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individually, and on behalf of all similarly
aggrieved employees and the putative class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

SITARA NAYABKHIL, individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

vs.

SAN FRANCISCO SPCA, dba, SFSPCA, a
California 501(c)(3) non-profit organization;
DOES 1 through 25, inclusive,

Defendants.

Case No. CGC-23-609950

*Assigned to the Hon. Jeffrey S. Ross, Department
606*

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
AND PAGA SETTLEMENT, ATTORNEYS'
FEES AND COSTS, ENHANCEMENT
PAYMENT, AND SETTLEMENT
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: March 6, 2025

Time: 9:30 a.m.

Dept.: 606

Complaint Filed: October 24, 2023

FAC Filed: December 22, 2023

Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT on March 6, 2025 at 9:30 a.m.,** in Department 606 of the
3 above-captioned Court, located at 400 McAllister St., San Francisco, California 94102, plaintiff Sitara
4 Nayabkhil (“Plaintiff”) will and hereby does move the Court for an Order granting final approval of
5 the class action and PAGA settlement between Plaintiff and Defendant San Francisco SPCA dba
6 SFSPCA (“Defendant”).

7 This Motion is brought pursuant to California Code of Civil Procedure section 382, California
8 Labor Code section 2699(l), and Rules 3.769 and 3.1113(e) of the California Rules of Court, all of
9 which together require approval by the Court of a class action and/or PAGA settlement, and further
10 permit the Court to extend the page limitations for memoranda upon good cause shown, which exists
11 here so as to permit Plaintiff to address all requirements of this Court for obtaining approval of the
12 pending class and PAGA settlement.

13 By way of this Motion, Plaintiff requests that the Court enter an Order:

- 14 1. Granting final approval of the class action and PAGA settlement;
- 15 2. Approving the settlement as fair, adequate, and reasonable, based upon the terms as set
16 forth in the previously approved Joint Stipulation of Class Action and PAGA Settlement (“Settlement
17 Agreement” or “Settlement”), including the non-revisionary payment by Defendant of the Gross
18 Settlement Amount of \$1,950,000.00.
- 19 3. Approving Class Counsel’s request for allocation of one-third (1/3) of the Gross
20 Settlement Amount to attorneys’ fees (totaling \$650,000.00), plus reimbursement of actual costs and
21 expenses in the amount of \$19,585.43;
- 22 4. Approving allocation of an Enhancement Payment to Plaintiff in the amount of
23 \$7,500.00 in recognition of her services to the Class Members and PAGA Employees;
- 24 5. Approving an allocation of settlement administration costs to ILYM Group, Inc. in the
25 amount of \$9,550.00; and
- 26 8. Approving an allocation of \$97,500.00 to Plaintiff’s PAGA claim, which includes an
27 allocation of \$73,125.00 (75%) to be paid to the LWDA as civil penalties under PAGA, and the
28 remaining \$24,347.00 to the PAGA Employees, as required under PAGA.

This Motion is based on this Notice, the attached Memorandum of Points and Authorities; the Declarations of: (i) the Class Representative (Sitara Nayabkhil), (ii) Class Counsel (Karen I. Gold), and (iii) the Settlement Administrator (Cassandra Polites on behalf of ILYM Group), as well as the pleadings and other records on file with the Court in this matter, and such evidence or oral argument as may be presented at the hearing on this Motion.

Respectfully submitted,

Dated: February 5, 2025

BLACKSTONE LAW, APC

By: Karen Gold

Jonathan Genish
Karen I. Gold
Marissa A. Mayhood

Attorneys for Plaintiff SITARA NAYABKHIL,
individually, and on behalf of all similarly
aggrieved employees and the putative class

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Plaintiff Sitara Nayabkhil (“Plaintiff” or “Class Representative”) seeks final approval of the
4 pending Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement” or
5 “Settlement”), which requires Defendant San Francisco SPCA dba SFSPCA (“Defendant”) to pay a
6 total non-revisionary amount of One Million Nine Hundred And Fifty Thousand Dollars
7 (\$1,950,000.00) to resolve all pending class and PAGA claims against it. (Gold Decl., ¶ 11, Ex. 1).

8 As already determined by this Court at the preliminary approval stage, the proposed Settlement
9 is preliminarily fair, adequate, and reasonable. (Gold Decl., Ex. 2; *See also, Kullar v. Foot Locker*
10 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th
11 1794, 1801). The response of the Class to the Settlement confirms that final settlement approval is
12 appropriate. ***There have been zero objections and zero requests for exclusion from the Class***
13 ***Settlement.*** (Polities Decl., ¶¶ 12-13). Because the Settlement achieves outstanding results for the
14 Settlement Class Members, the PAGA Employees, and the State of California, Plaintiff respectfully
15 requests that the Court approve the Settlement as fair, adequate, and reasonable, and enter judgment
16 in accordance with its terms.

17 Plaintiff further seeks Court approval of an attorneys’ fee award of one-third (1/3) of the Gross
18 Settlement Amount, equaling \$650,000.00, plus reimbursement of actual litigation costs and expenses
19 in the amount of \$19,585.43 (together, “Attorneys’ Fees and Costs”). As set forth in detail below,
20 Class Counsel’s request for such an award of attorneys’ fees and costs is reasonable and appropriate
21 in light of, *inter alia*: (i) the extensive work performed by Class Counsel to investigate the claims,
22 research the legal theories, and prepare for mediation in this matter in a manner akin to preparing for
23 trial; (ii) the contingent nature of the fee arrangement, and (iii) the exceptional and timely results
24 achieved by Plaintiff and Class Counsel without the extensive delays plaguing many class action
25 lawsuits. (*See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19). ***Critically, the***
26 ***percentage and amount of fees sought by Class Counsel was disclosed to class members in the Class***
27 ***Notice, and no class members objected to it.*** (Gold Decl., ¶ 49; *see also* Polites Decl., Ex. A thereto).

1 Plaintiff also requests the Court confirm a reasonable payment of \$7,500 to Plaintiff
2 (“Enhancement Payment”) for her services on behalf of the Class and her comprehensive personal
3 release of all claims against Defendant.

4 Finally, Plaintiff requests the Court approve the payment of \$9,550 in Settlement
5 Administration Costs to ILYM Group, Inc. (the “Settlement Administrator”) as compensation for
6 administration services it has provided and will continue to provide in connection with the Settlement.
7 (*See* Politics Decl., *generally*).¹

8 **II. RELEVANT BACKGROUND INFORMATION**

9 **A. Factual Background**

10 Defendant owns and operates veterinary hospitals, clinics, and adoption centers in San
11 Francisco, California. Plaintiff was employed by Defendant as an hourly-paid, non-exempt from
12 approximately June 2019 to October 2022, in San Francisco, California. (Nayabkhil Decl., ¶ 2).

13 **B. Procedural Background**

14 On October 24, 2023, Plaintiff filed a Class & Collective Action Complaint in the above-
15 captioned action, thereby commencing a putative class action and PAGA action against Defendant.
16 (Gold Decl., ¶ 8).

17 On December 22, 2023, Plaintiff filed a First Amended Class & Collective Action Complaint
18 (“Operative Complaint”) in the Action against Defendant to add a cause of action for unpaid vacation
19 time. (*Id.*, at ¶ 9). The Operative Complaint alleges thirteen (13) causes of action for: (1) Violation of
20 29 U.S.C. §§ 2101, et seq. (Federal WARN Act); (2) Violation of Cal. Labor Code §§ 1400, et seq.
21 (California WARN Act); (3) Violation of Cal. Labor Code §§ 510 and 1198 (Unpaid Overtime
22 Wages); (4) Violation of Cal. Labor Code §§ 1194, 1197, and 11971. (Unpaid Minimum Wages); (5)
23 Violation of Cal. Labor Code §§ 226.7 and 512(a) (Meal Break Violations); (6) Violation of Cal.
24 Labor Code § 226.7 (Rest Break Violations); (7) Violation of Cal. Labor Code §§ 204 and 210 (Wages
25 Not Timely Paid); (8) Violation of Cal. Labor Code § 226(a) (Wage Statement Violations); (9)
26

27 ¹ In an effort to efficiently present the Court with the necessary information to rule of the pending
28 Motion, Plaintiff also respectfully moves for an order permitting the filing of this single consolidated
memorandum, although it exceeds the page limit established by California Rules of Court, Rule
3.1113(d), instead of filing several separate motions.

1 Violation of Cal. Labor Code §§ 201, 202, and 203 (Final Wages Not Timely Paid); (10) Violation of
2 Cal. Labor Code § 227.3 (Unpaid Vacation Time); (11) Violation of Cal. Labor Code §§ 2800 and
3 2802 (Failure to Reimburse Expenses); (12) Violation of Cal. Business and Professions Code §§
4 17200 et seq. (Unfair and Unlawful Business Practices); and (13) Violation of Cal. Labor Code §§
5 2698 et seq. (“Private Attorneys General Act”). (*Id.*, at ¶ 9).

6 On April 9, 2024, Plaintiff and Defendant (together, the “Parties”) participated in mediation
7 conducted by Jeffrey A. Ross, Esq. (“Mediator”), a neutral and well-respected mediator with extensive
8 experience in complex wage and hour matters. (*Id.*, at ¶ 10). Following a full day of mediation, the
9 Parties reached an agreement to resolve this dispute on a class and PAGA-wide basis. (*Id.*).

10 On or around June 27, 2024, the Parties executed the Joint Stipulation of Class Action and
11 PAGA Settlement (“Settlement” or “Settlement Agreement”). (*Id.*, at ¶ 11). On September 9, 2024,
12 Plaintiff filed a Motion for Preliminary Approval of Class Action and PAGA Settlement (“Motion for
13 Preliminary Approval”) and supporting documents. (*Id.*, at ¶ 13 & Ex. 2). On September 24, 2024, the
14 Court entered the Order Granting Preliminary Approval of Class Action and PAGA Settlement
15 (“Preliminary Approval Order”), thereby preliminarily approving the terms of the Settlement
16 Agreement, the Notice of Class Action Settlement (“Class Notice”), and the proposed administration
17 procedures and associated deadlines. (*Id.*, ¶ 14 & Ex. 3).

18 Notice of the Settlement was timely provided to the class members. (Polites Decl., ¶ 8). No
19 Class Members objected, and no Class Members requested to be excluded from the Settlement. (*Id.*,
20 ¶¶ 12-13).

21 This Motion for Final Approval follows.

22 **C. Summary of Key Settlement Terms**

23 The Parties agreed to settle the Class and PAGA claims at issue in the Action for a non-
24 reversionary Gross Settlement Amount of \$1,950,000.00, exclusive of employer-side payroll taxes.
25 (Settlement Agreement, ¶ 6(q); Gold Decl., Ex. 1). The Gross Settlement Amount includes: (1) Class
26 Counsel’s fees in the amount of one-third (1/3) of the Gross Settlement Amount, equaling
27 \$650,000.00; (2) Class Counsel’s actual litigation costs and expenses, in the amount of \$19,585.43;
28 (3) Settlement Administration Costs in the amount \$9,550.00; (4) Enhancement Payment in the

1 amount of \$7,500.00; and (5) a PAGA allocation of \$97,500.00 (75% to the LWDA and 25% to the
2 PAGA Employees). (Settlement Agreement, ¶¶ 6(q), 9-12; Gold Decl., ¶¶ 38, 47, & 48). After the
3 above amounts are deducted from the Gross Settlement Amount, ***the Settlement Class Members will***
4 ***share in a Net Settlement Amount of approximately \$1,165,864.57, which is over 59% of the Gross***
5 ***Settlement Amount.*** (Polites Decl., ¶ 15).

6 The Settlement does not require Settlement Class Members to submit claims as a prerequisite
7 to receiving their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) nor
8 does it require PAGA Employees to submit claims as a prerequisite to receiving their *pro rata* share
9 of twenty-five percent (25%) of the net PAGA Amount (“Individual PAGA Payment”). (Settlement
10 Agreement, ¶¶ 6(r), 6(t), 14 & 15). Individual Settlement Shares are calculated by the Settlement
11 Administrator by dividing the Net Settlement Amount by the Workweeks of all Class Members to
12 yield the “Estimated Workweek Value” and multiplying the result by each Class Member’s individual
13 Workweeks worked during the Class Period. (Settlement Agreement, ¶ 14). Individual PAGA
14 Payments are calculated by the Settlement Administrator by dividing the amount of the PAGA
15 Employees’ 25% share of PAGA Amount (\$24,375.00) by the total number of PAGA Workweeks
16 worked by all PAGA Employees during the PAGA Period and multiplying the result by each PAGA
17 Employee’s individual PAGA Workweeks worked during the PAGA Period. (Settlement Agreement,
18 ¶ 15).

19 Each Individual Settlement Share will be allocated as twenty percent (20%) wages, eighty
20 percent (80%) penalties, interest, and non-wage damages. (Settlement Agreement, ¶ 16.) The portion
21 allocated to wages (“Wage Portion”) will be reported on an IRS Form W-2 and the portions allocated
22 to interest and penalties (together, “Non-Wage Portion”) will be reported on an IRS Form 1099 (if
23 applicable) by the Settlement Administrator. (Settlement Agreement, ¶ 16). The Settlement
24 Administrator will withhold the employee’s share of taxes and withholdings with respect to the Wage
25 Portion of the Individual Settlement Shares, and issue checks to Settlement Class Members for their
26 net payment of their Individual Settlement Share. (Settlement Agreement, ¶ 16). Defendant will
27 separately pay any and all employer payroll taxes owed on the Wage Portion of the Individual
28 Settlement Shares. (Settlement Agreement, ¶ 16). Each Individual PAGA Payment will be allocated

1 as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if applicable) by
2 the Settlement Administrator. (Settlement Agreement, ¶ 16).

3 Each Individual Settlement Payment and Individual PAGA Payment check will be valid and
4 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
5 thereafter, shall be canceled. (Settlement Agreement, ¶ 34). Any funds associated with such canceled
6 checks will be distributed by the Settlement Administrator to the State of California's Unclaimed
7 Property Division in the name of the Settlement Class Member and/or PAGA Employee at issue.
8 (Settlement Agreement, ¶ 34).

9 Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class
10 Members will be deemed to have fully, finally, and forever released, settled, compromised,
11 relinquished, and discharged the Released Parties of all Released Class Claims. Released Class
12 Claims" means any and all claims and damages which were alleged or which could have been alleged
13 based on the factual allegations in the Operative Complaint, arising during the Class Period, including
14 claims for Defendant's alleged failure to pay overtime and minimum wages, failure to provide meal
15 and rest periods and associated premiums, failure to pay paid sick leave, failure to timely pay wages
16 during employment, failure to provide accurate wage statements, failure to timely pay final wages,
17 failure to pay vacation pay, and failure to reimburse necessary business-related expenses, in violation
18 of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1194, 1197,
19 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s), and
20 for violations of the California Business and Professions Code sections 17200, et seq. based on the
21 aforementioned California Labor Code violations. The Released Class Claims specifically excludes
22 any and all claims and damages for violations of U.S.C. Sections 2101, et seq. (Federal WARN Act)
23 and California Labor Code Sections 1400, et seq. (California WARN Act), as Plaintiff has agreed to
24 dismiss these claims without prejudice. (collectively, "Released Class Claims"). (Settlement
25 Agreement, ¶¶ 6(ff) & 35).

26 Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with
27 respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and
28 forever released, settled, compromised, relinquished, and discharged the Released Parties of all

Released PAGA Claims. “Released PAGA Claims” means any and all claims arising from any of the factual allegations in the PAGA Letter and/or Operative Complaint, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698, et seq., including for Defendant’s alleged failure to pay overtime and minimum wages, failure to provide meal and rest periods and associated premiums, failure to pay paid sick leave, failure to timely pay wages during employment, failure to provide accurate wage statements, failure to timely pay final wages, failure to pay vacation pay, failure to maintain complete and accurate payroll records, and failure to reimburse necessary business-related expenses, in violation of California Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s). The Released PAGA Claims specifically excludes any and all claims for violations of U.S.C. Sections 2101, et seq. (Federal WARN Act) and California Labor Code Sections 1400, et seq. (California WARN Act), as Plaintiff has agreed to dismiss these claims without prejudice. (Settlement Agreement, ¶¶ 6(gg) & 36).

Upon the full funding of the Gross Settlement Amount, Plaintiff, individually and on her own behalf, will be deemed to have fully waived all claims against the Released Parties. (Settlement Agreement, ¶ 37).

The “Released Parties” means Defendant and its current and former officers, directors, members, insurers, shareholders, subsidiaries, affiliates, predecessors, successors, and assigns. (*Id.*, ¶ 6(hh)).

D. The Settlement Administration Process

ILYM Group, Inc. has taken all necessary steps to effectuate the notice and settlement administration process, as set forth in the Preliminary Approval Order.

On October 1, 2024, ILYM Group, Inc. received the Court approved language for the Class Notice from Class Counsel. (Polites Decl., ¶ 5).

On October 8, 2024, ILYM Group, Inc. received the Class List from Defendant’s counsel, which contained the full name, Social Security number, last known mailing address, and the dates worked for Defendant during the Class Period for each Class Member and PAGA Employee. (collectively, “Class Data”). (*Id.*, at ¶ 6). The Class Data was uploaded to ILYM Group Inc.’s database

1 and checked for duplicates and other possible discrepancies. (Ibid). The Class Data contained 540
2 individuals identified as Class Members who worked 49,583 Workweeks during the Class Period.
3 (Ibid).

4 As part of the preparation for mailing, all **540** names and addresses contained in the Class Data
5 were then processed against the National Change of Address (“NCOA”) database, maintained by the
6 United States Postal Service (“USPS”), for purposes of updating and confirming the mailing addresses
7 of the Class Members before mailing of the Class Notice. (*Id.*, at ¶ 7). The NCOA contains requested
8 change of addresses filed with the USPS. (Ibid). To the extent that an updated address was found in
9 the NCOA database, the updated address was used for the mailing of the Class Notice. (Ibid). To the
10 extent that no updated address was found in the NCOA database, the original address provided by
11 Defendant’s counsel was used for the mailing of the Class Notice. (Ibid).

12 On October 22, 2024, the Class Notice was mailed, via U.S. First Class Mail, in English and
13 Spanish to all 540 individuals contained in the Class Data. (*Id.*, at ¶ 8). ILYM Group, Inc. performed
14 a computerized skip trace on the **33** returned Class Notices that did not have a forwarding address in
15 an effort to obtain an updated address for the purpose of re-mailing the Class Notice. (Ibid). As a result
16 of this skip trace, **24** updated addresses were obtained and the Class Notice was promptly re-mailed to
17 those Class Members, via U.S First Class Mail. (Ibid). A total of 24 Class Notices were re-mailed.
18 (*Id.*, at ¶ 10). As of the date of this declaration, a total of **10** Class Notices have been deemed
19 undeliverable as no updated address was found notwithstanding the skip tracing. (Ibid). (*Id.*, at ¶ 11).

20 Class Members had forty-five (45) calendar days after the Settlement Administrator mailed the
21 Class Notices to submit a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute
22 (“Response Deadline”). (Settlement Agreement, ¶ 6(jj)). The Response Deadline was December 6,
23 2024. (Politics Decl., ¶¶ 12-14). The Settlement Administrator did not receive any Notice of
24 Objections, Workweeks Disputes, and/or Requests for Exclusion from Class Members. (Ibid).

25 The estimated average gross Individual Settlement Share is **\$2,159.01**, the estimated highest
26 gross Individual Settlement Share is **\$5,713.75**, and the estimated lowest gross Individual Settlement
27 Share is **\$23.51**; the estimated average Individual PAGA Payment is **\$81.80**, the estimated highest
28 Individual PAGA Payment is **\$127.47**, and the estimated lowest Individual PAGA Payment is **\$2.60**.
(*Id.*, at ¶¶ 18 & 20).

1 **E. Compliance With Procedural Requirements of PAGA**

2 On September 9, 2024, Class Counsel submitted a copy of the Settlement Agreement to the
3 LWDA through its online submission portal in compliance with California Labor Code § 2699(1)(2).
4 (Gold Decl., ¶ 12). The LWDA has not objected to or otherwise responded to the submissions. (Ibid).

5 **III. THIS COURT SHOULD ISSUE FINAL APPROVAL OF THE SETTLEMENT**

6 **A. The Legal Standard for Final Approval**

7 Before granting final approval of a class action settlement, the Court must review the
8 settlement for fairness. (Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48
9 Cal.App.4th 1794, 1801). A court must take into account relevant factors, including, for example, the
10 strength of the plaintiff's case, the risk, expense, complexity and likely duration of further litigation,
11 the amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
12 the experience and views of counsel, and the reaction of the class members to the proposed settlement.
13 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45; *Dunk*, 48 Cal.App.4th at 1801
14 ["The list of factors is not exhaustive and should be tailored to each case"]; *Officers for Justice v. Civil*
15 *Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625).

16 Considering such factors, a presumption of fairness exists where: (1) the settlement is reached
17 through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and
18 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
19 objectors is small. (*Wershba*, 91 Cal.App.4th at 245; *Dunk*, 48 Cal.App.4th at 1802).

20 "The settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the
21 merits. [The trial court is not] to reach any ultimate conclusions on the contested issues of fact and law
22 which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and
23 avoidance of wasteful and expensive litigation that induce consensual settlements." (*Officers for*
24 *Justice, supra*, 688 F.2d at 625).

25 **B. This Court Previously Determined the Settlement Is Just, Fair and Reasonable**

26 This Court previously determined (preliminarily) that the pending settlement is just fair and
27 reasonable based on a detailed *Kullar* analysis, which has not been challenged by anyone since the
28 Court's approval. (*See* Gold Decl., Exs. 2 & 3). Specifically, the Court noted: The Court finds that the

1 settlement preliminarily appears to be within the range of possible final approval as a fair, adequate,
2 and reasonable settlement such that notice should be provided to the Class. (*Id.*, Ex. 3). Nothing has
3 changed to warrant revision of that finding since its issuance months ago.

4 **C. The Settlement Is the Result of Arms-Length Negotiations**

5 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
6 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
7 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
8 were at all times made at arm’s-length and were adversarial. (Gold Decl., ¶ 15). The Parties engaged
9 in extensive informal discovery prior to mediation. (*Id.*, at ¶ 16). After much consideration and a full
10 day of mediation, the Parties ultimately decided to settle the Action. (*Id.*, at ¶ 10).

11 **D. The Parties Undertook Extensive Informal Discovery**

12 Courts typically assess the status of discovery in determining whether a class action settlement
13 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
14 Defendant produced putative class members’ time and pay data, as well as Defendant’s employee
15 handbook, relevant wage and hour policies, and information to determine the total number of putative
16 class members, the number of current versus former employees, the total workweeks worked by the
17 putative class members, and the average rate of pay for the putative class members. (Gold Decl., ¶ 16).
18 This allowed Plaintiff’s counsel to conduct an informed assessment and analysis of the strengths and
19 weaknesses of the claims and the potential class-wide damages. (*Ibid*). Plaintiff’s investigation was
20 sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996)
21 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-
22 130 (“*Dunk/Kullar*”).

23 Based on the information exchanged, the Parties extensively researched and briefed issues
24 regarding class certification and liability and provided their analyses to the mediator who helped the
25 Parties debate the strengths and weakness of their respective positions. (Gold Decl., ¶ 18). At all times,
26 Plaintiff was willing to and prepared to litigate this matter through class certification and trial if the
27 Parties had been unable to reach a favorable resolution. (*Ibid*).

28 ///

1 **E. Settlement Negotiations Were Undertaken by Experienced Counsel**

2 Additionally, settlement negotiations were conducted by highly capable and experienced
3 counsel. (Ibid). Class Counsel are respected members of the California State Bar with strong records
4 of vigorous and effective advocacy and are experienced in handling complex wage and hour class
5 action litigation. (Gold Decl., at ¶¶ 4-36). Accordingly, Class Counsel had sufficient experience to act
6 intelligently in negotiating the Settlement.

7 **F. The Class Received the Best Practicable Notice and No Objections Were Received**

8 California law vests the Court with broad discretion in fashioning an appropriate notice
9 program. (See California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-
10 74). To protect the rights of absent class members, the parties must provide class members with the
11 best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985)
12 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 [individual notice
13 must be sent to all class members who can be identified through reasonable efforts]; *Mullane v. Central*
14 *Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314 [best practicable notice is that which
15 is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of
16 the action and afford them an opportunity to present their objections"]]). The content and method of
17 the notice should be designed to apprise the class members of the terms of the proposed settlement
18 and of the class members' rights regarding the settlement. (See *Mullane, supra*, 339 U.S. at 314;
19 *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323
20 F. Supp. 364, 378).

21 The Class Notice approved by the Court met these requirements: it identified the Parties and
22 described the Action, the Class, the Gross Settlement Amount, the proposed method for distribution
23 of the Gross Settlement Amount, the amounts proposed to be paid as the Enhancement Payment to
24 Plaintiff, the Settlement Administration Costs to the Settlement Administrator, and the Attorneys' Fees
25 and Costs to Class Counsel. (Gold Decl., ¶ 49; see also Polites Decl., Ex. A thereto). The Class Notice
26 described the proposed Settlement with enough specificity to allow each Class Member to make an
27 informed choice whether to accept and participate in it. (Ibid). It also explained how and when Class
28 Members may object to or opt out of the Class Settlement. (Ibid). Finally, the Class Notice provided

the date for the hearing on final approval of the Settlement and informed Class Members how to obtain additional information about the Settlement. (Ibid).

Critically, not a single class member objected to the Settlement. (Politics Decl., ¶ 13).

IV. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AND SHOULD BE APPROVED

A. The “Common Fund Doctrine” Is the Preferred Method for Determining Fees

Courts have long recognized the “common fund” or “common benefit” doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund. (*See Serrano v. Priest* (“*Serrano III*”) (1977) 20 Cal.3d 25, 34, quoting *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees’ Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gernert* (1980) 444 U.S. 472,478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392).

The California Supreme Court has held that, “when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys’ fees out of the fund.” (*Serrano III, supra*, 20 Cal.3d at 34, quoting *D’Amico*, 11 Cal.3d 1; *see also Boeing, supra*, 444 U.S. at 478 (“[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.”); *Mills, supra*, 396 U.S. at 391-392 (United States Supreme Court endorsing the common fund approach in class actions)). California Practice Guide: Civil Trials and Evidence (The Rutter Group) at § 17:172.3 explains the common fund doctrine as follows:

Where the lawsuit results in the recovery of a fund or property benefiting others as well as plaintiff (e.g., a class action), the court has inherent equitable power to order plaintiffs attorney fees paid out of the common fund or property [citations]. Such fee spreading assures that all of those benefited by the litigation pay their fair share of obtaining the recovery.

The percentage-of-the-fund approach is the preferred method of awarding fees in traditional common fund cases, such as this case. Where the settlement amount is a “certain or easily calculable sum of money,” use of the percentage-of-the-fund method is appropriate. (*Serrano III*, 20 Cal. 3d at 35).

1 In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, a wage and hour class action wherein
2 class counsel obtained a \$19 million non-reversionary settlement on behalf of the class, the California
3 Supreme Court approved the use of the percentage of fund or common fund method to award one-
4 third of the settlement amount or \$6,333,333.33 to class counsel for attorneys' fees. The Court stated:

5 "Whatever doubts may have been created by *Serrano III*, supra, 20 Cal.3d 25, [], or the
6 Court of Appeal cases that followed, we clarify today that use of the percentage method
7 to calculate a fee in a common fund case, where the award serves to spread the attorney
8 fee among all the beneficiaries of the fund, does not in itself constitute an abuse of
9 discretion. We join the overwhelming majority of federal and state courts in holding
10 that when class action litigation established a monetary fund for the benefit of the class
11 members, and the trial court in its equitable powers awards class counsel a fee out of
12 that fund, the court may determine the amount of a reasonable fee by choosing an
13 appropriate percentage of the fund created. The recognized advantages of the percentage
14 method - including relative ease of calculation, alignment of incentives between counsel
15 and the class, a better approximation of market conditions in a contingency case, and
16 the encouragement it provides counsel to seek an early settlement and avoid
17 unnecessarily prolonging the litigation [] convince us the percentage method is a
18 valuable tool that should not be denied our trial courts."

19 (*Laffitte*, 1 Cal.5th at 503).

20 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court stated:
21 "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive
22 benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly,
23 in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the California Supreme
24 Court recognized that the common benefit doctrine has been applied "consistently in California when
25 an action brought by one party creates a fund in which other persons are entitled to share."

26 Numerous appellate courts are in accord. (*See e.g., Knoff v. City and County of San Francisco*
27 (1969) 1 Cal.App.3d 184, 203-204 (court upheld a "contingent percentage" award of attorneys' fees
28 in a representative action as the proper exercise of the court's broad equitable powers); *Rider v. County
of San Diego* (1992) 1 I Cal.App.4th 1410, 1423 (attorneys' fees and expenses properly awarded from
common benefit composed of illegally imposed sales and use tax); *Bank of America v. Cory* (1985)
164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action compelling state to
claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556, 567-568 (court
upheld fee award equal to one-third of the damages to owners of residential property in an inverse
condemnation action)).

1 The Supreme Court noted that several courts have expressed frustration with the alternative
2 “lodestar” approach for deciding fee awards, which usually involves wading through voluminous and
3 often indecipherable time records. (*Laffitte*, 1 Cal.5th at 503; see *Lealao v. Beneficial California, Inc.*
4 (2000) 82 Cal.App.4th 19, 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373,
5 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class
6 counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing
7 an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources.
8 (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79). The Ninth Circuit now routinely uses the
9 percentage of the common fund approach to determine the award of attorney’s fees. (*Lealao*, 82
10 Cal.App.4th at 30-31; see e.g., *In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79
11 (approving attorney’s fee of 33%)).

12 **B. A One-Third (1/3) Common Fund Fee Award is Proper Here**

13 Fee awards of one third of the Gross Settlement Amount are reasonable and commonplace in
14 California courts. See e.g. *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, 506 (2016) (California
15 Supreme Court upholding 1/3 fees award on \$19 million settlement); *Consumer Priv. Cases*, 175 Cal.
16 App. 4th 545, 558, 96 Cal. Rptr. 3d 127, 137 (2009) (“Empirical studies show that, regardless whether
17 the percentage method or the lodestar method is used, fee awards in class actions average around one-
18 third of the recovery.”); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008).

19 California “courts often consider the following factors when determining the benchmark
20 percentage to be applied: (1) the result obtained for the class; (2) the effort expended by counsel; (3)
21 counsel's experience; (4) counsel's skill; (5) the complexity of the issues; (6) the risks of non-payment
22 assumed by counsel; (7) the reaction of the class; and (8) comparison with counsel's lodestar.” *Spann*
23 *v. J.C. Penney Corp.*, 211 F. Supp. 3d 1244, 1263 (C.D. Cal. 2016) (citing *Craft v. Cnty. of San*
24 *Bernardino*, 624 F.Supp.2d 1113, 1116–17 (S.D.Cal.2008); *Laffitte v. Robert Half Internat. Inc.*, 1
25 Cal. 5th 480, 504 (2016)).

26 Here, each of these factors support an award of the requested attorneys’ fees.

27 **1. The Result Obtained for The Class**

28 The very strong results achieved by Class Counsel support its request for one third of the

1 common fund in attorneys' fees. As of the date of this Motion, Settlement Class Members will be paid,
2 on average, approximately \$2,159.01 each, which is intended to compensate them for the alleged wage
3 and hour violations they suffered during their employment. (Polites Decl., ¶ 18). This is a significant
4 benefit for the Settlement Class Members here as it represents a recovery for highly disputed claims.
5 Equally important is the fact that the State of California will receive \$97,500.00 for enforcement of
6 labor laws and education of employers. (Gold Decl., ¶ 48).

7 Furthermore, the efficiency with which this litigation was conducted and resolved should be
8 rewarded. After preparing and investigating the case prior to filing the Action, Class Counsel litigated
9 and then resolved the case without the extensive delays that plague most class action lawsuits. The
10 Class Members will directly benefit from the prompt and fair resolution of their claims, as they will
11 receive a significant monetary award in a relatively short order, as opposed to waiting potentially years
12 to recover some undetermined amount if they succeed at trial, which is an uncertainty in itself.

13 **2. Counsel's Experience, Skill and Effort**

14 Class Counsel has substantial experience in wage-and-hour and other class action litigation,
15 including litigation involving the legal issues in this matter. (Gold Decl., ¶¶ 3-36). Class Counsel's
16 skill in developing a factual and legal record was essential to achieving the Settlement. Through its
17 skill and reputation, Class Counsel was able to obtain a settlement that provides an outstanding result
18 for Class Members. (See generally Gold Decl.).

19 **3. The Complexity of The Issues**

20 Class action wage and hour and PAGA claims are notoriously specialized and complicated
21 areas of law. (Gold Decl., ¶ 45). This case was no exception. *See id.* This factor therefore weighs in
22 favor of the fees sought.

23 **4. The Risks of Non-Payment Assumed by Counsel**

24 From the outset of the Action to the present, prosecution of this matter has involved significant
25 financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingency fee basis,
26 with no guarantee of recovery, and fronted all costs necessary for its prosecution. (Gold Decl., ¶ 44).
27 The risks of this matter are apparent in that class certification would likely have been a hard-fought
28 issue, and even if class certification were granted over Defendant's opposition, there was no assurance

1 that Plaintiff would prevail on the inevitable motion for decertification, at trial, and/or on any
2 subsequent appeal(s) regarding the same. (Gold Decl., ¶¶ 22 & 39). Thus, Class Counsel assumed a
3 significant risk in accepting this matter on a contingency fee basis. *See id.*

4 **5. The Reaction of The Class**

5 Class Counsel's intention to request the Court's approval for payment of attorneys' fees in the
6 amount of one third of the Gross Settlement Amount totaling \$650,000.00 was clearly disclosed to
7 Class Members in the Court-approved Class Notice. (Gold Decl., ¶ 49; *see also* Polites Decl., Ex. A
8 attached thereto). As of the filing of this Motion, there has not been a single objection to the request
9 for attorneys' fees. (Polites Decl., ¶ 13). Based on this, it is fair to conclude that the Class believes that
10 such fees are proper in light of the timely and strong results achieved here, further supporting the
11 amount of Plaintiff's counsel's request for attorneys' fees. *See id.*

12 **C. The Lodestar Cross-Check Confirms that the Requested Fees are Reasonable**

13 It is often appropriate to "cross-check" the percentage of the common fund fee determination
14 against the lodestar amount. *See e.g. Consumer Priv. Cases*, 175 Cal. App. 4th 545, 557–58 (2009).
15 "Regardless of whether attorneys' fees are determined using the lodestar method or awarded based on
16 a "percentage-of-the-benefit" analysis under the common fund doctrine, 'the ultimate goal ... is the
17 award of a "reasonable" fee to compensate counsel for their efforts, irrespective of the method of
18 calculation.'" *Id.* (citing *Apple Computer, Inc. v. Superior Court*, 126 Cal.App.4th 1253, 1270 (2005)).
19 "It is not an abuse of discretion to choose one method over another as long as the method chosen is
20 applied consistently using percentage figures that accurately reflect the marketplace." *Id.* (citing
21 *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 65–66 (2008)).

22 Here, Class Counsel estimates that they spent approximately 535.75 hours litigating these
23 claims to date.² (Gold Decl., ¶ 42). Class Counsel expects to spend another 35 hours in connection
24

25 ² In *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, the court addressed the issue of what evidence
26 is required in California to support a fee application. The court held: "Testimony of an attorney as to
27 the number of hours worked on a particular case is sufficient evidence to support an award of attorney
28 fees, even in the absence of detailed time records." *Id.* There is no need to attach the voluminous
invoices prepared in a case as a basis for an award of fees and costs. *Id.* Through Class Counsel's
declarations in support of this application, however, Plaintiff presents a thorough breakdown of the
hours spent and costs incurred in prosecuting this class action. Pursuant to *Martino*, *supra*, this
presentation is sufficient to support the amount requested.

1 with the final approval process (including finalizing the MFAS and supporting documents, preparing
2 for and attending the Final Approval Hearing, and managing the Settlement through its conclusion,
3 including anticipated communications with defense counsel, the Settlement Administrator, client, and
4 Class Members). (*Id.*, ¶ 43). In addition to time spent during litigation, reasonable hours also include
5 the time spent before the Action was filed, including time spent interviewing the client, investigating
6 the facts and the law, preparing the initial pleadings, as well as litigating the case. (*Webb v. Board of*
7 *Educ.* (1985) 471 U.S. 234). Further, the fee award should include fees incurred to establish and defend
8 the attorneys' fee claim. (*Serrano v. Priest* (1982) 32 Cal .3d 621, 639 (“*Serrano IV*”). Based on the
9 rates of Class Counsel, the total fees for time worked to date are estimated to be **\$474,698**. (Gold Decl.,
10 ¶ 42). By the conclusion of this matter, the total fees for time worked are estimated to be approximately
11 **\$505,060.50**. (*Id.*, at ¶ 43).

12 When the lodestar methodology or cross-check is applied, the Court should adjust the fee
13 award by a multiplier to make an appropriate fee award. (*Serrano III, supra*, 20 Cal.3d at 48). In
14 applying the multiplier, *Newberg on Class Actions* states that “[m]ultiples ranging from one to four
15 frequently are awarded in common fund cases when the lodestar method is applied. A large common
16 fund award may warrant an even larger multiplier.” (4 *Newberg on Class Actions* 4th (4th ed. 2002) §
17 14.6). If the class members paid the fees that the market would bear, they would pay a fee of anywhere
18 from one-third to forty-five percent of any recovery. Since this is the market rate, the lodestar
19 calculation should be enhanced to reflect what the class members would pay on the open market.
20 (*Lealao, supra*, 82 Cal.App.4th at 47-48).

21 In *Lealao*, the court held that trial courts should award lodestar fees by examining the
22 percentage-of-the-benefit and adjusting the lodestar calculation accordingly. (*Id.* at 49 & 53). The
23 court indicated that this is an upward adjustment and should be akin to a contingency fee recovery;
24 the court stated, “[a]n adjustment reflecting the amount of the class recovery is not significantly
25 different from an adjustment reflecting a percentage of that amount; and California courts have
26 evaluated a lodestar as a percentage of the benefit.” (*Id.* at 46). The *Lealao* method appears particularly
27 appropriate because class actions generally are contingency fee cases for plaintiffs - and the class
28 action clients do not expect to pay an hourly fee.

1 The rationale of *Lealao* comports with the purpose of the multiplier. The multiplier is
2 “primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of
3 nonpayment in contingency cases.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138). The *Lealao*
4 court reasoned:

5 Given the unique reliance of our legal system on private litigants to enforce
6 substantive provisions of law through class and derivative actions, attorneys
7 providing the essential enforcement services must be provided incentives
8 roughly comparable to those negotiated in the private bargaining that takes
9 place in the legal marketplace, as it will otherwise be economic for
defendants to increase injurious behavior. It has therefore been urged (most
persistently by Judge Richard Posner) that in defining a reasonable fee in
such representative actions, the law should mimic the market.

10 In the class action context, that would mean attempting to award the fee that
11 informed private bargaining, if it were truly possible, might have reached.
12 The simplest way for the law to duplicate the bargain that informed parties
13 would reach if agency costs were low is to look to fee award levels in actions
brought by sophisticated private parties under the same or comparable
statutes.

14 (*Lealao*, 82 Cal.App.4th at 47-48 (internal citations and quotations omitted)). The court added:

15 [T]rial judges need the flexibility *Serrano III* provides, as it enables them to
16 relate fee awards to the economic realities that determine the efficacy of the
private enforcement contemplated by our civil justice system.

17 Accordingly, we hold that, in cases in which the value of the class recovery
18 can be monetized with a reasonable degree of certainty and it is not otherwise
19 inappropriate, a trial court has discretion to adjust the basic lodestar through
20 the application of a positive or negative multiplier where necessary to ensure
that the fee awarded is within the range of fees freely negotiated in the legal
marketplace in comparable litigation.

21 (*Id.* at 49-50).

22 In looking at similar cases, including those set forth above, Class Counsel’s requested fee
23 comports to the market. Based on the reasonable hourly rates suggested by Class Counsel and the
24 collective hours worked in this matter, the requested fee award would represent a 1.29 multiplier of
25 the current total fee lodestar. In this regard, Class Counsel’s fee request is reasonable. (*See e.g.*
26 *Buccellato v. At&T Operations, Inc.*, (N.D.Cal. June 30, 2011, No. C10-00463-LHK) 2011
27 U.S.Dist.LEXIS 85699, at *4) (finding a 4.3 multiplier reasonable); *Steiner v. Am. Broad. Co.*, 248
28 Fed. Appx. 780, 783 (9th Cir. 2007) (affirming award with multiplier of 6.85); *Uschold v. NSMG*

1 *Shared Servs., LLC*, (N.D.Cal. June 5, 2020, No. 18-cv-01039-JSC) 2020 U.S.Dist.LEXIS 99258, at
2 *49) (finding a 4.0 multiplier reasonable); *In re NCAA Ath. Grant-In-Aid Cap Antitrust Litig.*,
3 (N.D.Cal. Dec. 6, 2017, No. 4:14-md-2541-CW) 2017 U.S.Dist.LEXIS 201108, at *22) (finding a
4 3.66 multiplier reasonable)).

5 **V. PLAINTIFF’S COST REQUEST IS REASONABLE**

6 Class Counsel seeks reimbursement of a total amount of \$19,585.43 in costs and expenses in
7 this matter, which includes reasonable future costs for filing the Motion. (Gold Decl., ¶ 38 & Ex. 4).
8 All costs and expenses are documented in detail and were reasonably incurred in prosecution of this
9 matter. The Court should therefore approve an allocation of the requested amount from the Settlement.

10 **VI. THE REQUESTED ENHANCEMENT PAYMENT IS REASONABLE**

11 The named Plaintiff should be awarded an Enhancement Payment in the amount of \$7,500.00
12 for her services as the Class Representative and the risks in connection with that role. Enhancement
13 awards in wage and hour cases typically range from \$5,000.00 to \$20,000.00, although some awards
14 are higher. (*Ibid*). Often, multiple class representatives receive awards in the above range. (*See e.g.*,
15 *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 [approving an
16 enhancement request of \$10,000.00 per named plaintiff in a 188 member class]; *Cook v. Niedert*, 142
17 F.3d 1004, 1016 (7th Cir. 1998); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir.
18 1974) [“We also think there is something to be said for rewarding those drivers who protect and help
19 to bring rights to a group of employees who have been the victims of discrimination.”]). Here, the
20 requested Enhancement Payment is modest, reasonable, and should be approved.

21 Plaintiff’s actions establish that: (1) she sought to protect the interests of the Class above her
22 own personal interests; (2) the Settlement Class Members will benefit from her actions by receiving a
23 payment without having to do anything; and (3) Plaintiff has put forth a significant amount of time
24 and effort pursuing the litigation and seeing it through to resolution. (*See*, generally, *Nayabkhil Decl.*;
25 *see also Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804 (discussing the
26 criteria for determining class representative enhancement awards in concluding that a requested award
27 of \$25,000 for two class representatives was too high)).

28 The requested award for Plaintiff is also reasonable given the financial and personal risk she

1 took in commencing the Action, and in light of the benefits that her actions have conferred upon the
2 Class. (Nayabkhil Decl., ¶ 8; *See also Van Vranken v. Atl. Richfield Co.* (N.D.Cal. 1995) 901 F.Supp.
3 294, 299-300). Additionally, in considering a requested class representative enhancement award,
4 courts take into consideration a plaintiff's reasonable fear of retaliation. (*Staton v. Boeing Co.* (9th
5 Cir. 2003) 327 F.3d 938, 977). Here, it is easy to see that a potential future employer could expend
6 little effort to discover Plaintiff brought the lawsuit – and based thereon, decline to offer Plaintiff
7 employment.

8 In sum, Plaintiff has performed considerable services on behalf of the Class during the
9 litigation. (*See, generally, Nayabkhil Decl.*). Class Counsel cannot understate the importance of the
10 role of an employee who is willing to search out an attorney and step forward to assume the risk of
11 litigation and retaliation in order to represent a class and put the interests of the class before their own
12 interests. Plaintiff has understood that this is a class action where she is serving as the Class
13 Representative and must protect the Class Members' interests. (*Id.*, at ¶ 7). Plaintiff was the catalyst
14 to the benefit reached for the Class Members and the State of California, and has actively represented
15 the Class Members' interests during the pendency of this matter and will continue to do through
16 judgment. (*Ibid.*). Plaintiff spent numerous hours participating in this matter by searching for an
17 attorney, communicating with her attorneys on numerous occasions, searching for and producing
18 relevant documents related to her employment, responding to her attorneys' inquiries, reviewing the
19 settlement documents, and approving the Settlement on behalf of all Class Members. (*See Nayabkhil*
20 *Decl., generally*).

21 In contrast, without having to take on any of the risk incurred by Plaintiff or time spent by
22 Plaintiff in litigating this matter, Settlement Class Members will automatically be issued a payment
23 for their claims. It appears that the Settlement Class Members recognize this enhancement was
24 justified because since the time the Class received notice of the requested Enhancement Payment, no
25 one has objected to the request. Thus, the Enhancement Payment to Plaintiff is warranted to
26 compensate her for her time and effort, the fear and stress associated with assuming the responsibility
27 of serving as the Class Representative, and the concrete risks she assumed as the Class Representative.

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1 **VII. REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**

2 In Plaintiff's Motion for Preliminary Approval, Plaintiff requested, and the Court preliminarily
3 approved, Settlement Administration Costs not to exceed is \$11,000.00. (Gold Decl., ¶ 47). Class
4 counsel obtained competing bids, and ILYM's bid was the cheapest of the three bids obtained. ILYM
5 Group, Inc.'s anticipated fees and costs for completion of the settlement administration, are \$9,550.00.
6 (Polites Decl., ¶ 21). Moreover, ILYM Group, Inc. is an experienced class administrator and has
7 adequately performed the administration tasks required by the Preliminary Approval Order. (*See id.*,
8 at ¶ 3 & Ex. B). Based thereon, the requested costs should be approved.

9 **VIII. THE PROPOSED LWDA ALLOCATION IS REASONABLE**

10 Pursuant to California Labor Code Section 2699(1), the Superior Court shall review and
11 approve the settlement of penalties sought under that California Labor Code Section. (Cal. Lab. Code
12 § 2699(1)). For all of the reasons stated above, the Settlement is fair, reasonable, and adequate, and
13 should be approved. As part of the Settlement, Defendant agreed to pay \$97,500 to settle the claims
14 of the PAGA Employees brought pursuant to PAGA, of which \$73,125.00 (75% of the PAGA
15 Amount) will be paid to the LDWA for education and enforcement purposes, and the remaining
16 \$24,375 will go to the PAGA Employees. (Polites Decl., ¶ 15).

17 Courts routinely approve similar comparatively small PAGA allocation "in order to maximize
18 payments to class members." (*Magadia v. Wal-Mart Assocs.* (N.D. Cal. May 31, 2019, No. 17-CV-
19 00062-LHK) 2019 U.S. Dist. LEXIS 91732, *90-91, citing as examples *Ceja-Corona v. CVS Pharm.,*
20 *Inc.* (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 [preliminarily
21 approving \$10,000 in PAGA penalties out of a total settlement amount of \$900,000]; *Thio v. Genji,*
22 *LLC* (N.D. Cal. 2014) 14 F. Supp. 3d 1324, 1330 [preliminarily approving \$10,000 in PAGA penalties
23 out of a total settlement amount of \$1,250,000]; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012)
24 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 [granting final approval of \$10,000 in
25 PAGA penalties out of a total settlement amount of \$2,500,000]; *Garcia v. Gordon Trucking, Inc.*
26 (E.D. Cal. Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 [granting final
27 approval of \$10,000 in PAGA penalties out of a total settlement amount of \$3,700,000]; *Chu v. Wells*
28 *Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1
[granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of

1 \$6,900,000)).

2 Moreover, Plaintiff's counsel provided notice of the Settlement to the LWDA on September 9,
3 2024, and to date, the LWDA has not objected to or otherwise taken issue with its allocation. (Gold
4 Decl., ¶ 12).

5 The Parties' allocation of \$97,500.00 to Plaintiff's PAGA claim is therefore proper and
6 appropriate and should be approved by the Court.

7 **IX. CONCLUSION**

8 Plaintiff therefore respectfully requests that this Court grant Plaintiff's Motion for Final
9 Approval of Class Action and PAGA Settlement, Attorneys' Fees and Costs, Enhancement Payment,
10 and Settlement Administration Costs.

11
12
13 Respectfully submitted,

14 Dated: February 5, 2025

BLACKSTONE LAW, APC

15 By: 

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17 Sara Pezeshkpour
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19 Attorneys for Plaintiff SITARA NAYABKHIL,
20 individually, and on behalf of all similarly
21 aggrieved employees and the putative class
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