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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARIA SANDOVAL NUNEZ, an
individual, on behalf of herself and others
similarly situated,

PLAINTIFF,

v.

MERRITT HOSPITALITY, LLC; and DOES
1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 20STCV07198

[Case Assigned for All Purposes to Hon. Maren
Nelson in Dept. 17]

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Kelsey M. Szamet, Maria Sandoval Nunez, and
Makenna Snow, Proposed Order, and
Judgment]*

Date: May 26, 2022

Time: 9:00 a.m.

Dept.: 17

Complaint Filed: February 25, 2020

FAC Filed: May 4, 2020

SAC Filed: February 11, 2021

Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 26, 2022 at 9:00 a.m. in Department 17 of the above-entitled court, Plaintiff MARIA SANDOVAL NUNEZ ("Plaintiff") will, and hereby does, move the Court for an Order of Final Approval of the Class Settlement in this case. Plaintiff moves the Court for an order:

1. Granting final approval of the settlement in the case pursuant to the Amended Joint Stipulation of Class Action Settlement and Release of Claims ("Settlement" or "Settlement Agreement"), a copy of which is attached to the concurrently filed Declaration of Kelsey M. Szamet as Exhibit "1";

2. Affirming Kingsley & Kingsley, APC as Class Counsel;

3. Affirming MARIA SANDOVAL NUNEZ as Class Representative and awarding an enhancement award of \$5,000.00;

4. Awarding ILYM Group, Inc. claims administration fees of \$8,500.00 for its services as Settlement Administrator; and,

5. Entering judgment.

This Motion will be made pursuant to Code of Civil Procedure section 382 and California Rule of Court, rule 3.769 on the grounds that the proposed Settlement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members and the parties.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declarations of Kelsey M. Szamet, Maria Sandoval Nunez, Makenna Snow, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: May 4, 2022

KINGSLEY & KINGSLEY, APC

By:

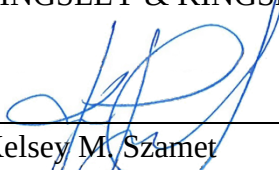

Kelsey M. Szamet
Shannen T. Garrett
Attorneys for Plaintiff Maria Sandoval Nunez and
the Proposed Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff MARIA SANDOVAL NUNEZ (“Plaintiff”) submits this Motion for Final
4 Approval of Class Settlement and requests that the Court:

5 1. Grant final approval of the settlement in this case pursuant to the Amended Joint
6 Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement
7 Agreement”), a copy of which is attached to the concurrently filed Declaration of Kelsey M.
8 Szamet as Exhibit “1”;

9 2. Award attorneys’ fees and costs as detailed in the concurrently filed Motion for
10 Attorneys’ Fees and Costs;

11 3. Award ILYM Group, Inc. claims administration fees of \$8,500.00 for its services
12 as Settlement Administrator;

13 4. Affirm named Plaintiff MARIA SANDOVAL NUNEZ as Class Representative
14 and award a cumulative Class Representative payment of \$5,000.00; and

15 5. Enter judgment.

16 **II. FACTUAL BACKGROUND**

17 **A. Litigation Overview and Procedural History**

18 MERRITT HOSPITALITY, LLC operates fifteen (15) first-class hotels and has roughly
19 four thousand (4,000) statewide employees in California. (Declaration of Kelsey M. Szamet
20 (“Szamet Decl.”) ¶5.) Plaintiff was hired as an hourly non-exempt “Front Desk Agent” for
21 Defendant in California at its Warner Center location from approximately October 2018 through
22 February 2020. (Szamet Decl. ¶6.) Plaintiff’s job duties included general administrative and
23 clerical tasks. Plaintiff earned roughly \$16.63 per hour. (*Id.*) Plaintiff has agreed to limit this action
24 to the hotel location where she worked in Woodland Hills, California. (*Id.*)

25 On February 25, 2020, Plaintiff filed a Class Action Complaint and a notice with
26 California’s Labor and Workforce Development Agency (“LWDA”), mailed February 24, 2020,
27 regarding her intent to file an action seeking civil penalties under PAGA. (Szamet Decl. ¶7.)
28 (Settlement Agreement, Ex. 1 at (“Ex. 1 at”) § II, ¶2.)

1 Plaintiff alleges that throughout Plaintiff and the Proposed Class's employment with
2 Defendant, Defendant failed to: pay all wages; provide lawful meal and rest periods; issue accurate
3 itemized wage statements; and failed to pay all wages due upon termination. (*Id.*) Plaintiff has
4 also asserted a representative claim under PAGA for Defendant's failure to provide a suitable
5 seating accommodation. (*Id.*)

6 On May 4, 2020, Plaintiff filed a First Amended Complaint ("FAC"), adding the PAGA
7 claim based on the facts previously alleged in the Complaint. (Szamet Decl. ¶8.) After learning
8 additional facts at mediation on November 23, 2020, on January 22, 2021, Plaintiff and Defendant
9 executed a Stipulation to Permit Plaintiff to File Second Amended Class and Representative
10 Complaint. On February 11, 2021, Plaintiff filed a Second Amended Complaint ("SAC"), adding
11 an additional cause of action for penalties for failure to pay wages and/or overtime pursuant to
12 Labor Code §§ 510, 1194, and 1199 and amending the class definition.

13 In the operative Complaint, Plaintiff alleges seven causes of action for: (1) Failure to Pay
14 Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199; (2) Failure to Provide Meal
15 Breaks Pursuant to Labor Code §§ 226.7 and 512; (3) Failure to Provide Rest Breaks Pursuant to
16 Labor Code § 226.7; (4) Failure to provide accurate, itemized wage statements; (5) Waiting time
17 penalties Pursuant to Labor Code § 203; (6) Violation of Business & Professions Code § 17200;
18 and (7) Penalties Pursuant to Labor Code § 2699, et seq. (hereafter, the "Action" or "Lawsuit").
19 (Szamet Decl. ¶9.)

20 B. The Discovery Process and Mediation

21 After the matter was at issue, the Parties began to engage in informal discovery to
22 understand the nature of the allegations and the scope of potential liability. (Szamet Decl. ¶10;
23 Ex. 1 at § II, ¶2.) Defendant provided Plaintiff's counsel with pertinent data for the Class Members
24 so that the Parties could fully-investigate the claims at issue and understand their strengths and
25 weaknesses. (*Id.*) This data included Proposed Class data, Plaintiff's payroll data, and Defendant's
26 internal policies. (*Id.*) The Parties agreed to mediate with experienced mediator, Jeff Krivis, Esq.,
27 and to an informal exchange of documents and information related to the putative class. (Szamet
28 Decl. ¶11.) Defendant produced a sampling of records and class data, including the timecards, pay

1 records, and written policies related to putative class members. (Szamet Decl. ¶12.)

2 On November 23, 2020, the Parties attended a full-day mediation with experienced
3 mediator Jeffrey Krivis, Esq. (Szamet Decl. ¶13; Ex. 1 at § II, ¶2.) Though the matter did not settle
4 that day, the Parties continued to work with the mediator and ultimately accepted the mediator's
5 settlement proposal to settle Plaintiff's claims on a class-wide basis in December 2020. (*Id.*)

6 Based on their own independent investigation and evaluation, Class Counsel is of the
7 opinion that the Settlement Agreement with Defendant is fair, reasonable, and adequate, and in the
8 best interest of the settlement classes in light of all known facts and circumstances, including the
9 risk of significant delay, defenses asserted by Defendant, the effects of Covid-19 on Defendant's
10 hotel operations, uncertainties regarding a class and representative action trial on the merits, and
11 numerous potential appellate issues. (Szamet Decl. ¶14.) Although Defendant denies any liability,
12 Defendant is agreeing to this Settlement Agreement solely to avoid the cost of litigation. (*Id.*)
13 Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise
14 and discharge all disputes and claims arising from or relating to the Action on the terms set forth
15 here. (*Id.*)

16 C. Preliminary Approval

17 On June 29, 2021, the Court issued a checklist to the Parties pertaining to deficiencies in
18 the Settlement Agreement. (Szamet Decl. ¶15.) In response, the Parties filed further briefing and
19 a revised Settlement Agreement. The matter came on for further hearing on November 23, 2021,
20 at which time the Court issued a further checklist and discussed with counsel. (*Id.*) Following that
21 submission, the Parties executed an Amended Joint Stipulation of Class Action Settlement and
22 Release of Claims, filed on November 30, 2021 along with a Second Supplemental Declaration of
23 Plaintiff's counsel. (*Id.*)

24 On December 6, 2021, the Court issued an Order preliminarily approving the settlement in
25 this case, approving the proposed Class Notice, ordering that the Settlement Administrator send
26 notice to the Settlement Class, and setting a date for the Final Approval and Fairness Hearing. (*Id.*)

27 ///

28 ///

1 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

2 A. The Settlement Class

3 For purposes of Settlement Agreement, the settlement class is defined as: “all persons
4 employed by Defendant as hourly non-exempt employees at the Warner Center Marriott during the
5 Class Period.” (“Settlement Class Members” or “Class Members”) (Szamet Decl. ¶16; Settlement
6 Agreement, Ex. 1 at § I, ¶5.)

7 The final Settlement Class contained 251 individuals. (Snow Decl. ¶13.)

8 B. Settlement Payments

9 As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to
10 pay a Gross Settlement Fund of \$190,000.00, which includes the sum of the Individual Settlement
11 Payments, the Class Representative Enhancement Award, the Class Counsel Award, PAGA
12 Payment, and the Settlement Administration Costs. (Szamet Decl. ¶17; Ex. 1 at § III, ¶16.)
13 Plaintiff now requests final approval of the allocation of the Gross Settlement Fund to determine
14 the Net Settlement Fund for distribution to the Settlement Class as follows:

15	Gross Settlement Fund:	\$	190,000.00
16	Class Representative Enhancement Award:	\$	5,000.00
17	Class Counsel Fees:	\$	63,333.33
18	Class Counsel Costs:	\$	14,455.77
19	PAGA Payment:	\$	10,000.00
20			<i>(\$7,500.00 to the LWDA and \$2,500.00 to remain in the Net Settlement Fund)</i>
21	<u>Settlement Administrator Costs:</u>	\$	<u>8,500.00</u>
22	Net Settlement Fund	\$	91,210.90

(Ex. 1 at § III, ¶16.)

23 C. Individual Settlement Payments

24 The amount of each Participating Class Member’s Individual Settlement Payment is an
25 individualized amount that is based on the number of compensable workweeks worked by the
26 Participating Class Member during the Class Period. (Ex. 1 at § III, ¶17; *see also* Ex. A to the
27 Settlement Agreement at pp. 3 [Class Notice].) This individual amount shall be determined
28 according to the settlement payment formula set forth in the Settlement Agreement. (*See* Ex. 1 at

§ III, ¶17; *Id.* at Ex. A to the Settlement Agreement [Class Notice].) The Settlement Agreement provides for a specific and detailed Work Week dispute process. (See Ex. 1 at § III, ¶10; see also Ex. A to the Settlement Agreement at pp. 3 [Class Notice].)

Based on these calculations, the average potential recovery is \$351.26 per Settlement Class Member. (Snow Decl. ¶14.)

D. Class Notice

The Court approved the proposed Class Notice and directed the mailing of the Notice by first-class mail to Settlement Class Members in accordance with the proposed implementation schedule. (Szamet Decl. ¶18.) The procedures for giving notice to the Settlement Class Members, as set forth in the Settlement and Plaintiffs’ Motion for Preliminary Approval and approved by the Court, have been fully and properly carried out. (Snow Decl. ¶3.)

To date, ILYM Group, Inc. received zero (0) requests to be excluded (“opt-outs”) from the proposed Settlement and zero (0) objections. (Snow Decl. ¶¶11-12.)

Class Counsel has no relationship, financial or otherwise with ILYM Group, Inc. other than a professional relationship arising out of working together on third-party settlement administrations. (Szamet Decl. ¶19.)

E. Check Mailed Settlement – No Reversion

The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement without the possibility of reversion of settlement funds to Defendant. Under the Settlement, every Settlement Class Member will receive a settlement check and Settlement Class Members do not need to submit a claim in order to receive a settlement check. Any funds that remain uncashed after 180 days shall be turned over by the Settlement Administrator, with information for each Settlement Class Member who failed to timely cash his/her settlement check, to the State of California Controller’s Office Unclaimed Property Fund. (Ex. 1 at § III, ¶22.)

IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT

Pursuant to California Code of Civil Procedure § 1781(f), “a class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the Class in such manner as the court directs”

1 In deciding whether to grant final approval to a proposed class action settlement under Code of
2 Civil Procedure § 382, the court’s overriding concern is whether the proposed settlement is “fair,
3 adequate, and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

4 A. The Settlement is Entitled to a Presumption of Fairness

5 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
6 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
7 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
8 small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case
9 meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

10 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
11 arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were
12 made by experienced and informed counsel, who believe that this settlement represents a favorable
13 resolution for the Settlement Class Members. (Szamet Decl. ¶20.) The settlement negotiations
14 have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-
15 dealing or other type of misconduct by either side has taken place. (Szamet Decl. ¶21.)

16 Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly
17 evaluate the strength of the case and the risks associated with ongoing litigation. Defendant
18 provided Plaintiff’s counsel with pertinent data for the Class Members so that the Parties could
19 fully-investigate the claims at issue and understand their strengths and weaknesses. This data
20 included Proposed Class data,¹ Plaintiff’s payroll data, and Defendant’s internal policies. (Szamet
21 Decl. ¶22.) Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure
22 and risks associated with each claim alleged in the lawsuit. (Szamet Decl. ¶23.)

23 Third, Class Counsel have significant experience in cases of this type, including several
24 years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶24.) Class
25

26 ¹ Defense counsel produced time and pay data for a random sampling of 50 individuals
27 which accounted for a sample size of 20.08% of the class members (50 out of 249 at the time).
28 Class Counsel worked with an expert and performed a margin of error calculation using an
online “Margin or Error Calculator” which is standard practice for Class Counsel’s office, Class
Counsel determined that a sample of that size resulted in a 10% margin of error with a 90%
confidence band.

Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and that the average recovery for each Settlement Class Member of \$351.26 is substantial, given the risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶25.)

Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were zero (0) request to be excluded and no objectors. (Snow Decl. ¶¶11-12.) As all of the *Dunk* factors are satisfied, this settlement is entitled to a presumption of fairness.

B. The Court Should Approve This Class Action Settlement Because it Satisfies Each of the *Kullar* Factors

In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

The proposed settlement satisfies each of these factors. Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter. (*Id* at Szamet Decl. ¶¶10-12.) To prepare for mediation, Defendant's counsel provided Plaintiff's counsel with the number of proposed Class Members for four (4) years prior to filing, the total number of former employees in the class during the Class Period, the total number of Work Weeks at issue during the Class Period, the total number of pay periods from one (1) year prior to the date the PAGA letter was sent, and the average hourly rate of pay for the proposed Class. (Szamet Decl. ¶26.) Defense counsel also produced time and pay data for a random sampling of 50 individuals which accounted for a sample size of 20.08% of the Class Members (50 out of 249 at the time). (Szamet Decl. ¶27.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl. ¶28.) Class Counsel worked with an expert to review and analyze the raw time and pay data and to create a damage model to

1 understand Defendant’s maximum potential exposure for the claims alleged. (Szamet Decl. ¶29.)
2 Working with Class Counsel’s expert and performing a margin of error calculation using an online
3 “Margin of Error Calculator” which is standard practice for Class Counsel’s office, Class Counsel
4 determined that a sample of that size resulted in a 10% margin of error with a 90% confidence
5 band. (Szamet Decl. ¶30.) Class Counsel believes that this is an acceptable margin of error for
6 purposes of mediation and settlement. (*Id.*) Class Counsel is experienced in handling wage and
7 hour class actions and, after weighing all of the following factors, supports this Settlement
8 Agreement. (Szamet Decl. ¶31.)

9 1. The Strength of Plaintiff’s Case

10 a) The Risks Associated with the Wage and Overtime Claim

11 Labor Code § 510(a) states that eight (8) hours of labor constitutes a day’s work and any
12 work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in
13 any one workweek must be compensated at the rate of no less than one and one-half times the
14 regular rate of pay for an employee. Labor Code §§ 1194 and 1199 require an employer to pay its
15 employees the legal minimum wage and the legal overtime compensation applicable. “Under
16 California’s minimum wage law, employees must be compensated for each hour worked at either
17 the legal minimum for the contractual hourly rate, and compliance cannot be determined by
18 averaging hourly compensation.” *Bluford*, 216 Cal. App. 4th at 872; *Armenta v. Osmose, Inc.*, 135
19 Cal.App.4th 314, 324 (2005).

20 Plaintiff contends that Defendant failed to properly compensate Plaintiff for all work in
21 excess of eight (8) hours in a workday and/or forty (40) hours at the rate of one-half (1 ½) their
22 regular rate of pay. (Szamet Decl. ¶32.) Plaintiff alleges that she and the Settlement Class were
23 forced to work on a regular and consistent basis without receiving compensation for all hours
24 worked at the proper rate. (*Id.*) Specifically, Plaintiff alleges the way that Defendant calculated
25 overtime it was slightly underpaying Settlement Class Members, thus resulting in a failure to
26 compensate Plaintiff and similarly situated employees for all overtime hours worked at the correct
27 overtime rate. (Szamet Decl. ¶33.) Plaintiff alleges that the underpayment was slight with the
28 overtime rate being off by a few cents. (Szamet Decl. ¶34.)

1 Defendant strongly disputes this contention and argues that all overtime worked was paid
2 at the correct rate. (Szamet Decl. ¶35.)

3 While Plaintiff is confident that certification of the wage and overtime class is appropriate,
4 at the same time, it cannot be ignored that there are significant risks associated with moving
5 forward and attempting to certify the wage and overtime claim. (Szamet Decl. ¶36.) Most
6 importantly, Plaintiff acknowledges that Defendant did pay overtime pay and the potential dispute
7 is limited to whether the rate is correct or not. (Szamet Decl. ¶37.) While Plaintiff alleged that
8 the overtime rate was paid at a rate that was a few cents off (lower) resulting in an alleged
9 cumulative underpayment of approximately \$31,686.87 to the Proposed Class, Defendant walked
10 Plaintiff through its overtime calculations as part of the negotiating process in an effort to establish
11 that it was paying at the correct overtime rate. (Szamet Decl. ¶38.)

12 In the end, though the Court may find that Plaintiff's wage and overtime claim is certifiable,
13 even if Plaintiff were to prevail, the monetary damages are small because Plaintiff acknowledges
14 that alleged underpayment was quite small. (Szamet Decl. ¶39.) If litigation continued, it is
15 anticipated extensive discovery would be necessary to support Plaintiff's contention, including
16 through further written discovery and depositions of Defendant's person(s) most knowledgeable.
17 (Szamet Decl. ¶40.) As such, Plaintiff could not attribute full value to this claim in the negotiations.
18 (*Id.*)

19 b) The Risks Associated with the Meal Break Claim

20 Labor Code § 512 provides:

21 An employer may not employ an employee for a work period of more than
22 five hours per day without providing the employee with a meal period of
23 not less than 30 minutes An employer may not employ an employee
24 for a work period of more than 10 hours per day without providing the
employee with a second meal period of not less than 30 minutes, except that
if the total hours worked is no more than 12 hours, the second meal period
may be waived by mutual consent of the employer and the employee only
if the first meal period was not waived.

25 Under this rule, "[e]mployers must afford employees uninterrupted half-hour periods in
26 which they are relieved of any duty or employer control and are free to come and go as they
27 please." (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037.) In order for a meal
28 period to qualify as a lawful break under California law, an employer must (1) relieve its

1 employees of all duty; (2) relinquish control over their activities; (3) permit them a reasonable
2 opportunity to take an uninterrupted 30-minute break; and (4) not impede or discourage them from
3 doing so. (*Id.* at p. 1040.)

4 The applicable wage order requires employers not only to provide meal periods in the
5 manner described above, but also “to record having done so.” (*Brinker, supra*, 53 Cal.4th at pp.
6 1052-53 (J. Werdegarr, concurring) [citations omitted].) A long-standing application of burden-
7 shifting occurs when an employer’s records are so incomplete or inaccurate that an employee
8 cannot prove his or her damages. (*Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 687-
9 88; *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1188-1190; *Safeway, Inc. v.*
10 *Superior Court of Los Angeles Cnty.* (2015) 238 Cal.App.4th 1138.)

11 Plaintiff alleges that that her managers frequently told her that she could not take a meal
12 break during shifts, and Plaintiff contends that she was frequently refused a meal break. (Szamet
13 Decl. ¶41.) In addition, Plaintiff’s managers routinely instructed her to clock-out for meal breaks
14 on the premise that another employee would cover her position. (Szamet Decl. ¶42.) Often,
15 however, the other employee never showed up and despite being “clocked out” Plaintiff was not
16 able to take her meal break. (Szamet Decl. ¶43.)

17 While Plaintiff is confident that certification of the meal period class is appropriate, at the
18 same time, it cannot be ignored that there are significant risks associated with moving forward and
19 attempting to certify the meal period claim. (Szamet Decl. ¶44.) Most importantly, Plaintiff must
20 acknowledge that the Court might find that Defendant did in fact maintain an accurate written meal
21 period policy. (Szamet Decl. ¶45.) In addition, there was risk that at certification (and trial),
22 Defendant would introduce evidence that employees were regularly advised of the timing of meal
23 periods. (Szamet Decl. ¶46.) With this analysis in mind, there is significant risk that the Court
24 could have determined that the written meal period policy does comply with California law, and
25 in that scenario, the likelihood that Plaintiff would have been able to certify a meal period class
26 was very low. (Szamet Decl. ¶47.) As Plaintiff’s analysis of the data above may suggest, the extent
27 to which Defendant actually “provided” employees with lawful breaks according to its policy
28 would be highly disputed were the case to have continued, a considerable discount from the

1 maximum settlement value of this claim was required. (Szamet Decl. ¶48.)

2 As for the damage analysis, Plaintiff's Counsel conducted an analysis of the sample of
3 wage statements at issue and determined the meal period violation rate. (Szamet Decl. ¶49.) This
4 analysis revealed that, of the sample payroll documents provided by Defendant prior to mediation,
5 the records show that, for shifts of greater than five (5) hours, Plaintiff and other employees missed
6 their meal periods approximately 4.5% of the time and took late meal periods 2.7% of time. (*Id.*)
7 Using these violations rates, Plaintiff's Counsel assessed the maximum potential liability on the
8 meal period claim to be \$43,432.27. (Szamet Decl. ¶50.)

9 Plaintiff must acknowledge Defendant's contention that Defendant maintained a valid
10 written meal break policy and that any missed or late meal periods were waived by the employees.
11 (Szamet Decl. ¶51.) Plaintiff must concede that the data does seem to bear out Defendant's
12 contentions because the meal period violation rate is so low. (*Id.*) As a result, Plaintiff did not
13 give significant value to the meal period claim and a significant discount from the maximum
14 settlement value of this claim is appropriate. (Szamet Decl. ¶52.)

15 c) The Risks Associated with the Rest Break Claim

16 Here, just as with meal periods, Plaintiff alleges that was regularly and consistently told by
17 managers that she could not take rest breaks. (Szamet Decl. ¶53.) Defendant maintains that its
18 policy makes rest breaks available and that no violation has been committed. (Szamet Decl. ¶54.)
19 Accordingly, while Plaintiff believes that certification of the rest period class is appropriate as a
20 result of Defendant's common policies, at the same time, it cannot be ignored that there are
21 significant risks associated with moving forward and attempting to certify the rest period claim.
22 (Szamet Decl. ¶55.) Most importantly, Plaintiff must acknowledge that the Court might find that
23 Defendant did in fact maintain an accurate written rest period policy that does comply with
24 California law, and in that scenario, the likelihood that Plaintiff would have been able to certify a
25 rest period class was very low. (Szamet Decl. ¶56.) The extent to which Defendant actually
26 "provided" employees with lawful rest periods according to its policy would be highly disputed
27 were the case to have continued. (Szamet Decl. ¶57.) Defendant would certainly have relied upon
28 its written rest period policy and argued that any alleged violations Plaintiff asserted were unique

1 to her and you would have to ask each person whether or not they were able to take complaint rest
2 periods per day, thereby defeating commonality. (Szamet Decl. ¶58.) The reliance on Plaintiff's
3 experiences and further need for supportive testimony through depositions and declarations (which
4 will assuredly be countered with Defendants' own testimony) makes the value of this claim
5 uncertain. (Szamet Decl. ¶59.)

6 Unlike the meal period claim, there was no time data to analyze to determine the rest period
7 violation rate. (Szamet Decl. ¶60.) Instead, for damages purposes, Plaintiff took the position that
8 each and every fractional shift triggered a rest period violation. Per this conclusion, Plaintiff's
9 Counsel assessed the maximum potential liability on the rest period claim to be \$716,222.43
10 (\$17.13 average hourly rate x 41,811 eligible shifts). (*Id.*) However, if the same violation rate
11 found in the records for missed and late meal periods of 7.2% were assumed for rest periods, the
12 maximum potential damages for the rest period claim is far smaller at \$51,568.01. (*Id.*) For the
13 reasons stated, Plaintiff's counsel believes that a considerable discount from the maximum
14 settlement value of this claim was required. (Szamet Decl. ¶61.)

15 d) The Risks Associated with the Inaccurate Wage Statement Claim

16 Labor Code § 226(a) provides:

17 An employer ... shall furnish to his or her employee ... an accurate itemized
18 statement in writing showing ... (2) total hours worked by the employee..., (4) all
19 deductions from the employees' wages..., (6) the inclusive dates for each pay
20 period, (7) the last four digits of the employees' social security number or the
21 employees' identification number other than a social security number, (8) the name
22 and address of the legal entity that is the employer, and (9) all applicable hourly
23 rates in effect during the pay period and the corresponding number of hours worked
24 at each hourly rate by the employee....

25 An employee suffering injury as a result of a knowing and intentional failure by an
26 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
27 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one
28 hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award
of costs and reasonable attorneys' fees. (Labor Code § 226(a).) Plaintiff's counsel has calculated
the maximum value of the wage statement claim under Labor Code section 226(a) to be

1 \$65,550.00. (Szamet Decl. ¶62.)

2 Here, Plaintiff alleged that Defendant failed to accurately show Plaintiff's and the Proposed
3 Class' overtime rates on the wage statements it issued. (Szamet Decl. ¶63.) By way of example,
4 attached to the Declaration of Kelsey M. Szamet as Exhibit "2" is document Bates Stamped Maria
5 Nunez 0034. (Szamet Decl. ¶64.) This paystub reflects Plaintiff's hourly rate of \$16.63 per hour.
6 (Szamet Decl. ¶65.) Plaintiff's accurate overtime rate was \$24.95 (\$16.63 x 1.5). (Szamet Decl.
7 ¶66.) On Plaintiff's paystub, there are two overtime categories which show overtime rates of
8 \$24.85 and \$25.00. (Szamet Decl. ¶67.) Consequently, Plaintiff alleges that Defendant has
9 violated Labor Code § 226(a) and the IWC Wage Order as a matter of law and is liable. (Szamet
10 Decl. ¶68.)

11 While Plaintiff is confident that certification of the inaccurate wage statement claim is
12 appropriate, Plaintiff must acknowledge that there are significant risks associated with moving
13 forward and attempting to certify the inaccurate wage statement claim. (Szamet Decl. ¶69.)

14 The main risk Plaintiff considered is addressed in *Maldonado v. Epsilon Plastics* (2018)
15 22 Cal.App.5th 1308. The Court of Appeal confirmed that a wage statement claim fails as a matter
16 of law when it is based on the alleged failure to show all wages purportedly "earned", but the wage
17 statements accurately reflect the wages actually paid to the employee. *Id.* The Court agreed with
18 the employer's "commonsense position that the pay stubs were accurate in that they correctly
19 reflected . . . the pay received" and held that a failure to pay wages "does not mandate that
20 [employees] also receive penalties for the wage statements which accurately reflected the[]
21 compensation" they were paid. (*Maldonado, supra*, 22 Cal.App.5th at 1336.) Here, Plaintiff
22 anticipated that Defendant would argue that the itemized wage statements issued were "accurate"
23 because they do show what the Class Members were actually paid. (Szamet Decl. ¶70.) Defendant
24 would argue that, like *Maldonado*, simply because Plaintiff asserted a failure to pay wages claim,
25 that would not automatically result in penalties for inaccurate wage statements so long as the wage
26 statements show "the pay received" by the Class Members. (Szamet Decl. ¶71.) Because of this
27 argument, Plaintiff believes that a significant discount is appropriate. (Szamet Decl. ¶72.)

28 ///

1 e) The Risks Associated with the Waiting Time Penalty Claim

2 This claim alleges that Defendant failed to pay all wages due and owing upon termination
3 or resignation. Labor Code § 203(a) provides:

4 If an employer willfully fails to pay ... any wages of an employee
5 who is discharged or who quits, the wages of the employee shall
6 continue as a penalty from the due date thereof at the same rate until
paid or until an action therefor is commenced; but the wages shall
not continue for more than 30 days.

7 Under Labor Code § 203, a “‘willful’ failure to pay wages ... occurs when an employer
8 intentionally fails to pay wages to an employee when those wages are due.” Cal. Code Regs., tit.
9 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 (“willful”
10 simply means that “the employer intentionally failed or refused to perform an act which was
11 required to be done[.] Willful ... does not necessarily imply anything blameable, or any malice or
12 wrong toward the other party”).

13 Here, Plaintiff contends that Defendant failed to pay overtime at the correct rate for any
14 work in excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week.
15 (Szamet Decl. ¶73.) The risk analysis for the section 203 claim flows from the risk analysis for the
16 underlying wage claim discussed above. (Szamet Decl. ¶74.) If Defendant could prove, as it
17 contends, that class members were properly paid for all hours worked, there would be no recovery
18 of wages and no waiting time penalties that flow therefrom. (Szamet Decl. ¶75.)

19 Plaintiff also contends that Defendant owes waiting time penalties by not paying former
20 alleged employees all wages owed and all premium payments for non-compliant meal or rest
21 periods. Labor Code § 226.7. Pursuant to *Murphy v. Kenneth Cole Productions, Inc.* (2002) 40
22 Cal.4th 1094, 1120, Plaintiff contended that break premium payments constitute “wages” under
23 Labor Code § 203. (“We hold that section 226.7’s plain language, the administrative and legislative
24 history, and the compensatory purpose of the remedy compel the conclusion that the ‘additional
25 hour of pay’ is a premium wage, not a penalty”). (Szamet Decl. ¶76.) However, the Court in
26 *Naranjo* recently held that unpaid break premiums do not entitle employees to additional remedies
27 under the California Labor Code for waiting time penalties. *Naranjo, et al. v. Spectrum Security*
28 *Services, Inc.* (2019) 40 Cal.App.5th 444. Though *Naranjo* is no longer citable as the California

Supreme Court accepted review in late December 2019, this issue is still certainly undecided. (Szamet Decl. ¶77.) Further, to establish liability for waiting time penalties, Plaintiff would have to establish not only that the underlying violations occurred, but also that Defendant's conduct was "willful." Labor Code § 203. (Szamet Decl. ¶78.)

f) The Risks Associated with the PAGA Claim

California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, permits private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

There are multiple risks associated with the PAGA claim. First, with the exception of the aggrieved employees' claim for failure to provide suitable seating, the aggrieved employees' PAGA claims are derivative of all the foregoing class claims. Second, a court has discretion to award less than the maximum penalty. Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). *See e.g., Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty; *see Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

Finally, the Settlement Class is compensated for these violations in the proposed Settlement Agreement, and thus any PAGA recovery for these same violations would be duplicative.

Regarding the claim for failure to provide suitable seating, Defendant contends that it fully satisfied its obligation to provide suitable seating to its employees. (Szamet Decl. ¶79.) Defendant contends that during lulls in guest activity, Defendant provides Front Desk Agents with chairs located directly behind the Front Desk. (Szamet Decl. ¶80.) Furthermore, Defendant provided photographic evidence of this alleged seating arrangement. (*Id.*) As such, Plaintiff believes that a significant discount of this claim is appropriate for settlement purposes and the Settlement

Agreement's contemplated PAGA payment of \$10,000.00 is appropriate. (*Id.*)

g) Defendant's Financial Status

It cannot be ignored that Defendant's financial status also poses a risk to recovery by the Proposed Class. (Szamet Decl. ¶81.) Defendant is a hotel in Southern California that was hugely impacted by the state stay at home orders including travel restrictions. (*Id.*) Indeed, this case was mediated in November 2020 and for many months Defendant was closed altogether or under very restrictive occupancy requirements. (*Id.*) Defendant's financial status was raised at mediation and Plaintiff certainly had to consider Defendant's ability to withstand a sizeable judgment against it. (*Id.*) With the assistance of the mediator, these risks were carefully considered in the negotiating process and further support Plaintiff's belief that the settlement is fair, adequate, and reasonable. (Szamet Decl. ¶82.) In consideration of the Court's concerns raised at the hearing for preliminary approval, the Parties determined a lump sum payment, rather than a payment plan, was more reasonable. (Szamet Decl. ¶83.)

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement Agreement now. (Szamet Decl. ¶84.) If the Court did eventually certify a class, trial of a case involving approximately 261 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Szamet Decl. ¶85.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶86.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Szamet Decl. ¶87.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need

1 to conduct multiple depositions, including of the Class Representative and of several person(s)
2 most knowledgeable regarding Defendant's payment of wages, its meal and rest policies, and its
3 front desk seating arrangements. (*Id.*) There is a risk for both sides as to what these depositions
4 will reveal and whether they will support class certification to the extent expected. (*Id.*)

5 4. The Amount Offered in Settlement

6 It was very difficult for the Parties to reach this Settlement of \$190,000.00. (Szamet Decl.
7 ¶88.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations
8 aided by experienced mediator, Jeffrey Krivis. (Szamet Decl. ¶89.) The Parties arrived at it after
9 extensive investigation and discovery, careful evaluation of the law, risks, and all information
10 substantiating the amount of penalties reasonably likely to be awarded to the class were the trier
11 of fact to find Defendant liable. (*Id.*)

12 a) Plaintiff's Assessment of Defendant's Maximum Exposure

13 Working with a data expert, Plaintiff was able to analyze Defendant's maximum potential
14 exposure on the operative claims alleged. (Szamet Decl. ¶90.)

15 As discussed above, Plaintiff assessed full value of the Wage/Overtime claim, without any
16 discount, at approximately \$31,686.87. (Szamet Decl. ¶91.)

17 The full value of the Meal Period claim, without any discount, was approximately
18 \$43,432.27. (Szamet Decl. ¶92.) Plaintiff assessed the full value of the Rest Period claim, without
19 any discount, was approximately \$716,222.43. (Szamet Decl. ¶93.) For the reasons above, Plaintiff
20 determined that accepting a steep discount of these full amount was appropriate. (Szamet Decl.
21 ¶94.)

22 Using \$50/\$100 per wage statement with a cap of \$4,000 per employee, Plaintiff valued
23 the Wage Statement Claim, without discount, at \$65,550.00. (Szamet Decl. ¶95.) Due to the risk
24 discussed above that 226(a) liability wouldn't attach under *Maldonado*, Plaintiff determined that
25 a discount of this claim was fair for settlement purposes. (Szamet Decl. ¶96.)

26 Plaintiff valued the Waiting Time Penalty Claim, without discount, at \$34,427.51. (Szamet
27 Decl. ¶97.) Due to the risk discussed above that 226(a) liability wouldn't attach under *Maldonado*,
28 Plaintiff determined that a discount of this claim was fair for settlement purposes. (Szamet Decl.

¶98.)

Finally, using \$100/\$200 per pay period, Plaintiff calculated the value of the PAGA claim at \$131,100.00 for Settlement Class Members. (Szamet Decl. ¶99.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Szamet Decl. ¶100.) A judge can award the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶101.) While there is a dearth of available authority, in Plaintiff’s view, were she to succeed on any of the underlying Labor Code violations, it is certainly speculative that a Judge would also award large penalties on top of any damages recovered on the underlying claims. (Szamet Decl. ¶102.)

Per Plaintiff’s assessment, the maximum potential value of all of Plaintiff’s and the Settlement Class Members’ claims was approximately \$1,022,043.68 (\$31,686.87 + \$43,432.27 + \$716,222.43 + \$65,550.00 + \$34,427.51 + \$131,100.00). (Szamet Decl. ¶103.) Notably, if the rest period amount were reduced as discussed specifically above, this amount decreases significantly to \$357,764.66 (\$31,686.87 + \$43,432.27 + \$51,568.01 + \$65,550.00 + \$34,427.51 + \$131,100.00).

However, as a result of the forgoing risks on the merits and the attendant discounts taken for purposes of negotiating, Class Counsel believes the Gross Settlement Fund of \$190,000.00 is fair and reasonable. (Szamet Decl. ¶104.)

5. The Extent of Discovery Completed and Stage of the proceedings

As outlined above, Class Counsel conducted a thorough investigation into the facts of the claims alleged. (Szamet Decl. ¶105.) The agreement to settle did not occur until Class Counsel exchanged and possessed sufficient information to make an informed judgement regarding the likelihood of success on the merits and the results that could be obtained through further litigation. (*Id.*)

6. The Experience and Views of Counsel

Kingsley & Kingsley is very experienced in prosecuting and defending employment litigation, and the firm has focused its practice since 2000 on wage, hour, and working condition violations. (Szamet Decl. ¶¶106-107.) The firm is well versed in class action litigation and has

1 diligently and aggressively pursued this action. (*Ibid.*) Kingsley & Kingsley, APC currently serves
2 as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern
3 California. (*Ibid.*) A list of representative cases that Kingsley & Kingsley, APC has handled is
4 included in the accompanying declaration of Kelsey M. Szamet. (Szamet Decl. ¶¶106-107.) After
5 factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair
6 and reasonable. (Szamet Decl. ¶108.)

7 7. The Presence of a Governmental Participant

8 There is no governmental participant in this action except arguably the LWDA, which has
9 been provided with all relevant documents. (Szamet Decl. ¶109.)

10 8. The Proposed Plan of Allocation Is Fair and Reasonable

11 Plans of allocation are subject to the same standard of review as class action settlements;
12 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
13 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
14 compensates Settlement Class Members pro rata based on the number of compensable Work
15 Weeks worked by the Settlement Class member during the Class Period. The lump sum payment
16 to each Settlement Class member not excluding him/ herself will be determined on an
17 individualized basis based upon the compensable pay periods worked by the Settlement Class
18 member. (Ex. 1 at § I, ¶18.) This allocation distributes Settlement Agreement funds proportionally
19 to each class member’s potential damages and should therefore be approved as fair, adequate, and
20 reasonable. (Szamet Decl. ¶110.)

21 9. The Reaction of the Class Members to the Proposed Settlement

22 To date, there are zero (0) requests to be excluded from the proposed Settlement and zero
23 (0) objections. (Snow Decl. ¶¶11-12.) Such indicates that the reaction of Settlement Class
24 Members on the whole is positive and weighs in favor of approval. (Szamet Decl. ¶111.)

25 **V. ENHANCEMENT TO PLAINTIFF**

26 Plaintiff’s Counsel request an enhancement of \$5,000.00 to the Class Representative
27 MARIA SANDOVAL NUNEZ for her work on behalf of the Settlement Class. (Szamet Decl.
28 ¶154.) “Courts routinely approve incentive awards to compensate named plaintiffs for the services

1 they provide and the risks they incurred during the course of the class action litigation.” *Ingram v.*
2 *The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations
3 omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).
4 In *Coca-Cola*, the Court approved service awards of \$300,000 to each named plaintiff in
5 recognition of the services they provided to the class by responding to discovery, participating in
6 the mediation process, and taking the risk of stepping forward on behalf of the class. *Coca-Cola*,
7 200 F.R.D. at 694; *see also, e.g. Van Vranken*, 901 F. Supp. at 299 (approving \$50,000
8 participation award to plaintiffs); *Glass v. UBS Financial Services, Inc.*, Case No. C-06-4068
9 MMC, 2007 WL 227862, at *17 (N.D. Cal. Jan. 26, 2007) (approving \$25,00 enhancement to each
10 named plaintiff).

11 Ms. Nunez is an adequate class representative because she has diligently, adequately and
12 fairly represented the Settlement Class and has not placed her interests above any member of the
13 Settlement Class. (see Declaration of MARIA SANDOVAL NUNEZ (“Nunez Decl.”) ¶¶3-11.)

14 Here, Class Counsel requests an enhancement for Ms. Nunez’s valiant effort and time
15 expended in this matter. The time spent by MARIA SANDOVAL NUNEZ is significant and
16 includes researching and retaining competent counsel; providing information to Class Counsel
17 regarding the nature of the work at Defendant; compiling relevant documents; working closely
18 with Class Counsel to develop the theories of liability and martial relevant evidence; regularly
19 discussing the status of the case with Class Counsel; discussing the case via telephone with many
20 Settlement Class Members; and responding promptly to Class Counsel’s communications
21 regarding settlement. (Szamet Decl. ¶155; Nunez Decl. ¶¶5-11.) As set forth in the Settlement,
22 Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section
23 1542. (Szamet Decl. ¶156; Ex. 1 at § III, ¶3.)

24 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl. ¶157.)
25 The enhancement takes into consideration the time, effort, and expense incurred by Ms. Nunez in
26 coming forward to litigate this matter on behalf of all Settlement Class Members. (Szamet Decl.
27 ¶158.) Additionally, the Class Representative was at risk for paying for Defendant’s legal fees
28 and costs in the event that Defendant prevailed at trial. (Szamet Decl. ¶159.)

1 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

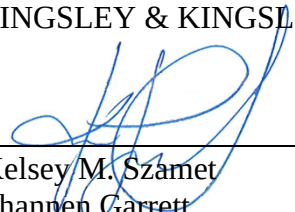
2 As indicated on the Proof of Service, Plaintiff's Motion for Final Approval of Class Action
3 Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development
4 Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of
5 submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA
6 confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "7." (Szamet
7 Decl. ¶165.)

8 **VII. CONCLUSION**

9 Plaintiff respectfully submits that the proposed Settlement is fair, adequate, reasonable, and
10 in the best interest of the Settlement Class Members. Therefore, Plaintiff respectfully requests that
11 the Court (1) grant Final Approval of the Settlement and all of its terms; (2) award attorneys' fees
12 and costs in the amount detailed in the concurrently filed Motion for Attorneys' Fees and Costs;
13 (3) award ILYM Group, Inc. claims administration fees of \$8,500.00; and (4) award the Class
14 Representative an enhancement of \$5,000.00; and (5) enter judgment.

15
16 DATED: May 4, 2022

KINGSLEY & KINGSLEY, APC

17
18 By: 

Kelsey M. Szamet
Shannen Garrett

Attorneys for Plaintiff Maria Sandoval Nunez and
the Proposed Class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On May 4, 2022, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jeffrey P. Fuchsman
jfuchsman@brgslaw.com
Ballard, Rosenberg, Golper & Savitt, LLP
15760 Ventura Blvd., 18th Floor
Encino, CA 91436

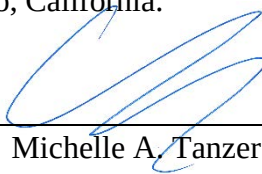
[] (BY MAIL) I am “readily familiar” with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] BY ELECTRONIC MAIL THROUGH CASE ANYWHERE: On interested parties set forth on the attached service list.

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing (“EF”) System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 4, 2022, at Encino, California.



Michelle A. Tanzer