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as an individual and on behalf of all employees similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

KIMBERLY M. WILHELM, as an individual and on behalf of all employees similarly situated, Plaintiff, v. KEMPER SPORTS MANAGEMENT, LLC, a Delaware Limited Liability Company; KEMPER SPORTS MANAGEMENT HOLDINGS, LLC, a Delaware Limited Liability Company, and DOES 1 through 50, inclusive, Defendants.	Case No.: 30-2024-01376524-CU-OE-CXC [Assigned for all purposes to Hon. David A. Hoffer, Dept. CX-103] <u>CLASS AND PAGA REPRESENTATIVE ACTION</u> **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** Date: January 26, 2026 Time: 1:30 p.m. Courtroom: Dept. CX103 Judge: Hon. David A. Hoffer Action Filed: January 30, 2024 Trial: Not Set

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

PLEASE TAKE NOTICE that on January 26, 2026, at 1;30 p.m., or as soon thereafter as the matter may be heard, in Department CX103 of the above-captioned Court, located at 751 W. Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff KIMBERLY M. WILHELM ("Plaintiff") will and hereby do move this Court for an order:

1. Granting class certification of the Class, solely for settlement purposes pursuant to Code of Civil Procedure § 382;
2. Finally approving the JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT AND FIRST AMENDEMENT TO JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT ("Settlement" or "Agreement");
3. Appointing counsel for Plaintiff, Tunyan Law, APC and The Sentinel Firm, APC, as Class Counsel;
4. Appointing Plaintiff as the Class Representative;
5. Approving the use of the proposed notice procedure and related notice form;
6. Approving ILYM Group, Inc. as the third-party administrator;
7. Ruling that Settlement Class Members who did not timely submit requests for exclusion from the settlement as set forth in the Agreement have released their claims against Defendant and the other releasees as set forth in the Agreement;
8. Awarding the sums requested in the Motion;
9. Entering a Final Judgment; and,
10. Without affecting the finality of the final judgment, reserving continuing jurisdiction over the parties for the purposes of implementing, enforcing and/or administering the settlement as set forth in the Agreement or enforcing the terms of the Final Judgment.

Good cause exists to grant this Motion because:

1. The Class meets all of the requirements for class certification for settlement purposes under Code of Civil Procedure § 382;
2. The Settlement Agreement is a fair, adequate, and reasonable compromise of the

disputed wage and hour claims asserted by Plaintiffs;

3. Plaintiff and Class Counsel are adequate to represent the Class;

4. The notice procedures and related forms complied with California Rules of Court 3.766(d) and (e), and adequately apprised Class Members of their rights and fully comport with due process.

This Motion is made pursuant to Rule 3.769 and Rule 3.1113(e) of the California Rules of Court, which require approval by the Court of a class action settlement and permit the Court to extend the page limit for memoranda.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of Plaintiff's counsel Lilit Tunyan, Seung Yang, Plaintiff, and the Settlement Administrator in support thereof, all papers and pleadings on file with the Court in this action, all matters judicially noticeable, and on such oral and documentary evidence as may be presented in connection with the hearing on the Motion.

Respectfully submitted,

Dated: January 6, 2026

TUNYAN LAW, APC

By: ______________________________

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff KIMBERLY M. WILHELM

Dated: January 6, 2026

THE SENTINEL FIRM, APC

By: ______________________________

Seung Yang
Tiffany Hyun

Attorneys for Plaintiff KIMBERLY M. WILHELM

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I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769(d) and (e), Plaintiff KIMBERLY M. WILHELM ("Plaintiff") respectfully request that this Court finally approve the proposed class action settlement set forth in the JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT and FIRST AMENDEMENT TO JOINT STIPULATION OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT ("Settlement" or "Agreement") with Defendants KEMPER SPORTS MANAGEMENT, LLC and KEMPER SPORTS MANAGEMENT HOLDINGS, LLC.[1] ("Defendants").

Plaintiff was employed by Defendants and alleged various wage and hour violations, which Defendants deny. After informal discovery, the exchange of documents, and an arm's-length mediation session with an experienced mediator, Steven Rottman, Esq., Plaintiff and Defendants (collectively referred to herein as the "Parties") reached a proposed class action settlement with a gross settlement amount ("GSA") of **$1,500,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting of **1,225** members as of the end of class period. i.e. April 18, 2025. Plaintiff believes that this settlement is a fair, adequate, and reasonable compromise of the disputed claims for alleged unpaid wage and hour violations and penalties asserted in this case.

Plaintiff now submit this Motion for Final Approval of Class and PAGA Representative Action Settlement, along with the Settlement (attached to the Declaration of Lilit Tunyan ["Tunyan Decl."], **Exhibit 1** thereto).

II. THE NOTICE PROCESS WAS SUCCESSFULLY COMPLETED AFTER PRELIMINARY APPROVAL

Plaintiff and Defendant have fulfilled the class notice procedures set forth in the Settlement. The Settlement Administrator, ILYM Group, Inc. ("ILYM Group"), sent individual notices, objection forms

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[1] Plaintiff named Kemper Sports Management, LLC and Kemper Sports Management Holdings, LLC as defendants. However, within Class and PAGA periods Plaintiff and other class and PAGA group members worked for both Kemper Sports Management, Inc., which is no longer existing as a legal entity and later Kemper Sports Management LLC which was the legal entity which continued employing Kemper Sports Management, Inc. employees after Kemper Sports Management, Inc. was terminated.

and exclusion forms ("Notice Packets") to 1,671 individuals from which 1,225 Class Members and 1,004 PAGA Employees on October 10, 2025. (Declaration of Garvin Brown ["Brown Decl."], ¶¶ 5-7, 14.) Of the Notices that were mailed, 142 were returned after mailing. (Brown Decl., ¶ 8.) Skip tracing found new addresses for 96 Class Members. 96 Notices were remailed with updated addresses. (Brown Decl., ¶¶8-9.) Ultimately, 46 Notice Packets are considered undeliverable. (Brown Decl., ¶ 10.) Three Class Members requested to be excluded from the Settlement with two of them being submitted by Class Members and one by PAGA Employee making the exclusion request no valid, and no Class Members submitted objections or disputed workweeks in writing. (Brown Decl., ¶¶ 11-13.) Since two Class Members requested to be excluded from the Settlement, there are 1,223 Settlement Class Members. (Brown Decl., ¶ 14.)

PAYMENTS: For **1,223** Settlement Class Members, the average gross payment per Class Member is **$1,226.49.** The Net Settlement Amount (*including both Class and PAGA Settlement payments*) is estimated to be at least **$876,795.24**, resulting in an average net payment per Class Member of at least **$716.92** (*including PAGA Settlement payments*) and the Net Class Settlement Amount (*excluding PAGA Settlement allocation of $25,000.00 to PAGA Employees)* is estimated to be at least **$851,795.24**, resulting in an average net payment per Class Member of at least **$696.48**. (Brown Decl., ¶ 15.) The highest individual net payment is estimated to be **$2,060.60** (Brown Decl., ¶ 17.) For the Court's convenience, below is a summary of the key provisions of the Settlement. For the Court's convenience, below is a summary of the key provisions of the Settlement.

III. <u>THE MAJOR TERMS OF SETTLEMENT</u>

The provisions of the proposed Settlement include the following:

- Defendants agree not to oppose certification of a Class for purposes of Settlement only (Settlement, ¶ 19);
- **<u>Settlement Amount</u>**: Defendants will pay a maximum of **$1,500,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** payment per Class Member of approximately **$1,226.49** (Settlement, ¶ 26(c));
- **<u>Class Size</u>**: **1,223** Settlement Class Members who worked **112,487** workweeks during the Class Period ending on April 18, 2025. (Brown Decl., ¶ 16.);

- **<u>PAGA Group Size</u>**: **1,004** PAGA Employees who worked **31,502** pay periods during the PAGA Period ending on April 18, 2025 (Brown Decl., ¶ 18);
- **<u>Escalator Clause</u>**: Defendants represent that the number of Class Members was approximately 1,239 individuals as of January 18, 2025, and the number of workweeks worked in the Class Period for those Class Members was approximately 108,218 as of that date. If it is later determined that, the number of Covered Workweeks in the Class Period is more than 10% greater than the estimated number of workweeks as of January 18, 2025 (there are 119,040 or more Covered Workweeks), Defendants can either have the Gross Settlement Amount increased by 1% for each percent over the 10% threshold that the actual number of Covered Workweeks exceed the estimated number of workweeks (if the number of workweeks increases by 11%, the Gross Settlement will increase 1%), or have the Class Period end on the date that the estimated number of Covered Workweeks exceed 10% threshold (the "Escalator Clause"). (Settlement, ¶ 26(d).) ***The Escalator Clause has not been triggered, and the class period ended on April 18, 2025.***
- **<u>*Kullar/Munoz* Analysis</u>**: Plaintiff addresses the claims analysis herein, at Part V.B.3, and in more detail the Declaration of Tunyan, at Paragraph 17;
- **<u>No Reversion</u>**: The Settlement is a ***non-reversionary*** settlement (Settlement, ¶ 26(e));
- **<u>Certification</u>:** Plaintiff addresses certification requisites herein, at Part V.A., and in the Declaration of Tunyan, at Paragraphs 35-41;
- **<u>No Claim Form</u>:** No claim form is required (Settlement., ¶ 26(f));
- **<u>Class Release</u>**: The Settlement will release specified wage-and-hour claims for Class Members (those Class Members who do not opt out of the Settlement) (Settlement, ¶ 37);
- **<u>PAGA Release</u>**: PAGA Employees are deemed to release the PAGA Claims set forth in this Action, that were identified in the Complaint and Plaintiff's LWDA Notice Letter, regardless of whether they opt out of the class portion of the Settlement (Settlement, ¶ 37);
- **<u>Release Effective Date</u>:** The Release is not active until Defendants tender all payments required under the Settlement to the Settlement Administrator (Settlement, ¶ 37);
- **<u>Net Settlement Amount Available to the Class</u>:** After deducting Class Counsel's

attorneys' fees and costs, service payment to Plaintiff, administration costs, and the payment to the LWDA, the remainder will be used to pay Settlement Class Payments to Class Members who do not opt out and PAGA Settlement Payments to PAGA Employees. For the Settlement Class Payments, each Class Member will receive a share based on the number of workweeks each Class Member worked for Defendants within the Class Period. The Net Settlement Amount which also includes PAGA Settlement Payments to PAGA Employees is estimated to be at least **$876,795.24**, resulting in an average **net** payment per Class Member of at least **$716.92**. (Settlement, ¶ 26(g));

- **Tax Allocation:** The amounts distributed to Class Members will be characterized as 1/3 wages, and 2/3 interest and penalties, and PAGA Settlement Payments will be allocated as 100% penalties. (Settlement, ¶ 26(k));
- **Employer's Portion of Payroll Taxes Paid Separately**: Defendants' portion of payroll taxes (e.g., FICA, FUTA, etc.) owed on any settlement payments to Class Members that constitute wages will be paid separate and apart from the GSM (Settlement, ¶ 26(h));
- **Settlement Administrator**: The notice portion of the Settlement and distribution of funds will be administered by a third-party Administrator, ILYM Group, Inc., and the Parties estimated that the costs of administration should not reasonably exceed $25,000.00. ILYM Group, Inc.'s low bid for settlement administration services in the amount of **$15,950.00** was selected as the lowest bid from a competitive bidding process. (Settlement, ¶ 26(p));
- **Class Data for Administration:** The Settlement Administrator will receive the Class List within 15 calendar days of Preliminary Approval, use the NCOA database to update the Class List, and then use skip tracing on returned Notices (Settlement, ¶ 32(a));
- **Notice:** The Notice will issue within 14 days of receipt of the Class List (Settlement, ¶ 32(b)). The Notice describes how to dispute workweeks, submit and objection, or request exclusion (Settlement, ¶ 26(s)).
- **Notice Language**: Notice will be issued in English and Spanish (Settlement, ¶ 26(t));
- **Objections:** Objections can be submitted to the Settlement Administrator in writing via the Objection Form, or at the Final Approval Hearing. (Settlement, ¶ 26(x));

- **<u>Exclusion Requests</u>:** Requests for exclusion can be submitted to the Settlement Administrator in writing on the Request for Exclusion Form (Settlement, ¶ 26(w));
- **<u>PAGA Allocation</u>:** From the GSA, **$100,000.00** will be allocated to settle claims brought pursuant to the California Private Attorneys General Act, Labor Code § 2699 *et seq*. ("PAGA"), and seventy-five percent (75%), or **$75,000.00** will be paid to the California Labor & Workforce Development Agency. (Settlement, ¶ 10.)
- **<u>Notice to LWDA</u>:** Notice was provided prior to the filing of this Motion. Evidence is attached to Tunyan Declaration.
- **<u>Service Payment to Plaintiff</u>:** Defendants will not oppose the application for Class Representative Service Payment of **$5,000.00** to be paid from the GSA (Settlement, ¶ 26(n));
- **<u>Fees and Costs</u>**: Defendants will not oppose Class Counsel's application for fees not to exceed 33 1/3% of the GSA **($500,000.00**), and actual costs, in an amount not to exceed **$30,000**, to be paid out of the GSA (Settlement, ¶ 26(m)).
- **<u>Check Void Period</u>**: Settlement checks will be valid for 180 days (Settlement, ¶ 34);
- **<u>Uncashed Checks</u>**: Any settlement checks that are mailed to the Class Members and remain uncashed after 180 days of the date of issuance will be cancelled, and the moneys will be directed to the California State Controller's Office for Unclaimed Property in the name of each Class Member who failed to cash their Settlement Payment (Settlement, ¶ 35);
- **<u>Judgment Notice</u>:** Judgment will be posted on the Settlement Administrator's website after entry for 180 days (Settlement, ¶ 30);
- **<u>Confidentiality Provisions</u>:** Plaintiff and Class Counsel agree to keep settlement terms confidential prior to preliminary approval of the Settlement (Settlement ¶ 58).

(Tunyan Decl., ¶¶ 10-11 and Exhibit 1 thereto.)

IV. <u>FACTUAL AND PROCEDURAL BACKGROUND</u>

A. <u>Plaintiff's Claims</u>

On January 30, 2024, Plaintiff filed a putative Class Action alleging the following labelled causes of action: (1) failure to pay all wages); (2) failure to provide meal periods; (3) failure to provide rest periods; (3) failure to maintain and provide accurate itemized wage statements; (5) failure to indemnify necessary business expenses; (6) failure to timely pay all wages and final wages; (7) Unfair Business Practices in violation of Bus. & Prof. Code § 17200 et seq. On March 7, 2024, Defendants filed a Notice of Removal of this action to the United States District Court, Central District of California on the basis of the Class Action Fairness Act pursuant to 28 U.S.C. § 1441. On May 1, 2024, Plaintiff filed her First Amended Complaint adding the eighth case of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] ("PAGA"). On March 6, 2025, the Parties filed a joint stipulation seeking remand of this action to the Orange County Superior Court, which was granted on March 13, 2025, and this action was remanded to Orange County Superior Court (The "Action.") In the complaint, Plaintiff sought to represent all persons that worked for Defendants in California as an hourly-paid, non-exempt employee at any time during the period beginning four years before the filing of the initial complaint. (Tunyan Decl., ¶ 3.)

Plaintiff satisfied the administrative exhaustion requirement that is a prerequisite to filing a claim for Civil Penalties under the Labor Code Private Attorneys General Act of 2004 [Lab. Code § 2699, et seq.] ("PAGA"). (Tunyan Decl., ¶ 4.)

B. <u>Pre-Mediation Data Production and Analysis</u>

The Parties have conducted informal discovery and investigation of the facts and law. Such discovery and investigation have included, inter alia, the exchange of data and discoverable information in preparation for the mediation session. (Tunyan Decl., ¶ 5.) The Parties have analyzed payroll and other data pertaining to Plaintiff and the Class during the relevant Settlement Period, including but not limited to the numbers of former and current members of the Class, average workweeks, and average rate of hourly pay. (*Id.*) In addition, Defendants also provided documents reflecting their wage and hour policies and practices during the Class Period (*Id*.)

After reviewing documents regarding Defendants' wage and hour policies and practices and other information obtained during the exchange of discovery, Class Counsel were able to evaluate the probability of class certification, success on the merits, and the reasonably obtainable maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (Tunyan Decl., at ¶ 6.)

C. Settlement

On January 18, 2025, the Parties mediated before a mediator, Steven Rottman, Esq., who is a highly experienced and well-regarded mediator for wage and hour class action litigation. (Tunyan Decl., ¶ 7.) At the mediation, the Parties discussed at length the burdens and risks of continuing with the litigation as well as the merits of the claims and defenses. (*Id*.) The Parties have been able to reach a settlement at the mediation. The Parties have reached an agreement regarding the substantive terms of a class-wide settlement, pending the Parties' agreement on a long-form class settlement agreement. The Parties then signed a long form settlement agreement ("Agreement"). (*Id.*)

Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendants' defenses thereto. (Tunyan Decl., ¶ 8.) Plaintiff and Class Counsel have also taken into account Defendants' agreement to enter into a Settlement that confers substantial relief upon the Class.

Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement set forth in this Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class. (Tunyan Decl., ¶ 9.) Solely for the purpose of settling this case, the parties agree that the requirements for establishing class action certification with respect to this class have been met and are met. (*Id*.) If this Settlement is not approved by the Court for any reason, Defendants reserve their right to contest class certification. (*Id.*) This Settlement, if approved by the Court, will result in the entry of the Judgment and the release of all Released Claims for all Class Members, including all within the class definition who have not elected to exclude themselves from the Class. (*Id.*)

V. CLASS DEFINITION

The Class is defined as follows:

> All persons who are or previously were employed by defendant Kemper Sports Management, LLC and/or Kemper Sports Management, Inc., defendant Kemper Sports Management Holdings, LLC in California and classified as non-exempt employees at any time during the Class Period and who did not sign arbitration agreements with class waivers (the "Class Period" is from January 30, 2020 through April 18, 2025). "Settlement Class Members" are those Class Members who do not submit timely exclusion requests to the Settlement Administrator. (Settlement, ¶¶ 3-4.) (Tunyan Decl.,

¶ 34 and Exhibit 1.)

The PAGA Employee is defined as follows:

> All persons who are or previously were employed by defendant Kemper Sports Management, LLC and/or Kemper Sports Management, Inc., defendant Kemper Sports Management Holdings, LLC in California and classified as non-exempt employees at any time during the PAGA Period (the "PAGA Period" is from January 30, 2023 through April 18, 2025.) PAGA Employees cannot opt out of the settlement of the PAGA claim. (Settlement, ¶¶ 11-12.)

VI. DISCUSSION

A. The Court Should Conditionally Certify the Class Because It Meets All the Requirements for Certification for Settlement Purposes Under CCP § 382

Under Code of Civil Procedure § 382,[2] class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest among its members and that a "class action proceeding is superior to other means for a fair and efficient adjudication of the litigation." *See, e.g., Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 326, 332 (2004). Any doubts as to the appropriateness of class treatment must be resolved in favor of certification, subject to later modification. *Richmond v. Dart Indus. Inc.*, 29 Cal. 3d 462, 473-475 (1981). For purposes of this Settlement only, Defendants has agreed not to oppose conditional certification of the proposed class action. (Settlement ¶ 19.)

"The certification question is 'essentially a procedural one that does not ask whether an action is legally or factually meritorious.'" *Id.*, at 326, quoting *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2000). Indeed, the certification question simply asks whether the theory of recovery advanced by the Plaintiff is likely to prove amenable to class treatment. *See, e.g., Jaimez v. Daiohs USA, Inc.*, 181 Cal. App. 4th 1286, 1298 (2010). In ruling on certification, a trial court's task is to determine "whether ... the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." *Id*. Thus, "[t]he relevant comparison lies between the costs and benefits of

[2] Code Civ. Proc. § 382, which is the statutory basis for the maintenance of class actions under California law, states in relevant part, "[W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all."

adjudicating Plaintiff' claims in a class action and the costs and benefits of proceeding by numerous separate actions . . . ."*See, e.g., id.*

"[I]t is also well established that trial courts should use different standards to determine the propriety of a settlement class, as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases." *Global Minerals & Metals Corp. v. Superior Court*, 113 Cal. App. 4th 836, 859 (2003), citing *Dunk v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). As the court noted in *Dunk*, although certification requirements are intended "to protect the interests of the non-representative class members," that concern is "protected by the trial court's fairness review of the settlement." *Dunk*, 48 Cal. App. 4th at 1807 n.19.

Indeed, numerous courts have certified settlement classes. For example, the court in *In re Drexel Burnham Lambert Group, Inc.*, 960 F.2d 285 (2d Cir. 1992), cert. dismissed, 506 U.S. 1088, 122 L. Ed. 497, 113 S. Ct 1070 (1993), addressed settlement before a class was certified. After a hearing, the "district court issued an order certifying the class and approving the settlement agreement." *Id.* at 289; *see also Alaniz v. California Processors, Inc.*, 73 F.R.D. 269, 278 (N.D. Cal. 1976) ("the use of the tentative settlement class procedure was appropriate in this case"), *aff'd*, 572 F.2d 657 (9th Cir.), cert. denied, 439 U.S. 837 (1978). Certification of a settlement class is a regular feature of class action litigation and an approved procedure which ought to be followed in this case. *See* Newberg on Class Actions (3d ed. 1991) § 11.27, pp. 11-40 to 11-56; Manual for Complex Litigation, 2d (1993) § 30.45.

In view of these standards, **as discussed more thoroughly as part of the preliminary approval motion already granted by the Court,** the Class should be certified for purposes of settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

B. The Court Should Finally Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims in View of Defendants' Potential Liability Exposure and the Risks of Continued Litigation

California courts favor settlement. *See, e.g., Stambaugh v. Superior Court*, 62 Cal. App. 3d 231, 236 (1976). Unlike most settlements, class action settlements involve a court approval process that exists to prevent fraud, collusion, and unfairness to class members. *Malibu Outrigger Bd. of Governors v. Superior Court*, 103 Cal.App.3d 573, 578-579 (1980). This approval process consists of preliminary settlement approval, notice being given to class members, and a final fairness and approval hearing being held at which class members may be heard with respect to the settlement. *Id.* For the reasons discussed below, this Court should finally approve the Settlement and enter Judgment.

1. Class Action Settlements Are Subject to Review and Approval.

Any settlement of class litigation must be reviewed and approved by the presiding court. Rules of Court, Rule 3.769(a). Approval occurs in two steps: (1) an early (preliminary) review by the trial court and (2) a subsequent (final) review after notice has been distributed to the class members. The Preliminary Approval Hearing and Final Approval Hearing coincide with these two steps. The present motion seeks final *approval* and entering of Judgment.

To evaluate a settlement, the trial court must receive "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 133 (2008). However, the record need not contain an explicit statement of the maximum theoretical amount that the class could recover. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010).

2. The Parties Reached the Settlement Through Arms' Length Negotiations Between Experienced Counsel with the Assistance of a Highly Qualified Mediator After Sufficient Data Was Exchanged to Evaluate Settlement.

A settlement is presumptively fair where it is reached through arms' length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802; *In re Microsoft I-V Cases*, 135 Cal. App. 4th 706, 723 (2006); *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000). In deciding whether to approve a settlement, a trial court has broad powers to determine whether it is fair under the circumstances of the case. *See, e.g.*, *Mallick v. Superior Court*, 89 Cal. App. 3d 434, 438 (1979). In exercising these powers, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, at 1801, quoting *Officers for Justice v. Civil Serv. Comm'n of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982).

Relevant factors in making this determination, include, but are not limited to:

> [T]he complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.

Id. These factors require balancing, are non-exhaustive, and, as such, trial courts should tailor the factors considered to each case and give due regard to "what is otherwise a private consensual agreement between the parties." *Id.*

Here, the Settlement resulted from thorough, arms' length negotiations between experienced counsel with the assistance of highly regarded mediator. (Tunyan Decl., ¶¶ 6-8, 16.) With respect to the claims at issue in this case, Plaintiff obtained data from Defendants and then carefully reviewed that information. Counsel for Plaintiff also examined relevant policies in detail about their work experiences and Defendants' practices.

Based on the totality of that review, Plaintiff estimated the potential exposure and then estimated risk factors to adjust the reasonable expected outcome. The investigation and discovery that Plaintiff's counsel conducted were sufficient to provide them with enough information to intelligently evaluate the estimated exposure in this action for purposes of negotiating the Settlement in view of the risks discussed below and are also sufficient to allow this Court to do the same. *See, e.g.*, *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 245 (2001).

3. The Settlement Represents a Fair, Adequate, and Reasonable Compromise of Class Members' Claims Based on Defendants' Estimated Liability Exposure Given the Risks Continued Litigation Would Entail.

A settlement is not judged against what might have been recovered had a Plaintiff prevailed at trial and does not have to provide 100% of damages sought to be fair and reasonable. "In the context of a settlement agreement, the test is not the maximum amount Plaintiff might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances." *Wershba*, 91 Cal.App.4th at 250. Accordingly, because settlements involve compromise, even one that provides for substantially narrower relief than would likely be obtained if the suit were successfully litigated can be reasonable given that "the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation." *Id.*, *quoting Air Line Stewards & Stewardesses*

Ass'n, Local 550 v. American Airlines, Inc., 455 F.2d 101, 109 (7th Cir. 1972).

With respect to the claims asserted on behalf of the Class in this case, there are serious risks that support the reduced compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff would be unable to establish liability for unpaid straight time or overtime wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"), *citing Dilts v. Penske Logistics, LLC* 2014 WL 205039 (S.D. Cal. 2014); (ii) the risk that Defendants' meal and rest period policies might not ultimately support class certification or a class-wide liability finding, *see Duran*, 59 Cal. 4th at 14, n. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing opinion as to ultimate viability of proposition); (iii) the risk that uncertainties pertaining to the ultimate legality of Defendants' policies and practices could preclude class-wide awards of statutory penalties under Labor Code §§ 203 and 226(e); (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not solely to damages, *see Duran*, 59 Cal. 4th at 19; (v) the risk that any civil penalties award under the PAGA could be reduced by the Court in its discretion, *see* Labor Code § 2699(e)(1); (vi) the risk that class treatment could be deemed improper as to one or more claims, except for settlement purposes; (vii) the risk that lengthy appellate litigation could ensue. (Tunyan Decl., ¶ 15.) These risks are non-exhaustive.

In light of the uncertainties of protracted litigation, the settlement amount reflects a fair and reasonable recovery for the Class Members. (Tunyan Decl. ¶¶ 12-19.) The settlement amount is, of course, a compromise figure. (Tunyan Decl. ¶ 16.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendants. (*Id.*) Moreover, each Class Member will be given the opportunity to opt-out of the Settlement, allowing those who feel they have claims that are greater than the benefits they can receive under this Settlement to pursue their own claims. (*Id.*) For the approximately **1,223** members of the Class who did not submit exclusion requests, the average ***gross*** recovery is at least **$1,226.49** per class member, and the estimated average ***net*** recovery for each Class Member including PAGA individual payment is approximately **$716.92**. (*Id.*) Given that Defendants could challenge certification and liability, this is a significant sum to have achieved in settlement. Moreover, <u>a Class Member who worked a greater number of weeks for Defendants will receive a larger share of the Settlement</u> than a Class Member who worked for a shorter amount of time during the class period. (*Id.*)

After analyzing the claims in this matter, Plaintiff has concluded that the value of this Settlement is fair, adequate, and reasonable. (Tunyan Decl., ¶ 17.) The Gross Settlement Amount of **$1,500.000.00** is about 73% of the **$2,051,489.32** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. On that basis, it would be unwise to pass up this settlement opportunity. This assessment is based on a carefully constructed model of the current fair value of the case, using estimated risks, average wage rates, numbers of employees, and the amount of time covered by the class period. (*Id.*) The maximum calculated reasonable exposure is **$12,880,497.10,** *including* PAGA penalties. (*Id.*)

- A reasonably estimated exposure for unpaid wages for the off-the clock work was calculated, with the assistance of an expert, to be approximately **$1,801,829.70.** However, with the risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$270,274.46**, assuming certification probability of 50% and merits success at 30%.
- A reasonably estimated exposure for rest break violations over the class period was calculated at **$1,801,829.70** with chances of certification and proof of liability (50% and 40% respectively) for a risk-adjusted exposure of **$360,365.94.**
- A reasonably estimated exposure for meal break violations over the class period was calculated at **$1,801,829.70**, with chances of certification and liability risks (60% and 40% respectively) resulting in a risk-adjusted exposure of **$432,439.13**.
- Risk-adjusted penalty recoveries for wage statement and Labor Code § 203 penalties with chances of certification and liability risks (50% and 20% respectively) were estimated to be approximately **$165,570.00** and **$286,912.80**, respectively, on maximum exposures of **$1,655,700.00** and **$2,869,128.00**, respectively.
- A reasonably estimated exposure for unreimbursed expenses over the class period was calculated at **$1,082,180.00,** with chances of certification and liability risks (50% and 30% respectively) resulting in a risk-adjusted exposure of **$162,327.00**.
- Performing risk-adjusted valuations for all claims yields a total value in the range of **$1,677,889.32**, excluding PAGA. (*Id.*)

- PAGA penalties were calculated as having a maximum realistic exposure of **$1,868,000.00**, but a risk adjusted value of **$373,600.00**, after factoring in risks of reduction in penalties pursuant to Court discretion and the high risk of the inability to prove violations for all aggrieved employees.

The concurrently filed Declaration of Lilit Tunyan sets forth claim valuation in additional detail. (*See*, Tunyan Decl., ¶ 17.)

This result here is fully supportable as reasonable. First, it is important to recognize the wilfulness finding required for Labor Code §§ 203 and 226 is challenging to establish. (Tunyan Decl., ¶ 18.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Tunyan Decl., ¶ 18.) Third, the certification rates in California are lower than conventional wisdom holds. *See*, H. Scott Leviant, *Second Interim Report on class actions in California sheds new light on certification* (February 19, 2010), www.thecomplexlitigator.com, available at http://www.thecomplexlitigator.com/post-data/2010/2/19/second-interim-report-on-class-actions-in-california-sheds-n.html; *see also*, *Findings of the Study of California Class Action Litigation*, 2000-2006, available at http://www.courtinfo.ca.gov/reference/documents/class-action-lit-study.pdf (finding, at page 5, and in Table 9, at page 15, that only 21.4% of all class actions were certified either as part of a settlement ***or*** as part of a contested certification motion).

Here, the estimated certification probabilities are ***above*** the average rate at which cases were certified in California over the study years, based upon data available through the California Courts websites. (Tunyan Decl., ¶ 18.) In sum, well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (*Id.*) The recovery is roughly 12% of the maximum theoretical recovery (estimated to be approximately $12,880,497.10, including PAGA), which falls within the expected outcome under the likelihood of success metric. (*Id.*) This Settlement achieves the goals of the litigation.

4. The Proposed Method for Allocating Settlement Funds Is Fair, Adequate, and Reasonable.

The proposed method of allocating the Net Settlement to Class Members also is fair and reasonable. As noted, the parties agreed to allocate the Settlement Fund between all Class Members based on time worked by the Class Member during the Class Period, in relation to the total amount of time worked by all participating Class Members collectively during the class period. This proposed method is fair and reasonable because each Class Member's actual potential damages vary based on the number of workweeks he or she actually worked (e.g., Lab. Code § 226.7 provides for an extra hour of pay at the employee's regular rate of pay for each violation, resulting in a higher potential damage when a higher number of incidents occur). A Class Member who worked a greater number of weeks for Defendants will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time during the relevant period. (Tunyan Decl., ¶ 16.)

5. The Proposed Service Payment to Plaintiff is Fair, Adequate, and Reasonable and Warrants Final Approval.

The proposed Service Payment to Plaintiff is intended to recognize the substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named Plaintiff for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. *See, e.g., Bell v. Farmers Ins. Exchange*, 115 Cal. App. 4th 715, 726 (2004) (upholding "service payments" to named Plaintiff for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.,* 901 F. Supp. 294 (N.D.Cal. 1995) (approving a $50,000 enhancement award). Plaintiff contributed time to the prosecution of this matter, including assistance prior to the mediation with discovery, information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Wilhelm Decl., ¶¶ 4-16; Tunyan Decl., ¶ 34.) The service payment also recognizes the considerable risks Plaintiff undertook on behalf of the Class to be personally liable for all costs incurred regardless of the success of the litigation or class certification, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued a former employer, making future employment prospects uncertain.

6. The Proposed Award of Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits Final Approval.

a) Plaintiff's Counsel Should be Awarded Fees Based on a Percentage of the Fund Recovered, Consistent with the Common Fund Method

The request for attorneys' fees as a percentage of the settlement fund is supported by the "common fund theory," where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest*, 20 Cal. 3d 25, 35 (1977). The lodestar may be cross-checked against the percentage-of-recovery. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

The purpose of the common fund approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (9th Cir. 1977). Thus, the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *City and County of San Francisco v. Sweet*, 12 Cal. 4th 105, 110 (1995); *see Quinn v. State of California*, 15 Cal. 3d 162, 167 (1975) ("[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs.").

The California Supreme Court removed any lingering doubt about the use of the percentage of the fund method to award attorney's fees in California Courts:

> We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation (See pt. I, *ante; Lealao, supra,* 82 Cal.App.4th at pp. 48–49, 97 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p. 516)—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte v. Robert Half Intern. Inc., 1 Cal. 5th 480, 503 (2016).[3] Thus, this Court may and, as strongly encouraged by the California Supreme Court, *should* award attorney's fees to Plaintiff's counsel based upon the percentage of the fund methodology.

"Empirical studies show that, regardless whether the percentage method or the lodestar method is

[3] The Supreme Court also corrected the misconception that *Dunk* should be viewed as expressing doubt about the use of the percentage method: "The *Dunk* court, while finding the percentage method inapplicable to the settlement before it due to the lack of a readily valued common fund, did not purport to bar its usage generally in common fund cases." *Laffitte*, 1 Cal. 5th at 501.

used, fee awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 47 n. 11 (2008). This is also consistent with Plaintiff's counsels' experience in these types of cases. Here, Plaintiff's attorneys request attorneys' fees of up to $500,000.00 (one-third of the GSA), and costs of $27,254.76, which includes payment for filing fees and other standard expenses. (Tunyan Decl., ¶¶ 30-33.) Given the efforts and risks involved in this case, as well as the results achieved, these amounts are within the range of reasonableness and warrant *final approval*.

b) Class Counsel Is Entitled to Attorneys' Fees and Costs under the California Labor Code and California's Private Attorney General Statute

Class Counsel is entitled to recover fees under Labor Code § 1194, which provides, in part:

> [A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Lab. Code § 1194. As this litigation culminated in a Settlement that provides for a recovery of unpaid wages, including unpaid minimum and overtimes wages, Plaintiff is entitled to recover reasonable attorneys' fees and costs under the Labor Code.

Class Counsel is also entitled to a fee under California's private attorney general statute, Code of Civil Procedure § 1021.5. "The award of attorney's fees is proper under section 1021.5 if '(1) plaintiffs' action 'has resulted in the enforcement of an important right affecting the public interest,' (2) 'a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons' and (3) 'the necessity and financial burden of private enforcement are such as to make the award appropriate.'" *Press v. Lucky Stores*, 34 Cal. 3d 311, 317-318 (1983). The objective of the statute is "to encourage suits enforcing public policies by providing substantial attorneys' fees to successful litigants in such cases." *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553, 565 (2004).

The Action resulted in the enforcement of an important right affecting the public interest, as Plaintiff sought to enforce Class Members' rights to recover statutory wages arising from Defendants' failure to pay all wages and failure to provide meal and rest breaks. *See Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1113 (2007) (noting that "health and safety concerns" are what motivated the Industrial Wage Commission to adopt mandatory meal and rest periods).

The Action also conferred a significant benefit on a class of persons who worked for Defendant during the Class Period and were, according to allegations, not properly compensated for all hours worked and were not provided meal and rest periods or compensation therefor.

Finally, the necessity and financial burden of private enforcement render an award appropriate. Without the incentive of an attorneys' fee award, Plaintiff could not have afforded to hire counsel to pursue this case, as the cost of litigating this matter far outweighed Plaintiff's potential recovery. *See Ryan v. California Interscholastic Fede*ration, 94 Cal. App. 4th 1033, 1044 (2001) ("As to the necessity and financial burden of private enforcement, an award is appropriate where the cost of the legal victory transcends the claimants' personal interest; in other words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual stake in the matter.").

c) A Lodestar Cross Check Confirms that Class Counsel's Requested Attorneys' Fees Are Reasonable

Plaintiff's fee application is also reasonable based on Class Counsel's lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee requested. *Ramos v. Countrywide Home Loans, Inc.*, 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden in this regard by submitting "declarations evidencing the reasonable hourly rate for their services and establishing the number of hours spent working on the case" as "California case law permits fee awards in the absence of detailed time sheets." *Wershba*, 91 Cal. App. 4th at 254-55; *Dunk*, 48 Cal. App. 4th at 1810; *Nightengale v. Hyundai Motors America*, 31 Cal. App. 4th 99, 103 (1994). The hours spent and the reasonable hourly compensation are computed to arrive at a "lodestar" figure which may then be augmented or diminished by the court taking into account various "multiplier" factors. *See Ramos*, 82 Cal. App. 4th at 622 (*citing Serrano*, 20 Cal. 3d at 48-49).

Here, Class Counsel's billed lodestar exceeds **$170,790.00** which is based on approximately 276.4 *billed* hours from two firms representing Plaintiff and the class (not including final estimated hours) at the attorneys' customary hourly rates. (Tunyan Decl., ¶¶ 30-32, Yang Decl. ¶ 8.) The actual lodestar is estimated to be **$176,784.00**. (Tunyan Decl., ¶ 32.) Application of a positive multiplier is appropriate, based on the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the benefit conferred on the class as a result of the Settlement, the skill displayed by Class Counsel and the fact that two separate firms counsel represented Plaintiff and Class and worked on this case and the resolution was reached at early stages of litigation benefiting more Class Members due to Class Counsel's efforts. Thus, the request for $500,000.00 in attorneys' fees, which is 2.8 times the final estimated lodestar, is reasonable under the lodestar method.

(1) Class Counsel's Hours Are Reasonable

In determining whether the number of hours expended on the litigation was reasonable, the court must determine that "the time spent was reasonably necessary and that [] counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary." *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 n.8 (9th Cir. 1987). The court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (noting that "[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.").

Here, Class Counsel expended a prudent amount of time litigating the case to achieve the excellent result on behalf of the class. (Tunyan Decl. ¶¶ 30-33.)

(2) Class Counsel's Hourly Rates Are Reasonable

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084, 1095 (2000). "[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys' skill as reflected in the quality of work, as well as the attorneys' reputation and status." *MBNA American Bank, N.A. v. Gorman*, 147 Cal. App. 4th 1, 3 (2006). The trial court may also "find hourly rates reasonable based on evidence of other courts approving similar rates." *Parkinson v. Hyundai Motor America*, 796 F.Supp.2d 1160, 1172 (C.D. Cal. 2010).

Class Counsel are experienced litigators who specialize in employment law, with a substantial wage and hour class action practice. (Tunyan Decl. ¶¶ 19-25.) A number of courts, including this Court, have approved Class Counsel's hourly rates which are consistent with her practice area, legal market. (Tunyan Decl. ¶ 25.) Given the skill and experience of Class Counsel, and the excellent result achieved, Class Counsel's hourly rates are reasonable.

(3) Application of a Positive Multiplier Would Be Appropriate

The lodestar may be adjusted 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. *Wershba*, 91 Cal. App. 4th at 254; *see also Chavez*, 162 Cal. App. 4th at 66 (upholding ***2.5 multiplier***); *Glendora Community Redevelopment Agency v. Demeter*, 155 Cal. App. 3d 465 (1984) (affirming a fee award that included a ***12.0 multiplier***); Some factors a trial court considers when determining whether to apply a multiplier are: "(1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award." *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001) (citations omitted). The ultimate goal is "to entice competent counsel to undertake difficult public interest cases." *San Bernardino Valley Audubon Soc. v. County of San Bernardino*, 155 Cal. App. 3d 738, 755 (1985). Fee awards that are too small "chill the private enforcement essential to the vindication of many rights…." *Lealao v. Beneficial California, Inc.*, 82 Cal. App. 4th 19, 53 (2000).

In *Ketchum*, the California Supreme Court held that fee enhancement in contingency cases is necessary to (1) fully compensate counsel for the "loan" of legal services in light of the inherent high risk of "default" posed by losing the case, and (2) 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 more, competent counsel will be reluctant to accept fee award cases." *Id*. at 1133 (citations omitted). Application of a positive multiplier is appropriate, based on the contingent risk incurred by Class Counsel, the difficulty of the questions involved, the benefit conferred on the class as a result of settlement at early stages and the net average individual payment, the skill displayed by Class Counsel and the fact that more than one firm represented the Class . Here, a multiplier of 2.8 is required to align the final estimated lodestar with the requested fee. Class Counsel have been litigating this case before receiving any reimbursement, expending resources which could have been directed elsewhere. Class Counsel agreed to litigate on a contingent basis, and in the process assumed considerable risk. Additionally, Class Counsel's efforts brought to resolution of this matter at early stages of litigation preserving the Parties' resources and directing them to Class Members settlement to benefit Class Members in lieu of further accumulating costs and attorneys' fees (Tunyan Decl. ¶ 32.)

Class Counsel's efficiency and skill in bringing the case to an early resolution should not be used to justify refusal to award the requested fees. As the court explained in *Lealao*:

> [T]he promptness of settlement cannot be used to justify the refusal to apply a multiplier to reflect the size of the class recovery without exacerbating the disincentive to settle promptly inherent in the lodestar methodology. Considering that our Supreme Court has placed an extraordinarily high value on settlement … it would seem counsel should be rewarded, not punished, for helping to achieve that goal….

Lealao, 82 Cal. App. 4th at 52 (citations omitted).

Given the contingent risk incurred by Class Counsel, the issues involved, the substantial benefit conferred on the class and State as a result of the Settlement, the skill displayed by Class Counsel, the fact that two firms represented Plaintiff and the Class, application of a modest positive multiplier would be appropriate. Thus, Plaintiff respectfully requests that the Court award Class Counsel the requested fees of **$500,000.00** under the common fund theory with a lodestar cross-check or, alternatively, based on Class Counsel's lodestar with application of a multiplier based upon the agreed-upon cap on fees.

d) Class Counsel's Costs Are Reasonable

The Settlement Agreement provides for reimbursement of costs not to exceed $30,000.00. To date, Tunyan Law, APC and The Sentinel Firm, APC have already incurred actual costs in the amount of at least $27,254.76 which include future final approval motion filing, notice of court ruling and final accounting report filing fees. (Tunyan Decl., ¶ 33.) These costs were reasonably incurred in prosecuting the Action on behalf of the Class Members and should be approved by the Court. Accordingly, Class Counsel respectfully requests the Court approve costs in the amount of **$27,254.76** which is less than the capped amount. (Tunyan Decl., ¶ 33.).

7. The Proposed Payment to the Administrator Is Fair and Reasonable

In deciding whether to approve a proposed settlement, a trial court must determine if the proposed settlement is fair under the circumstances of the case. *Mallick*, 89 Cal.App.3d at 438. In exercising this power, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable." *Dunk*, 48 Cal.App.4th at 1801 (internal quotations omitted). ILYM Group, Inc., which has been selected due to its competitive bid, estimates that administration can be performed for **$15,950.00** flat fee. In counsel's experience, based on similar wage-and-hour actions, an estimated cost of **$15,950.00** is a fair and reasonable amount for administration fees and should be finally approved. (Tunyan Decl., ¶ 35.)

8. The PAGA Allocation is Reasonable

The PAGA allocation is reasonable because the settlement of the underlying wage and hour claims is robust and serves the deterrent purpose of the PAGA statute. *O'Connor v. Uber Technologies, Inc*., 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016) ("By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of class members as employees, but may have a deterrent effect upon the Defendants employer and other employers, an objective of PAGA."); *see also Viceral v. Mistras Group*, 2016 WL 5907869 *9 (N.D. Cal. 2016) ("Applying O'Connor's sliding scale approach, settlement of the PAGA claim may be substantially reduced below its standalone settlement value without sacrificing its statutory purposes because the non PAGA settlement is relatively substantial.")

In addition, there is no evidence that a court or a commissioner had informed Defendants that its conduct violated the Labor Code. *Amaral v. Cintas Corp*., 163 Cal. App. 4th 1157, 1209 (2008); *Willis v. Xerox Bus. Servs., LLC,* 2013 WL 6053831, *7-8 (E.D. Cal. 2013) ("Under California law, courts have held that employers are not subject to heightened penalties for subsequent violations until and unless a court or commissioner notified the employer that it is in violation of the Labor Code.").

Finally, the PAGA allocation is fair. The LWDA is receiving **$75,000.00**. PAGA Employees are receiving $25,000.00 and Class Members are receiving, net, an estimated **$851,795.24** for the releases for eight theories of recovery (excluding the $25,000.00 as the aggrieved employees' share of the PAGA Allocation). An allocation to the LWDA equal to approximately 9% of the Net Settlement Amount is not unfair and satisfies the policies underlying California's wage and hour laws.

VII. CONCLUSION

For all the foregoing reasons, because the Class meets the requirements for certification, because the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the proposed notice procedure and forms comport with Rules of Court, Rule 3.766 and due process, this Court should grant this Motion for Final Approval.

Respectfully submitted,

Dated: January 6, 2026 **TUNYAN LAW, APC**

By: ______________________________

Lilit Tunyan
Artur Tunyan

Attorneys for Plaintiff KIMBERLY M. WILHELM

Dated: January 6, 2026 **THE SENTINEL FIRM, APC**

By: ______________________________

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 355 S. Grand Ave., Suite 1450 Los Angeles, CA 90071.

On the date indicated below, I served the document described as: **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND PAGA REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action by sending a true copy thereof to interested parties as follows and as stated on the attached service list:

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[✓] **BY E-MAIL:** I hereby certify that this document was served from Glendale, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[✓] **BY ELECTRONIC SERVICE:** Based on an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses listed above via electronic mail. I did not receive an error message.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 6, 2026 at Los Angeles, California.

Ivette Hernandez ____________
Name

____
Signature