SULLIVAN EMPLOYMENT LAW PC
Martin E. Sullivan, CA Bar No 274279
martin@sullivanlawgrp.com
145 S. Spring Street, Ste. 850
Los Angeles, CA 90012
Tel: (323) 645-5470

Attorneys for Plaintiffs and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANDRES QUIJANO, an individual, on behalf himself and all others similarly situated, Plaintiff, v. SOUTH ITALIA HUNTINGTON BEACH, LP, a California Limited Partnership, and DOES 1 TO 50, Defendants.	CASE NO: 24STCV08676 [*Assigned for all purposes to Dept. 1, Hon. Theresa M. Traber*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** [filed concurrently with Declarations of Andres Quijano and Martin Sullivan; [Proposed] Order] Hearing Date: December 8, 2025 Time: 10:30 a.m. Dept.: 1 Judge: Hon. Theresa M. Traber

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

PLEASE TAKE NOTICE that on December 8, 2025, at 10:30 a.m. or as soon thereafter as the matter can be heard in Department 1 of the Los Angeles County Superior Court, 312 N. Spring Street, Los Angeles, California 90012, before the Honorable Theresa M. Traber, Plaintiff Andres Quijano, through his undersigned Class Counsel, will and hereby does move this Court for entry of an order, pursuant to California Rules of Court, Rules 3.766 and 3.769, and California Code of Civil Procedure § 382, as follows:

1. Granting final approval of the Amended Joint Stipulation Of Settlement And Release for the Gross Settlement Amount of $248,000.00, plus employer-side payroll taxes;
2. Finally certifying the Class for settlement purposes only;
3. Finding that the notice distributed to the Class pursuant to the court's order granting preliminary approval constituted the best notice practicable under the circumstances;
4. Directing that compensation be paid to the Class Members who did not request exclusion;
5. Approving the payment to the California Labor Workforce Development Agency ("LWDA") in the amount of $6,000;
6. Approving a Class Representative Enhancement Award of $7,000 to Plaintiff;
7. Approving Martin Sullivan and Sullivan Employment Law PC as Class Counsel and awarding attorneys' fees in the amount of $82,666.66 and reimbursement of actual costs and expenses in the amount of $12,369.91 (less than the allotted $17,000).

The motion is based upon this notice, the attached Memorandum of Points and Authorities, the Declarations of Andres Quijano, Martin Sullivan, and Garvin Brown of ILYM Inc.; the Proposed Order Granting Final Approval of the Class Action Settlement; and the court's file and any other evidence or oral argument which may be considered by the Court. As this motion is unopposed, Plaintiffs respectfully requests the Court for relief from the 15-page limit requirement under California Rule of Court 3.1113(d)

Respectfully submitted,

Dated: November 11, 2025

SULLIVAN EMPLOYMENT LAW P.C.

Martin Sullivan
Attorney for Plaintiff and the Putative Class

Table of Contents

Table Of Authorities

CASES

TREATISES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Andres Quijano ("Plaintiff"), individually and on behalf of all others similarly situated ("Class Members"), seeks final approval of the settlement ("Settlement") of this wage and hour putative class and representative action pursuant to the Amended Joint Stipulation Of Settlement And Release ("Settlement," "Settlement Agreement," "SA," or "Stipulation").

On June 3, 2025, this Court granted preliminary approval of the Settlement Agreement between Plaintiff and Defendant South Italia Huntington Beach, LP ("Defendant") (collectively, the "Parties"). The proposed Settlement will dispose of this action as to the following Settlement Class, defined as: *all individuals who are or were employed by Defendant as nonexempt employees in California at any time between April 8, 2020, and June 3, 2025* (the "Class Period") ("Class") (MS Decl.,¶ 11-12, **Exhibit A**, hereinafter "Settlement Agreement" and "SA").
The proposed Settlement creates an all-inclusive, non-reversionary settlement fund in the amount of Two Hundred Forty-Eight Thousand Dollars ($248,000.00) ("Gross Settlement Amount" or "GSA"). A presumption of fairness exists as:

(1) the Settlement was reached through extensive, mediated arm's-length negotiations;

(2) Sullivan Employment Law, PC ("SELPC") is experienced in similar wage-and-hour class litigation and conducted extensive investigation and discovery which enabled SELPC to zealously, yet fairly, negotiate the Settlement;

(3) there are **zero objections** to the Settlement by Class Members; and

(4) **three requests for exclusion by Class Members (97.76% participation)**.

As allocated by the Settlement Agreement and in accordance with the preliminary approval order, the Gross Settlement Amount shall be distributed as follows:

Gross Settlement Amount	$248,000.00
Attorneys' Fees (1/3 of the GSA)	$82,666.66
Litigation Costs and Expenses	$12,369.91[1]
Class Rep. Enhancement Award	(up to $7,000.00)
Settlement Administration Costs	$6,350.00[2]
PAGA payment to the LWDA	(up to $6,000.00)
PAGA payments to Aggrieved	(up to $2,000.00)
Net Settlement Amount	**$131,613.43**

If the Court approves the proposed settlement allocations, the 131 Participating Class Members, on average, $1,004.68, with the longest serving class member estimated to receive $4,480.83. (Brown Decl. ("ILYM Decl."), ¶¶ 14-17.)

Thus, the proposed settlement is fair, reasonable, and adequate, and is in the best interest of the Class Members, Accordingly, Plaintiff respectfully requests that the Court grant final approval of the settlement.

II. RELEVANT FACTUAL BACKGROUND

A. The Parties

Defendant is in a food service business in the County of Los Angeles. MS Decl., ¶ 3. Plaintiff worked for Defendants on an hourly basis, in various food service positions similar to other class members, and subject to common policies and practices. *Id.*; Declaration of Plaintiff Andres Quijano (hereinafter, "Plaintiff's Decl."), ¶¶ 3-4.

B. Procedural History

Plaintiff filed a class complaint on April 8, 2024, which alleged twelve (12) causes of actions for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to authorize and permit compliant rest periods and/or pay rest period premiums; (4) failure to provide compliant meal periods and/or pay meal period premiums; (5) failure to maintain

[1] Less than the $17,000 allotted in the SA.

[2] Less than the $12,000 allotted in the SA.

employment records; (6) failure to timely pay wages during employment; (7) waiting time penalties; (8) failure to indemnify business expenses; (9) failure to provide complete and accurate wage statements; (10) conversion of tips; (11) accounting; (12) violations of California's Unfair Competition Law, Business & Professions Code section 17200 et seq. ("UCL"). Plaintiff, on July 25, 2024, subsequently filed an Amended Complaint, adding a thirteenth cause of action for (13) violation of PAGA. MS Decl., ¶ 5.

C. Discovery and Investigation

The Parties engaged in significant informal discovery, with Defendant producing thousands of pages of payroll, timekeeping, policies, personnel files, and other pertinent documents. MS Decl., ¶ 7-8. Should mediation have been unsuccessful, Plaintiff was prepared to depose Defendant's Person Most Knowledgeable on numerous topics, spearhead the Belaire-West notice process, and engage in written and other deposition testimony. *Id.* However, settlement made those further steps unnecessary. *Id.*

Plaintiff's counsel thoroughly analyzed the class records for possible meal period, rest period, rounding, and overtime violations. MS Decl., ¶ 8. Plaintiff also sought information regarding tipping procedures. *Id.* Through analysis of the class data records, class details regarding numbers of class members, work weeks and pay periods at issue, Plaintiff's Counsel had sufficient information to prepare a comprehensive damages model on a class-wide basis. *Id.*

D. Settlement Negotiations And Preliminary Approval

On October 14, 2024, the Parties attended a full-day mediation with Chris Barnes, who is a full-time mediator with extensive experience in California wage and hour class action lawsuits. MS Decl., ¶ 9. Mr. Barnes successfully mediated the case, which included several months of ongoing negotiations—not finalizing until April 2025—with a deal agreed upon in the amount of $248,000 plus employer-side payroll taxes. *Id.* In April 2025, the Parties finally executed a long form agreement with the Gross Settlement Amount ("GSA") of $248,000, with Defendant to pay employer-side payroll taxes in addition to the GSA. *Id.* The "Settlement Agreement" is now before the Court for final approval and attached to the declaration of Martin Sullivan as **Exhibit A**. MS Decl., ¶ 11. Though cordial and professional, the settlement negotiation was adversarial and non-collusive in nature. *Id*. The settlement that was fair to the class, according to the analysis performed by Class Counsel and weighing the strengths and weaknesses of each claim and defense. *Id.*

On June 3, 2025, the court granted preliminary approval of the Settlement. MS Decl., ¶ 12.

III. SUMMARY OF SETTLEMENT

A. The Class and PAGA

The proposed Class comprises all individuals who are or were employed by Defendant as nonexempt employees in California at any time between April 8, 2020, and June 3, 2025 (the "Class Period"). MS Decl., ¶ 11; 13; S.A. ¶¶ 1.4, 1.6. Based on Defendant's data, the class contains 134 members, 3 of whom have submitted requests for exclusion (97.76% participation), with an aggregate of 4,494 workweeks. ILYM Decl., ¶¶ 7, 11-12, 14, 16; MS Decl. ¶ 15. There are 100 PAGA Aggrieved Employees in the PAGA Period, with each PAGA Aggrieved Employee receiving an estimated average payment of $20.00, with the estimated highest payment being $62.72. MS Decl. ¶ 16; ILYM Decl. ¶ 17.

B. Settlement Terms

The non-reversionary Gross Settlement Amount ("GSA") of $248,000.00, includes:

Gross Settlement Amount	**$248,000.00**
Attorneys' Fees (1/3 of the GSA)	$82,666.66 (1/3 of GSA)
Litigation Costs and Expenses	$12,369.91 (up to $17,000)
Class Rep. Enhancement Award	(up to $7,000.00)
Settlement Administration Costs	$6,350.00 (up to $12,000)
PAGA payment to the LWDA	(up to $6,000.00)
PAGA payments to Aggrieved	(up to $2,000.00)
Net Settlement Amount	**$131,613.43**

S.A., at ¶¶ 1.2, 1.3, 1.8, 1.20, 1.21, 1.22, 1.44; ILYM Decl., ¶ 15; MS Decl., ¶ 14.

The GSA shall be allocated as follows:

1. Individual Settlement Awards.

The Individual Settlement Awards will be determined by dividing the Net Settlement Amount by the total number of Workweeks for all Participating Class Members in each class, multiplied by each Participating Class Member's respective number of individual Workweeks in that class, in order to yield his or her Individual Settlement Award. S.A., at ¶ 3.12 et seq.

2. Class Representative Service Award.

In recognition of his significant time investment and steadfast support of the interests of the Class, as well as his efforts and risks in prosecuting this matter and provision of a broader release than other class members, Plaintiff requests and Defendant does not oppose that the named Plaintiff should be awarded a Class Representative Service Award of $7,000 to Plaintiff. MS Decl., ¶¶ 20-24; Plaintiff's Decl., ¶ 11.

3. Attorneys' Fees and Costs.

SELPC requests a fee an award of $82,666.66. S.A., at ¶ 1.2; MS Decl., ¶¶ 25-27. SELPC is the only firm receiving fees on this case. MS Decl., ¶ 27. Plaintiff also seeks reimbursement of costs in the amount of $12,369.91, which is less than the $17,000 allotted. MS Decl., ¶ 27. These costs are summarized by category:

Cost Type	**Cost Amount**
Mailing	$18.07
PAGA Submission to LWDA	$75.00
Filing and complex fee (One Legal)	$1,895.06
Service / Case Anywhere	$1,381.78
Mediation	$9,000.00
Net Settlement Amount	**$12,369.91**

4. Settlement Administration Costs.

The Settlement Administrator will be paid $6,350 from the GSA for the costs of administration, which is less than the $12,000 allotted for in the Settlement Agreement. S.A., at ¶ 1.44; ILYM Decl., ¶ 18; MS Decl., ¶ 28.

5. LWDA Payment.

Eight Thousand ($8,000) from the GSA will be allocated to penalties under PAGA, of which Six Thousand Dollars ($6,000) shall be paid by the Settlement Administrator to the LWDA (representing 75% of the total amount allocated towards PAGA penalties). S.A., ¶ 1.20; MS Decl., ¶ 29. The remaining Two Thousand Dollars ($2,000) shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members who are also Aggrieved Employees as part of their Individual Settlement Awards. *Id*.

6. Employer-Side Payroll Taxes.

Employer-side payroll taxes are to be paid separately by the Defendant. S.A., at ¶ 1.21; MS Decl., ¶ 30.

7. Uncashed Checks.

Pursuant to the Settlement Agreement, the proceeds of any checks which are not cashed within 180 days will be sent to the California State Controller Office Unclaimed Property Division bearing the identifying information and corresponding settlement payment amounts for the Class Members who failed to cash their checks so that they might later be able to claim these settlement proceeds, pursuant to California Code of Civil Procedure section 384. S.A., at ¶ 3.10; MS Decl., ¶ 31.

C. The Release

In exchange for the consideration provided in the Settlement Agreement, Plaintiff and each Participating Class Member release against Defendant and Released Parties, any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability, irrespective of theory of recovery, that arose during the Class Period and which were or could have been brought based on the facts or claims alleged in Plaintiffs' Operative Complaint. The released claims include claims for failure to pay wages, including minimum wages and overtime and including wages due based on alleged time rounding and/or "boot-up time," failure to pay wages (including overtime wages) at the correct rate, failure to provide meal periods, failure to authorize and permit rest periods, short/late meal and rest periods, failure to relieve employees of all duties during meal and/or rest periods, failure to pay for time worked off the clock during meal periods, failure to properly compensate meal or rest break premiums at the regular rate, failure to furnish accurate wage statements, recordkeeping violations, failure to timely pay wages during employment, failure to timely pay wages at separation, claims related to wages and premium pay based on failure to properly calculate the regular rate of pay, as well as claims derivative and/or related to these claims, liquidated damages, conversion of wages, and claims arising under Business and Professions Code section 17200 arising from the Labor Code violations released herein. Participating Class Members shall further waive their right to pursue individual lawsuits as to any of the claims released herein against the Released Parties to the extent such claims accrued during the Class Period. (S.A., ¶ 1.37).

Also, in exchange for the consideration provided, the State of California, Plaintiff and the PAGA Aggrieved Employees will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims means all claims for penalties, fees, and costs Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA") for violations of the California Labor Code set forth in the operative complaint or the initiating PAGA notice letter, comprising Sections 201, 202, 203, 203.1, 204, 210, 218, 218.5, 226, 226.3, 226.7, 227.3, 232, 232.5, 351, 353, 510, 512, 558, 558.1, 1102.5, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2084, that arose during the PAGA Period]. S.A., at ¶ 1.36.

Finally, the named Plaintiff provided a general release of all claims known and unknown, against the Released Parties, in exchange for consideration, including but not limited to Defendant's agreement that the amount of the requested Service Award is reasonable and should be awarded. S.A., at ¶ 3.2.3.

IV. CLASS NOTICE WAS EFFECTUATED AND COMPORTS WITH CALIFORNIA LAW AND DUE PROCESS

To protect the right of absent class members, the trial court must provide the best notice practicable to class members. See *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-175. There is no requirement that all class members receive actual notice, whether by mail or some other means; rather, "individual notice must be provided to those class members who are identifiable through reasonable effort." *Id*. at 175.

On June 3, 2025, , Group received the Court-approved Notice Packet. ILYM Decl., ¶ 4. On June 23, 2025Defendant delivered to ILYM Group the Class Data. ILYM Decl., ¶ 5. On June 30, 2025, ILYM Group mailed Notice Packets to the Class Members. ILYM Decl., ¶¶ 6-7. Zero Class Members objected and Three requested to be excluded from the settlement. ILYM Decl., ¶¶ 11-12. Zero class members submitted a written dispute. ILYM Decl., ¶ 13.

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. The Settlement Is Entitled To a Presumption of Fairness

A presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1802. As the proposed settlement was reached through arm's-length negotiations, as sufficient investigation and discovery allowed Class Counsel to act intelligently, as Class Counsel is experienced in wage and- hour class actions, and as there are no objectors to the settlement, the proposed settlement should be presumed to be fair.

1. Settlement Negotiations Were Conducted Based On Sufficient Investigation and Discovery Prior to Reaching this Settlement.

Prior to mediation, SELPC investigated the claims, researched the law, reviewed a large volume of documents and data produced by Defendant, conducted informal discovery, spoke with witnesses, and analyzed the time and payroll records. MS Decl., ¶¶ 7-8. Thus, Plaintiffs' counsel diligently prepared to intelligently negotiate the proposed Settlement. *Id*. As a result, the mediation was successful, albeit after five additional months of wrangling.

2. The Settlement Was Reached Through Arm's Length Bargaining

The Settlement was reached following a successful negotiation with mediator Chris Barnes. MS Decl., ¶ 9-12. The settlement negotiations were at arm's length and, although conducted in a professional manner, were adversarial. *Id*. The Parties went into mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement had not been reached. *Id*. Ultimately, after tireless negotiations extending for many months, Defendant offered $248,000 plus employer-side payroll taxes to resolve the lawsuit. *Id*.

3. <u>SELPC Has Extensive Experience in Wage And Hour Class Actions</u>

The settlement negotiations were conducted by highly capable and experienced counsel. SELPC has a strong record of vigorous and effective advocacy for their clients and are experienced in handling complex wage and hour class action litigation. MS Decl., ¶ 32-40. Although SELPC was prepared to litigate the claims asserted in the action, the firm supports the Settlement as being in the best interests of the Class. MS Decl., ¶ 40.

4. <u>Zero Class Members Have Objected to the Settlement; Three Class Members Have Requested Exclusion.</u>

The response of Class Members is indicative of the fairness of the settlement. MS Decl., ¶ 41. To date, there have been no objections to the Settlement. *Id.*; ILYM Decl., ¶ 12. Additionally, three (3) members of the Class have requested to be excluded from the Settlement, and thus their rights to pursue claims otherwise released by participating class members remain intact. ILYM Decl., ¶ 11. The complete lack of objections and disputes, with only three opt outs resulting in a 97.76% participation rate, strongly indicate the fairness of the settlement. ILYM Decl., ¶ 14; MS Decl., ¶¶ 15, 41-42.

B. The Settlement Is Fair, Adequate And Reasonable

The trial court has "broad discretion to determine "whether a settlement [is] fair and reasonable." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389. In considering whether a settlement is reasonable, the trial court should consider relevant factors, which may include the strength of plaintiff's case, the risk, expense, 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 stage 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. *Kullar v. Foot Locker Retail, Inc.* (2008) 168

Cal.App.4th 116, 128. In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. *Id*. at 133.

The Class's maximum potential damages, exclusive of interest and inclusive of PAGA penalties, is $1,845,660 including: (a) $16,000 in unpaid regular wages (1,000 hours of time write-downs x $16.00 avg. hourly rate) and $32,000 for liquidated damages for the minimum wage claim (2,000 hours of write-downs x $16.00 minimum wage rate), (b) $24,000 in overtime (1,000 hours of time write-downs x $16.00 avg. hourly rate x 1.5), (c) approximately $316,080 for rest period premiums (3,951 workweeks x 5 days x $16.00/hr.), (d) approximately $316,080 for meal period premiums, which is the same base calculation as for rest periods, (e) approximately $560,000 for the wage statement class (140 x $4,000), (f) approximately $384,000 for waiting time penalties (100 former employees x 8 hrs. x 30 days x $16.00/hr.), (g) negligible amount for pay period violations, unreimbursed business expenses, and employment record-keeping violations, and (h) approximately $197,500 for PAGA penalties (1,975 pay periods x $100), without stacking and $100 initial violation rate. MS Decl., ¶¶ 43, 44 (a-h) (setting forth the damages model for Plaintiff's maximum damages calculations on a claim-by-claim basis).

Taking into consideration both the risks in obtaining class certification and the risks in establishing liability and damages on a class-wide basis, the risks of an unfavorable judgment followed by appeals, Plaintiff estimated value of the case would be significantly less than the maximum potential damages. MS Decl., ¶¶ 45-47. The Settlement obviates the significant risk that the court may deny certification of all or some of Plaintiffs claims. Proving the amount of wages due to each Class Member would be an expensive, time-consuming, and uncertain proposition. *Id*. Even if Plaintiff obtained certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class Members. *Id*.

In contrast, if the Court approves the Settlement, Class Members will receive timely relief and avoid the risk of an unfavorable judgment. *Id*. While SELPC remains confident in the merits of Plaintiff's case, a legitimate controversy exists as to each cause of action. *Id*.

In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are balanced against the merits of Plaintiffs' claims, it is clear that the settlement amount of $248,000 is within the "ballpark" of reasonableness and settlement is in the best interests of the class. MS Decl., ¶¶ 45-47.

VI. SELPC'S REQUESTED FEES AND COSTS ARE REASONABLE

The Stipulation provides for attorneys' fees to SELPC in an amount up to one third of the $248,000 GSA, or $82,666.66, plus reasonable and actual litigation expenses in an amount not to exceed $17,000.00, which in the end were $12,369.91. S.A., ¶ 1.2; MS Decl., ¶ 27. SELPC is entitled to reasonable attorneys' fees pursuant to Labor Code §§ 1194, 2699, 2802, 2699(g), and Code of Civil Procedure § 1021.5. The requested fees are well-within the range of fees generally sought and approved in common fund class actions and are also reasonable based on SELPC's lodestar.

A. SELPC's Attorneys' Fees Are Reasonable Under the Common Fund Method

A request for attorneys' fees as a percentage of the settlement amount 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* (1977) 20 Cal.3d 25, 35. The percentage is properly based upon the gross settlement, rather than on the amount of claims made. *Williams v. MGM-Pathe Communications Co.* (9th Cir. 1997) 129 F.3d 1026, 1027. The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Schwartz Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.

The lodestar analysis may be used to cross-check percentage-of-recovery award. See *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 556-558. However, in a recent case involving an objection to a one-third percentage-based recovery in a $19 million employment class action lawsuit, the Supreme Court of California clarified that:

[W]hen an attorney fee is awarded out of the common fund preserved or recovered by means of litigation [citation], the award is not per se unreasonable merely because it is calculated as a percentage of the common fund.

Laffitte v. Robert Half Intern, Inc. (2016) 1 Cal.4th 480, 486. The Court further held that "… trial courts have discretion to conduct a lodestar cross-check on a percentage fee ... [and] also retain the ***discretion to forego a lodestar cross-check*** and use other means to evaluate the reasonableness of a requested percentage fee." *Id*. at 506 [emphasis added]. Indeed, several courts have expressed frustration with the alternative "lodestar" approach for deciding fees, which usually involves wading through voluminous and often indecipherable time records. See, e.g., *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375. The percentage approach is preferable to the lodestar because: (1) it provides predictability to class counsel and class members; (2) encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial records. *Id*. at 1378-79.

The percentage of attorneys' fees set forth in the Settlement, one-third of the GSA, is reasonable. Historically, courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of the case, *Newberg on Class Actions*, 4th Ed, 2002, § 14:6. California and federal courts have long recognized that a percentage of recovery for attorneys' fees is properly awarded on the basis of the total value, *Boeing v. Van Gernert* (1980) 444 U.S. 472, 480-481; see also *Consumer Privacy Cases*, 175 Cal.App.4th at 558, fn. 13 ["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." (emphasis added.)]

SELPC's efforts have resulted in significant benefits to the Class Members, in the form of a significant settlement fund established to compensate the Class Members for the wage and hour violations -- the average and maximum payments being $1,004.68 and $4,480.83, respectively (ILYM Decl. ¶16). Payments to SELPC for all fees has been deferred to the end of the litigation – one a year and a half - and is entirely contingent upon the outcome. MS Decl.¶ 48. Without SELPC's efforts, the claims alleged in the complaint would likely have gone without remedy. *Id.*

In light of all these reasons, Plaintiff respectfully request that this Court approve their request for reasonable attorneys' fees pursuant to Labor Code §§ 1194, 2699(g) and Code of Civil Procedure § l021.5 and under the percentage-based approach.

B. SELPC's Attorneys' Fees are Reasonable under Lodestar Method With *Fractional / Negative* Multiplier of .90

Plaintiff's fee application is also reasonable based on SELPC's lodestar. Under the lodestar method, the court considers a compilation of the time spent and a reasonable hourly compensation of each attorney to evaluate the reasonableness of the fee requested, *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615,622. The hours spent and the reasonable hourly compensation are computed to arrive at a "lodestar" figure which may then be augmented or diminished by the court taking into account various "multiplier" factors. *Id.* at 622 (citing *Serrano*, 20 Cal.3d at 48-49). The California Court of Appeal held that if a court sets fees under a lodestar, the multiplier should consider what counsel would have earned on the free market, which is determined by a percentage of the common fund. *Lealao v. Beneficial California, Inc.,* 82 Cal. App. 4th 19, 49-50 (2000). Thus, even if the Court awards fees under the lodestar method, the fees should be adjusted by a multiplier to reflect the percentage of the fund. SELPC's lodestar is $91,992.50, which is based on approximately 118.8 hours of attorney time, at $775 per hour. MS Decl., ¶¶ 25-26, 49. Tasks included client communications, document analysis, formal discovery, informal discovery, meeting and conferring, legal research, mediation and negotiations, drafting and filing legal briefs, and attendance at hearings. *Id*. Application of a fractional/negative multiplier is required to achieve the equivalent of one-third of the common fund. *Id*. Plaintiff's counsel is satisfied that the net amount provided to the class, even after accounting for attorney fees, is generous and evidences the hard work and skill of Plaintiff's counsel. *Id*. The fee award is also appropriate given the contingent risk, the delay in payment, the substantial benefit conferred on the Class and State from the Settlement, the skill displayed by SELPC, the quality of its representation, and the difficulty of the issues. *Id*. Thus, Plaintiffs request for $82,666.66 in attorneys' fees is reasonable under the lodestar method.

1. SELPC's Hours Are Reasonable

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

SELPC expended a significant amount of time investigating and litigating the case to achieve the excellent result on behalf of the Class, including, but not limited to: engaging in meet and confer efforts and informal discovery conferences; obtaining policy documents and a sampling of Class Members' time and payroll records; reviewing and analyzing a large volume of documents produced by Plaintiff; retaining and consulting with a statistician regarding the time and payroll sampling, which assisted Plaintiff's counsel in preparing a damages model prior to mediation; preparing the mediation brief; attending a full day mediation, follow up settlement negotiations with Defendant regarding the settlement terms for several months, including tax issues; numerous discussions with the Plaintiff; numerous conferences and correspondence with Defendant's counsel; attending court hearings; drafting, negotiating, and revising the Stipulation; researching and drafting the Motion for Preliminary Approval, supporting declaration and supplemental briefing; communicating with Defendants' counsel and the Settlement Administrator to effectuate the terms of the Stipulation and to monitor the claims process; drafting the Motion for Final Approval and accompanying documents, and predicting no fewer than 2.3 hours of additional time working with the Settlement Administrator on the distribution and submitting a declaration and preparing for and attending a Final Accounting Hearing. MS Decl.¶ 26. SELPC also bears the risk of taking whatever actions are necessary if Defendants fail to pay. *Id*. Thus, the Court should find that SELPC's hours were reasonable and necessary to achieve the excellent result on behalf of the Class. *Id*.

2. <u>SELPC's Hourly Rates Are Reasonable</u>

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. "[J]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* (2006) 147 Cal.App.4th 1, 3.

The current prevailing billing rates in the Los Angeles area range from $350 to $1,200 per hour. MS Decl.,¶ 50; *PLCM*, 22 Cal.4th at 1095 ("The reasonable hourly rate is that prevailing in the community for similar work."); *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 997 ("In setting the hourly fee the court was entitled to consider 'fees customarily charged by that attorney and others in the community for similar work.'"), disapproved on another ground in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664.

Martin Sullivan is an experienced litigator who practices exclusively in employment law, and predominately in wage and hour class actions. MS Decl.¶ 32-40. Given Class Counsel's skill and experience, and the excellent result achieved for the Class, his hourly rate of $775 is reasonable.

3. <u>While Application of a Positive Multiplier Is Normally Appropriate, Here, The Amount of Work Invested In This Case, While Critical to Achieving the Result, Calls For a Fractional / Negative Multiplier</u>

The lodestar amount may be increased by applying a multiplier. *Serrano*, 20 Cal.3d at 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407. In California, "[m]ultipliers can range from two to four or even higher" and are routinely applied in the range requested by Class Counsel. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in *Hernandez Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 273-74, fn. 4; see also *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 105 I (approving a 3.65 multiplier); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 298-299 (approving multiplier of

3.6). Some of the factors a trial court considers when determining whether to apply a multiplier are: (1) the contingent nature of the fee award; (2) any delay in receipt of payment; (3) the result obtained by the litigation; (4) the extent to which the nature of the litigation precluded other employment by the attorneys; (5) the skill displayed by counsel; (6) the quality of the representation; and (7) the novelty and difficulty of the issues involved. *Serrano*, 20 Cal.3d at 49.

In *Ketchum v. Moses* (2001) 24 Cal.4th 1122,1132-1133, the California Supreme Court held that fee enhancement in contingency cases is necessary to (1) fully compensate counsel for the "loan" of legal services in light of the inherent high risk of "default" posed by losing the case, and (2) encourage competent counsel to take on fee award cases. The court noted, "[a] lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." Id. at 1133 (citations omitted); see also *Greene v. Dillingham Construction NA., Inc.* (2002) 101 Cal.App.4th 418, 426 (trial court erred by refusing to consider contingent risk as a factor in the decision to apply a multiplier).

Here, Plaintiff suggests that payment of 90% of the lodestar—or applying a .90 multiplier—best serves justice and the interests of the Class. MS Decl. ¶¶ 26, 49, 54. Class Counsel has deferred any compensation throughout this representation and has expended significant time and resources which could have been directed towards other cases. *Id*. In agreeing to litigate this case on a contingent fee basis, Class Counsel assumed considerable risk given the uncertain outcome of putative wage and hour class actions. *Id*. The proof of Class Counsel's skill in this area of the law lies in the size of the recovery of individual Class Members. The average Class Member will receive $1,004.68 and the highest award will be $4,480.83. ILYM Decl., 16; MS Decl. ¶¶, 48, 53. Out of a total of 134 Class Members, the fact that there is a 97.76% participation rate amongst class members is further evidence that the Settlement is an excellent result and the Class Members are satisfied with the Settlement. ILYM Decl., ¶¶ 11-14; MS Decl. ¶¶ 48, 53.

As the results demonstrate in other cases where class certification was denied, the risk presented in this case was significant. As the California Supreme Court recognized in *Ketchum*, if a multiplier is not awarded to class counsel on the cases that are successfully settled, counsel's fees are essentially being cut because the lodestar in and of itself does not account for contingent risk. *Ketchum*, 24 Cal.4th at 1132-1133.

Thus, a .90 fractional / negative multiplier demonstrates risk of contingency representation, as it represents a reduction in attorney compensation based upon work reasonably incurred by SELPC, the substantial benefit conferred on the Class and the State as a result of the Settlement, the delay in payment and the skill displayed by SELPC and the quality of SELPC's representation. MS Decl. ¶¶ 49, 54. Plaintiff therefore requests that the court award SELPC the requested fees of $82,666.66 under the common fund theory with a lodestar cross-check or, alternatively, based on SELPC's lodestar with a .90 fractional/negative multiplier. *Id*.

C. SELPC's Costs Are Reasonable

The SA provides for reimbursement of costs not to exceed $17,000.00. SA, at ¶ 1.3. SELPC's costs, which are reasonably and necessarily incurred in prosecuting this action, are $12,369.91, which is less than what is allotted for in the SA. MS Decl., ¶ 18. Accordingly, SELPC seeks only $12,369.91, for the reimbursement of litigation costs. As such, Class Counsel's request for reimbursement of litigation costs is reasonable and should be approved.

VII. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS REASONABLE

Plaintiffs in class action lawsuits are eligible for reasonable incentive payments as compensation "for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz*, 186 Cal.App.4th at 412. Courts routinely grant approval of class action settlement agreements containing enhancements for the class representatives, which are necessary to provide incentive to represent the class, and are appropriate given the benefit the class representatives help to bring about for the class. Class Representative payments are especially appropriate where the plaintiff is a present or past employee whose present position or employment credentials or recommendation may be at risk by reason of having prosecuted the suit and therefore lends his or her name and efforts to the prosecution of litigation at some personal peril. See, e.g., *Roberts v. Texaco* (S.D.N.Y. 1997) 979 F. Supp. 185.

The Settlement Agreement provides that a Class Representative Service Award of $7,000 shall be paid to Plaintiff. S.A. ¶¶, 1.8; MS Decl., ¶¶ 20-24; Plaintiff's Decl., ¶ 11. The proposed service award is reasonable compensation given the time and effort that Plaintiff devoted to this case, the potential risks to Plaintiff, the active involvement by the Plaintiff in case analysis, availability and remote participation in the mediation and subsequent negotiations, and the result obtained on behalf of the Settlement Class. Plaintiff's Decl., ¶¶ 3-11; MS Decl., ¶¶ 20-24. Plaintiff deserves $7,000 because he greatly contributed throughout this litigation and provides key insights into the facts, including as to business practices, job functions, policies, and therefore helped to establish that common questions predominated as to the areas of fact and law central to this case. Plaintiff's Decl., ¶¶ 6-7; MS Decl., ¶¶ 20-24. Without the particular knowledge, availability, and enthusiastic willingness of Plaintiff to assist in this litigation, Plaintiff would not have achieved the settlement he did on behalf of the class members. Plaintiff's Decl., ¶¶ 3-11; MS Decl., ¶¶ 20-24.

Plaintiff actively participated in many hours of telephonic conversations with Plaintiff's Counsel and responded to dozens of separate emails and texts from Class Counsel during the course of the case and reviewed the pleadings. Plaintiff's Decl., ¶¶ 6-7; MS Decl., ¶¶ 20-24. Plaintiff provided Class Counsel with substantive information to assist in analyzing records received from Defendant and identified and provided numerous pages of his own documents that were exchanged in pre-mediation exchanges. *Id.* Plaintiff identified several other current and former employees at Defendant that could serve as both witnesses and potential class members. *Id.* Plaintiff also reviewed the factual allegations making up the mediation brief and made himself available via telephone throughout a full-day mediation. *Id.* The Plaintiff was responsive and attentive to the needs of the class, despite the disruption to his life. *Id.*

Plaintiff also entered into a general release of claims that is broader than the release of the Class. S.A. at ¶¶ 1.8, 3.2.3, MS Decl., ¶¶ 20-24; *See* Plaintiff's Decl., ¶¶ 9-10. This is critical because Plaintiff had other valuable claims he could have pursued had he not been required by

Defendant to enter into a general release, variously for wrongful and retaliatory termination for complaining about tipping and payroll practices. *Id*. At no time did the Class Representative ever have a guarantee of any personal benefit as a result of this case. *Id.* On the contrary, Plaintiff assumed significant risk in bringing this litigation — namely, had he lost, he could have been ordered to pay Defendant's costs. *Id.*

Plaintiff also face the real risk that future employers may not hire him because he lent his name as the Class Representative in this case. MS Decl., ¶ 24. Plaintiff also put the interests of the Class ahead of his own interests by surrendering his individual claims, which were valuable. *Id*. Again, Plaintiff is giving a broader release to Defendant than the other Class Members, which was specifically required by Defendant as part of the deal and in exchange for not opposing the enhancement request. *Id*.; S.A. ¶¶, 1.8, 3.2.3. The requested payment is thus reasonable under California law. See *Clark v, American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 805-806; see also *Cellphone Termination Cases*, 186 Cal.App.4th at 1394-1395.

VIII. NOTICE OF JUDGMENT TO THE CLASS

For the benefit of the Class Members, notice of Final Judgment shall be posted on the claim administrator's website. MS Decl., ¶ 55.

IX. NOTICE OF FINAL APPROVAL TO THE LWDA

Plaintiff provided notice of the Amended Settlement Agreement, the Order Granting Preliminary Approval, and Proposed Order Granting Final Approval to the LWDA on November 11, 2025, via electronic submission through the LWDA website. MS Decl., ¶ 56.

X. CONCLUSION

Based on the foregoing argument and authority, Plaintiff respectfully requests that the Court grant final approval of the Settlement.

Respectfully Submitted,

Dated: November 11, 2025

SULLIVAN EMPLOYMENT LAW P.C.

Martin Sullivan
Attorney for Plaintiff and the Putative Class