims.

3 (Starr Decl., **Ex. B**).

4 **III. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

5 **a. The Wershba Factors Support Final Approval**

6 Pursuant to Rule of Court 3.769(g), the court conducts a final approval hearing to inquire
7 into the fairness of a settlement. There is a presumption of fairness when the following exist: 1) the
8 settlement was reached through arm's-length bargaining, 2) investigation and discovery are
9 sufficient to allow counsel to act intelligently, 3) counsel is experienced in similar litigation, and 4)
10 the percentage of objectors is small. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
11 245.) All the factors are present here. The settlement is the product of significant work and effort by
12 the parties and their counsel. (Starr Decl. ¶¶ 23-25.).

13 In advance of substantive settlement discussions, and as a result of extensive informal
14 discovery, Defendant produced substantial data including Plaintiff's punch records, wage
15 statements, and personnel files, as well as a 20% sampling of time and payroll records for the class,
16 and data around the total number of class members and workweeks involved. (*Id.* at ¶ 23.).
17 Plaintiff's counsel retained an expert to analyze this data and prepare a detailed damages model
18 prior to settling. (*Id.* at ¶ 24.).

19 On November 6, 2024, the Court reviewed and granted Preliminary Approval of the
20 settlement. The Court also approved the Notice Packet to be sent to the class members. The Notice
21 Packet has been sent to the Class Members pursuant to the Court's order. (Polites Decl. ¶ 4-7.) On
22 December 2, 2024, the Settlement Administrator mailed the Notice to all 7,217 individuals on the
23 Class List. (*Id.* at ¶ 7.) Through diligent efforts, including NCOA searches and skip tracing, the
24 Settlement Administrator has successfully re-mailed 510 Notices that were initially returned, with
25 only 305 ultimately remaining undeliverable despite these efforts. (*Id.* at ¶ 6-10.). Only two Class
26 Members submitted valid requests for exclusion, resulting in 7,215 Settlement Class Members
27 (representing over 99.9% of the Class), and only one objection was received. (*Id.* at ¶ 11-12.).¹

28 ¹ This information is current as of the date of drafting this Motion for Final Approval. The opt-out deadline is January 31, 2025 and the objection deadline is February 5, 2025. If the number of opt-outs or objections change between now and the date of the respective deadlines, counsel for Plaintiff as well as the settlement administrator will submit

1 Further, Counsel provided notice to the LWDA of the settlement agreement as required
2 under Labor Code section 2699(1)(2) at the time of moving for preliminary approval, and will
3 submit a copy of this motion to the LWDA at the same time it is filed with the Court. (Starr Decl. ¶
4 42.) Thus, the procedural requirements for final approval have been met.

5 Frontier Law Center has significant experience representing employees in wage and hour
6 cases, including numerous class and PAGA actions. (*Id.* at ¶ 38.). Finally, the extremely low opt-out
7 rate of less than 0.1% and a single objection considering over 7,200 class members strongly support
8 the fairness of the settlement. Thus, under *Wershba* the settlement is fair.

9 **b. The Single Objection Does Not Undermine the Settlement**

10 Out of over 7,200 class members who received notice of the settlement, only one individual
11 submitted an objection. (Polites Decl. ¶ 12.). “The absence of a large number of objections to a class
12 settlement raises a strong presumption that the terms of a proposed class settlement action are
13 favorable to the class members.” *Nat’l Rural Telecommunications Coop. v. DIRECTV, Inc.*, 221
14 F.R.D. 523, 529 (C.D. Cal. 2004); see also *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th
15 Cir. 2000) (affirming district court’s approval of settlement where there were “only a handful of
16 objectors at the fairness hearing”).

17 The objection, submitted by class member Antonio Martinez, states in its entirety:

18 “I choose 3rd option. I was ran off by WIS. I showed up to work and
19 was threatened but had to go home and look for a new job because of
20 threats from the Santa Maria team. Meliss F. Veronica H. and others.
21 Maybe because of this lawsuit. I worked for JWI and they worked for
22 RGIS. I then got a job at WIS and wasn’t told it is temporary. However,
23 I became a good auditor. My machine was sabotaged repeatedly treated
24 like cr*p by the team members. I did work but since leaving I haven’t
25 found work. Feel that the[y] took the work from me.”

26 (Starr Decl., **Ex. C.**).

27
28 supplemental declarations.

1 In assessing objections, the Court “keep[s] in mind that objectors to a class action settlement
2 bear the burden of proving any assertions they raise challenging the reasonableness of a class action
3 settlement.” *Nunez v. BAE Sys. San Diego Ship Repair Inc.*, 292 F. Supp. 3d 1018, 1041 (S.D. Cal.
4 2017). Here, Mr. Martinez’s objection fails to meet this burden for several reasons.

5 First, Mr. Martinez’s objection does not address any aspect of the settlement’s terms, the
6 settlement amount, the distribution method, the requested attorneys’ fees, or any other component
7 of the settlement that could impact its fairness, reasonableness, or adequacy. Instead, his objection
8 raises entirely unrelated workplace grievances concerning alleged harassment, threats, and
9 equipment sabotage. Indeed, “objections found to be without substance and frivolous require no
10 hearing.” *Mandujano v. Basic Vegetable Prods., Inc.*, 541 F.2d 832, 836 (9th Cir. 1976).

11 Second, the claims being settled and released in this action are specifically limited to wage
12 and hour violations under the California Labor Code. Mr. Martinez’s objection does not pertain to
13 any of these claims. His complaints about alleged workplace harassment, threats, and equipment
14 sabotage would more properly be addressed through a separate lawsuit alleging harassment, hostile
15 work environment, or wrongful termination - none of which are included in or released by this
16 settlement. Therefore, even if this settlement is approved and binds Mr. Martinez, he still retains his
17 right to pursue these additional claims through other appropriate channels if he so chooses.

18 Finally, the fact that only one class member out of 7,217 (approximately 0.014%) submitted
19 any objection - and that the objection does not actually challenge the settlement terms - strongly
20 supports finding that the settlement is fair, reasonable, and adequate. See *Wren v. RGIS Inventory*
21 *Specialists*, No. C-06-05778 JCS, 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011) (noting “minimal
22 number of objections filed strongly supports approval of the settlement”).

23 For these reasons, Mr. Martinez’s objection should be overruled, and the settlement should
24 be granted final approval.

25 **IV. THE SETTLEMENT WARRANTS FINAL APPROVAL UNDER KULLAR**

26 In applying the presumption of fairness, the court examines the following factors: 1)
27 strength of the case, 2) risk, expense, complexity, and likely duration of further litigation, 3) risk of
28 maintaining class action status through trial, 4) amount offered in settlement, 5) extent of discovery

1 completed and the stage of proceedings, 6) experience and views of counsel, 7) presence of a
2 governmental participant, and 8) reaction of the class members to the settlement. (*Kullar v. Foot*
3 *Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.).

4 **a. Strength of Plaintiff's Case**

5 Plaintiff's counsel analyzed the data produced by Defendant to determine maximum
6 potential liability for each claim. Based on this analysis, the total unadjusted maximum liability for
7 the class claims was approximately \$30,949,414.36, broken down as follows:

8 **Off-the-Clock Work:** \$4,881,673.86

9 **Meal Break Violations:** \$1,655,365

10 **Rest Break Violations:** \$2,578,931.50

11 **Unreimbursed Work Expenses:** \$672,985

12 **Wage Statement Violations:** \$4,326,750

13 **Waiting Time Penalties:** \$16,833,709

14 (*Id.* at ¶ 25.).

15 However, when accounting for various litigation risks and defenses, including challenges to
16 class certification, disputes over reasonable commute time, the voluntary nature of carpooling, and
17 proof issues regarding meal and rest breaks, the risk-adjusted maximum liability for the class claims
18 was approximately **\$4,092,784.36**, as will be discussed in more detail below. (*Id.* at ¶ 26.).

19 While the \$2,400,000 settlement represents approximately 7.8% of the total *maximum*
20 potential exposure, this percentage does not accurately reflect the true value of the case when
21 considering litigation risks, certification challenges, and factual disputes. The more meaningful
22 metric is the settlement's relationship to the risk-adjusted value of the claims. Here, the settlement
23 recovers approximately 59% of the risk-adjusted liability, which reflects a careful analysis of the
24 claims' merits, various defenses, and litigation risks. (*Id.* at ¶ 27.). This is an excellent result that far
25 exceeds the 8% to 25% range that courts regularly approve as fair and reasonable. (*See, e.g., In re*
26 *Mego Fin. Corp. Secs. Litig.*, (9th Cir.2000) 213 F.3d 454, 459 [holding that class action settlement
27 recovering 16% of potential exposure was fair and reasonable; "[i]t is well-settled law that a cash
28 settlement amounting to only a fraction of the potential recovery does not per se render the

1 settlement inadequate or unfair. Rather, the fairness and the adequacy of the settlement should be
2 assessed relative to risks of pursuing the litigation to judgment”; noting that whether the settlement
3 is fair and adequate depends on the “the difficulties in proving the case”].); (*Bellinghausen v.*
4 *Tractor Supply Co.*, (N.D. Cal. Mar. 20, 2015) No. 13-CV-02377-JSC, 2015 WL 1289342, at *6
5 [holding that class action settlement recovering between 8.5% and 25% of the defendant’s potential
6 exposure was fair].); (*Van Ba Ma v. Covidien Holding Inc.*, (C.D. Cal. 2014) U.S. Dist. Ct. Case
7 No. 8:12-cv-02161, 2014 WL 2472316, at *3 [court granted preliminary approval of wage and hour
8 class settlement which obtained only 9.1% of projected damages, given the risks of continued
9 litigation].); (*Villegas v. J.P. Morgan Chase & Co.*, (N.D. Cal. Nov. 21, 2012) No. CV 09-00261
10 SBA EMC, 2012 WL 5878390, at *6 [holding that gross class action settlement of approximately
11 15% of the potential recovery was fair and reasonable].); (*Greko v. Diesel U.S.A., Inc.*, (N.D. Cal.
12 Apr. 26, 2013) No. 10-cv-02576 NC, 2013 WL 1789602, at *5 [finding that 24% was
13 reasonable].).

14 The primary claims and their respective strengths and risks are as follows:

15 **1. Off-the-Clock Work**

16 The maximum liability for unpaid drive time was calculated at \$4,881,673.86. (Starr Decl. ¶
17 29.) Defendant, an inventory counting service, had employees travel to various client locations, with
18 workers often carpooling from designated meeting points. While carpooling was optional,
19 Defendant’s policy paid drivers for all travel time but passengers only after the first hour. The
20 dispute centers on what constitutes compensable travel time versus an “ordinary commute,” which
21 employers aren’t required to pay for. Defendant argues it shouldn’t pay for any commute time at all,
22 since carpooling was voluntary, and alternatively that a one-hour commute is reasonable. Given
23 these substantial defenses and certification challenges, the risk-adjusted value of \$976,334.77 (20%
24 of maximum) is appropriate. (*Id.*).

25 **2. Meal Break Violations**

26 Plaintiff’s expert analyzed meal break compliance under two scenarios. Under Scenario 1,
27 which treated drive time as hours worked for meal break timing purposes, approximately 48.9% of
28 meal breaks were facially noncompliant, resulting in 223,717 potential violations and \$3,310,731 in

1 liability after accounting for premiums already paid. (*Id.* at ¶ 30.). Under Scenario 2, which
2 excluded drive time, only 13.3% of breaks were facially noncompliant, resulting in 33,470 potential
3 violations. (*Id.*). Because Defendant had already paid 38,162 meal break premiums during the class
4 period, there was technically no liability under Scenario 2. (*Id.*). Averaging these scenarios yields
5 \$1,655,365 in potential liability. (*Id.*). Given Defendant's arguments about voluntary missed breaks
6 and certification challenges, the risk-adjusted value of \$546,270.45 (33% of maximum) is
7 reasonable. (*Id.*).

8 **3. Rest Break Violations**

9 Rest break liability was analyzed under the same two scenarios. Assuming violation rates
10 matched the meal break analysis, Scenario 1 showed potential violations in 48.9% of shifts (378,514
11 violations), resulting in \$5,157,863 in liability after crediting premiums paid. (*Id.* at ¶ 31.). Under
12 Scenario 2, with only 13.3% of shifts showing potential violations (85,873 violations), Defendant's
13 payment of \$1,515,385 in rest break premiums during the class period eliminated any liability. (*Id.*).
14 Averaging these scenarios yields \$2,578,931.50 in potential liability. (*Id.*). Rest break violations are
15 inherently more difficult to prove than meal breaks due to lack of time records, and class
16 certification would face additional challenges given the need to rely on individual testimony about
17 missed breaks. Given these proof challenges and Defendant's substantial premium payments, the
18 risk-adjusted value of \$386,839.73 (15% of maximum) is appropriate. (*Id.*).

19 **4. Work Expense Violations**

20 The maximum liability for unreimbursed expenses was calculated at \$672,985. (*Id.* at ¶ 32.).
21 However, Defendant was already paying mileage to carpool drivers, and cell phone usage was
22 infrequent with no formal requirement. Given these defenses, the risk-adjusted value of \$67,298.50
23 (10% of maximum) is reasonable. (*Id.*).

24 **5. Wage Statement and Waiting Time Penalties**

25 The maximum exposure for wage statement penalties was \$4,326,750, and waiting time
26 penalties were valued at \$16,833,709. (*Id.* at ¶ 33.). However, these claims are purely derivative of
27 the underlying violations. (*Id.*). Given this derivative nature and Defendant's good faith defenses,
28

1 the risk-adjusted values of \$432,670 and \$1,683,370.90 respectively (both 10% of maximum) are
2 appropriate. (*Id.*).

3 **6. PAGA Penalties**

4 The maximum PAGA penalties across all violations totaled approximately \$28,492,400. (*Id.*
5 at ¶ 34.). However, after applying the same risk adjustments discussed above for each underlying
6 violation, the reasonable PAGA exposure was calculated at \$4,748,946. ² (*Id.*).

7 **b. Risk, Expense, Complexity and Duration of Further Litigation**

8 Continued litigation would present substantial risks and challenges. Class certification
9 would face significant hurdles, particularly regarding commonality and typicality. (*Id.* at ¶ 35.). For
10 instance, Defendant could argue that employees had varying experiences with meal and rest breaks
11 depending on their specific job duties, locations, or supervisors. (*Id.*). The off-the-clock claims
12 would face additional certification challenges given Defendant's arguments about the voluntary
13 nature of carpooling and individual choices about commuting methods. (*Id.*).

14 Settlement at this stage also avoids the substantial time and expense of completing full
15 formal discovery, briefing class certification, and proceeding through trial and likely appeals. (*Id.* at
16 ¶ 36.). Given these risks and challenges, the guaranteed recovery of \$2.4 million, representing
17 approximately 59% of the risk-adjusted value of the claims, provides excellent value to the class
18 while avoiding years of uncertain litigation. (*Id.*).

19 **c. Stage of Proceedings and Investigation**

20 The settlement follows substantial investigation and informal discovery. (*Id.* at ¶ 11.).
21 Defendant produced comprehensive data including class member information, relevant company
22 policies, time records, and payroll records. (*Id.*). Plaintiff's counsel retained an expert to analyze
23 this data and prepare a detailed damages model. (*Id.*). After mediation was complete, Plaintiff also
24 conducted confirmatory discovery and reengaged the expert to further analyze the data. (*Id.*).
25 Through this processes, the parties exchanged sufficient information to evaluate the claims'
26 strengths and weaknesses and make informed decisions about settlement value.

27 ///

28 ² The breakdown of PAGA penalties is set forth at length in Plaintiff's Motion for Preliminary Approval.

1 **d. Experience and Views of Counsel**

2 Frontier Law Center has extensive experience in wage and hour class actions and PAGA
3 matters, having successfully prosecuted numerous similar cases. (*Id.* at ¶¶ 37-40.). Based on this
4 experience and their thorough investigation, Class Counsel strongly believes this settlement
5 represents an excellent result for the class. (*Id.*).

6 **e. Presence of Government Participant/LWDA**

7 The settlement allocates \$120,000 to PAGA penalties, with 75% (\$90,000) going to the
8 LWDA as required by statute. Plaintiff properly provided notice to the LWDA at the outset of
9 litigation and when seeking preliminary approval. (*Id.* at ¶ 42.). The LWDA will also be notified of
10 this motion for final approval as required by Labor Code section 2699(l)(2). (*Id.*). The LWDA has
11 not indicated any objection to the settlement or PAGA allocation. (*Id.*).

12 **f. Class Members' Reaction to Settlement**

13 The class response strongly supports approval. Out of 7,217 class members who received
14 notice, only two submitted valid requests for exclusion, and only one class member objected.
15 (Polites Decl. ¶ 11-12.). This represents an extraordinarily high participation rate of over 99.9%,
16 demonstrating overwhelming class support for the settlement.

17 Moreover, as discussed above, the single objection received does not actually challenge the
18 settlement terms but rather raises unrelated workplace issues outside the scope of this wage and
19 hour settlement. The nearly complete absence of opt-outs and the lack of any substantive objections
20 to the settlement terms provide compelling evidence that the class views the settlement as fair and
21 reasonable.

22 **V. THE FEE AND COST REQUEST IS REASONABLE**

23 Class Counsel seeks an award of \$800,000 in attorneys' fees (one-third of the gross
24 settlement amount) and \$25,049.67 in costs. This request is reasonable under both the percentage
25 and lodestar methods of calculation.

26 **a. The Percentage Method Supports the Fee Request**

27 Courts in California frequently use the "percentage-of-the-fund" method to calculate
28 attorneys' fees in common-fund settlements. This approach awards class counsel a percentage of the

1 total settlement fund to compensate for their efforts, expenses, and the assumption of significant
2 contingency risk. Here, Class Counsel requests an attorneys' fee award of one-third (33.33%) of the
3 \$2,400,000 Gross Settlement Amount, which is consistent with awards in similar wage and hour
4 class actions. Indeed, the percentage-of-the-fund method is firmly endorsed in California law. In
5 *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503, the California Supreme Court explicitly
6 recognized that trial courts may reasonably award attorneys' fees using the percentage method, and
7 that awarding one-third of a common fund is well within the court's discretion.

8 Further supporting this request is the significant risk Class Counsel undertook in prosecuting
9 this matter on a purely contingent basis. Counsel advanced all litigation costs, performed extensive
10 discovery and investigation, and invested considerable time preparing for and attending mediation
11 and litigating the novel claims that form the basis of the settlement. (Starr Decl. ¶ 40.). Throughout
12 this process, Class Counsel bore the risk of receiving no compensation at all if they were
13 unsuccessful. This commitment of time and resources—without any guarantee of recovery—favors
14 a fee award commensurate with a standard contingency rate.

15 Additionally, the 33.33% request aligns with the market rate for complex wage and hour
16 class actions in California. Courts regularly approve fee awards of 33.33% or higher when counsel
17 has demonstrated skill, expended significant resources, and achieved a favorable result for class
18 members. Here, Class Counsel successfully negotiated a \$2,400,000 non-reversionary settlement
19 that provides meaningful and immediate relief to the class members. The Settlement also avoids the
20 substantial expense, uncertainty, and delay that would inevitably accompany continued litigation or
21 trial. These considerations strongly support the conclusion that a fee award of one-third of the fund
22 is fair and reasonable under the percentage-of-the-fund method.

23 Thus, taking into account the excellent result for class members, the contingent risk borne
24 by Class Counsel, the complexity of this action, and the market rate for similar wage and hour
25 matters, the percentage method fully supports the fee request of \$800,000 (33.33% of the common
26 fund).

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28 ///

1 **b. The Lodestar Cross-Check Confirms Reasonableness**

2 While courts in common-fund cases often rely on the percentage-of-the-fund method to
3 determine attorneys' fees, many courts also perform a lodestar "cross-check" to confirm the
4 reasonableness of the percentage-based award. (*See Laffitte v. Robert Half Int'l Inc.* (2016) 1
5 Cal.5th 480, 504 [acknowledging that trial courts may cross-check percentage-based fees against
6 the lodestar].)

7 Here, Class Counsel's cumulative lodestar stands at approximately \$292,302.50, based on
8 the reasonable hourly rates and hours devoted to this case. (*Id.* at ¶ 41.). The requested fee of
9 \$800,000—representing 33.33% of the common fund—translates to a multiplier of about 2.74
10 relative to this lodestar amount. Several factors justify such a multiplier in this case.

11 First, Class Counsel achieved an exceptional result for the class, securing approximately
12 59% of the risk-adjusted value of the claims. This is particularly notable given the complex nature
13 of the case, which involved multiple theories of liability and large amounts of data that required
14 analysis.

15 Second, Class Counsel undertook substantial risk in prosecuting this action. The case
16 presented novel legal issues, particularly regarding the compensability of travel time, which
17 required extensive research and analysis.

18 Third, Class Counsel's efficiency in achieving this settlement warrants recognition.
19 Specifically, Plaintiff's counsel achieved an excellent settlement for the class early into the
20 litigation. As noted by the Ninth Circuit, the "timely result" of early settlement is a positive
21 outcome and is a "relevant circumstance" in determining a fee award. *Vizcaino v. Microsoft Corp.*,
22 290 F.3d 1043, 1050 (9th Cir. 2002). Put simply, counsel must not be penalized for efficiency.
23 Where a prompt settlement produces an excellent result, a substantial multiplier is justified.

24 Fourth, courts have recognized that higher multipliers are appropriate where, as here,
25 counsel demonstrates exceptional skill in handling complex wage and hour issues. *See Wershba v.*
26 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or
27 even higher").
28

1 Class Counsel's lodestar spreadsheet is attached to the Starr Declaration as **Exhibit D**.
2 When considering the exceptional results achieved, the complexity of the issues involved, the
3 efficiency of the resolution, the skill demonstrated, and the contingent risk undertaken, the
4 requested multiplier is well-justified and reasonable under the circumstances of this case.

5 **c. The Costs Request Is Reasonable**

6 Class Counsel seeks reimbursement of \$25,049.67 in actual litigation costs, which is less
7 than the \$30,000 in costs authorized by the settlement. (*Id.* at ¶ 43.). These costs were reasonably
8 necessary to prosecute this action. (*Id.* at ¶ 44.). The costs include mediation fees, court filing and
9 service fees, expert fees for damages analysis, and other routine litigation expenses. (*Id.* at ¶ 43.).

10 Class Counsel's costs spreadsheet is attached to the Starr Declaration as **Exhibit E**.

11 **VI. THE SERVICE AWARD IS APPROPRIATE**

12 Plaintiff Salvador Anthony Rodriguez Jr seeks a \$10,000 service award in recognition of his
13 contributions to this litigation and the risks he undertook on behalf of the class. Service awards
14 compensate class representatives for the time, effort, and risks they take in pursuing class litigation.
15 (*Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958.). Indeed, "the rationale for
16 making enhancement or incentive awards to named plaintiffs is that they should be compensated for
17 the expense or risk they have incurred in conferring a benefit on other members of the class." (*Clark*
18 *v. American Residential Services LLC* (2009) 175 Cal. App. 4th 785, 806).

19 Here, Mr. Rodriguez has demonstrated exceptional commitment to representing the class.
20 (*See generally* Declaration of Salvador Anthony Rodriguez Jr in Support of Motion for Final
21 Approval ("Rodriguez Decl.")). He spent substantial time assisting counsel in investigating the
22 claims, providing detailed information about Defendant's travel time policies and pay practices,
23 reviewing the complaint and other filings, and remaining available throughout the settlement
24 process. (*Id.* at ¶ 6-7.). He participated in preparing for and attending mediation, reviewing
25 settlement terms, and staying informed about post-preliminary approval developments. (*Id.* at ¶ 8.).

26 Moreover, Mr. Rodriguez accepted significant personal risk by serving as the class
27 representative. (*Id.* at ¶ 10.). By attaching his name to this action, he also risked that future
28 employers in the inventory services industry might view his involvement in litigation negatively.

1 (*Id.* at ¶ 10.). Despite these risks, he stepped forward to vindicate the rights of his fellow employees.
2 His efforts ultimately helped secure a \$2.4 million settlement that provides meaningful
3 compensation to over 7,200 class members. (*Id.* at ¶ 15.).

4 **VII. CONCLUSION**

5 For these reasons, Plaintiff respectfully requests this Court finally approve the Settlement, the
6 service award, Class Counsel’s request for fees and costs, and the PAGA penalty allocation.
7 Plaintiff respectfully requests the court to enter judgment, retaining jurisdiction pursuant to Code of
8 Civil Procedure section 664.6.

9
10 Date: January 27, 2025

FRONTIER LAW CENTER

11
12 /s/ Manny Starr
13 Manny Starr
14 Attorney for Plaintiff
15 Salvador Anthony Rodriguez Jr
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