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all others similarly situated, and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ROYA NOORI and PAOLA OLIVO on
behalf of themselves, all others similarly
situated, and on behalf of the general
public,

Plaintiffs,

v.

VISTA COMMUNITY CLINIC; and
DOES 1-100,

Defendants.

Case No.: 37-2023-00000144-CU-OE-CTL
(Consolidated with Case No.
37-2023-00005665-CU-OE-CTL)

*[Assigned for All Purposes to the
Honorable James A. Mangione; Dept. C-75]*

**PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT**

Date: January 24, 2025
Time: 9:00 a.m.

Complaint Filed: January 3, 2023
Trial Date: None Set

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I. INTRODUCTION

This motion seeks approval of a non-reversionary \$3,000,000 proposed wage and hour class action settlement reached between Plaintiffs Roya Noori and Paola Olivo (hereinafter “Plaintiffs”) and Defendant Vista Community Clinic (hereinafter “Defendant” or “Vista”) (hereinafter Plaintiffs and Defendant are collectively referred to as the “Parties”).¹ The settlement is on behalf of Plaintiffs and a Class comprised of all current and former non-exempt, hourly employees who were employed by Defendant in California at any time from January 3, 2019, through January 18, 2024.² **There is a 100% participation rate amongst Class Members—that is, no requests for exclusion were received.**³ **Furthermore, no objections to the settlement were received.**⁴ **The proposed settlement is projected to pay an average estimated payment of \$1,163.83 per Class Member, with a high payment of \$3,240.96.** In addition, Aggrieved Employees are currently estimated to receive an additional payment that averages \$28.37, with a high payment of \$64.64.

To date, this matter has required 991.2 hours of attorney time from Class Counsel. This litigation involved investigations into the claims asserted, discovery, the production and review of documents from Defendant, a full day of mediation, and evaluation of continuing litigation. As will be demonstrated herein, the attorneys’ fee request of \$1,050,000 (“Attorney Fee Award”), which represents 35% of the Gross Settlement Amount (“GSA”), is fully supported using the percentage fee method. The Attorney Fee Award is also supported under the lodestar cross-check method. Plaintiff further moves for reimbursement of litigation costs and expenses in the amount of \$26,329.53 (“Cost Award”), originally estimated not to exceed \$50,000, for costs incurred in litigating this matter. Plaintiffs also move for final approval of the payment in the amount of \$10,000, each, to Plaintiffs (these payments are referred to as the “Class Representative Service Payments”) to compensate them for agreeing to a general release of their claims against Defendant

¹ The Parties’ Agreement is attached to the Declaration of David Mara, Esq. (“Mara Decl.”) as Exhibit 1. “Exhibit 1” herein refers to the Parties’ Agreement.

² Exhibit 1 at Section A, Paragraph 5, Page 1 and Section A, Paragraph 12, Page 2.

³ Declaration of Makenna Snow of ILYM Group, Inc. Regarding Notice and Settlement Administration (“Snow Decl.”) ¶ 11.

⁴ Snow Decl. ¶ 12.

1 and their vital role in representing the Class Members and spearheading the case to seek actual
2 and substantial monetary relief for the Class. Additionally, Plaintiffs move for final approval of
3 Administration Costs in the amount of \$19,564.80 (originally estimated not to exceed \$25,000)
4 to the Settlement Administrator, ILYM Group, Inc. (hereinafter “ILYM”) for the costs and fees
5 of administering settlement (“Administration Costs”).

6 The requested Attorney Fee Award, Cost Award, Class Representative Service Payments,
7 and Administration Costs were fully disclosed to the Class Members when the Class Notice was
8 mailed to them. To date, the settlement and all of its terms have received support from Class
9 Members as not a single Class Member has objected to the settlement or requested to be excluded
10 from it. With an average and high payout to Participating Class Members of \$1,163.83 and
11 \$3,240.96, respectively, the settlement is fair, adequate, and reasonable. The Court is respectfully
12 requested to consider the Class Members’ endorsement of the settlement and grant final approval
13 of the settlement, and approve of the Attorney Fee Award, Cost Award, Class Representative
14 Service Payments, and Administration Costs in the amounts as preliminarily approved of by this
15 Court and disclosed to the Class Members, and as requested herein.

16 Class Counsel is convinced that the proposed settlement is in the best interest of the Class
17 based on the negotiations and a detailed knowledge of the issues present in this matter. The length
18 and risks of trial and perils of litigation that affect the value of the claims were all carefully
19 weighed by Class Counsel. The affirmative defenses asserted by Defendant, uncertainty of class
20 certification, difficulties of complex litigation, lengthy process of establishing specific damages,
21 and various possible delays and appeals were all carefully considered by Class Counsel.

22 **II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY**

23 **a. Background and Litigation History**

24 On November 14, 2022, Plaintiff Noori provided written notice to the California Labor
25 and Workforce Development Agency (“LWDA”) and Defendant. (Mara Decl. ¶ 12).

26 On January 3, 2023, Plaintiff Noori filed this wage-and-hour class action lawsuit in the
27 Superior Court of California, County of San Diego, alleging nine (9) causes of action (Case No.
28 37-2023-00000144-CU-OE-CTL). (Mara Decl. ¶ 13).

1 On February 8, 2023, Plaintiff Noori filed a representative Private Attorneys General Act
2 of 2004 (“PAGA”) action in the Superior Court of California, County of San Diego, asserting
3 allegations like those asserted in her wage-and-hour class action lawsuit (Case No. 37-2023-
4 00005665-CU-OE-CTL). (Mara Decl. ¶ 14).

5 On March 21, 2023, Plaintiff Olivo filed a wage-and-hour class action lawsuit in the
6 Superior Court of California, County of San Diego, alleging eight (8) causes of action (Case No.
7 37-2023-00011846-CU-OE-NC).

8 On July 31, 2023, the Court granted Plaintiff Noori’s request to consolidate her wage-and-
9 hour class action lawsuit (Case No. 37-2023-00000144-CU-OE-CTL) and representative PAGA
10 action (Case No. 37-2023-00005665-CU-OE-CTL) and designated the former as the lead case.
11 (Mara Decl. ¶ 15).

12 On August 16, 2023, Plaintiff Noori filed a first amended complaint that added Plaintiff
13 Olivo as a named plaintiff. (Mara Decl. ¶ 16). The first amended complaint is referenced as the
14 Operative Complaint in the Parties’ Agreement.

15 **b. Discovery and Investigation**

16 The Parties conducted significant investigation and discovery of the facts and law both
17 before and after this action was filed. Through informal discovery, Defendant produced over nine
18 hundred (900) separate policy documents. These documents included policy documents that
19 covered Class Members’ employment with Defendant. Included within these documents were
20 Defendant’s wage and hour policies, including its meal and rest period policies. Defendant also
21 produced a sampling of time and wage records for Class Members which Plaintiffs had an expert
22 review and analyze. Plaintiffs also requested, and Defendant produced, the number of current and
23 former employees, as well as the number of workweeks worked by Class Members during the
24 relevant time period, to establish a potential exposure model in preparation for mediation.
25 Plaintiffs also located and interviewed several Class Members who worked for Defendant
26 throughout the Class Period. From this discovery, Plaintiffs and their Counsel analyzed
27 Defendant’s liability in this action and prepared a realistic damage model. (Mara Decl. ¶ 17).

28 ///

1 **c. The Parties Agreed to Attend Mediation**

2 The Parties successfully attended an all-day mediation presided over by respected wage
3 and hour mediator David Rotman on January 18, 2024. The Parties then met and conferred over
4 all the terms of the settlement and finalized their settlement in the Parties' Agreement. The Parties
5 seek final approval of the Agreement in the instant motion. (Mara Decl. ¶ 18).

6 **III. TERMS OF THE PROPOSED SETTLEMENT**

7 **a. Deductions from the Settlement**

8 The Parties have agreed (subject to and contingent upon the Court's approval) that this
9 action be settled and compromised for the non-reversionary total sum of \$3,000,000 ("Gross
10 Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of
11 \$1,050,000 (35% of the GSA); (b) litigation expenses in the amount of \$26,329.53 (originally
12 estimated not to exceed \$50,000); (c) Class Representative Service Payments to each named class
13 representative in the amount of \$10,000 each; (d) settlement administration fees and expenses to
14 ILYM in the amount of \$19,564.20 (estimated not to exceed \$25,000); and (e) \$150,000 allocated
15 to Plaintiffs' claims under the PAGA.⁵ The PAGA Payment will be distributed to the LWDA and
16 Aggrieved Employees with 75%, or \$112,500, being distributed to the LWDA, and 25%, or
17 \$37,500, being distributed to Aggrieved Employees.

18 **b. Calculation of Settlement Payments to Class Members**

19 After all Court-approved deductions from the GSA, it is estimated that \$1,734,105.67
20 ("Net Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the
21 settlement payment, will be distributed to Participating Class Members.⁶ Each Participating Class
22 Member will receive an Individual Class Payment that will be calculated using the formula set
23 forth in the Agreement. Under this formula, each Participating Class Member will receive a pro
24 rata share of the NSA based upon the number of workweeks they worked for Defendant during
25

26 ⁵ Aggrieved Employees are all current and former non-exempt, hourly employees who were
27 employed by Defendant in California at any time during the PAGA Period. (Exhibit 1 at Section
28 A, Paragraph 4, Page 1).

⁶ A Participating Class Member is a Class Member who does not submit a valid and timely
Request for Exclusion from the Settlement. (Exhibit 1 at Section A, Paragraph 34, Page 3).

1 the Class Period. (Exhibit 1 at Section C, Paragraph 2(d), Page 7). This payment will be divided
2 into a “wage portion” (20%) to compensate Participating Class Members for alleged unpaid
3 wages and a “non-wage portion” (80%) to compensate Participating Class Members for alleged
4 interest and penalties. (Exhibit 1 at Section C, Paragraph 2(d)(i), Page 7).

5 Each Aggrieved Employee will receive an Individual PAGA Payment that will be
6 calculated using the formula set forth in the Agreement. Under this formula, each Aggrieved
7 Employee will receive a pro rata share of the PAGA Payment based upon the number of pay
8 periods they worked for Defendant during the PAGA Period. Aggrieved Employees assume full
9 responsibility and liability for any taxes owed on their Individual PAGA Payment. (Exhibit 1 at
10 Section C, Paragraph 2(e)(i), Pages 7-8). This payment will be treated as 100% penalties.

11 Under no circumstances will any portion of the \$3,000,000 settlement revert to Defendant,
12 and 100% of the NSA will be available for payment to Participating Class Members. (Exhibit 1
13 at Section C, Paragraph 1, Page 6). The employer’s share of taxes will be paid in addition to and
14 outside of the GSA. (Exhibit 1 at Section C, Paragraph 1, Page 6).

15 **c. Release of Claims**

16 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
17 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
18 Participating Class Members, on behalf of themselves and their former and present
19 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the
20 Released Parties from the Released Class Claims. (Exhibit 1 at Section E, Paragraph 2, Page 10).

21 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
22 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, All
23 Participating and Non-Participating Class Members, who are Aggrieved Employees, are deemed
24 to release, on behalf of themselves and their former and present representatives, agents, attorneys,
25 heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA
26 Claims. (Exhibit 1 at Section E, Paragraph 3, Page 10).

27 Plaintiffs have agreed to a release of their claims that is broader than the release given by
28 Participating Class Members. (Exhibit 1 at Section E, Paragraph 1, Pages 9-10).

1 **d. Notice to the Class**

2 On September 13, 2024, ILYM received the Court approved text for the Class Notice from
3 Class Counsel. ILYM prepared a draft of the formatted Class Notice, which was approved by the
4 Parties' Counsel prior to mailing. (Snow Decl. ¶ 4).

5 On October 8, 2024, ILYM received the class data file from Counsel for Defendant. The
6 data file was uploaded to ILYM's database and checked for duplicates and other possible
7 discrepancies. The Class List contained 1,490 individuals. (Snow Decl. ¶ 5).

8 As part of the preparation for mailing, all 1,490 names and addresses contained in the Class
9 List were then processed against the National Change of Address ("NCOA") database, maintained
10 by the United States Postal Service ("USPS"), for purposes of updating and confirming the
11 mailing addresses of the Settlement Class Members before mailing of the Class Notice. (Snow
12 Decl. ¶ 6).

13 On October 17, 2024, the Class Notice was mailed, via U.S First Class Mail, to all 1,490
14 individuals contained in the Class List. (Snow Decl. ¶ 7). Class Members had until December 2,
15 2024, to respond to the settlement.

16 Seventy-four (74) Class Notices were returned as deliverable to ILYM. Of these, fifty-five
17 (55) updated addresses were obtained by ILYM and the Class Notices were promptly re-mailed
18 to those Class Members, via U.S. First Class Mail. In addition, one (1) Class Member contacted
19 ILYM to request that a Class Notice be re-mailed to them. (Snow Decl. ¶ 8). A total of fifty-six
20 (56) Class Notices have been re-mailed. (Snow Decl. ¶ 9). A total of nineteen (19) Class Notices
21 have been deemed undeliverable as no updated addresses were found notwithstanding the skip
22 tracing. (Snow Decl. ¶ 10). These Class Notices represent 1.2% of the Class Members.

23 ILYM received one (1) dispute from a Class Member during the notice period. (Snow Decl.
24 ¶ 13).

25 The settlement received overwhelming support from the Class Members. Not a single Class
26 Member has objected to the settlement. (Snow Decl. ¶ 12). In addition, no Class Members
27 requested to be excluded from the settlement. (Snow Decl. ¶ 11).

28 ///

1 **e. Distribution of Funds**

2 Defendant shall fund the Gross Settlement Amount by transmitting the funds to the
3 Administrator no later than the Effective Date.⁷ (Exhibit 1 at Section D, Paragraph 2, Page 8).

4 Within fourteen (14) calendar days after Defendant fully funds the Gross Settlement
5 Amount, the Administrator will mail settlement checks to the appropriate entities and persons.
6 (Exhibit 1 at Section D, Paragraph 3, Page 8).

7 Settlement checks sent to Participating Class Members and Aggrieved Employees will be
8 negotiable for one hundred eighty (180) calendar days. Uncashed settlement checks will be sent
9 to the Controller's Unclaimed Property Fund. (Exhibit 1 at Section D, Paragraph 3(a), Page 8).

10 **IV. ARGUMENT**

11 **a. The Settlement is Fair, Reasonable, and Adequate and Satisfies the Standard**
12 **for Final Approval**

13 California Rule of Court, Rule 3.769, requires court approval for class action settlements.
14 Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62
15 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602
16 (“[T]he law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what
17 is otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer,*
18 *Inc.* (2001) 91 Cal. App. 4th 224, 245.

19 In deciding whether to approve a class settlement, a court evaluates whether the proposed
20 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
21 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.* (9th Cir.
22 1982) 688 F.2d 615, 625); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742
23 43. A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at
24 1801. However, “a presumption of fairness exists where: (1) the settlement is reached through

25 ⁷ The Effective Date is fourteen (14) calendar days after both of the following have occurred: (a)
26 the Court enters a Judgment on its order granting Final Approval of the Settlement; and (b) the
27 Judgment is final. The Judgment is final as of the latest of the following occurrences: (i) if no
28 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (ii) if
one or more Participating Class Members objects to the Settlement, the day after the deadline for
filing a notice of appeal from the Judgment; or (iii) if a timely appeal from the Judgment is filed,
the day after the appellate court affirms the Judgment and issues a remittitur. (Exhibit 1 at Section
A, Paragraph 18, Page 2).

1 arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
2 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
3 of objectors is small.” *Dunk*, 48 Cal. App. 4th at 1802; accord *Wershba*, 91 Cal. App. 4th at 245.
4 In addition, a court should consider additional relevant factors, including the strength of the
5 plaintiff's case compared to the settlement amount; the risk, expenses, complexity, and likely
6 duration of further litigation; and the fair treatment of class members in relation to each other.
7 *Dunk*, 48 Cal. App. 4th at 1802; see also *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706,
8 723; see also *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

9 At the time of preliminary approval, the Court was provided with sufficient information
10 to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors,
11 unknown until after the Class had an opportunity to respond to the settlement.⁸ Subject only to
12 the Class's reaction to the settlement, the Court preliminarily presumed the settlement was fair,
13 adequate and reasonable. Not a single objection to the settlement has been submitted by any Class
14 Member to the Settlement Administrator. Thus, the settlement is entitled to the presumption that
15 it is fair and in all other respects proper and should be finally approved.

16 **b. The Court Should Approve the Requested Fees and Costs**

17 **i. The Requested Fee Award is Fair and Reasonable, Calculated as a
18 Percentage of a Common Fund**

19 Class Counsel applies for an award of attorneys' fees in the sum of \$1,050,000 and
20 litigation costs of \$26,329.53. (Mara Decl. ¶ 19). California courts have recognized an appropriate
21 method for determining an award of attorneys' fees is based on a percentage of the total value of
22 benefits to Class Members by the settlement, also known as the “common fund” method. *Serrano*
23 *v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano III*) 34 (“when a number of persons are entitled in
24 common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all
25 results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded
26 attorney's fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a

27 ⁸ See Memorandum of Points and Authorities in Support of Motion for Preliminary Approval,
28 pages 16-21. In addition to the *Dunk* factors, Class Counsel also detailed the other factors such as
the strengths of Plaintiff's case, risks and costs of further litigation, as well as the reasonableness
of the GSA amount in light of *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

1 fee from the common fund obtained for the benefit of all parties, the trial court acts within its
2 equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache*
3 *Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating
4 attorney's fees more accurately reflects the results achieved for the putative class than the lodestar
5 method and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their
6 expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re*
7 *Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-
8 recovery method is generally favored in common fund cases because it allows courts to award
9 fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'").

10 The purpose of the common fund/percentage approach is to "spread litigation costs
11 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
12 burden alone." *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. In *Quinn v.*
13 *State of California* (1995) 15 Cal.3d 162, 167, the Court stated: "[O]ne who expends attorneys'
14 fees in winning a suit which creates a fund from which others derive benefits may require those
15 passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of*
16 *San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that
17 the common fund doctrine has been applied "consistently in California when an action brought
18 by one party creates a fund in which other persons are entitled to share." The reasons for applying
19 the common fund doctrine include: "...fairness to the successful litigant, who might otherwise
20 receive no benefit because his recovery might be consumed by the expenses; correlative
21 prevention of an unfair advantage to the others who are entitled to share in the fund and who
22 should bear their share of the burden of its recovery; encouragement of the attorney for the
23 successful litigant, who will be more willing to undertake and diligently prosecute proper
24 litigation for the protection or recovery of the fund if he is assured that he will be properly and
25 directly compensated should his efforts be successful." *Id.*

26 The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* that using
27 the percentage method has many advantages:

28 ///

1 The recognized advantages of the percentage method - including relative ease of
2 calculation, alignment of incentives between counsel and the class, a better
3 approximation of market conditions in a contingency case, and the encouragement
4 it provides counsel to seek an early settlement and avoid unnecessarily prolonging
5 the litigation—convince us the percentage method is a valuable tool that should
6 not be denied our trial courts.

7 *Id.* at 503 (internal citation omitted).⁹ Because there is a defined and traceable benefit to the Class,
8 the Court can base an award of attorneys’ fees using a ‘common fund’ approach.

9 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
10 decisions will “‘not be disturbed on appeal absent a manifest abuse of discretion.’” *Lealao v.*
11 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
12 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
13 in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.

14 California law provides that an attorneys’ fee award should be equivalent to fees paid in
15 the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half*
16 *Int’l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a
17 recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
18 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
19 in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will
20 “chill the private enforcement essential to the vindication of many legal rights and obstruct the
21 representative actions that often relieve the courts of the need to separately adjudicate numerous
22 claims.” *Lealao, supra*, 82 Cal.App.4th at 53. Therefore, fees in class and representative actions
23 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
24 attorney and client in comparable litigation. *Id.* at 48.

25 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
26 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
27 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126
28

⁹ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools
such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We
hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee
. . . they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate
the reasonableness of a requested percentage fee”).

1 Cal.App.4th at 1270). It is not an abuse of discretion to choose one method over another as long
2 as the method chosen is applied consistently using percentage figures and/or rates that accurately
3 reflect the marketplace. In cases where class members present claims against a settlement amount
4 and the settlement agreement provides that the defendant agrees to paying the attorneys a
5 percentage of the same, use of that percentage method is appropriate. *Lealao, supra*, 82
6 Cal.App.4th at 32.

7 Where the amount of a settlement is a “certain easily calculable sum of money,” California
8 courts may calculate attorneys’ fees as a reasonable percentage of the settlement. Weil and Brown,
9 California Practice Guide, Civil Procedure Before Trial, Chapter 14, § 14:145; *Dunk, supra*, 48
10 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and
11 representative actions because “it better approximates the workings of the marketplace than the
12 lodestar approach.” *Lealao, supra*, 82 Cal.App.4th at 49. The purpose of the common
13 fund/percentage approach is to “spread litigation costs proportionally among all the beneficiaries
14 so that the active beneficiary does not bear the entire burden.” *Vincent, supra*, 557 F.2d at 769.

15 Courts have consistently recognized that class action litigation is increasingly necessary
16 to protect the rights of individuals whose injuries and/or damages are too small to economically
17 justify legal action on an individual basis. In determining a reasonable fee award, courts award
18 fees to serve as an economic incentive for lawyers to pursue such litigation in order to achieve
19 increased access to the judicial system for meritorious claims and to enhance deterrents to
20 wrongdoing. This is especially true in situations where multiple similar alleged wrongs would not
21 be economically feasible to pursue individually, such as here. *See A. Conte, Attorney Fee Awards*
22 (2d Ed., 1993) 104, at 6.

23 When the lawsuit was originally filed, the prospect of a long, drawn-out battle with a
24 defendant represented by experienced counsel, was almost a certainty. By taking on this “battle”
25 on a contingency basis, Class Counsel risked substantial economic loss if the results were not
26 successful. This substantial risk is the reason that the courts approve the use of the percentage
27 method when a settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft*
28 (9th Cir. 2002) 290 F.3d 1043, 1048-49 (quotations omitted) (discussing the risks of engaging in
litigation without certainty of compensation).

1 Under the terms of the Agreement, Defendant will pay a Gross Settlement Amount of
2 \$3,000,000. An award of attorneys' fees is to be calculated as a percentage of the total value of
3 benefits made available to the Class Members under the settlement. In light of Class Counsel's
4 prosecution and resolution of the case, the Attorneys' Fees are appropriate and reasonable.

5 Compensating class counsel in class litigation on a percentage basis makes good sense
6 because: (1) it is consistent with the private marketplace where contingent fee attorneys are
7 customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent
8 class members in achieving the maximum possible resolution of the case; and (3) it encourages
9 the most efficient and expeditious resolution of the litigation by providing an incentive for early,
10 yet reasonable, settlement.

11 Class Counsel have obtained a substantial recovery on behalf of Plaintiffs and the Class.
12 Thus, the requested Class Counsel Fees Payment is appropriate. In short, Class Counsel's fee
13 request of \$1,050,000 is in line with awards in similar cases in California and nationwide and
14 demonstrates that Class Counsel's fee request is consistent with market rates and is reasonable.

15 **ii. The Requested Attorneys' Fee and Cost Award is Within the Range**
16 **of Fees Approved in Comparable Common Fund Cases**

17 The requested fee falls in the mid-range of percentage class fee awards, which generally
18 range from 20% to 50% of a common fund. Historically, courts have awarded fees as high as fifty
19 percent (50%) of the settlement, depending on the circumstances of the case. *Conte & Newberg,*
20 *Newberg on Class Actions* (4th Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.*
21 *(D.D.C. 1981) 526 F. Supp. 494* (awarding attorneys' fees in the amount of 45% of the settlement
22 amount of \$7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y.
23 1979) 480 F. Supp. 1195 (awarding approximately 53% of the settlement amount as attorneys'
24 fees). California courts routinely approve class action attorneys' fees awards "averag[ing] around
25 one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower
26 court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class
27 actions). The Supreme Court has explained that "percentage of the fund method more accurately
28 reflects the results achieved." *Laffitte*, 1 Cal. 5th at 439. The requested fee constitutes fair
compensation for undertaking complex, risky, expensive, and time-consuming litigation on a

1 contingent basis and compensates Class Counsel for their efforts, as well as the result achieved
2 for the benefit of the Class. Numerous state and federal courts in California routinely approve fee
3 requests equal to or greater than 35%. In short, Class Counsel's fee request of \$1,050,000 is in
4 line with awards in similar cases in California and nationwide and demonstrates that Class
5 Counsel's fee request is consistent with market rates and is reasonable.

6 **iii. A Lodestar Cross-Check with a Modest Multiplier Confirms the**
7 **Reasonableness of the Requested Fee**

8 Class Counsel's fee request is reasonable when calculated using the lodestar method.
9 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
10 spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977)
11 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a "multiplier" to account for a
12 range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree
13 of success achieved. *Id.* at 49; see also *Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM*
14 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92
15 Cal.App.4th 819, 834, ("[t]here is no ... rule limiting the factors that may justify an exercise of
16 judicial discretion to [adjust the] lodestar").

17 Courts "routinely enhance[] the lodestar to reflect the risk of non-payment in common
18 fund cases." *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051; *Graham v.*
19 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 ("One of the most common fee enhancers
20 [...] is for contingency risk."). Such an enhancement "mirrors the established practice in the
21 private legal market of rewarding attorneys' fees for taking the risk of nonpayment by paying
22 them a premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 220
23 F.3d at 1051. A risk multiplier also serves to bring the financial incentives for enforcing important
24 rights "into line with incentives [attorneys] have to undertake claims for which they are paid on
25 a fee-for-service basis." *Ketchum*, 24 Cal.4th at 1132. In determining whether or not to enhance
26 or reduce the lodestar, California courts take into account multiple factors, including: the time
27 and labor required; the skill requisite to perform the legal services properly; the preclusion of
28 other employment by the attorney due to the acceptance of the case; the contingent nature of the

1 fee; the amount involved and results obtained; the experience, reputation, and ability of the
2 attorney; and awards in similar cases. *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 822.

3 Class Counsel has worked 991.2 hours and have calculated the lodestar fee on those hours
4 at \$720,820 at rates reflecting those currently earned in the marketplace. (Mara Decl. ¶ 20, Exhibit
5 5; Declaration of Douglas Han in Support of Motion for Final Approval of Class Action
6 Settlement (“Han Decl.”) ¶ 9, Exhibit 1). All the work and tasks performed by Class Counsel
7 were reasonable and necessary to prosecute this case and are reflected in the result achieved.

8 This was a highly contested matter which required a significant amount of time and labor.
9 Class Counsel had to investigate and analyze documents and data for Plaintiffs and a sampling of
10 Class Members. In addition, Plaintiffs had to marshal the evidence in a manner in which it could
11 be adjudicated on a class-wide basis. Class Counsel has considerable experience in class litigation
12 and is marshalling the evidence with a sharp focus on class-wide proof needed for certification.
13 This filtering of voluminous evidence into class-wide proof while keeping an eye on the merits
14 of the litigation required a considerable amount of attorney time and skill. (Mara Decl. ¶ 22).

15 All services were performed by Class Counsel on a contingent basis. Both California and
16 federal courts recognize that attorneys should be compensated for taking on such contingent risks
17 and provided with financial incentives to enforce important rights and protections like those at
18 issue in this case. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal.4th at 1132-33. Class
19 Counsel bore the risk that there may be no recovery.

20 Class Counsel respectfully requests a fee of \$1,050,000, which would require a 1.5
21 multiplier to raise the generated fees of \$720,820 to the requested amount. Far greater multipliers
22 have been awarded in similar cases, and the total amount of fees sought by Class Counsel is also
23 reasonable compared to fees awarded in like cases. Courts routinely enhance lodestar amounts
24 based on multipliers that “range from 2 to 4 or even higher.”¹⁰ Thus, consideration of the lodestar

25
26 ¹⁰ *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 255 (2001); see, e.g., *Vizcaino*, 290 F.3d
27 at 1051 (approving multiplier of 3.65); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96,
28 123 (2d Cir. 2005) (approving multiplier of 3.5); *Craft v. County of San Bernardino*, 624 F. Supp.
2d 1113, 1125 (C.D. Cal. 2008) (awarding multiplier of 5.2 and collecting cases with cross-check
multipliers ranging from 4.5 to 19.6); *Glendora Community Redevelopment Agency v. Demeter*,
155 Cal.App.3d 465, 479-80 (1984) (approving fee award with multiplier of 12).

1 method as a cross-check to the percentage figure sought strongly supports the reasonableness of
2 the requested fee award.

3 **iv. Class Counsel's Hourly Rates Are Reasonable**

4 Class Counsel's hourly rates are between \$500 and \$900 and are in line with rates typically
5 approved in wage and hour class action litigation and which rates have been approved by courts
6 in California. (Mara Decl. ¶ 24; Exhibit 2, Westlaw Court Express's Legal Billing Report,
7 Volume 14, Number 3, California Region for December 2012; Exhibit 3, 2014 Declaration of
8 Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exhibit 4, 2012
9 National Law Journal Survey of Hourly Billing Rates for Partners and Associates; Han Decl. ¶¶
10 10-11; Exhibit 2, 2022 Real Rate Report compiled by Wolters Kluwer; Exhibit 3, Laffey Matrix).

11 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
12 experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson*
13 *v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining
14 a reasonable hourly rate, courts may consider factors such as the attorney's skill and experience,
15 the nature of the work performed, the relevant area of expertise and the attorney's customary
16 billing rates. *Flannery v. California Highway Patro* (1998) 61 Cal. App. 4th 629, 632.

17 Class Counsel's skill and experience support their hourly rates. Their practice is limited
18 exclusively to litigation, focusing on the representation of employees in wage and hour and
19 consumer class action matters. (Mara Decl. ¶¶ 2-11; Han Decl. ¶¶ 14-19). Plaintiffs' counsel
20 continually monitors the prevailing market rates charged by both defense and plaintiff law firms
21 and set the billing rates of their attorneys and paralegals/law clerks to be consistent with the
22 prevailing market rates in the private sector for attorneys and staff of comparable skill,
23 qualifications and experience.

24 **v. Class Counsels' Total Hours are Reasonable**

25 In determining a lodestar fee, reasonable hours include, in addition to time spent during
26 litigation, the time spent before the action was filed, including time spent interviewing clients,
27 investigating the facts and law, and preparing the pleadings. See *New York Gaslight Club, Inc. v.*
28 *Carey* (1980) 447 U.S. 54, 62; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th

1 440, 447. Further, the fee award should include fees incurred to establish and defend the attorneys’
2 fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 (“*Serrano IV*”). Under California law,
3 counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

4 Class Counsel has expended a total of 991.2 hours on this case. The work performed by
5 Class Counsel in order to achieve a settlement that will provide valuable consideration to the
6 Class, averaging a \$1,163.83 settlement payment per Class Member, with the highest estimated
7 award being \$3,240.96, is outlined by Class Counsel in the declarations submitted herewith.
8 (Mara Decl. ¶¶ 25, 30; Han Decl. ¶ 9, Exhibit 1). Class Counsel have been actively involved in
9 this case, prior to the commencement of this action and all the way up to the present, and Class
10 Counsel’s dedication to providing representation in the case has precluded other employment.

11 Class Counsel bore the risk that, despite all their efforts and skills employed, there may be
12 no recovery. All the work performed was reasonable and necessary to the prosecution of this case.
13 The work performed was particularly justified, considering the extraordinary result achieved.

14 **vi. Costs of Litigation**

15 Class Counsel seeks reimbursement of the litigation costs and expenses of \$26,329.53.
16 (Mara Decl. ¶ 32, Exhibit 5; Han Decl. ¶ 21, Exhibit 6). These costs were all reasonable and
17 necessary to the prosecution of this case and the results achieved and are fair and reasonable.

18 **c. The Class Representative Service Payments are Reasonable**

19 Class Counsel seeks approval of Class Representative Service Payments to the named
20 Plaintiffs in the sum of \$10,000, each. Plaintiffs have agreed to a general release of their claims
21 against Defendant that is broader than the release given by other Class Members. This payment
22 not only compensates Plaintiffs for the work they undertook in this case, but also for the claims
23 and potential claims they may have against Defendant that they are releasing. Since the inception
24 of this case, Plaintiffs have put the Class’s interests ahead of their own.

25 The requested Class Representative Service Payments are reasonable in light of the
26 benefits Plaintiffs have conferred upon the entire Class, resulting in payments averaging at
27 \$1,163.83 with a high payment of \$3,240.96. The requested awards are appropriate and
28 reasonable based upon Plaintiffs’ time and effort expended on this case, the risks they faced, and

1 the outcome of this case. Plaintiffs have submitted declarations detailing the efforts and time they
2 expended on behalf of the Class in order to advance this case to its successful conclusion.

3 It should be noted that service awards are particularly important to plaintiffs in wage and
4 hour cases because they promote the important public policies underlying the wage and hour laws.
5 This strong policy is codified in Labor Code section 90.5, which provides that “[i]t is the policy
6 of this state to vigorously enforce minimum labor standards in order to ensure employees are not
7 required or permitted to work under substandard unlawful conditions . . .” Cal. Lab. Code § 90.5.
8 Nonetheless, the California Supreme Court has noted that “retaliation against employees for
9 asserting statutory rights under the Labor Code is widespread,” despite anti-retaliation statutes
10 designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61. In this
11 context, class representatives should be rewarded for assuming the risk of retaliation for the sake
12 of class members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

13 Plaintiffs’ willingness to assume the financial risk is significant. Plaintiffs risked a
14 potential judgment taken against them for attorneys’ fees and costs if this matter had not been
15 successfully concluded. Case law holds that a losing party is liable for the prevailing party’s costs,
16 *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in some wage and hour actions,
17 such as this case, pursuant to Labor Code section 218.5, for attorneys’ fees as well. Though the
18 fee agreement provides that Class Counsel would pay such costs, Plaintiffs would nevertheless
19 have had a cost bill entered against them leaving them ultimately liable for potentially hundreds
20 of thousands of dollars in the unexpected possibility that Class Counsel did not meet their
21 obligation to cover those costs. Unfortunately, there have been several judgments entered against
22 class representatives, e.g. *Koehl v. Verio, Inc.* 142 Cal.App.4th 1313, 1328 (2006) (a wage and
23 hour class action where Defendant prevailed at trial, the named plaintiffs were held liable, jointly
24 and severally for the Defendant’s attorneys’ fees); *Whiteway v. Fedex Kinkos Office & Print*
25 *Services, Inc.*, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and hour misclassification
26 case lost on summary judgment, after the case was certified, the named Plaintiff was assessed
27 costs in the sum of \$56,788.). The risk of payment of Defendant’s costs is a sufficient basis for
28 an award of the requested enhancement sum.

1 Courts routinely approve service payments, or incentive awards, to compensate named
2 plaintiffs for the services they provide and the risks they incur during class litigation. See *In re*
3 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers*
4 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
5 representatives); Manual § 21.62 n.971 (noting that service payments are warranted); *Cook v.*
6 *Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y.
7 1997) (“present or past employee whose present position or employment credentials or
8 recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his
9 or her name and efforts to the prosecution of litigation at some personal peril, a substantial
10 enhancement award is justified”); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th
11 Cir. 1974) (“We also think there is something to be said for rewarding those drivers who protect
12 and help to bring rights to a group of employees who have been the victims of discrimination.”).

13 Based on the foregoing, the \$10,000 Class Representative Service Payments to each of
14 the named Class Representatives are fair, appropriate, and justified in light of the work performed,
15 risks undertaken for payment of fees and costs if this case had not been successfully concluded,
16 stigma on future employment opportunities, and the benefits all Class Members.

17 **d. The Administration Costs are Reasonable**

18 The Settlement Administrator was responsible for responding to Class Member inquiries,
19 providing weekly status reports, answering questions, and providing a declaration to document
20 its duties and responsibilities under the settlement. Plaintiffs now request that the Court finally
21 approve the Settlement Administration Costs in the amount of \$19,564.80 to ILYM for services
22 rendered and to be rendered for the notice and settlement administration process.

23 Following the grant of final approval, the Settlement Administrator’s duties will continue
24 in order to calculate and mail the individual settlement payments to Participating Class Members,
25 perform tax reporting obligations, disburse other payments as ordered by the Court, and perform
26 such other duties as set forth in the Agreement. Administration Costs to ILYM for services
27 rendered and to be rendered is fair and reasonable and should be granted.

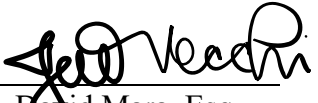
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1 **V. CONCLUSION**

2 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
3 of the settlement and award the requested payments.

4
5 Date: December 20, 2024

MARA LAW FIRM, PC

6
7 Signed: 
8 David Mara, Esq.
9 Jill Vecchi, Esq.
10 Attorneys for Plaintiffs