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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

GABRIEL GUERRERO, individually, and on behalf of all others similarly situated,

Plaintiff,

vs.

SILVER LAKES ASSOCIATION, a California corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: CIVSB2403018

[Assigned for all purposes to the Hon. David E. Driscoll, Dept. S-22]

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: August 18, 2025
Time: 8:30 a.m.
Courtroom: Dept. S22 - SBJC
Judge: Hon. David E. Driscoll

Action Filed: March 11, 2024
Trial Date: Not Set

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

PLEASE TAKE NOTICE that on August 18, 2025, at 8:30 a.m., in Department S-22 of the above-captioned Court, located at 247 West 3rd Street, San Bernardino, California 92415-0210, Plaintiff GABRIEL GUERRERO ("Plaintiff") will and hereby does 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 CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE ("Agreement");
3. Appointing counsel for Plaintiff, Moon Law Group, PC, as Class Counsel;
4. Appointing Plaintiff as the Class Representative;
5. Approving ILYM Group, Inc., as the third-party administrator;
6. Awarding the sums requested in the Motion;
7. Entering a Final Judgment; and,
8. 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 terms of the Agreement are a fair, adequate, and reasonable compromise of the disputed wage and hour claims asserted by Plaintiff; (3) Plaintiff and Class Counsel are adequate to represent the Class; and, (4) the notice procedures and related forms comply with California Rules of Court 3.766(d) and this Court's Order granting preliminary approval of the Settlement, 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.

TENTATIVE RULINGS: A judicial officer may provide tentative rulings on law and motion matters after 3:00 p.m. and 7:00 p.m. on the court day before the scheduled hearing. The Court follows the procedure set forth in CRC 3.1308(a)(2). If you experience difficulty accessing the rulings you may obtain the tentative ruling by calling the Administrative Assistant, between 3:00 p.m. and 5:00 p.m., at (909) 708-8756.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the Declarations of H. Scott Leviant, 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: July 25, 2025

MOON LAW GROUP, PC

By: H. S. Leviant

Kane Moon
H. Scott Leviant
Jaeyoung Lee

Attorneys for Plaintiff

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I. INTRODUCTION

Pursuant to California Rules of Court, Rules 3.769, Plaintiff requests that this Court finally approve the class action settlement set forth in the CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE ("Agreement"; the resolution of the matter, in accordance with the requested Judgment and Agreement is referred to as the "Settlement") with SILVER LAKES ASSOCIATION ("Defendant" or "SLA").

After the exchange of documents and data, and an arm's-length mediation session with mediator Michael Ludwig, Plaintiff and Defendant (collectively referred to herein as the "Parties") reached a proposed class action settlement with a gross settlement amount ("GSA") of **$588,000.00** in compromise of disputed claims asserted on behalf of the below-defined Class consisting of **307** members. Preliminary approval was granted by this Court, and the Notice process approved by the Court was completed, without issue, in accordance with the Agreement. Plaintiff believes this settlement is a fair, adequate, and reasonable compromise of disputed claims for alleged wage and hour violations and penalties asserted in this case.

Plaintiff now submits this Motion for Final Approval of Class Action Settlement, along with the Agreement (attached to the Declaration of H. Scott Leviant ["Leviant Decl."], Exhibit 1 thereto). For the Court's convenience, below is a summary of the key provisions of the proposed Settlement.

II. THE NOTICE PROCESS WAS COMPLETED WITHOUT ISSUE

Plaintiff and Defendant have fulfilled the class notice procedures set forth in the Settlement and as dictated by the Court's preliminary approval Order. The Administrator, ILYM Group, Inc. ("ILYM"), sent individual Notices to 307 Class Members on April 25, 2025. (Declaration of Nick Castro ["Castro Decl."], ¶ 7.) There have been ***zero*** requests for exclusion from the Settlement, ***zero*** disputes of workweeks, and ***zero*** written objections. (*Id*., at ¶¶ 11-12.) Of the 307 Notices that were mailed, only six have been deemed undeliverable. (*Id*., at ¶ 10.)

III. THE MAJOR TERMS OF SETTLEMENT

The provisions of the proposed Settlement include the following:

- Defendant agrees not to oppose certification for purposes of Settlement. (Agreement, ¶ 12.1.)

- Class: all persons employed by SLA as hourly-paid or non-exempt employees during the Class Period (the "Class Period" is the period from March 11, 2020 to January 21, 2025). "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Agreement, ¶¶ 1.5, 1.9, 1.12, 1.34.)
- Settlement Amount: Defendant will pay a maximum of **$588,000.00**, referred to as the Gross Settlement Amount (or GSA herein), resulting in an estimated average **gross** benefit per Class Member of about **$1,915.30**. (Agreement, ¶¶ 1.21, 3.1; Leviant Decl., ¶ 17.)
- Escalator Clause: If the number of actual work weeks as of the close of the Class Period is more than 10% higher than the estimated Workweeks (i.e., exceeds 28,096 work weeks), SLA may, at its election, opt to (a) increase the Gross Settlement Amount in the exact proportionate amount as to any additional Workweeks (*i.e.*, 17% more Workweeks than estimated will result in a 7% proportionate increase in the GSA) or (b) end the Class Period a week prior to when the total Workweeks surpasses 28,096 Workweeks. (Agreement, ¶ 8.)
- Funding of Gross Settlement Amount: Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator in two installment payments, with the first payment due 30 days after the Effective Date and the second due on the earlier of May 21, 2026, or six months after the first installment. (Agreement, ¶ 4.1.)
- Class Size: **307** individuals who worked **27,264** workweeks. (Castro Decl., ¶ 5.);
- PAGA Group Size: **181** aggrieved employees who worked **5,434** Pay Periods. (Agreement, ¶ 8; Leviant Decl., ¶ 11.)
- PAGA Period: March 11, 2023 to January 21, 2025. (Agreement, ¶ 1.30.)
- *Kullar/Munoz* Analysis: Plaintiff addresses the claims analysis herein, at Part VI.B.3, and in the Declaration of Leviant, at Paragraph 18.
- No Reversion: The Settlement is a ***non-reversionary*** settlement. (Agreement, ¶ 3.1.)
- Certification: Plaintiff addresses certification requisites herein, at Part VI.A. Certification was addressed in greater detail in the Motion for Preliminary Approval.

- No Claim Form: No claim form is required. (Agreement., ¶ 3.1.)
- Class Release: The Settlement will release wage-and-hour claims for Participating Class Members, (those Class Members who do not opt out of the Settlement) including all claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint. (Agreement, ¶ 5.1.)
- PAGA Release: Plaintiff, on behalf of himself and the State of California, will release the Released Parties from all claims for civil penalties under PAGA, based on the facts and Labor Code sections that were alleged or reasonably could have been alleged in Plaintiff's PAGA Notice of violations and the Operative Complaint. (Agreement, ¶ 5.2.)
- Net Settlement Amount: The Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. The Net Settlement Amount is estimated to be at least **$304,550.00**, resulting in an average **net** payment per Class Member of at least **$992.02**, before any tax withholdings. (Agreement, ¶ 1.27.)
- Tax Allocation: The amounts distributed to Class Members will be characterized as 20% alleged unpaid wages, 80% to interest and penalties, and PAGA Settlement payments to Aggrieved Employees will be allocated as 100% penalties. (Agreement, ¶¶ 3.2.4.1, 3.2.5.2.)
- Employer's Portion of Payroll Taxes Paid Separately: Defendant's 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 GSA. (Agreement, ¶ 3.1.)
- Settlement Administrator: The notice portion of the Settlement has been administered by a third-party Administrator, ILYM, with the costs of administration not to exceed $15,000.00. ILYM's actual costs for settlement administration services are **$7,950.00**. (Agreement, ¶ 3.2.3; Castro Decl., ¶ 14.)
- Class Data for Administration: The Settlement Administrator received the Class Data within 14 days after the Court granted Preliminary Approval, used the National Change of Address

("NCOA") database to update the Class Data, and then used skip tracing on returned Notices (Agreement, ¶¶ 1.10, 7.4; Castro Decl., ¶¶ 5-10.)

- Notice: The Notice was be issued within 14 days of receipt of the Class Data (Agreement, ¶ 7.4.2). The Notice describes how to dispute workweeks, submit an objection in writing, in person, or through an attorney, or request exclusion. (Agreement, ¶¶ 7.6 – 7.8.)
- Notice Language: Notice issued in English and Spanish. (Agreement, ¶ 1.11; 7.5.2.)
- Objections: Objections can be submitted in person, by attorney, or in writing to the Administrator, with no pre-requisite to being heard. (Agreement, ¶¶ 7.8.1 – 7.8.3.)
- Exclusion Requests: The procedure for exclusion requests, mailing a request to the Settlement Administrator, is the same as the procedure for submitting a written objection (Agreement, ¶¶ 7.6.1 and 7.8.2.)
- PAGA Allocation: From the GSA, **$58,000.00** 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 **$43,500.00**, will be paid to the California Labor & Workforce Development Agency. (Agreement, ¶ 1.33; 3.2.5.)
- Notice to LWDA: Notice was provided prior to the filing of this Motion. Evidence is attached to the Leviant Declaration.
- Enhancement/Service Award to Plaintiff: Defendant will not oppose the application for a Class Representative Service Payment of up to **$7,500.00** to be paid from the GSA (Agreement, ¶ 3.2.1.)
- Fees and Costs: Defendant will not oppose Class Counsel's application for fees of not more than one-third of the GSA **($196,000.00**), and costs, in an amount of **$14,000.00** (actual costs exceed the cap by about $86, so the capped amount is requested) to be paid out of the GSA (Agreement, ¶ 3.2.2.)
- Check Void Period: Settlement checks will be valid for 180 days (Agreement, ¶ 4.2.1.)
- Uncashed Checks: 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 represented by such checks will be sent to the California Controller's Unclaimed Property Fund in the

name of the Class Member failing to cash the check. (Agreement, ¶ 4.2.3.)

- Judgment Notice: Judgment will be posted on the Administrator's website after entry. (Agreement, ¶ 7.9.1.)
- Confidentiality Provisions: The Agreement permits Class Counsel to discuss the proposed Settlement with Class Members. (Agreement ¶ 12.2.)

(Leviant Decl., ¶¶ 11-12 and Exhibit 1 thereto.)

IV. FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Claims

Defendant is an association that manages a large community. On March 11, 2024, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for failure to pay wages (minimum, overtime, and regular rate), failure to provide meal periods, failure to authorize and provide rest breaks, failure to timely pay final wages at termination, failure to indemnify for necessary business expenses, failure to provide accurate itemized wage statements, and unfair business practices. (Leviant Decl., ¶ 4.)

Plaintiff sent a letter to the Labor and Workforce Development Agency ("LWDA"), pursuant to California Labor Code § 2699.3, providing notice of his intent to seek civil penalties under the Private Attorneys General Act, California Labor Code § 2698, *et seq*. (Leviant Decl., ¶ 5.) The LWDA did not indicate that it intended to investigate the alleged violations referenced in the letter, and the 65-day time period permitted for the LWDA to provide such a notification expired. (*Id.*) On May 16, 2024, Plaintiff filed a First Amended Complaint alleging an additional cause of action against Defendant for civil penalties under the Private Attorneys General Act ("PAGA"). (*Id.*) The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint."). (*Id.*)

B. Pre-Mediation Data Production and Analysis

The Parties conducted informal and formal discovery and investigation of the facts and law. (Leviant Decl., ¶ 6.) Class member contact information was provided through formal discovery. Investigation included, *inter alia*, the exchange of extensive data and discoverable information in preparation for the mediation session. The Parties have analyzed time clock, pay 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 pay periods, and average rate of hourly pay. Time and pay data were used for Plaintiff's pre-mediation analysis. Data for 277 of 304 Settlement Class Members was provided. (*Id.*) The margin of error calculation for the sample of the Class in this case is as follows:

$$1.96\sqrt{\frac{0.5(1-0.5)}{277}}\sqrt{\frac{304-277}{304-1}} = \text{margin of error}^{1} = 0.0176 = 1.76\%$$

(*Id.*) With data for 277 employees, the margin of error, using the population adjustment factor, was no more than 1.76 percent.[2] (*Id.*) In addition, Defendant also provided other data pertaining to Plaintiff and the Class during the relevant Class Period, including but not limited documents reflecting wage and hour policies and practices during the Class Period (*e.g.*, the relevant employee handbook). (*Id.*)

After reviewing documents regarding Defendant's wage and hour policies and practices and other information obtained during the exchange of information, and interviewing Settlement Class Members, 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 prepared a damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation. (Leviant Decl., ¶ 7.)

C. <u>Settlement</u>

On November 21, 2024, the Parties participated in an all-day mediation presided over by Michael Ludwig, which led to this Agreement to settle the Action. The Parties discussed at length the burdens and

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[1] The term "1.96" is derived from a standard deviation table for a 95% confidence interval, known as a "z-table." It is not affected by sample or population size. The margin of error is an "overestimate" of the margin of error because the variance is presumed to be at its highest value, using 0.5(1-0.5) to represent p*q in the variance equation of (p*q)/n.

[2] The margin of error formula does not require an adjustment factor for extremely large populations. (*Id.*) A poll of all potential voters in the United States, for example, does not require an adjustment for the population size, since the second radicand in the equation (the fraction in the second radical sign) is effectively equal to 1. (*Id.*) This is because the square root of a fraction that is very close to 1 is even closer to 1. Consider a population of 200 million and a sample of 1,000 individuals from that population. The second radicand is the fraction of 200 million minus 1,000, all divided by 200 million minus 1. (*Id.*) That is equal to 0.999995. (*Id.*) The square root is 0.99999975, which is indistinguishable from 1 when talking about a margin of error percentage even to the nearest tenth of a percent. (*Id.*) But when the population size is much smaller, the population size has a major impact on the margin of error for a given sample size. (*Id.*)

risks of continuing with the litigation as well as the merits of claims and defenses. After the mediation, and the eventual settlement, the Parties then signed a long form settlement agreement (the “Agreement”). (Leviant Decl., ¶ 8.)

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 Defendant’s defenses thereto. Plaintiff and Class Counsel have also taken into account Defendant’s agreement to enter into a Settlement that confers substantial relief upon the Class. (Leviant Decl., ¶ 9.)

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. (Leviant Decl., ¶ 10.) 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, Defendant reserves its right to contest class certification. (*Id.*) This Settlement, if approved, will result in the termination of the litigation through the entry of the Judgment and the release of all Released Claims for all Class Members who have not elected to exclude themselves from the Class. (*Id.*)

V. <u>CLASS DEFINITION</u>

The Class is defined as follows:

> All persons employed by SLA as hourly-paid or non-exempt employees during the Class Period (the “Class Period” is the period from March 11, 2020 to January 21, 2025). “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Class portion of the Settlement. (Settlement, ¶¶ 1.5, 1.9, 1.12, 1.34.)

(Leviant Decl., ¶ 11 and Exhibit 1.)

VI. <u>DISCUSSION</u>

A. <u>Consistent with the Court’s Findings at the Time of Preliminary Approval, the Court Should Certify the Class for Settlement Purposes</u>

Under Code of Civil Procedure § 382, class certification is warranted so long as there is a numerous and ascertainable class with a well-defined community of interest 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). For purposes of this Settlement *only*, Defendant stipulated to conditional certification. (Agreement ¶ 12.1.)

"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). The certification question 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). 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 v. Ford Motor Co.* 48 Cal. App. 4th 1794, 1807 n. 19 (1996). In view of these standards, ***as discussed more thoroughly as part of the preliminary approval motion***, the Settlement Class should be certified for settlement. Code Civ. Proc. § 382; Rules of Court, Rule 3.769(c).

B. The Court Should Approve the Settlement Because It Is a Fair, Adequate, and Reasonable Compromise of Disputed Wage Claims

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). 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 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 *preliminary approval* and the setting of a Final Approval Hearing.

To evaluate a settlement, a 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). But the record need ***not*** contain an explicit statement of the maximum theoretical recovery. *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 exercising the power to approve a settlement, the overriding concern is to ensure that a proposed settlement is "fair, adequate, and reasonable," *Dunk*, at 1801, considering "the 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 a skilled mediator, Hon. Carl West (Ret.) (Leviant Decl., ¶¶ 8-10.) Plaintiff obtained data from Defendant and then carefully reviewed that information. Counsel for Plaintiff also examined relevant policies and interviewed witnesses in detail about their work experiences and Defendant's practices.

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

Finally, no Class Member requested exclusion, and no Class member objected to the proposed Settlement.

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

a) The Class Settlement is Fair, Adequate and Reasonable

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 plaintiffs 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*.

With respect to the claims asserted on behalf of the Class, there are serious risks that support this compromise amount. These risks include, but are not limited to: (i) the risk that Plaintiff would be unable to establish liability for unpaid wages, *see Duran v. US Bank Nat'l Ass'n*, 59 Cal. 4th 1, 39 & n. 33 (2014) ("*Duran*"); (ii) the risk that Defendant's meal and rest period policies might not support class certification or a class-wide liability finding; (iii) the risk that uncertainties about the legality of Defendant's policies and practices could preclude class-wide awards of statutory penalties; (iv) the risk that individual differences between Class Members could be construed as pertaining to liability and not just damages; (v) the risk that any penalty award under PAGA could be reduced by the Court in its discretion; (vi) the risk that lengthy trial or appellate litigation could ensue; and (vi) the risk that violation rates could prove lower than expected; (Leviant Decl., ¶ 16.) 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. (Leviant Decl. ¶¶ 13-20.) The settlement amount is, of course, a compromise figure. (Leviant Decl. ¶ 17.) By necessity it took into account risks related to liability, damages, and the defenses asserted by Defendant. (*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

307 members of the Class, the average ***gross*** benefit is **$1,915.30** per class member, and the estimated average ***net*** recovery for each Class Member would be approximately **$992.02**. Given that Defendant could potentially defeat certification, this is a significant sum to have achieved in settlement. Moreover, <u>a Class Member who worked a greater number of weeks for Defendant 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 concludes that the value of this Settlement is fair, adequate, and reasonable. The GSA of **<u>$588,000.00</u>** is about 93% of the **$631,162.83** estimate of *risk-adjusted* recovery (excluding interest) at this stage in the litigation. (Leviant Decl., ¶ 18.) 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 length of the class period. (*Id.*)

- A reasonably estimated exposure for unpaid off-the-clock wages was calculated, with the assistance of an expert, to be approximately **$183,678.50**, based on a short period of Covid-19 temperature checks, a small amount of on-call time, and a small amount of alleged post-shift activities. However, with the high risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$22,041.42**, assuming certification probability of 40% and merits success at 30%. The off-the-clock time was disputed by Defendant. Here, a $22,041.42 exposure has a value of about 12% of its maximum, given a likelihood of success on both certification and the merits, which is an approximation of the chain probability of certification multiplied by merits chances: $0.4 \times 0.3 = 0.12$. This theory of recovery has a high degree of risk because it depends on Class Member estimates of the frequency and duration and is testimony dependent. There were inconsistencies in information provided by Class Members, which let to the view that this claim carries high risk.

- A reasonably estimated exposure for unpaid wages due to rounding was calculated, with the assistance of an expert, to be approximately **$15,046.00**. However, with the modest risk factor discounts for certification and liability proof, the value of that claim is estimated by Plaintiff's counsel to be approximately **$8,463.38**, assuming certification probability of 75% and merits success at 75%. While this claim was the strongest theory, legally, the value arises only if penalties are awarded. Until *Camp v. Home Depot*, all appellate decisions approved of at least "neutral" rounding. Here, there is an argument that the rounding was not neutral, but penalties are far from assured on this claim. Defendant abandoned the time rounding practice in 2024.

- A reasonably estimated exposure for unpaid wages due to regular rate errors was calculated, with the assistance of an expert, to be approximately **$688.50**. 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 **$387.28**, assuming certification probability of 75% and merits success at 75%. While this claim is also one of the strongest theories, legally, the value arises only if penalties are awarded, and then, only for the employees who experienced the issues, which occurred sporadically. There was a dispute as to whether the extra compensation was and required to be included in compensation for regular rate purposes.

- A reasonably estimated exposure for rest break violations over the class period was calculated at **$82,122.60**, but with chances of certification and proof of liability (30% and 20% respectively) for a risk-adjusted exposure of **$4,927.36**. This claim is based entirely on class member testimonials that rest breaks were sometimes missed due to work demands, Plaintiff estimated the exposure assuming 25% of the Class missed one rest break per week, while understanding that this theory carries the potential for high risk given that employees were allowed to determine when to take rest breaks.

- A reasonably calculated exposure for meal break violations over the class period was calculated at **$115,397.25**, with chances of certification and liability risks (50% and 40% respectively) resulting in a risk-adjusted exposure of **$23,079.45**. This exposure is based upon facial violations. Employee choice is a serious issue in the context of a meal period claim. So long as an employee has the opportunity to take a lawful meal period, an employee can choose to take it late, cut it short, or skip it. In addition, Defendant paid premiums for some violations, suggesting that other "facial" violations may be voluntary.

- A calculated exposure for unreimbursed expenses was estimated to be **$16,405.00**, but with chances of certification and proof of liability (50% and 30% respectively) for a risk-adjusted exposure of **$4,260.75**. The allegation is that employees had to occasionally use personal cell phones for work purposes when work-provided phones failed. However, it is likely that few employees were actually impacted by this issue, rendering this claim highly susceptible to challenge.

- The risk-adjusted penalty recovery for Labor Code § 203 penalties was estimated to be approximately **$153,553.20**, on a maximum exposure of **$511,844.00** (with certification and merits success chances of 75% and 50% respectively, based on all theories of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). The need to show a knowing and intentional violation constitutes an additional risk factor.

- The risk-adjusted penalty recovery for wage statement penalties were estimated to be approximately **$139,320.00**, on a maximum exposure of **$464,400.00** (with certification and merits success chances of 75% and 50% respectively, based on all theories of unpaid wages, adjusted for the additional risk of needing to prove other elements in addition to the underlying wage claim). The value of this claim was just dealt a severe blow by the recent California Supreme Court decision of *Naranjo v. Spectrum Security Services, Inc.* (May 6, 2024), which strengthened the good faith defense to Section 226 penalties.

- Performing risk-adjusted valuations for all claims yields a total value in the range of **$354,232.83**, excluding PAGA.[3]

- For the PAGA Period, the number of PAGA Pay Periods at issue is estimated to be **4,735** for the 177 Aggrieved Employees. Using the most straightforward formulation of applying the "catch-all" $100 penalty specified in Labor Code § 2699(f)(2) to each PAGA Pay Period, the total penalty exposure is approximately **$473,500.00**. In addition, with assistance from Plaintiff's data consultant, and after a thorough review of evidence casting serious doubt on the viability of many of the theories of penalty recover, counsel separately estimated the plausible potential PAGA exposure to be, on a penalty-by-

[3] It is difficult to assign specific percentages to future events, but it does provide a method for attempting to reduce the concept of "very high risk" or "high risk" to a quantifiable amount. Certification of a claim is typically a binary event. One does not obtain a 20% certification; a claim is either certified or it is not. But the current expected value is best quantified by applying a risk reduction, based on the total experience of counsel. The numbers explain with math what can also be described conceptually in words.

> penalty basis, to be **$1,384,650.00**, with some stacking of duplicative penalties for the same violation. But, assuming issues with proof and cooperation of aggrieved employees, along with the Court's power to reduce penalties, the exposure was estimated to be **$276,930.00**, which is 20% of the calculated exposure assuming an ideal outcome.

(*See*, Leviant Decl., ¶ 18.)

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. (Leviant Decl., ¶ 19.) Second, rest break and meal period claims have been challenging to certify for many years, even after *Brinker*. (Leviant Decl., ¶ 19.) Arbitration agreements present a very high risk to all class claims. The Judicial Council's Class Certification in California: SECOND INTERIM REPORT FROM THE STUDY OF CALIFORNIA CLASS ACTION LITIGATION - FEBRUARY 2010 ("Second Interim Report"), at page 5, states that "less than a quarter of disposed cases in the study sample were certified, either through a litigated motion for certification ***or*** as part of a classwide settlement agreement." *See*, Second Interim Report, at 5 (emphasis added).[4] That "***or***" is significant. The certification rates identified in the study of less that 25% includes ***both*** contested certifications and settlement certifications, which are the majority of certifications. In other words, one must assume in any wage and hour class action prior to certification that a contested certification motion will have a success rate of well under 25%, and probably closer to 10% as a starting point for risk evaluation. The facts of each case have significant bearing on these percentages. But it cannot be disputed that certification is an exceptionally difficult procedural hurdle to successfully overcome. Thus, it is not unreasonable to start from the proposition that a pre-certification settlement that is 10% to 15% of the maximum plausible exposure is a valid starting point for valuation. If roughly 10% of class actions are certified on a contested basis, then, on average, 90% of the time a class will not be certified and the result for the class is *zero* dollars

Here, the estimated certification probabilities are ***above*** the average rate at which cases were certified in California, based upon data available through the California Courts websites showing that

[4] The report is available at https://www.courts.ca.gov/documents/classaction-certification.pdf (last viewed March 12, 2024).

well *under* 20% of all cases filed as proposed class actions are ultimately certified by way of a *contested* motion. (Leviant Decl., ¶ 19.) The recovery falls within the expected outcome under the likelihood of success metric. (*Id*.) It would also be appropriate to evaluate the result by examining only the premium wages at issue (approximately $1,373,176.85, *with no risk reduction*), excluding penalties and interest, and the Settlement is 42.82% of that amount.[5] This Settlement achieves the goals of the litigation.

b) The PAGA Allocation is Reasonable

The ultimate decision as to the amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: "In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."

Prior to the issuance of *Moniz v. Adecco USA, Inc*., 72 Cal. App. 5th 56 (2021), the only sources of persuasive guidance as to how to assess the reasonableness of a PAGA allocation were found in federal court decisions. In their view, a PAGA allocation, even if a small portion of the total settlement, could be reasonable if the settlement of the wage and hour claims is robust and serves the deterrent purpose of PAGA. *O'Connor v. Uber Technologies, Inc*., 201 F.Supp.3d 1110, 1135 (N.D. Cal. 2016). *Moniz* provided explicit confirmation that this was an appropriate yardstick by which to measure reasonableness of a PAGA settlement. *Moniz*, 72 Cal. App. 5th at 77. *Moniz*, in agreeing with federal courts that considered how to evaluate a PAGA settlement, concluded that class action factors are appropriately considered, along with whether the settlement furthers "PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws."

As to the first set of elements (the class-type analysis), it is embodied in Plaintiff's discussion of

[5] The exclusion of interest and penalties from the fairness evaluation is proper because, first, PAGA penalties are discretionary (*see* Lab. Code § 2699(e)(2) (the court in its discretion "may award a lesser amount than the maximum civil penalty amount specified by this part…")), and, second, courts evaluate the strength of a proposed settlement without taking potential penalties or interest into consideration. *See Rodriguez v. West Publishing Corp.,* 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc*., 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval).

the adequacy of the settlement generally. Here, the expense, complexity and likely duration of future litigation was to some extent an unknown. However, what is certain is that to adequately establish the violations that would support a substantial penalty, tremendous time and expense would be invested.

The second element (the PAGA purposes element) is also satisfied here. As held by *Moniz*, PAGA's purposes include (1) remediation of present labor law violations, (2) deterrence of future violations, and (3) maximization of enforcement of state labor laws. Here the allocation of a major portion of settlement funds to class members still advances the goal of labor law violation remediation. The allocation of a major portion of settlement funds to class members also deters future violations. This is a $588,000.00 settlement, a good result. Deterrence is fulfilled. Finally, allocation of a major portion of settlement funds to class members still advances the goal of enforcement of state labor law. This settlement is, by definition, a response to alleged violations of labor laws, balanced against risks.

In addition, there is no evidence that a court or a commissioner had informed Defendant 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). And in *Cotter*, the court found a significant reduction of the PAGA claim would be appropriate because "[t]his does not appear to be a case where a company has deliberately sought to evade the law." *Cotter*, 176 F. Supp. 3d at 941.

Finally, the PAGA allocation is fair. The LWDA is receiving $43,500.00. The Class is receiving, net, an estimated $304,550.00 for the releases of *all* other claims. While the proportion is tipped in favor of employees, the allocation satisfies California's wage and hour policies.

4. The Proposed Method for Allocating Settlement Funds Is Fair.

The proposed method of allocating the Settlement Fund to Class Members also is fair and reasonable. The Settlement Fund is to be allocated 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. 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 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 work weeks will receive a larger payment under the Settlement than a Class Member who worked for a shorter amount of time. (Leviant Decl., ¶¶ 13, 17.)

5. The Proposed Enhancement Award to Plaintiff Warrants Approval.

The proposed enhancement of $7,500.00 to Plaintiff is intended to recognize substantial initiative and significant efforts on behalf of the Class. Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incur during class action litigation, often in much higher amounts than that sought here. Factors considered when awarding an incentive include the actions the plaintiff has taken to protect the class, the degree to which the class has benefitted, the amount of time and effort the plaintiff expended in the litigation, the risk to the class representative in commencing suit (financial and otherwise), the notoriety and personal difficulties encountered, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the plaintiff as a result of the litigation. *Clark v. Am. Residential Servs. LLC*, 175 Cal. App. 4th 785, 804 (2009). Here, Plaintiff contributed time to the prosecution of this matter, including bringing the case forward, and providing assistance prior to the mediation with information and substantial time conferring with counsel over the course of this litigation and before it was filed. (Guerrero Decl., ¶¶ 5-19; Leviant Decl., ¶ 33.) The enhancement also recognizes risks Plaintiff took to be personally liable for costs regardless of the success of the litigation, as well as the personal risk of facing intrusive discovery and potential disclosure to future employers that Plaintiff sued an employer, making future employment less certain.

6. The Proposed Award of Class Counsel Attorneys' Fees and Costs Is Also Fair, Adequate, and Reasonable and Merits 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 fees as a percentage of a settlement 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 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). The lodestar may be cross-checked against the percentage. *See In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-58 (2009).

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. *Laffitte v. Robert Half Intern. Inc*., 1 Cal. 5th 480, 503 (2016).[6] Thus, this Court may and, as strongly encouraged by the California Supreme Court, *should* award fees to Class Counsel based upon the percentage of the fund methodology.

"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, 47 n. 11 (2008). This is consistent with counsels' experience in class cases. Here, Plaintiff's attorneys request attorneys' fees of up to **$196,000.00** (33 and 1/3% of the GSA), and actual costs in the capped amount of **$14,000.00**. (Leviant Decl., ¶ 32.) 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) A Lodestar Cross Check Confirms that Class Counsel's Requested Attorneys' Fees Are Reasonable

Plaintiff's fee application is also reasonable based on 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. *Ramos v. Countrywide Home Loans, Inc*., 82 Cal. App. 4th 615, 622 (2000). The moving party meets its burden 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 used to arrive at a "lodestar" figure which may then be augmented or diminished 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 *total* lodestar is **$161,455.00** (including about 10 hours of past and future

[6] 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.

time not billed by Mr. Leviant). (Leviant Decl., ¶ 32.) Plaintiff contends the request for **$196,000.00** in attorneys' fees, which is **1.21** times the estimated total lodestar, is reasonable under the lodestar method, given the recovery obtained for the Class.

(1) Class Counsel's Hours Are Reasonable

In determining whether the number of hours 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 lawyer's 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) ("[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, Counsel expended a prudent amount of time to achieve the excellent result. (Leviant Decl., ¶ 32.)

(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 practice. (Leviant Decl., ¶¶ 21-27.) Courts throughout California have approved Class Counsel's hourly rates. (Leviant Decl., ¶ 21.) Given the skill and experience of Class Counsel, and the excellent result achieved, Plaintiff contends Class Counsel's hourly rates are reasonable.

c) Class Counsel's Costs Are Reasonable

The Agreement provides for reimbursement of costs not to exceed $14,000.00. Because actual costs exceed the cap by about $86.00, Moon Law Group, PC seeks costs in the capped amount of $**14,000.00** (Leviant Decl., ¶ 32, Exh. 2.) 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 total costs in the amount of **<u>$14,000.00</u>**. (*Ibid.*)

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

ILYM, which was selected due to its competitive bid, states that administration will cost **$7,950.00**. (Castro Decl., ¶ 14.) In counsel's experience, based on similar wage-and-hour actions, a cost of **$7,950.00** is a fair and reasonable amount for administration fees and should be approved. (Leviant Decl., ¶ 34.) ILYM has previously confirmed it capabilities to perform administration services.

VII. <u>CONCLUSION</u>

For all the foregoing reasons, because the Class meets the requirements for certification for settlement purposes, only, because the Settlement bears all requisite indicia of fairness, reasonableness, and adequacy, and because the notice procedure and forms complied with Rule 3.766 and Due Process, this Court should grant this Motion for Final Approval, adopt the [Proposed] Order Granting Final Approval of Class Action Settlement submitted herewith, and enter the [Proposed] Judgment.

Respectfully submitted,

Dated: July 25, 2025

MOON LAW GROUP, PC

By: ______________________________

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