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9 and on behalf of others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CRUZ**
12

13 TYLER EMERY, individually, and on behalf of
others similarly situated,

14 Plaintiff,

15 vs.

16 SANTA CRUZ BICYCLES, LLC; and DOES 1
17 through 25, inclusive,

18 Defendants.
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Case No.: 24CV00244
Related Case No. 24CV00839

Hon. Syda K. Cogliati, Dept. 5

**PLAINTIFF TYLER EMERY'S NOTICE OF
MOTION AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT, ATTORNEYS' FEES
AND COSTS, CLASS REPRESENTATIVE
INCENTIVE PAYMENT, AND
SETTLEMENT ADMINISTRATION
COSTS; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: March 3, 2025
Time: 8:30 a.m.
Dept.: 5

Complaint Filed: January 25, 2024
Trial Date: Not Set

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

2 **PLEASE TAKE NOTICE THAT** on **March 3, 2025, at 8:30 a.m.** in Department 5 of the
3 above-captioned Court, located at 701 Ocean Street, Santa Cruz, California 95060, plaintiff Tyler
4 Emery (“Plaintiff”) will and hereby does move the Court for an Order granting final approval of the
5 class action and PAGA settlement between Plaintiff and Defendant Santa Cruz Bicycles, LLC
6 (“Defendant”).

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

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

- 14 1. Granting final approval of the class action and PAGA settlement;
- 15 2. Approving the settlement as fair, adequate, and reasonable, based upon the terms as set
16 forth in the previously approved Class Action and PAGA Representative Action Settlement and
17 Release (“Settlement Agreement” or “Settlement”), including the non-revisionary payment by
18 Defendant of the Gross Settlement Amount of \$949,285.00.
- 19 3. Approving Class Counsel’s request for allocation of thirty-five percent (35%) of the
20 Gross Settlement Amount to attorneys’ fees (totaling \$332,249.75), plus reimbursement of actual costs
21 and expenses in an amount not to exceed \$22,039.48.
- 22 4. Approving allocation of an Class Representative Incentive Payment to Plaintiff in the
23 amount of \$7,500.00 in recognition of his services to the Class Members and Aggrieved Employees;
- 24 5. Approving an allocation of settlement administration costs to ILYM Group, Inc. not to
25 exceed \$9,000.00;
- 26 8. Approving an allocation of \$50,000.00 to Plaintiff’s PAGA claim, which includes an
27 allocation of \$37,500.00 (75%) to be paid to the LWDA as civil penalties under PAGA, and the
28 remaining \$12,500.00 to the Aggrieved Employees, as required under PAGA.

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

Respectfully submitted,

Dated: February 5, 2025

BLACKSTONE LAW, APC

By:

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Noam Reiffman
Marissa A. Mayhood

Attorneys for Plaintiff TYLER EMERY,
individually and on behalf of others similarly
situated

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Plaintiff Tyler Emery (“Plaintiff” or “Class Representative”) seeks final approval of the
4 pending Class Action and PAGA Representative Action Settlement and Release (“Settlement
5 Agreement” or “Settlement”), which requires Defendant Santa Cruz Bicycles, LLC (“Defendant”) to
6 pay a total non-revisionary amount of Nine Hundred Forty-Nine Thousand Two Hundred Eighty-Five
7 Dollars and Zero Cents (\$949,285.00), to resolve all pending class and PAGA claims against it. (Gold
8 Decl., Ex. 1).

9 As already determined by this Court at the preliminary approval stage, the proposed Settlement
10 is fair, adequate, and reasonable. (Gold Decl., Ex. 3); *see also, Kullar v. Foot Locker Retail, Inc.*
11 (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794,
12 1801). The response of the Class to the Settlement confirms that final settlement approval is
13 appropriate. ***There have been no objections and no requests for exclusion from the Class Settlement.***
14 (Hernandez Decl., ¶¶ 11-12). Because the Settlement achieves outstanding results for the Participating
15 Class Members, the Aggrieved Employees, and the State of California, Plaintiff respectfully requests
16 that the Court approve the Settlement as fair, adequate, and reasonable, and enter judgment in
17 accordance with its terms.

18 Plaintiff further seeks Court approval of an attorneys’ fee award of thirty-five percent (35%)
19 of the Gross Settlement Amount, equaling \$332,249.75, plus reimbursement of actual litigation costs
20 and expenses in an amount not to exceed \$22,039.48 (together, “Attorneys’ Fees and Costs”). As set
21 forth in detail below, Class Counsel’s request for such an award of attorneys’ fees and costs is
22 reasonable and appropriate in light of, *inter alia*: (i) the extensive work performed by Class Counsel
23 to investigate the claims, research the legal theories, and prepare for mediation in this matter in a
24 manner akin to preparing for trial; (ii) the contingent nature of the fee arrangement, and (iii) the
25 exceptional and timely results achieved by Plaintiff and Class Counsel without the extensive delays
26 plaguing many class action lawsuits. (*See Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th
27 19). ***Critically, the percentage and amount of fees sought by Class Counsel was disclosed to class***
28 ***members in the Class Notice, and no class members objected to it.*** (Hernandez Decl., ¶ 12 & Ex. A).

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

Finally, Plaintiff requests the Court approve the payment of \$9,000.00 in Settlement Administration Costs to ILYM Group, Inc. (the “Settlement Administrator”) as compensation for administration services it has provided and will continue to provide in connection with the Settlement. (See Hernandez Decl., *generally*).¹

II. RELEVANT BACKGROUND INFORMATION

A. Factual Background

Defendant manufactures and ships high-end bicycles out of its facility in Santa Cruz, California. Plaintiff was employed by Defendant as an hourly-paid, non-exempt Shipper from approximately August 2017 to approximately May 2023. Declaration of Plaintiff Tyler Emery in Support of Motion for Preliminary Approval of Class Action and PAGA Settlement (“Emery Decl.”), ¶ 2.

B. Procedural Background

On January 16, 2024, Plaintiff provided written notice to the LWDA and to Defendant, pursuant to California Labor Code Section 2699.3, of the specific provision of the California Labor Code alleged to have been violated by Defendant (“PAGA Letter”). (Gold Decl., ¶ 19).

On January 25, 2024, Plaintiff filed a Class Action Complaint for damages in the action entitled *Tyler Emery v. Santa Cruz Bicycles, LLC*, Santa Cruz County Superior Court, Case No. 24CV00244 (“Class Action”), thereby commencing a putative class action against Defendant. (*Id.*, at ¶ 20).

On March 22, 2024, Plaintiff filed a Complaint for Enforcement Action Under the Private Attorneys General Act, Cal. Labor Code §§ 2689 *et seq.*, in the action entitled *Tyler Emery v. Santa Cruz Bicycles, LLC*, Santa Cruz County Superior Court, Case No. 24CV00839 (“PAGA Action”), thereby commencing a separate representative action against Defendant. (*Id.*, at ¶ 21).

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

1 On July 12, 2024, the Parties participated in a formal mediation conducted by Paul Haines,
2 Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and
3 hour matters. (*Id.*, at ¶ 22). After a full day of mediation, and with the help of the Mediator, the Parties
4 were able to reach an agreement to resolve this dispute on a class and PAGA basis. (*Id.*)

5 On September 10, 2024, the Parties executed the Settlement Agreement. (*Id.*, at ¶ 23 & Ex. 1).

6 On September 12, 2024, Plaintiff filed a Motion for Preliminary Approval of Class Action and
7 PAGA Settlement (“Motion for Preliminary Approval”) and supporting documents. (*Id.*, at ¶ 25 & Ex.
8 2). On October 7, 2024, the Court entered the Order Granting Preliminary Approval of Class Action
9 and PAGA Settlement (“Preliminary Approval Order”), thereby preliminarily approving the terms of
10 the Settlement Agreement, the Notice of Class Action Settlement (“Class Notice”), and the proposed
11 administration procedures and associated deadlines. (*Id.*, at ¶ 26 & Ex. 3).

12 Notice of the Settlement was timely provided to the class members. (Hernandez Decl., ¶ 8).
13 No class members objected, and none requested exclusion from the Settlement. (*Id.*, at ¶¶ 11-12).

14 This Motion for Final Approval follows.

15 C. Summary of Key Settlement Terms

16 The Parties agreed to settle the Class and PAGA claims at issue in the Action for a non-
17 reversionary Gross Settlement Amount of \$949,285.00, exclusive of employer-side payroll taxes.
18 (Gold Decl., ¶35; Gold Decl., Ex. 1 [“Settlement Agreement”, ¶ 1.22]). The Gross Settlement Amount
19 includes: (1) Class Counsel’s fees not to exceed thirty-five percent (35%) of the Gross Settlement
20 Amount (i.e., \$332,249.75 if the Gross Settlement Amount is \$949,285.00); (2) Class Counsel’s actual
21 litigation costs and expenses not to exceed \$24,000.00; (3) Settlement Administration Costs not to
22 exceed \$9,000.00; (4) Class Representative Incentive Payment in the amount of \$7,500.00; and (5) a
23 PAGA allocation of \$50,000.00 (75% to the LWDA and 25% to the Aggrieved Employees).
24 (Settlement Agreement, ¶1.22). After the above amounts are deducted from the Gross Settlement
25 Amount, *the Participating Class Members will share in a Net Settlement Amount of approximately*
26 *\$526,535.25, which is over 55% of the Gross Settlement Amount.* (Gold Decl., ¶ 35).

27 The Settlement does not require Participating Class Members to submit claims as a prerequisite
28 to receiving their *pro rata* share of the Net Settlement Amount (“Class Member Payment”) nor does

1 it require Aggrieved Employees to submit claims as a prerequisite to receiving their *pro rata* share of
2 twenty-five percent (25%) of the net PAGA Amount (“PAGA Settlement Payment”). (Gold Decl.,
3 ¶36, & Settlement Agreement, ¶ 4.2). Class Member Payments will be calculated based on the
4 following formula: Each Participating Class Member will receive a proportionate settlement share
5 based on the number of Credited Workweeks that each Participating Class Member worked during the
6 Class Period, to be calculated by multiplying the Net Settlement Amount by a fraction, the numerator
7 of which is the Participating Class Member’s Credited Workweeks during the Class Period, and the
8 denominator of which is the total Credited Workweeks worked by all participating Class Members
9 during the Class Period. (Settlement Agreement, ¶ 4.2(a)). Participating Class Members who have
10 already received a payment from the Gross Settlement Amount shall only receive an additional
11 settlement payment to the extent required to ensure they receive the total amount to which they are
12 entitled based on the calculations for their Class Member Payments. For example, if a Participating
13 Class Member’s Class Member Payment is \$100 and the Participating Class Member previously
14 received a \$20 payment from the Gross Settlement Amount then the Participating Class Member will
15 only receive \$80 (the net amount owed after subtracting the prior payment). (*Id.*).

16 Each PAGA Settlement Payment will be calculated based on the following formula: Each
17 Aggrieved Employee will receive a proportionate settlement share based on the number of Credited
18 Workweeks that each Aggrieved Employee worked during the PAGA Period, to be calculated by
19 multiplying the 25% portion of the PAGA Payment by a fraction, the numerator of which is the
20 Aggrieved Employee’s Credited Workweeks during the PAGA Period, and the denominator of which
21 is the total Credited Workweeks worked by all Aggrieved Employees during the PAGA Period.
22 (Settlement Agreement, ¶ 4.2(b)).

23 Each Class Member Payment will be allocated in three parts: (i) twenty percent (20%) as
24 wages; (ii) sixty-five percent (65%) as penalties; and (iii) fifteen percent (15%) as interest. (*Id.*). The
25 portion allocated to wages (“Wage Portion”) will be reported on an IRS Form W-2 and the portions
26 allocated to interest and penalties (together, “Non-Wage Portion”) will be reported on an IRS Form
27 1099 (to the extent required by law) by the Settlement Administrator. (Settlement Agreement, ¶
28 4.2(e)). The Settlement Administrator will withhold the employee’s share of taxes and withholdings

1 with respect to the Wage Portion of the Class Member Payment, and issue checks to Participating
2 Class Members for their net payment of their Class Member Payment. (*Id.*). Defendant will separately
3 pay any and all employer payroll taxes owed on the Wage Portion of the Class Member Payments
4 (*Id.*). Each PAGA Settlement Payment will be allocated as one hundred percent (100%) penalties and
5 will be reported on an IRS Form 1099 (if applicable) by the Settlement Administrator. (*Id.*).

6 Each Class Member Payment and PAGA Settlement Payment check will be valid and
7 negotiable for one hundred and eighty (180) calendar days from the date the checks are issued, and
8 thereafter, shall be canceled. (Settlement Agreement, ¶4.2(c)). Any funds associated with such
9 canceled checks will be distributed by the Settlement Administrator to the State of California's
10 Unclaimed Property Fund in the name of the Participating Class Member and/or Aggrieved Employee
11 at issue. (*Id.*, at ¶ 4.2(d)).

12 Upon the full funding of the Gross Settlement Amount, Plaintiff and all Participating Class
13 Members will be deemed to have fully, finally, and forever released, settled, compromised,
14 relinquished, and discharged the Released Parties of all Class Released Claims. "Class Released
15 Claims" means all claims made or which could have been made based on the facts pled in the Class
16 Action Complaint, arising during the Class Period, including, but not limited to, claims for: (i) Failure
17 to Pay Minimum Wage (Labor Code §§ 1194, 1197, and 1197.1); (ii) Failure to Pay Overtime (Labor
18 Code §§ 510 and 1198); (iii) Failure to Provide Timely Off-Duty Meal Breaks or Compensation in
19 Lieu Thereof (Labor Code §§ 226.7 and 512); (iv) Failure to Provide Timely, Off-Duty Rest Periods
20 or Compensation in Lieu Thereof (Labor Code § 226.7); (v) Failure to Timely Pay Wages During
21 Employment (Labor Code §§ 204 and 210); (vi) Failure to Provide Accurate Itemized Wage
22 Statements (Labor Code § 226(a)); (vii) Failure to Timely Pay All Wages Due at Separation (Labor
23 Code §§ 201, 202 and 203); (viii) Failure to Reimburse Necessary Business Expenses (Labor Code §§
24 2800 and 2802); and (ix) Violation of Unfair Competition Law (Business & Professions Code § 17200,
25 *et seq.*) (Settlement Agreement, ¶¶ 1.34 & 6.2). The Class Released Claims expressly exclude the
26 PAGA Released Claims, and Participating Class Members will not release the PAGA Released Claims
27 unless such Participating Class Members are also Aggrieved Employees. Participating Class Members
28

1 who are also Aggrieved Employees shall release the PAGA Released Claims, in addition to releasing
2 the Class Released Claims. (*Id.* at ¶1.34).

3 Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with
4 respect to all Aggrieved Employees, and all Aggrieved Employees will be deemed to have fully,
5 finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties
6 of all PAGA Released Claims. “PAGA Released Claims” means all claims made or which could have
7 been made for civil penalties under the PAGA, Labor Code Sections 2698 *et seq.*, based in the facts
8 pled in Plaintiff’s letter to the LWDA and the PAGA Action Complaint, arising during the PAGA
9 Period, including, but not limited to, claims for: (i) Failure to Pay Minimum Wage (Labor Code §§
10 1194, 1197, and 1197.1); (ii) Failure to Pay Overtime (Labor Code §§ 510 and 1198); (iii) Failure to
11 Provide Timely Off-Duty Meal Breaks or Compensation in Lieu Thereof (Labor Code §§ 226.7 and
12 512); (iv) Failure to Provide Timely, Off-Duty Rest Periods or Compensation in Lieu Thereof (Labor
13 Code § 226.7); (v) Failure to Timely Pay Wages During Employment (Labor Code §§ 204 and 210);
14 (vi) Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226(a)); (vii) Failure to
15 Timely Pay All Wages Due at Separation (Labor Code §§ 201, 202 and 203); (viii) Failure to
16 Reimburse Necessary Business Expenses (Labor Code §§ 2800 and 2802). (Settlement Agreement, ¶
17 1.35 & 6.4).

18 Upon the full funding of the Gross Settlement Amount, Plaintiff, individually and on his own
19 behalf, will be deemed to have fully waived all claims against the Released Parties. (Settlement
20 Agreement, ¶¶ 6.3).

21 The “Released Parties” means Defendant, their present and former officers, directors, members,
22 managers, shareholders, employees, agents, parents, subsidiaries, affiliates, insurers, operators,
23 partners, joint ventures, consultants, attorneys, successors, or assignees. (*Id.*, ¶ 1.36).

24 **D. The Settlement Administration Process**

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

27 On July 23, 2024, ILYM Group, Inc. received the Court approved language for the Class
28 Notice from Class Counsel. (Hernandez Decl., ¶4).

1 On October 21, 2024, ILYM Group, Inc. received the class data file from Defendant’s counsel,
2 which contained the full name, Social Security number, last known mailing address, number of
3 Workweeks during the Class Period, and number of Workweeks during the PAGA Period
4 (collectively, “Class Data”). (*Id.*, at ¶ 5). The Class Data was uploaded to ILYM Group Inc.’s database
5 and checked for duplicates and other possible discrepancies. (*Ibid*).

6 The Class Data contained 293 individuals. (*Id.*). As part of the preparation for mailing, all 293
7 names and addresses contained in the Class Data were then processed against the National Change of
8 Address (“NCOA”) database, maintained by the United States Postal Service (“USPS”), for purposes
9 of updating and confirming the mailing addresses of the Participating Class Members before mailing
10 of the Class Notice. (*Id.*, at ¶ 6). The NCOA contains requested change of addresses filed with the
11 USPS. To the extent that an updated address was found in the NCOA database, the updated address
12 was used for the mailing of the Class Notice. (*Id.*). To the extent that no updated address was found in
13 the NCOA database, the original address provided by Defendant’s counsel was used for the mailing
14 of the Class Notice. (*Id.*).

15 On November 4, 2024, the Class Notice was mailed, via U.S. First Class Mail, in English and
16 Spanish to all 293 individuals contained in the Class Data. (*Id.*, at ¶ 8). **Eleven (11)** Class Notices were
17 returned to ILYM Group, Inc. as undeliverable. (*Id.*, at ¶ 9). ILYM Group, Inc. performed a
18 computerized skip trace on the **11** returned Class Notices that did not have a forwarding address in an
19 effort to obtain an updated address for the purpose of re-mailing the Class Notice. (*Ibid*). As a result
20 of this skip trace, **six (6)** updated addresses were obtained and the Class Notice was promptly re-mailed
21 to those Participating Class Members, via U.S First Class Mail. (*Ibid*). A total of six (6) Class Notices
22 were re-mailed. (*Ibid*). As of the date of this Motion, a total of **five (5)** Class Notices have been deemed
23 undeliverable as no updated address was found notwithstanding the skip tracing. (*Id.*, at ¶10).

24 Class Members had forty-five (45) calendar days after the Settlement Administrator mailed the
25 Class Notices to submit a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute
26 (“Response Deadline”). (Settlement Agreement, ¶ 1.37). The Response Deadline was December 19,
27 2024. (Hernandez Decl., ¶¶ 11-12). The Settlement Administrator did not receive any Notice of
28 Objections and/or Requests for Exclusion. (*Ibid*).

1 The Participating Class Members will receive an average net settlement amount of \$1,294.23
2 (before reduction for employee-side taxes), with the estimated highest net allocation being \$3,357.95,
3 and the estimated lowest net allocation being \$13.99 (after reduction for prior payments received).
4 (*Id.*, at ¶ 16). The estimated average Individual PAGA Payment is \$42.66, the estimated highest
5 Individual PAGA Payment is \$99.65, and the estimated lowest Individual PAGA Payment is \$1.11.
6 (*Id.*, at ¶ 17). The remaining 75% (\$37,500) will be submitted to the LWDA in accordance with the
7 terms of the Settlement Agreement. (*Ibid.*).

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

9 On September 12, 2024, Class Counsel submitted a copy of the Settlement Agreement to the
10 LWDA through its online submission portal in compliance with California Labor Code § 2699(1)(2).
11 (Gold Decl., ¶ 24). The LWDA has not objected to or otherwise responded to the submissions. (*Ibid.*).

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

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

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

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

27 "The settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the
28 merits. [The trial court is not] to reach any ultimate conclusions on the contested issues of fact and law

1 which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and
2 avoidance of wasteful and expensive litigation that induce consensual settlements.” (*Officers for*
3 *Justice, supra*, 688 F.2d at 625).

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

5 This Court previously determined that the pending settlement is just fair and reasonable based
6 on a detailed *Kullar* analysis, which has not been challenged by anyone since the Court’s approval.
7 (Gold Decl., ¶ 3; Hernandez Decl., ¶¶11-12).

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

9 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
10 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
11 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
12 were at all times made at arm’s-length and were adversarial. (Gold Decl., ¶ 27). The Parties engaged
13 in extensive informal discovery prior to mediation. (*Id.*, at ¶ 28). After a full day of mediation and
14 with the help of a neutral and respected mediator with extensive experience in complex wage and hour
15 matters, the Parties reached an agreement to resolve this dispute on a class and PAGA basis. (*Id.*, at ¶
16 22).

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

18 Courts typically assess the status of discovery in determining whether a class action settlement
19 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
20 Defendant produced putative class members’ time and pay data, as well as Defendant’s employee
21 handbook, relevant wage and hour policies, and information to determine the total number of putative
22 class members, the number of current versus former employees, the total workweeks worked by the
23 putative class members, and the average rate of pay for the putative class members. (Gold Decl., ¶ 28).
24 This allowed Plaintiff’s counsel to conduct an informed assessment and analysis of the strengths and
25 weaknesses of the claims and the potential class-wide and PAGA damages. (*Id.*, at ¶ 29). Plaintiff’s
26 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker*
27 *Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168
28 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

1 Based on the information exchanged, the Parties extensively researched and briefed issues
2 regarding class certification and liability and provided their analyses to the mediator who helped the
3 Parties debate the strengths and weakness of their respective positions. (Gold Decl., ¶ 30.). At all
4 times, Plaintiff was willing to and prepared to litigate this matter through class certification and trial
5 if the Parties had been unable to reach a favorable resolution. (*Ibid*).

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

7 Additionally, settlement negotiations were conducted by highly capable and experienced
8 counsel. (*Ibid*). Class Counsel are respected members of the California State Bar with strong records
9 of vigorous and effective advocacy and are experienced in handling complex wage and hour class
10 action litigation. (Gold Decl., ¶¶ 3-17). Accordingly, Class Counsel had sufficient experience to act
11 intelligently in negotiating the Settlement.

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

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

26 The Class Notice approved by the Court met these requirements: it identified the Parties and
27 described the Action, the Class, the Gross Settlement Amount, the proposed method for distribution
28 of the Gross Settlement Amount, the amounts proposed to be paid as the Class Representative

Incentive Payment to Plaintiff, the Settlement Administration Costs to the Settlement Administrator, and the Attorneys' Fees and Costs to Class Counsel. (Gold Decl., ¶ 49; *see also* Hernandez Decl., Ex. A thereto). The Class Notice described the proposed Settlement with enough specificity to allow each Class Member to make an informed choice whether to accept and participate in it. (*Ibid*). It also explained how and when Class Members may object to or opt out of the Class Settlement. (*Ibid*). Finally, the Class Notice provided the date for the hearing on final approval of the Settlement and informed Class Members how to obtain additional information about the Settlement. (*Ibid*).

Critically, not a single class member objected to the Settlement. (Hernandez Decl., ¶ 12).

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

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

Courts have long recognized the "common fund" or "common benefit" doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund. (*See Serrano v. Priest* ("Serrano III") (1977) 20 Cal.3d 25, 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees' Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 16 7; *see also Boeing Co. v. Van Gernert* (1980) 444 U.S. 472,478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392).

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

///

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

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

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

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

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

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

34 Numerous appellate courts are in accord. (*See e.g., Knoff v. City and County of San Francisco*
35 (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of attorneys’ fees

1 in a representative action as the proper exercise of the court's broad equitable powers); *Rider v. County*
2 *of San Diego* (1992) 1 I Cal.App.4th 1410, 1423 (attorneys' fees and expenses properly awarded from
3 common benefit composed of illegally imposed sales and use tax); *Bank of America v. Cory* (1985)
4 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action compelling state to
5 claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556, 567-568 (court
6 upheld fee award equal to one-third of the damages to owners of residential property in an inverse
7 condemnation action)).

8 The Supreme Court noted that several courts have expressed frustration with the alternative
9 "lodestar" approach for deciding fee awards, which usually involves wading through voluminous and
10 often indecipherable time records. (*Laffitte*, 1 Cal.5th at 503; see *Lealao v. Beneficial California, Inc.*
11 (2000) 82 Cal.App.4th 19, 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373,
12 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class
13 counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing
14 an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources.
15 (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79). The Ninth Circuit now routinely uses the
16 percentage of the common fund approach to determine the award of attorney's fees. (*Lealao*, 82
17 Cal.App.4th at 30-31; see e.g., *In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79
18 (approving attorney's fee of 33%)).

19 **B. A Thirty-Five Percent (35%) Common Fund Fee Award is Proper Here**

20 Fee awards of thirty-five percent (35%) of the Gross Settlement Amount are reasonable and
21 commonplace in California courts. Historically, attorneys' fee awards in common fund cases in
22 general range from 20% to 50% of the fund, depending on the circumstances of the case. See *Newberg*
23 *on Class Actions*, (3rd Ed.), 1992, §14.03 (finding 50% to be the upper limit). Class Counsel's request
24 for thirty-five percent (35%) of the settlement sum for attorneys' fees is within established rates for
25 fee awards in class settlements pursuant to the common fund doctrine, especially in light of the
26 excellent results achieved in this case. See *In re Activision Sec. Litigation*, 723 F. Supp. 1373, 1379.
27 (N.D. Cal. 1989). In class action litigation, the typical percentage negotiated between parties ranges
28 from thirty to forty percent (30% to 40%) based on the same factors. (Gold Decl., ¶ 44). Class

Counsel's request of 35% falls within these typical fee arrangements. *See e.g. Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th 480, 506 (2016) (California Supreme Court upholding 1/3 fees award on \$19 million settlement); *Consumer Priv. Cases*, 175 Cal. App. 4th 545, 558, 96 Cal. Rptr. 3d 127, 137 (2009) ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66, fn. 11 (2008).

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

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

1. The Result Obtained for The Class

The very strong results achieved by Class Counsel support its request for thirty-five percent (35%) of the common fund in attorneys' fees. As of the date of this Motion, Participating Class Members will be paid, on average, approximately \$1,294.23 each, which is intended to compensate them for the alleged wage and hour violations they suffered during their employment. (Hernandez Decl., ¶ 16). This is a significant benefit for the Participating Class Members here as it represents a recovery for highly disputed claims. Equally important is the fact that the State of California will receive \$37,500.00 for enforcement of labor laws and education of employers. (*Id.*, at ¶ 17).

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

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

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

7 **3. The Complexity of The Issues**

8 Class action wage and hour and PAGA claims are notoriously specialized and complicated
9 areas of law. (*See, e.g.,* Gold Decl., ¶¶ 28-34; 45). This case was no exception. (*Id.*). This factor
10 therefore weighs in favor of the fees sought.

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

12 From the outset of the Action to the present, prosecution of this matter has involved significant
13 financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingency fee basis,
14 with no guarantee of recovery, and fronted all costs necessary for its prosecution. (Gold Decl., ¶ 45).
15 The risks of this matter are apparent in that class certification would likely have been a hard-fought
16 issue, and even if class certification were granted over Defendant's opposition, there was no assurance
17 that Plaintiff would prevail on the inevitable motion for decertification, at trial, and/or on any
18 subsequent appeal(s) regarding the same. (*Id.*). Thus, Class Counsel assumed a significant risk in
19 accepting this matter on a contingency fee basis.

20 **5. The Reaction of The Class**

21 Class Counsel's intention to request the Court's approval for payment of attorneys' fees in the
22 amount of thirty-five percent (35%) of the Gross Settlement Amount totaling \$332,249.75 was clearly
23 disclosed to Class Members in the Court-approved Class Notice. (Gold Decl., ¶ 49; *see also* Hernandez
24 Decl., Ex. A). As of the filing of this Motion, there has not been a single objection to the request for
25 attorneys' fees. (Hernandez Decl., ¶ 12). Based on this, it is fair to conclude that the Class believes
26 that such fees are proper in light of the timely and strong results achieved here, further supporting the
27 amount of Plaintiff's counsel's request for attorneys' fees. *See id.*

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

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

10 Here, Class Counsel estimates that they spent approximately 323 hours litigating these claims
11 to date.² (Gold Decl., ¶ 42). Class Counsel expects to spend another 35 hours in connection with the
12 final approval process (including finalizing the Motion and supporting documents, preparing for and
13 attending the Final Approval Hearing, and managing the Settlement through its conclusion, including
14 anticipated communications with defense counsel, the Settlement Administrator, client, and Class
15 Members). (*Id.*, ¶ 43). In addition to time spent during litigation, reasonable hours also include the
16 time spent before the Action was filed, including time spent interviewing the client, investigating the
17 facts and the law, preparing the initial pleadings, as well as litigating the case. (*Webb v. Board of Educ.*
18 (1985) 471 U.S. 234). Further, the fee award should include fees incurred to establish and defend the
19 attorneys’ fee claim. (*Serrano v. Priest* (1982) 32 Cal .3d 621, 639 (“*Serrano IV*”). Based on the rates
20 of Class Counsel, the total fees for time worked to date are estimated to be **\$284,787.50** (Gold Decl.,
21 ¶ 42). By the conclusion of this matter, the total fees for time worked are estimated to be
22 approximately **\$314,945.83** (*Id.*, ¶ 43).

23
24
25 ² In *Martino v. Denevi*, 182 Cal.App.3d 553, 559 (1986), the court addressed the issue of what evidence
26 is required in California to support a fee application. The court held: “Testimony of an attorney as to
27 the number of hours worked on a particular case is sufficient evidence to support an award of attorney
28 fees, even in the absence of detailed time records.” *Id.* There is no need to attach the voluminous
invoices prepared in a case as a basis for an award of fees and costs. *Id.* Through Class Counsel's
declarations in support of this application, however, Plaintiff presents a thorough breakdown of the
hours spent and costs incurred in prosecuting this class action. Pursuant to *Martino, supra*, this
presentation is sufficient to support the amount requested.

1 When the lodestar methodology or cross-check is applied, the Court should adjust the fee
2 award by a multiplier to make an appropriate fee award. (*Serrano III, supra*, 20 Cal.3d at 48). In
3 applying the multiplier, *Newberg on Class Actions* states that “[m]ultiples ranging from one to four
4 frequently are awarded in common fund cases when the lodestar method is applied. A large common
5 fund award may warrant an even larger multiplier.” (4 *Newberg on Class Actions* 4th (4th ed. 2002) §
6 14.6). If the class members paid the fees that the market would bear, they would pay a fee of anywhere
7 from one-third to forty-five percent of any recovery. Since this is the market rate, the lodestar
8 calculation should be enhanced to reflect what the class members would pay on the open market.
9 (*Lealao, supra*, 82 Cal.App.4th at 47-48).

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

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

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

In the class action context, that would mean attempting to award the fee that
informed private bargaining, if it were truly possible, might have reached.
The simplest way for the law to duplicate the bargain that informed parties
would reach if agency costs were low is to look to fee award levels in actions

brought by sophisticated private parties under the same or comparable statutes.

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

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

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

(*Id.* at 49-50).

In looking at similar cases, including those set forth above, Class Counsel's requested fee comports to the market. Based on the reasonable hourly rates suggested by Class Counsel and the collective hours worked in this matter, the requested fee award would represent a modest 1.06 multiplier of the current total fee lodestar. In this regard, Class Counsel's fee request is reasonable. (See e.g. *Buccellato v. At&T Operations, Inc.*, (N.D.Cal. June 30, 2011, No. C10-00463-LHK) 2011 U.S.Dist.LEXIS 85699, at *4) (finding a 4.3 multiplier reasonable); *Steiner v. Am. Broad. Co.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (affirming award with multiplier of 6.85); *Uschold v. NSMG Shared Servs., LLC*, (N.D.Cal. June 5, 2020, No. 18-cv-01039-JSC) 2020 U.S.Dist.LEXIS 99258, at *49) (finding a 4.0 multiplier reasonable); *In re NCAA Ath. Grant-In-Aid Cap Antitrust Litig.*, (N.D.Cal. Dec. 6, 2017, No. 4:14-md-2541-CW) 2017 U.S.Dist.LEXIS 201108, at *22) (finding a 3.66 multiplier reasonable)).

V. PLAINTIFF'S COST REQUEST IS REASONABLE

Class Counsel seeks reimbursement of a total amount not to exceed \$22,039.48 in costs and expenses in this matter, which includes reasonable future costs for filing the Motion. (Gold Decl., ¶ 38 & Ex. 4). All costs and expenses are documented in detail and were reasonably incurred in prosecution of this matter. The Court should therefore approve an allocation of the requested amount from the Settlement.

///

1 **VI. THE REQUESTED CLASS REPRESENTATIVE INCENTIVE PAYMENT IS**
2 **REASONABLE**

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

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

21 The requested award for Plaintiff is also reasonable given the financial and personal risk he
22 took in commencing the Action, and in light of the benefits that his actions have conferred upon the
23 Class. (Emery Decl., ¶¶ 3-12); *See also Van Vranken v. Atl. Richfield Co.* (N.D.Cal. 1995) 901 F.Supp.
24 294, 299-300). Additionally, in considering a requested class representative enhancement award,
25 courts take into consideration a plaintiff’s reasonable fear of retaliation. (*Staton v. Boeing Co.* (9th
26 Cir. 2003) 327 F.3d 938, 977). Here, it is easy to see that a potential future employer could expend
27 little effort to discover Plaintiff brought the lawsuit – and based thereon, decline to offer Plaintiff
28 employment.

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

14 In contrast, without having to take on any of the risk incurred by Plaintiff or time spent by
15 Plaintiff in litigating this matter, Participating Class Members will automatically be issued a payment
16 for their claims. It appears that the Participating Class Members recognize this enhancement was
17 justified because since the time the Class received notice of the requested Class Representative
18 Incentive Payment, no one has objected to the request. Thus, the Class Representative Incentive
19 Payment to Plaintiff is warranted to compensate him for his time and effort, the fear and stress
20 associated with assuming the responsibility of serving as the Class Representative, and the concrete
21 risks he assumed as the Class Representative.

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

23 In Plaintiff's Motion for Preliminary Approval, Plaintiff requested, and the Court preliminarily
24 approved, Settlement Administration Costs not to exceed is \$9,000.00. (Gold Decl., Ex. 3). ILYM
25 Group, Inc. is the approved Settlement Administrator. (*Ibid*). Class counsel obtained competing bids,
26 and ILYM's bid was the cheapest of the three bids obtained. Moreover, ILYM Group, Inc. is an
27 experienced class administrator and has adequately performed the administration tasks required by the
28 Preliminary Approval Order. (*See* Hernandez Decl., ¶ 3). Based thereon, the requested costs should be

1 approved.

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

3 Pursuant to California Labor Code Section 2699(1), the Superior Court shall review and
4 approve the settlement of penalties sought under that California Labor Code Section. (Cal. Lab. Code
5 § 2699(1)). For all of the reasons stated above, the Settlement is fair, reasonable, and adequate, and
6 should be approved. As part of the Settlement, Defendant agreed to pay \$50,000.00 to settle the claims
7 of the Aggrieved Employees brought pursuant to PAGA, of which \$37,500 (75% of the PAGA
8 Amount) will be paid to the LDWA for education and enforcement purposes, and the remaining
9 \$12,500 will go to the Aggrieved Employees. (Settlement Agreement, ¶ 1.26).

10 Courts routinely approve similar comparatively small PAGA allocation “in order to maximize
11 payments to class members.” (*Magadia v. Wal-Mart Assocs.* (N.D. Cal. May 31, 2019, No. 17-CV-
12 00062-LHK) 2019 U.S. Dist. LEXIS 91732, *90-91, citing as examples *Ceja-Corona v. CVS Pharm.,*
13 *Inc.* (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 [preliminarily
14 approving \$10,000 in PAGA penalties out of a total settlement amount of \$900,000]; *Thio v. Genji,*
15 *LLC* (N.D. Cal. 2014) 14 F. Supp. 3d 1324, 1330 [preliminarily approving \$10,000 in PAGA penalties
16 out of a total settlement amount of \$1,250,000]; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012)
17 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 [granting final approval of \$10,000 in
18 PAGA penalties out of a total settlement amount of \$2,500,000]; *Garcia v. Gordon Trucking, Inc.*
19 (E.D. Cal. Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 [granting final
20 approval of \$10,000 in PAGA penalties out of a total settlement amount of \$3,700,000]; *Chu v. Wells*
21 *Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1
22 [granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of
23 \$6,900,000]).

24 Moreover, Plaintiff’s counsel provided notice of the Settlement to the LWDA on September
25 12, 2024, and to date, the LWDA has not objected to or otherwise taken issue with its allocation. (Gold
26 Decl., ¶ 24).

27 The Parties’ allocation of \$50,000 to Plaintiff’s PAGA claim is therefore proper and
28 appropriate and should be approved by the Court.

1 **IX. CONCLUSION**

2 Plaintiff therefore respectfully requests that this Court grant Plaintiff's Motion for Final
3 Approval of Class Action and PAGA Settlement, Attorneys' Fees and Costs, Class Representative
4 Incentive Payment, and Settlement Administration Costs.

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6
7 Respectfully submitted,

8 Dated: February 5, 2025

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9
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12
13 *Attorneys for* Plaintiff TYLER EMERY,
14 individually and on behalf of others similarly
15 situated