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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO

DESIREE GARCIA, individually, and on behalf
of other members of the general public similarly
situated, and as an aggrieved employee and
Private Attorney General;

Plaintiffs,

vs.

SESLOC FEDERAL CREDIT UNION, an
unknown business entity; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 22CV-0295

*Assigned for all purposes to: Hon. Craig B.
Van Rooyen, Dept. 2*

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Hearing Date: February 27, 2025
Hearing Time: 9:00 A.M.
Dept: 2

Filed date: June 8, 2022
Trial date: None Set

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on February 27, 2025, at 9:00 a.m. in Department 2 of the San Luis Obispo County Superior Court, Department 2, located at 1050 Monterey Street, Room 220, San Luis Obispo, California, 93408, Plaintiff Desiree Garcia (“Plaintiff”) will apply to this Court for an order granting final approval of the Joint Stipulation of Class Action and PAGA Settlement and Amendment thereto (“Settlement” or “Settlement Agreement”) between Plaintiff and Defendant SESLOC Federal Credit Union (“Defendant”) (collectively with Plaintiff, “the Parties”). As part of that approval, Plaintiff will request that the Court:

1. Grant final approval of the Settlement attached to the Declaration of Heather Davis, Esq., on the grounds that the proposed settlement is fair, adequate, and reasonable because:

- a. The non-reversionary Net Settlement Amount of approximately \$371,000.00 will be paid out to the Participating Class Members;
- b. Proper Notice was provided to all Class Members pursuant to the terms of the Settlement;
- c. No objections were submitted to the Settlement; and
- d. Only one (1) Class Member requested to be excluded from the settlement, leaving 285 Participating Class Members;

2. Award attorneys’ fees in the amount \$262,500.00 (35% of the Gross Settlement Amount) to Protection Law Group, LLP (“Class Counsel”);

3. Award costs in the amount of \$15,176.78 to Class Counsel for litigation costs and expenses;

4. Award payment of \$9,000.00 to the Settlement Administrator, ILYM Group, Inc., for the costs of settlement administration;

5. Award a class representative enhancement payment of \$7,500.00 to Plaintiff Desiree Garcia;

6. Approve payment of \$75,000.00 for penalties pursuant to California Labor Code Section 2698 *et. seq.* the Private Attorneys General Act of 2004 (“PAGA”) and the distribution of seventy-five percent of these penalties (\$56,250.00) to the California Labor and Workforce

1 Development Agency (“LWDA”) and twenty-five percent (\$18,750.00) to all current and former
2 non-exempt employees of Defendant who were employed by Defendant in the state of California
3 (“PAGA Members”) at any time during the period from June 8, 2021, to January 29, 2024 (“PAGA
4 Period”); and

5 7. Order the funding and distribution of the Maximum Settlement Amount in the
6 manner set forth in the Settlement.

7 The motion is based upon this notice; the attached memorandum of points and authorities;
8 the Declaration of Heather Davis, Esq. and all exhibits attached thereto; the Declaration of Plaintiff
9 Desiree Garcia; the Declaration of Nick Castro on behalf of ILYM Group, Inc., and all exhibits
10 attached thereto; the pleadings and other records on file with the Court in this matter, and any other
11 further evidence or argument that the Court may properly receive at or before the hearing.
12

13 DATED: February 3, 2025

Respectfully Submitted,

15 **PROTECTION LAW GROUP, LLP**

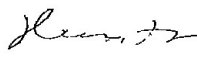
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff DESIREE GARCIA (“Plaintiff”) seeks final approval of a class action and PAGA settlement with Defendant SESLOC FEDERAL CREDIT UNION (“Defendant”). The settlement provides for: (1) A non-reversionary Gross Settlement Amount of \$750,000.00; (2) attorneys’ fees in the amount of \$262,500.00 (35% of the Gross Settlement Amount); (3) actual litigation costs and expenses incurred by Class Counsel in the amount of \$15,176.78; (4) payment of \$75,000.00 for PAGA Penalties (75% of which shall be distributed to the LWDA and 25% to PAGA Members); (5) payment of \$9,000.00 to the Settlement Administrator, ILYM Group, Inc. for costs associated with administration of the settlement; and (6) a requested class representative enhancement payment of \$7,500.00 to Plaintiff Desiree Garcia. The result is a Net Settlement Amount (“NSA”) of \$371,000.00 that will be distributed to a Class of 285 Participating Class Members who worked for Defendant as an hourly-paid or non-exempt employee in the State of California at any time between June 8, 2018, and January 29, 2024. Participating Class Members will receive an average payment of approximately \$1,301.75, from the class portion of their Individual Settlement Payment. The highest payment to a class member from the Class portion of the settlement will be approximately \$2,973.28, while the lowest payment from the class settlement will be approximately \$10.15. Declaration of Nick Castro of ILYM Group, Inc. (“ILYM Decl.”) ¶13.

At Preliminary Approval, the Court established a presumption of fairness after extensively analyzing the terms of the Settlement and underlying settlement efforts. This presumption of fairness is confirmed here following notice of the proposed settlement to the class. To date, only one (1) Class Member has submitted a request for exclusion, and there have been zero objections to the terms of the settlement. ILYM Decl. ¶¶11-12. The lack of objections to the terms of the settlement and the fact that only one (1) class member submitted a request for exclusion, (a 99.65% participation rate by the Class) is further evidence, in addition to the factors extensively analyzed at Preliminary Approval that demonstrate the Settlement is a fair and reasonable result. Accordingly, the Court should approve the proposed Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant SESLOC FEDERAL CREDIT UNION (“Defendant”) is a full-service credit union, offering both personal and business banking and loan services to clients throughout California. Plaintiff worked for Defendant from approximately December 2017 to approximately May 2020. Declaration of Heather Davis in Support of Motion for Final Approval of Class Action and PAGA Settlement (“Davis Decl.”) ¶13; *see also* Declaration of Desiree Garcia (“Garcia Decl.”) ¶2.

On June 8, 2022, Plaintiff filed her wage and hour class action complaint with the San Luis Obispo Superior Court (Case No. 22CV-0295) alleging the following ten (10) causes of action: (1) Unpaid Overtime Wages Earned; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Failure to Provide Accurate Wage Statements; (8) Failure to Keep Accurate Payroll Records; (9) Failure to Reimburse Business Expenses; and (10) Violation of Cal. Business & Professions Code § 17200, *et seq.* Davis Decl. ¶14.

On August 8, 2022, Defendant filed its Answer to Plaintiff’s Complaint. Davis Decl. ¶15.

On November 21, 2022, Plaintiff propounded (i) Form Interrogatories – General, Set One; (ii) Special Interrogatories, Set One; (iii) Demands for Productions of Documents, Set One; and (iv) a Deposition Notice for Defendant’s Person Most Qualified. Davis Decl. ¶16.

Prior to Defendant’s Responses to Plaintiff’s Initial Discovery being due, Plaintiff and Defendant (collectively the “Parties”) met and conferred Plaintiff’s propounded discovery. After discussions regarding the discovery, the Parties conferred regarding private mediation. After these extensive meet and confer efforts, the Parties agreed to attend private mediation and agreed to stay further formal discovery to allow the Parties to focus on exploring early resolution possibilities. Davis Decl. ¶17.

On April 13, 2023, the Parties reduced their meet and confer efforts to writing, and executed and submitted a Joint Stipulation Regarding Discovery and Mediation, implementing a stay of the Action until completion of private mediation. On April 14, 2023, the Court entered the Order. Davis Decl. ¶18, Ex. 1.

1 On September 7, 2023, Plaintiff provided notice to the California Labor and Workforce
2 Development Agency (“LWDA”) and Defendant of her intent to seek civil penalties pursuant to
3 the Private Attorneys General Act (the “PAGA”) for violations of California wage and hour laws.
4 Davis Decl. ¶19, Ex. 1

5 Pursuant to the Joint Stipulation Regarding Discovery and Mediation, the Parties also
6 agreed to exchange informal discovery and engage in a private mediation with Eve Wagner, Esq.,
7 a well-respected mediator with substantial experience handling wage and hour matters, for
8 November 30, 2023. Davis Decl. ¶20.

9 In advance of mediation, Defendant provided Plaintiff’s Counsel with extensive informal
10 discovery including all relevant policies and handbooks in place during the Class Period, which
11 included all applicable policies relating to meal breaks, rest breaks, timekeeping, the payment of
12 wages and other relevant areas of investigation; Plaintiff’s personnel file; a randomly selected
13 20% sampling of time and payroll data for the putative class; and figures and information
14 regarding the class size and composition. The randomly-selected 20% sampling included records
15 for putative class members who were employed throughout different time periods during the Class
16 Period, that is representative of the Class. With this data for the Class, Plaintiff’s Counsel and
17 their retained expert were able to perform a comprehensive damages analysis and estimate
18 Defendant’s potential violations, liability, and exposure, including, and not limited to, analyzing
19 time and pay data, considering potential meal period violations, potential rest period violations,
20 potential synthetic meal period recordings, potential unpaid and rest period premiums, rounding,
21 overtime and premium payments, etc. This discovery and investigation allowed Plaintiff’s
22 Counsel to perform a comprehensive damages analysis and estimate Defendant’s potential
23 liability. Davis Decl. ¶21.

24 After extensive review of these documents and other information, on November 30, 2023,
25 the Parties attended a full day mediation with Eve Wagner, Esq. At the mediation, the Parties
26 engaged in intensive settlement discussions during which they debated their respective positions
27 and exchanged views regarding the strengths and weaknesses of the alleged claims. At the
28 conclusion of the mediation, the Parties were able to reach an agreement. The Parties accepted a

mediator's proposal to resolve this dispute on a class and representative basis for a Gross Settlement Amount of \$750,000.00. After a few days of negotiations and multiple revisions, on December 13, 2023, the Parties executed a Memorandum of Understanding memorializing the key settlement terms. Davis Decl. ¶22.

Thereafter, the Parties worked diligently to negotiate and memorialize the terms of a long form settlement agreement. On March 18, 2024, after extensive discussions and multiple revisions to the agreement, the Parties entered into a fully executed Joint Stipulation of Class Action and PAGA Settlement. Davis Decl. ¶23.

Pursuant to the terms of the Settlement Agreement regarding the filing a first amended complaint adding a cause of action under California Labor Code § 2699, the Private Attorneys General Act of 2004 and more than sixty-five (65) days since the mailing of Plaintiff's PAGA Notice Letter and the LWDA not having indicated that it intended to investigate the violations discussed in the PAGA Notice Letter, on April 2, 2024, the Parties submitted a Joint Stipulation and [Proposed] Order to permit Plaintiff to file her First Amended Class and Representative Action Complaint adding an eleventh (11th) cause of action under PAGA. Davis Decl. ¶24.

On April 5, 2024, the Court entered the Order deeming the First Amended Complaint as the operative Complaint in the Action. Davis Decl. ¶25.

Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Joint Stipulation of Class Action and PAGA Settlement, as well as information regarding the preliminary approval hearing on this matter, were submitted to the LWDA via online filing at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html> on May 1, 2024. Davis Decl. ¶26.

On September 5, 2024, the Court issued a tentative ruling granting Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement. Davis Decl. ¶27.

At the September 19, 2024, hearing on Plaintiffs' Motion for Preliminary Approval, the Court found on a preliminary basis that the settlement was fair, reasonable, and adequate.¹ Davis

¹ The Court signed the Order granting Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement on October 17, 2024.

Decl. ¶28.

Now, following notice of the settlement to the class and aggrieved employees, and the opportunity for class members to opt out or be heard, Plaintiff hereby moves for Final Approval of the proposed settlement. Davis Decl. ¶29.

III. THE ADMINISTRATION PROCESS AND PLAN OF DISTRIBUTION

On September 19, 2024, Class Counsel sent ILYM Group, Inc. (“ILYM”), a copy of the Settlement Agreement thereto along with the Court-approved Notice Packet. The Class Notice included the formula for determining the estimated sum to be paid to each individual from the Net Settlement and stated each Class Members’ estimated Individual Settlement Payment. Davis Decl. ¶30; *see also* Declaration of Nick Castro of ILYM Group, Inc. (“ILYM Decl.”) ¶¶3-4.

On October 31, 2024, Defendant’s counsel provided the class data file, which contained the name, social security number, last known telephone number, last known mailing address, start and end dates of employment, workweeks worked by each Class Member and workweeks worked by each PAGA member during the PAGA period. The Class List contained 286 individuals who worked 36,849 workweeks. Davis Decl. ¶40; ILYM Decl. ¶5.

On November 7, 2024, Notice Packets were mailed to all 286 Class Members. Davis Decl. 41; ILYM Decl. ¶7, Exhibit (“Ex.”) A.

Initially, ten (10) Notice Packets were returned to the Settlement Administrator. None of the ten (10) returned Notice Packets included a forwarding address. The Settlement Administrator performed a skip trace on these ten (10) Notice Packets. As a result of the skip trace, six (6) updated addresses were obtained, and the Notice Packets were promptly re-mailed to those Settlement Class Members. Specifically, six (6) were re-mailed as a result of the Settlement Administrator’s skip tracing efforts. In sum, one hundred twenty-eight (128) Notice Packets were re-mailed thus resulting in four (4) undeliverable Notices. Davis Decl. ¶42; ILYM Decl. ¶¶8-10.

To date, there has been no objections to the Settlement, one (1) request for exclusion, and no disputes. The deadline for Class Members to submit workweek disputes, request exclusion from, or object to the Settlement expired on January 6, 2025. Davis Decl. ¶43; ILYM Decl. ¶¶11-12.

1 According to the terms of the Settlement Agreement, within fourteen (14) calendar days of
2 the Effective Date of the Settlement (as defined in the Settlement Agreement), Defendant will
3 deposit the Gross Settlement Amount (*i.e.*, \$750,000.00) and all applicable employer-side payroll
4 taxes into a Qualified Settlement Fund (“QSF”) that will be established by the Settlement
5 Administrator. Within seven (7) calendar days of the funding of the Settlement, the Settlement
6 Administrator will issue payments for: (1) Individual Class Payments for all Participating Class
7 Members; (2) Individual PAGA Payments to all Aggrieved Employees; (3) the LWDA PAGA
8 Payment; (4) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (5)
9 the Class Representative Enhancement Award to Plaintiff; and (6) Settlement Administration
10 Costs. Davis Decl. ¶¶44; *See* Settlement Agreement ¶¶40, 42.

11 **IV. STANDARD OF REVIEW FOR FINAL APPROVAL**

12 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.*, 48
13 Cal.App.4th 1794 (1996). California courts look to federal authority for guidance with class action
14 settlements. *Id.* At 1801, n.7. “In general, questions whether a settlement was fair and reasonable,
15 whether certification of the class was proper, and whether the attorney fee award was proper are
16 matters addressed to the trial court’s broad discretion.” *Wershba v. Apple Computer, Inc.*, 91
17 Cal.App.4th 224, 234-35 (2001) (disapproved of on other grounds).

18 Accordingly, a court’s decision to approve a class action settlement may be reversed only
19 upon a strong showing of “clear abuse of discretion.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
20 1026 (9th Cir. 1998). To determine whether the settlement is fair, courts consider relevant factors
21 such as “the strength of Plaintiffs’ case, the risk, expense, complexity and likely duration of further
22 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
23 the extent of discovery completed, the stage of the proceedings, the experience and views of
24 counsel, the presence of a governmental participant, and the reaction of the class members to the
25 proposed settlement.” *Dunk*, 48 Cal.App.4th at 1801. “The list of factors is not exclusive and the
26 court is free to engage in a balancing and weighing of the factors depending on the circumstances
27 of each case.” *Wershba*, 91 Cal.App.4th at 245 (disapproved of on other grounds).

1 In considering the class settlement, the court need not reach any ultimate conclusions on
2 the issues of fact and law which underlie the merits of the dispute. *7-Eleven Owners for Fair*
3 *Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000). The inquiry is not whether the
4 settlement agreement is the best one that class members could have possibly obtained, but whether
5 the settlement taken as a whole is “fair, adequate, and reasonable.” *See Chavez v. Netflix, Inc.*, 162
6 Cal.App.4th 43, 55 (2008). Even if the relief afforded by the proposed settlement is substantially
7 narrower than it would be if the lawsuit was to be successfully litigated, that is no bar to a class
8 settlement because the public interest may indeed be served by a voluntary settlement in which
9 each side gives ground in the interest of avoiding prolonged litigation. *Id.* The burden is on the
10 proponent of the settlement to show that it is fair and reasonable. *Id.* At 245 (disapproved of on
11 other grounds). However, a presumption of fairness exists where: (1) the settlement is reached
12 through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel
13 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
14 percentage of objectors is small. *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 723 (2006).

15 **V. THE SETTLEMENT IS PRESUMED FAIR**

16 Because this court preliminarily approved the Settlement, it necessarily determined that
17 the Settlement appeared to be fair and reasonable. The same factors that allowed the Court to
18 preliminarily approve the settlement apply here and are reinforced in these moving papers
19 including that: (1) the Settlement was reached through arm’s-length bargaining; (2) investigation
20 and discovery were sufficient to allow counsel and the court to act intelligently; and (3) class
21 counsel are experienced in similar litigation. Additionally, the reaction of the class members,
22 which was unknown at preliminary approval, also supports the reasonableness of the proposed
23 Settlement. *See generally*, Davis Decl. ¶¶30-38.

24 **A. The Settlement Was Reached Through Arm’s Length Bargaining.**

25 California courts recognize that “a presumption of fairness exists where . . . [a] settlement
26 is reached through arm’s-length bargaining.” *Wershba*, 91 Cal. App. 4th at 245; *see also Clark v.*
27 *Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 799 (2009). Here, the Settlement was reached
28 following a full-day of mediation with Eve Wagner, Esq., a highly-respected mediator with

particular experience involving wage and hour class actions. The mediation was held on November 30, 2023, with Eve Wagner, Esq. The mediation occurred only after substantial formal and informal discovery and extensive analysis of the claims at issue. These negotiations were at arm's length, non-collusive, and adversarial. Following a full-day of mediation, with the help of the mediator, the Parties were able to reach an agreement to resolve this matter for a Gross Settlement Amount of \$750,000.00. At all times Defendant maintained that it had complied with California wage and hour laws. Similarly, if this matter had not resolved, Plaintiff was prepared to vigorously litigate this dispute including through class certification and trial. The proposed Settlement was reached at the end of a process that was neither fraudulent nor collusive. To the contrary, counsel for the Parties advanced their respective positions throughout the settlement negotiations. Davis Decl. ¶¶31-33.

B. There was Sufficient Investigation, Discovery and Analysis by Experienced Counsel

Class Counsel conducted significant investigation into the claims alleged by Plaintiff before reaching a settlement in this matter. Class Counsel communicated with Plaintiff about her work experience with Defendant, conducted legal research regarding the applicable Labor Code Sections and thoroughly researched Defendant's organization, structure, and employment policies and practices and conducted substantial formal and informal discovery. Davis Decl. ¶34.

Moreover, as previously reviewed by the Court and set forth extensively in Plaintiff's Motion for Preliminary Approval, prior to mediation, Defendant provided Plaintiff with extensive formal and informal discovery including a random 20% sampling of the time and payroll records of the Class Members, policy documents including the employees handbooks throughout the class period and extensive information regarding the size and composition of the class including the number of current and former employees, the total workweeks and pay periods worked by the Class, and the average rate of pay for hourly employees during the class period, and the number of employees and pay periods within the PAGA period. This discovery and investigation allowed Class Counsel to conduct a class-wide analysis of Defendant's potential damages, analyze the strengths and weaknesses of the case, and calculate Defendant's potential exposure. The Parties

1 extensively briefed these issues, provided this analysis to the mediator, and debated their respective
2 positions. Davis Decl. ¶¶20-22, 34-35.

3 Moreover, the settlement negotiations were conducted by highly capable and experienced
4 counsel. Class Counsel's experience and the extensive investigation allowed Plaintiff to enter this
5 Settlement aware of the risks associated with the case and permitted Class Counsel to negotiate an
6 informed, reasonable, and intelligent Settlement. Davis Decl. ¶¶2-11; see also Declaration of
7 Vartan Madoyan ("LFJ Decl."), ¶¶15-20(a)-(nn). After substantial discovery and investigation, it
8 is Class Counsel's opinion that the settlement is in the best interest of the class as it provides a
9 guaranteed result over a reasonably short period as opposed to waiting years for the same, or
10 possibly worse result. The substantial economic uncertainty of businesses during the Covid-19
11 pandemic only highlights the value of such a guaranteed result. Davis Decl. ¶¶35-36.

12 **C. There Have Been No Objections and Only One (1) Request for Exclusion**

13 California courts have consistently found that a small number of objectors indicates the
14 class's support for a settlement and strongly favors final approval. *See Wershba*, 91 Cal.App.4th
15 at 250-51 (final approval granted despite 20 objectors); *7-Eleven Owners*, 85 Cal.App.4th at 1152-
16 53 (final approval granted despite 9 objectors). Here, as of the filing of this Motion, there have
17 been no objections to the settlement and only one (1) class member has requested to be excluded
18 (a participation rate of 99.65% of the Class). ILYM Decl. ¶11. The lack of objections and strong
19 participation in the Settlement by the Class further demonstrate that the proposed settlement is
20 both fair and reasonable. Davis Decl. ¶¶37-38.

21 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

22 **A. The Standard For Attorneys' Fees In A Class Action.**

23 Where the amount of a settlement is a "certain easily calculable sum of money," California
24 courts may calculate attorneys' fees as a reasonable percentage of the settlement created. *See*
25 *Dunk*, 48 Cal.App.4th at 1808. The ultimate goal is the award of a "reasonable" fee to compensate
26 counsel for their efforts, irrespective of the method of calculation. *See Apple Computer, Inc. v.*
27 *Super. Ct.*, 126 Cal.App.4th 1253, 1270 (2005). Trial courts have wide latitude in assessing the
28 value of attorneys' fees and their decisions will not be disturbed on appeal absent a manifest abuse

1 of discretion. *See Lealao v. Beneficial Cal., Inc.*, 82 Cal.App.4th 19, 41 (2000). California law
2 provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal
3 marketplace and paid in comparable litigation based on the result achieved and risk incurred. *Id.*
4 at 47, 50. Fee awards that are too small will "chill the private enforcement essential to the
5 vindication of many legal rights and obstruct the representative actions that often relieve the
6 courts of the need to separately adjudicate numerous claims." *Id.* at 53. Therefore, fees in class
7 and representative actions should approximate the probable terms of a contingent-fee contract
8 negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 47. The
9 percentage-of-the-benefit approach is preferred in such cases because "it better approximates the
10 workings of the marketplace than the lodestar approach." *Id.*

11 **B. A Percentage of the Entire Fund is Appropriate.**

12 California and federal courts have long recognized that an appropriate method for
13 determining the award of attorneys' fees is based on a percentage of the total value made available
14 to class members by the settlement. *See Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th
15 Cir. 1977); *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977). The California Supreme Court has urged
16 trial courts to follow federal authority in this area. *See Green v. Obledo*, 29 Cal.3d 126, 146
17 (1981). The purpose of this equitable doctrine is to spread litigation costs among all beneficiaries
18 so that the active beneficiary does not bear the entire burden alone. *See Vincent*, 557 F.2d at 769.

19 Courts have consistently recognized that class litigation is necessary to protect the rights
20 of individuals whose injuries and/or damages are too small to economically justify individual
21 representation. Accordingly, in determining a reasonable common fund fee award, courts award
22 fees to serve as an economic incentive for lawyers to engage in class litigation that will permit
23 increased access to the judicial system for meritorious claims and deter wrongdoing. *See R.*
24 *Pearle, California Attorney Fee Awards* (CEB, 1993) §7A, p. 5-7; *Vincent*, 557 F.2d at 769.

25 Furthermore, a common fund award is not dependent on a determination of the actual
26 amount claimed out of the fund by those entitled—it is the creation of the fund that is the crucial
27 fact. In *Winslow v. Harold G. Ferguson Corp.*, 25 Cal.2d 274, 284 (1944), the California Supreme
28 Court expressly held that "it is equitable that [the attorney's] compensation and expenses should

1 come from the entire fund saved for all classes concerned before it is distributed.” Likewise,
2 *Lealao* expressly recognizes that “in a traditional common fund case, [a percentage-based fee]
3 may be calculated on the basis of the total fund made available rather than the actual payments
4 made to the class.” *Lealao*, 82 Cal.App.4th at 51. In *Wershba v. Apple Computer, Inc.*, the Court
5 of Appeal definitively decided the issue in favor of granting attorneys’ fees that are a percentage
6 of the total value of the settlement obtained by the efforts of counsel. In determining reasonable
7 attorneys’ fees, the court valued a settlement based on the total value of the settlement made
8 available to class members. 91 Cal.App.4th at 247 (disapproved on other grounds).

9 Historically, courts have awarded percentage fees in the range of 20% to 50%, depending
10 on the circumstances of the case. *Newberg on Class Actions*, 4th Ed. 2002, §14:6. According to
11 *Newberg*, “. . . no general rule could be articulated as to what is a reasonable percentage of a
12 common fund. Usually, 50 percent of the fund is the upper limit on a reasonable fee award . . .
13 though somewhat larger percentages are not unprecedented.” *Id.* *Newberg* further notes that
14 achievement of a substantial recovery with modest hours expended should not be penalized but
15 should be rewarded for considerations of time saved by superior services performed. *Id.*

16 The amount of attorney fees provided by the Settlement Agreement, *i.e.*, one-third (1/3)
17 of the Maximum Settlement Amount, is clearly reasonable. Class Counsel risked substantial
18 economic loss when they took this case on a contingency basis, knowing that there would likely
19 be a long battle with an aggressive defense firm including the very real possibility of potential
20 appeals. As a result of class counsel taking on this risk and the efforts of class counsel, the Class
21 Members will now be able to recover for these claims. The percentage award of the attorneys’
22 fees is commensurate with: (1) the economic risk Class Counsel took in commencing the Action
23 on a contingency basis, knowing that there would likely be a long battle with the premier defense
24 firms; (2) the time, effort and expense dedicated to the case; (3) the skill and determination this
25 case has required; (4) the results have achieved throughout the litigation; and (5) the value of the
26 settlement achieved for Class Members, Aggrieved Employees, and the State of California. As
27 such, Class Counsel has obtained a fair recovery for the Class which justifies a fee award based
28 on the percentage of the common fund. *See Davis Decl.* ¶¶46-47.

C. The Fee is Reasonable Based on the Dunkel Factors

In *Camden I Condominium Association, Inc. v. Dunkel*, 946 F.2d 768, 772 (11th Cir. 1991), the court identified twelve factors to consider in awarding fees in a common fund case.² The court noted that, “the analysis in a common fund case focuses not on the Plaintiff’s position as ‘prevailing parties,’ but on a showing that the fund conferring a benefit on the class resulted from their efforts” and thus in common fund cases “the monetary results achieved predominate over all other criteria.” *Id.* at 774. Plaintiff will address some of the factors that are particularly relevant here.

1. Time and Labor Required

Class Counsel have aggressively litigated this case from the initial pleading to the settlement of this action. Class Counsel participated in case strategy and analysis and drafted, reviewed, and revised pleadings, including extensive investigation, analysis, and research prior to filing the lawsuit and during litigation and in preparation for mediation as well as engaging in extensive formal and informal discovery. Class Counsel was able to convince Defendant to attend mediation and thereafter spent substantial time reviewing and analyzing documents and discovery in preparation for mediation and participating in settlement negotiations. Even after an agreement was reached in principle, Class Counsel spent numerous hours drafting and revising the Settlement Agreement, drafting the motion for preliminary approval, and coordinating the notice process with the settlement administrator. This case consumed hundreds of hours of Class Counsel’s efforts. However, a settlement was finally achieved, despite all obstacles, because of the work performed by Class Counsel. Davis Decl. ¶48. In addition to Class Counsel’s time, litigating this case also required counsel to incur significant costs. In total, more than \$15,176.78 in costs were necessary to successfully resolve this case. Davis Decl. ¶68, Ex. 5. In light of the time expended and costs involved, the requested attorneys’ fees are reasonable.

2. The Skill Required to Perform Legal Services

In addition to the time and effort required this matter also required substantial skill to litigate. Substantial skill was necessary in order to adequately evaluate the alleged claims and

² These factors include the (1) time and labor required, (2) difficulty involved, (3) skill required, (4) preclusion of employment, (5) customary fee, (6) contingent or fixed fee, (7) time limitations, (8) results obtained, (9) experience of the attorney, (10) undesirability of the case, (11) relationship with the client, and (12) awards in similar cases.

1 negotiate the substantial settlement reached in this matter on behalf of the putative class members.
2 Defendant felt strongly that its policies and practices had at all times complied with California law
3 and that the alleged claims were not appropriate for class certification. Despite this, Class Counsel
4 was able to use their substantial experience in complex wage and hour litigation to convince
5 Defendant to discuss a potential settlement rather than proceed with further litigation. Davis Decl.
6 ¶48. Class Counsel's skill and experience also allowed them review and analyze a large amount
7 of time and payroll data, a complex process that took considerable time and energy in order to
8 determine Defendant's underlying practices and potential damages. This settlement, against
9 experienced defense counsel and despite the existence of several strong defenses, was made
10 possible as a result of Class Counsel's expertise. Davis Decl. ¶49.

11 ***3. The Value, Amount, and Results Achieved***

12 The Settlement represents a fair resolution of this case given the risks inherent in litigating
13 the action through trial and possible appeals. Counsel obtained a non-reversionary Maximum
14 Settlement Amount of \$750,000.00. Although Class Counsel predicts that Plaintiff would prevail
15 on all causes of action at trial, a number of risks reduced the case's value. For instance, as discussed
16 extensively in Plaintiff's Motion for Preliminary Approval, Defendant felt strongly that its
17 practices at all times had complied with California law. Defendant further contended that there were
18 numerous individualized issues that would prevent Plaintiff from successfully certifying the
19 proposed class. Defendant also claimed there were substantial problems with respect to the
20 manageability of Plaintiff's claims. Defendant raised issues with Plaintiff's meal break claims
21 regarding the necessity of individualized proof. Plaintiff faced similar difficulties with respect to
22 his rest period claim and claims for off-the-clock work and unreimbursed business expenses.
23 Defendant contended these issues would prevent Plaintiff from successfully recovering on these
24 claims which were a major focus of the litigation. Plaintiff also faced substantial risks associated
25 with Plaintiff's waiting time penalties and wage statement claims which were derivative of
26 Plaintiff's previous claims. Davis Decl. ¶¶50-53.

27 Despite these challenges, Defendant ultimately agreed to pay a non-reversionary Gross
28 Settlement Amount of \$750,000.00. Davis Decl. ¶22. This will provide an average class settlement

1 payment of approximately \$1,301.75 and an estimated high payment of \$2,973.28. This will also
2 provide an average PAGA settlement payment of approximately \$87.21, and an estimated high
3 payment of \$141.86, to PAGA Members. Davis Decl. ¶62. *See also* ILYM Decl. ¶13. This is an
4 outstanding result.

5 **4. Whether the Fee is Fixed or Contingent**

6 Whether the representation was provided on a contingency basis, as it was in this case, is
7 an important factor:

8 **A contingent fee must be higher than a fee for the same legal services paid as**
9 **they are performed** [and] [...] compensates the lawyer not only for the legal
10 services he renders but for the loan of those services. A lawyer who both bears the
11 risk of not being paid and provides legal services is not receiving the fair market
12 value of his work if he is paid only for the second of these functions.

13 *Cates v. Chiang*, 213 Cal.App.4th 791, 823 (2013).

14 The fact that this case was litigated on a contingent basis strongly supports the award of
15 attorneys' fees requested by Plaintiff. If Class Counsel had been unsuccessful they would not have
16 received any fee or recovered any portion of the expenses spent litigating this matter. Class
17 Counsel has borne all of the risks and costs of litigation and will not receive any compensation
18 until recovery is obtained in this case. If the Covid-19 crisis has made one thing clear, it is that
19 economic uncertainty can arise swiftly and for reasons beyond any party's control. These are the
20 types of risks Class Counsel faced litigating this matter on a contingent basis and this risk is a
21 relevant factor when considering the reasonableness of the requested fee. Davis Decl. ¶67.

22 **D. The Fee is Reasonable Under a Lodestar Analysis**

23 While the percentage-of-the-benefit approach is endorsed as the better approximation of
24 the workings of the marketplace than the lodestar approach, courts may also use the lodestar
25 method to "cross-check" the results of the other. This said, Courts have cautioned that the primary
26 basis of the fee award in common fund cases remains the percentage of the fund method and have
27 cautioned that class counsel should not necessarily receive a lesser fee achieving a speedy and
28 timely result for class members in need of immediate relief. *See e.g. Vizcaino v. Microsoft Corp.*,
29 290 F. 3d. 1043, 1050 fn.1 (2002). Indeed, courts have noted that "it is widely recognized that the
30 lodestar method creates incentives for counsel to expend more hours than may be necessary on

litigating a case so as to recover a reasonable fee, since the lodestar method does not reward early settlement.” *Id.* (quoting *Camden I Condominium Ass’n*, 946 F.2d at 773–74.)

Here, the lodestar is calculated based on the hours worked at reasonable prevailing hourly rates for the attorneys who worked on this matter. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1131–1132 (2001). Counsel are entitled to compensation for every hour reasonably spent on the matter. *See id.* at 1133. Further, this amount may be enhanced and courts in California routinely apply multipliers between 1 and 4 to a party’s requested lodestar amount based on some of the same factors identified above. *See Cates*, 213 Cal.App.4th at 822.

1. Counsel Spent a Reasonable Amount of Time

Reasonableness of hours is assessed by “the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]” *Vo v. Las Virgenes Municipal Water Dist.*, 79 Cal.App.4th 440, 447 (2000). As discussed above, this case was highly contested and required a significant amount of time and labor. Defendant raised significant defenses and denied liability. Class Counsel invested significant time and labor into this matter even before this action was filed to investigate Defendant’s policies, practices, business, and merits-based issues including significant time investigating and reviewing Plaintiff’s personnel file, researching Defendant’s organization and management, and strategizing how to certify the alleged claims and bring these claims to trial. Class Counsel also spent significant time drafting and revising the PAGA Notice sent to the LWDA, drafting and revising the complaints, and drafting the pleadings filed with the Court. Class Counsel engaged in extensive efforts to meet and confer with Defendant’s counsel and as a result were able to reach an agreement to attend mediation rather than engaging in further litigation. In advance of mediation, class counsel engaged in extensive investigation, review, and analysis of the informal discovery provided by Defendant so that they could effectively negotiate the proposed settlement. Class Counsel spent many hours reviewing the documents produced by Defendant and analyzing data from thousands of pages of documents. After an agreement was reached in principle class counsel spent significant time negotiating the terms of the settlement to obtain the best possible outcome for the class. Class Counsel spent hundreds of hours on this matter. In total, this Action consumed more than 349.80

hours of Class Counsel’s efforts. Davis Decl. ¶¶13-29, 31-38, 61-62, Ex. 4; LFJ Decl., ¶¶13-20(nn). Accordingly, Class Counsel has spent a reasonable amount of time working on this matter.

2. Class Counsel’s Hourly Rate is Reasonable

Both California and federal courts recognize that attorneys should be compensated for providing representation on a contingency basis and for taking on the risks associated with said representation, as well as being provided with financial incentives to enforce important rights and protections like those at issue in this Action. *See Ketchum*, 24 Cal.4th at 1132-33. In awarding attorneys’ fees, the aim is to mirror “the established practice in the private legal market of rewarding attorneys for taking the risk of nonpayment by paying them a premium over their normal hourly rates for winning contingency cases.” *See id.*

As previously discussed, Class Counsel have been actively involved in this case from the filing of the initial complaint to completing these final approval papers. The professional background and experience and work performed on this matter support the requested rates for Class Counsel for the work performed on this matter. To date, the lodestar for Plaintiff’s Counsel totals more than \$244,490.00. Davis Decl. ¶¶2-11, 61-62, Ex. 4; LFJ Decl. ¶¶13-14.

3. The Use of a Multiplier Is Appropriate

The lodestar amount may be increased by applying a multiplier. *See Serrano*, 20 Cal.3d at 49. In California, “[m]ultipliers can range from two to four or even higher” and are routinely applied in the range requested by Class Counsel. *Chavez*, 162 Cal.App.4th at 66 (upholding 2.5 multiplier); *Vizcaino*, 290 F.3d at 1051 n.6 (noting multipliers of 1-4 are commonly applied). Factors considered include: (1) the difficulty of the questions involved; (2) the skill displayed; (3) the extent to which the litigation precluded other employment; and (4) the contingent nature of the fee award and the associated risk. *See Ketchum v. Moses*, 24 Cal.4th 1122, 1132 (2001).

In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is necessary to fully compensate counsel for the loan of legal services and encourage competent counsel to take on fee award cases. *Ketchum*, 24 Cal.4th at 1132-1133. As the court noted, “A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no

1 more, competent counsel will be reluctant to accept fee award cases.” *Id.* at 1133. Similarly, in
2 *Greene v. Dillingham Construction*, 101 Cal.App.4th 418, 426 (2002), the Court of Appeal held
3 that the trial court erred by refusing to consider contingent risk as a factor in the decision to apply
4 a multiplier. The court recognized that “[t]he adjustment to the lodestar figure, e.g., to provide a
5 fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not
6 succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous.
7 Rather, it is intended to approximate market-level compensation for such services, which typically
8 includes a premium for the risk of nonpayment or delay in payment of attorney fees.” *Id.*

9 Here, the use of a multiplier of approximately 0.07 is appropriate. This matter involved
10 difficult questions and required substantial skill by Class Counsel in order to obtain a settlement
11 for the class. As noted above, all wage and hour class actions involve complex and difficult issues
12 relating to class certification and proving the alleged damages. Class Counsel were able to utilize
13 their expertise in class and representative litigation in order to overcome these complex and
14 difficult issues and obtain a substantial settlement on behalf of the putative class members where
15 other Counsel may have been unable to achieve these results. And as noted above this settlement
16 represents an outstanding result at the conclusion of hotly contested litigation. The settlement
17 provides an average class settlement payment of approximately \$1,301.75 and an estimated high
18 payment of \$2,973.28. The Settlement also provides an average PAGA settlement payment of
19 approximately \$87.21 and an estimated high payment of \$141.86, to PAGA Members. Davis Decl.
20 ¶¶62-65. *See also* ILYM Decl. ¶13.

21 Furthermore, Class Counsel assumed considerable risk in agreeing to litigate this case on
22 a contingent basis. This risk is particularly relevant in light of the complex questions related to
23 certification of the proposed claims, and the substantial hurdles that were required to be overcome.
24 Given the complex nature of these claims many attorneys would have been unprepared to litigate
25 these claims and unable obtain the settlement reached by Class Counsel. This risk is also notable
26 in light of the fact that this matter was filed during the COVID-19 pandemic and the broad
27 economic uncertainty faced by all employers during this challenging time. Class Counsel took on
28 the risk that they could ultimately recover nothing from the litigation if they were unsuccessful or

1 if the organization experienced the financial difficulties faced by so many organizations during the
2 pandemic. These increased risks were real, challenging, and significantly increased the contingent
3 risk associated with litigating this matter. Davis Decl. ¶¶53, 66.

4 As recognized by the California Supreme Court in *Ketchum*, these risks illustrate that if
5 multipliers are not awarded to class counsel in the cases that are successfully settled class counsel
6 will not be fully compensated because the lodestar in and of itself cannot account for contingent
7 risk associated with the litigation. Further a decision to withhold a multiplier not only fails to
8 compensate attorneys for this associated risk, but actively penalizes class counsel who obtain a
9 timely and efficient result. Such would be the case here. Class Counsel were able to obtain a
10 substantial settlement on behalf of the class without forcing the class members to wait years
11 through class certification and potential appeals for a similar result.

12 Accordingly, given the contingent risk incurred by Class Counsel, the difficulty of the
13 questions involved, the benefit conferred on the Class, and the skill displayed by Class Counsel,
14 the application of a multiplier is appropriate. For these reasons, Plaintiff respectfully requests the
15 Court award the requested attorneys' fees of \$262,000.00 (35% of the Gross Settlement Amount).
16 Davis Decl. ¶¶68-70.

17 **VII. THE REQUESTED COSTS ARE FAIR AND REASONABLE**

18 Class Counsel request the reimbursement of the costs incurred litigating this case in the
19 amount of \$15,676.78. These costs include filing fees, mediation fees, costs for attending hearings
20 with the Court, expert costs, and many others. This includes \$15,176.78 in current costs and
21 \$500.00 in future costs associated with the filing of this motion and additional expenses connected
22 with submitting a declaration regarding the distribution of the settlement. These costs are
23 \$9,823.22 less than the \$25,000.00 allocated under the Settlement Agreement meaning these funds
24 will be available for distribution to the Participating Class Members. These costs are both
25 reasonable and were necessary for the successful resolution of this matter and should therefore be
26 approved by the Court. Davis Decl. ¶71, Ex. 5; LFJ Decl. ¶21, Ex. B.

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VIII. THE REQUESTED INCENTIVE PAYMENT IS FAIR AND REASONABLE

Named plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation “for the expense or risk they have incurred in conferring a benefit on other members of the class.” *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles*, 186 Cal.App.4th 399, 412 (2010). The criteria courts may consider in determining whether to make an incentive award include: (1) the risks faced by the class representative; (2) the difficulties encountered; (3) the time spent; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) to the class representative. *See Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995).

Here, the requested Class Representative Enhancement Payment of \$7,500 to Plaintiff Desiree Garcia is fair and appropriate based on the substantial time and effort Plaintiff invested into bringing this suit and assisting counsel with the development of this case. Plaintiff spent substantial time working on this matter on behalf of the putative class. Plaintiff extensively discussed the proposed claims with Class Counsel and searched for documents in support of the alleged claims. Plaintiff discussed issues regarding Defendant’s policies, policies, practices, and procedures, and his employment with Defendant. When the Parties agreed to attend mediation twice, Plaintiff spent substantial time speaking with and helping Class Counsel prepare for mediation and actively attempted to obtain information that would benefit the Class. Plaintiff reviewed the agreement, asked questions, and discussed the settlement with Class Counsel. Plaintiff monitored the status of the case. These services unquestionably merit the requested enhancement award. *See Declaration of Plaintiff Desiree Garcia in Support of Plaintiff’s Motion for Final Approval (“Garcia Decl.”) ¶¶2-9; Davis Decl. ¶¶72-73.*

Further, in addition to the substantial time spent helping Class Counsel litigate this case, Plaintiff also faces substantial risks to his future employment by serving as the named representative in an employment lawsuit. Plaintiff still chose to bring this litigation on behalf of others and has put others interests ahead of her own. Further, Plaintiff has also agreed to enter into a broader individual release than that agreed to by the other Class Members. Despite this, Plaintiff has not received any compensation to date for her services helping to obtain the Class Members awards. Accordingly,

1 Plaintiff should be compensated for efforts she made on behalf of others, the risks she undertook,
2 and the services she has performed. Garcia Decl. ¶¶10-16; Davis Decl. ¶¶74-76.

3 **IX. PAYMENT TO THE SETTLEMENT ADMINISTRATOR**

4 ILYM Group, Inc. (“ILYM”) is seeking \$9,000.00 for its costs associated with
5 administration of the settlement. The Settlement Administrator is a necessary third-party who has
6 performed substantial services on behalf of the putative class, and this payment should be
7 approved by the Court. Davis Decl. ¶78; ILYM Decl. ¶14.

8 **X. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests that the Court grant the Motion for
10 Final Approval and enter Judgment in this case pursuant to the terms of the Settlement.

11
12 DATED: February 3, 2025

Respectfully Submitted,

13 **PROTECTION LAW GROUP, LLP**

14
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