PROPOSED TENTATIVE

The court detailed the factual and procedural background of this case in its February 6, 2024, order granting preliminary approval of the class action and Private Attorney General Act (the PAGA) settlement. Briefly, plaintiff Mr. Juan Rivera (hereafter, plaintiff or Mr. Rivera) filed a first amended class and representative action complaint against defendants Copenhagen Sausage Garden, LLC, and Aarmark Beer Gardens (hereafter, defendants), on behalf of others similarly situated, as well as aggrieved employees, raising the following causes of action: 1) failure to pay minimum wages in violation of Labor Code[1] sections 1194, 1197, 1182.12 and IWC wage order No. 5-2001 (Cal. Code Regs., tit. 8, § 11050, which governs restaurant workers) (hereafter, Wage Order No. 5); 2) failure to provide meal periods in violation of sections 226.7, 512, Civil Code section 3287, and Wage Order No. 5); 3) failure to provide rest periods in violation of sections 226.7, 512, and Wage Order No. 5; 4) failure to provide appropriate wage statements in violation of sections 201-203; 5) waiting time penalties in violation of sections 201-203; 6) failure to reimburse business expenses in violation of sections 2802 and 2804; 7) a violation of Business & Professions Code, section 17200, et seq., [unfair/unlawful business practices]; and 8) and civil penalties in violation of the PAGA, in turn based on violations of sections 203 and 226 (i.e., minimum wage and meal and rest period claims). Plaintiff was employed by defendants between February 2022 and March 2022 as a nonexempt, hourly paid worker.

Following a supplemental brief by attorney Mr. Tuvia Korobkin in response to the court's tentative ruling on February 6, 2024 (highlighting deficiencies in the original submission), the court on February 15, 2024, in a written order, preliminarily approved the proposed class and the settlement amounts and granted conditional certification of the settlement class. The court designated Arbamson Labor Group as class counsel; designated ILYM Group, Inc, as the settlement administrator; appointed Mr. Rivera as class representative; and preliminarily approved the proposed "Class Notice and Notice of Estimated Settlement Award," as well as the proposed methods of service, opt-out and/or objection procedures, including those procedures for the final approval hearing, scheduled for June 25, 2024; the court tentatively approved the gross settlement amount of $350,000, attorneys fees, costs of up to $15,000, the PAGA settlement amount of $40,000 ($30,000 to the state and $10,000 to the aggrieved class) (with reservations), the enhancement to the class representative of $7,500 (with reservations); and the costs of up to $7,500 to the settlement administrator.

Plaintiff today seeks final approval of the nonreversionary $350,000 class action settlement, consisting of 303 class members. The class is defined as follows: "All current and former non-exempt, employees who worked for Defendants in California at any time from October 14, 2018 through May 2, 2023 (the 'Class Period')." According to plaintiff, each participating class member will receive an average amount of $593.40, and as of the filing, no objections have been filed or opt-outs submitted. Plaintiff asks the court to confirm the previous appointment of class counsel, class representative, and settlement administrator. He also asks the court to approve the final settlement amount of $350,000, including the $40,000 PAGA allocation; attorney's fees of $116,666.67, litigation costs of $10,034.59, class enhancement award of $7,500, and settlement administrator costs of $6,000, leaving a Net Settlement Amount

[1] All further statutory references are to the Labor Code unless otherwise indicated.

of $169,798.74 (including the $10,000 PAGA settlement to aggrieved employees). Plaintiff asks the court to approve of all payment procedures contemplated by the settlement, including funding and disbursement processes, as well as notice procedures effectuated to date.

The court will initially discuss three preliminary matters; detail the general standards for final approval of a class action settlement; determine whether the gross settlement is fair, reasonable, and adequate; discuss the general standards for a PAGA settlement; examine the propriety of the preliminary class certification of the class, the settlement administrator's fees and costs, counsel's attorney fees and litigation costs, the class representative's enhancement, and finish with an assessment of the class certification efforts, notices, class procedures and disbursement time frames. The court will conclude with a summary of its conclusions.

A) Preliminary Matters

The court in its preliminary approval directed plaintiff's counsel to submit the following documents: 1) a notice of settlement that comports with CRC 3.1385; 2) a copy (or the verbatim contents) of the attorney-fee agreement with plaintiff, as manded by CRC 3.769(b); and 3) proof that plaintiff has complied with section 2699, subdivision ((l)(2), showing that he has submitted a copy of the settlement agreement with the LWDA, and further, that there will be compliance with section 2699, subdivision (l)(3), which requires that plaintiff submit a "copy of the superior court's judgment in any civil action filed pursuant to this part and any other order in that action that either provides for or denies an award of civil penalties under this code," within 10 days after entry of the judgment or order.

Plaintiff has ***not*** complied with the first request, as no notice of settlement has been filed. Plaintiff is directed to comply with the court's earlier order on or before the final approval hearing date and submit a notice of settlement. Plaintiff ***has*** complied with the second and third requests, as detailed in the supplemental declaration of attorney Tuvia Korobkin, filed on February 5, 2024.

The court will want oral assurances by counsel at the final approval hearing of future compliance with section 2699, subdivision (l)(3).

B) General Standards for Approval of a Class Action Settlement

At the final approval hearing, "the court must conduct an inquiry into the fairness of the proposed settlement." (CRC 3.769(g).) If the court approves the settlement agreement, it enters judgment accordingly. (CRC 3.769(h).) (See *Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93.)

Final approval involves the same factors involved in the preliminary approval process, although the court's scrutiny is more rigorous and thorough. (*Cho v. Seagate Technology Holdings, Inc.* (2009) 177 Cal.App.4th 734, 743; see also *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 240.) " 'Due regard,' . . . 'should be given to what is otherwise a private consensual agreement between the parties. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or

overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." [Citation.]....' " (*7–Eleven Owners* (2000) 85 Cal.App.4th 1135, 1145, quoting from *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The test is not whether the maximum amount is secured, but whether the settlement is reasonable under all the circumstances. For example, a trial court does not abuse its discretion in approving a settlement when it found that the settlement was achieved at arm's length negotiation, including review of the mediator's declaration; the fact the case was vigorously litigated; plaintiff was represented by experienced counsel; the number of class members who objected or opted out was very small; and plaintiff faced considerable risk in proceeding to trial. (*Cho, supra*, at p. 745.)

As was true for preliminarily approval, the proponents of final approval have the burden to show the settlement is fair, although a presumption of fairness exists where the settlement is reached through arm's length bargaining; investigation and discovery are sufficient to allow counsel and the court to act intelligently; counsel is experienced in similar litigation; and the percentage of objectors is small. (*Dunk, supra*, at p. 1802.) This is only an initial presumption; a trial court's ultimate approval of a class action settlement will be vacated if the court "is not provided with basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." In short, the trial court may not determine the adequacy of a class action settlement "without independently satisfying itself that the consideration being received for the release of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408.)

The court undoubtedly gives considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm's-length transaction entered without self-dealing or other potential misconduct. While an agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections, in the final analysis it is the court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement. (*Munoz, supra*, 186 Cal.App.4th at p. 408, fn. 6.)

1. Is the Class Action Settlement Fair, Adequate and Reasonable?

a. Factors Favoring Presumption of Fairness

As noted, a presumption of fairness exists where the settlement is reached through arm's length bargaining; investigation and discovery are sufficient to allow counsel and the court to act intelligently; counsel is experienced in similar litigation; and the percentage of objectors is small. (*Dunk, supra*, at p. 1802.)

Here, it is reported that private mediation occurred with Phillip Cha, Esq., on June 15, 2023, which led to the settlement agreement. (Neil Larson Dec.,¶¶ 10, 11.) Before the mediation, plaintiff's counsel "engaged in multiple substantive discussions with defense counsel about the case," and in preparation for mediation, the "Parties engaged in extensive informal discovery. Defendants produced a class list with putative class members' hire dates, termination dates, job titles, locations, and other information. Defendants also produced a sampling of timekeeping and payroll records for putative class members during the Class Period, its wage and hour polices, and other information. [Plaintiff's counsel] hired an expert date analyst to analyze and extrapolate the data produced by defendants. This discovery allowed the Parties to assess the merits and value of Plaintiff's clams and Defendants' defenses, as well as the chances for class certification." (Neil Larson's Dec., ¶10) Further, according to Mr. Larsen, his office engaged in "pre-filing investigation, analyzing Plaintiff's claims, conducting legal research, reviewing Defendants' documents and policies, conducting extensive informal discovery, analyzing timekeeping and payroll records with help of an expert to develop a comprehensive mediation brief and exposure analysis, preparing for and attending mediation," and fielding questions from individual class members. (Nel Larson's Dec., ¶ 19.) Mr. Larson, plaintiff's counsel, assures the court of his work experience, explaining he has been a wage and hour attorney for over 14 years, and is currently involved in over 50 active wage and hour class actions, and details the cases worked on in paragraph 4 of his declaration. The experience of counsel, the firm, and its staff, cannot seriously be questioned, and their efforts seem reasonable.

The settlement administrator (ILYM Group, Inc.) has received zero (0) notices of objections from class members, and no opt-outs. The deadline for objecting or to be excluded from the class settlement was June 3, 2024. (Nick Castro's Dec., ¶¶ 10, 11.)

These factors favor a presumption of fairness.

b. Strength of the Case

The most important factor in the fairness calculation is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement. While the court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case," it must eschew any rubber stamp approval in favor of an independent evaluation. (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 407-408 (*Munoz*).) To perform this balance, the trial court must have "a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.' " (*Munoz, supra*, at p. 409; see *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 801; *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 120.)

The declaration submitted by plaintiff for purposes of final approval (through Neil Larsen, attorney) provides ***no*** discussion of what counsel thought the maximum value of the

lawsuit might be for litigation. *Counsel is urged in the future to be sensitive to this requirement, under the authority noted above, as the figures offer a useful benchmark to help the court gauge the fairness and adequacy of the settlement*. This omission is not fatal under the circumstances, however, for in the preliminary approval, Mr. Tuvia Korobkin, through a declaration, estimated that the maximum value of the lawsuit as to all claims was $2,273,846, broken down as follows: for failure to pay minimum wages, $135,404; for meal and rest period violations, $317,196 and $424,666 respectively; as for the reimbursement claims, $42,980; for itemized wage statement violations, $280,700; for waiting time penalties, $511,500; and for PAGA penalties, $561,400. Mr. Korobkin declared that defendants had a number of defenses to these claims, and given the risks associated with the litigation, and after extensive investigation, plaintiff's counsel discounted defendant's realistic exposure to the following: $44,006 for minimum wage claims; $78,506 for meal violations and $76,440 for rest period violations; to $10,745 for reimbursement claims; to $63,859 to wage statement violations; to $83,119 for waiting time penalties; and to $88,421 for PAGA claims (leaving defendant's realistic liability at $445,096, with $350,000 representing approximately 78% of the defendant's realistic exposure). The court found this proffer relevant at the time it preliminarily approved the settlement, and finds it to have continuing relevance for purposes of final approval.

Mr. Larson's current declaration adds a useful supplement to the litigation values discussed in Mr. Krobokin's earlier declaration. Mr. Larsen details and explains the significant risk of non-certification (and ultimately a loss on the merits) with respect to each cause of action, and that these considerations "bore heavily on the negotiations leading to the Settlement. . . ." (Neil Larson's Dec., ¶ 17.) As for the minimum wage claim, defendants contended "that each [of their restaurants] should be looked at individually," and that each restaurant generally employed 25 or fewer employees, and thus, they were required to pay the lower minimum wage rate; further, defendants did not control the wages, hours, or working conditions of employees, and thus, were not joint employers. As for meal and rest period violations, defendants insisted that they maintained legally compliant meal and period policies and practices at all times; that they were required only to provide an opportunity to take meal and rest periods, and not ensure they were taken, and any missed meal and rest periods were due to employee choice, meaning class action treatment was inappropriate; that employees were permitted to take mean and rest periods at their own discretion; that as for second meal periods and third rest periods, employees rarely worked shifts over 10 hours, and those periods were waived by employees. As for claims involving reimbursed expenses, defendants argued that employees did not need to use their personal cell phones to perform job duties, and if so, procedures were already in place for employees to request reimbursement, thus (again) undermining class action as the appropriate forum to resolve the issues. (Neil Larson's Dec., ¶¶ 13 to 15.) Defendants argued that the derivative claims for wage statement penalties, waiting time penalties, and PAGA civil penalties, all fail for the same reasons, underscored by compelling, good-faith defenses, notably that plaintiffs could not show a knowing and intentional violation, and that no plaintiff could show injury per section 226, subdivision (e). These factors and concerns all support the conclusion that the settlement agreement is reasonable.

The court finds the class action gross settlement of $350,000 to be fair, adequate and reasonable under the circumstances.

2. General Standards for PAGA Settlement

The PAGA settlement here is $40,000 of the $350,000 gross settlement amount, with $30,000 going to the state (75%), and $10,000 going to the aggrieved employees (which are the entirety of the class) (25%). This is the standard division for PAGA settlements. Procedurally, section 2699, subdivision (l)(2) provides that the "the superior court shall review and approve any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court." (See also *Correia v. NB Baker Electric, Inc.* (2019) 32 Cal.App.5th 602, 615.) The proposed settlement was served on the LWDA, through its online portal, on December 29, 2023. (See Supplemental Korobkin Dec., Exhibit A.) No objection from the LWDA has been lodged.

The court's gatekeeping function in the class action context differs from its role in reviewing PAGA settlements. In class actions, courts have a fiduciary duty to protect the interests of absent class members, whose individual claims for wrongfulness will be discharged. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129 [court acts as guardian of rights of absentee class members].) A PAGA representative action, however, is "not akin to a class action"; it "is a species of *qui tam* action." When reviewing a PAGA settlement, courts do not consider the value of individuals' claims for damages because a PAGA settlement does not release those claims. (*Kim v. Reins International California, Inc. (2020)* 9 Cal.5th 73 87 [PAGA claims have no individual component]; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 197-198 [PAGA damages limited to civil penalties].) "The state's interest in such an action is to enforce its laws, not to recover damages on behalf of a particular individual." (*Huff, supra*, 23 Cal.App.5th at p. 760.) Instead of focusing on fair recovery for individual claims, the goal of PAGA enforcement is to achieve "maximum compliance with state labor laws." (*Huff*, at p. 756.)

That being said, "section 2699, subdivision (l)(2) requires the trial court to review and approve any PAGA settlement," and in so doing, the court "ensur[es] that any negotiated resolution is fair to those affected." (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 549.) When evaluating the fairness, adequacy, and reasonableness of a PAGA penalty, courts compare the potential penalty amount (its verdict value, as some courts refer to it) with the actual recovery under the settlement. (See *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 87 ["In estimating the potential recovery in the case to evaluate the fairness of the settlement, the trial court assumed one violation [ ] per employee"].)) There is no express or even baseline percentage of recovery required. Under the express terms of the PAGA, a verdict value is not guaranteed even if the plaintiff prevails, as courts have discretion to lower the amount of penalties based on the circumstances of a particular case. (§ 2699(e)(2).)

Because many of the factors used to evaluate class action settlements bear on a settlement's fairness—including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount—these factors can be useful in evaluating the fairness of a PAGA settlement. (*Moniz, supra,* 72 Cal.App.5th at 76.) However, "a trial court should evaluate a PAGA settlement to determine whether it is fair, reasonable, and adequate *in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws*." (*Moniz, supra,* 72 Cal.App.5th at 76 [emphasis added].) The *Moniz* court cited with approval the

federal district court case of *O'Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, which explains this standard as follows:

> "[I]if the settlement for the Rule 23 class is robust, the purposes of PAGA may be concurrently fulfilled. By providing fair compensation to the class members as employees and substantial monetary relief, a settlement not only vindicates the rights of the class members as employees but may have a deterrent effect upon the defendant employer and other employers, an objective of PAGA. Likewise, if the settlement resolves the important question of the status of workers as employees entitled to the protection of the Labor Code or provides substantial injunctive relief, this would support PAGA's interest in augmenting the state's enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance."
>
> (*Id*. at 1134-35 (internal quotations to LWDA's responsive brief omitted.)

However, when "the compensation to the class amounts is relatively modest when compared to the verdict value, the non-monetary relief is of limited benefit to the class, and the settlement does nothing to clarify [aggrieved workers' rights and obligations], the settlement of the non-PAGA claims does not substantially vindicate PAGA." (*Id*. at 1135.) Thus, while the case law defining what the elements of the review are to evaluate a PAGA settlement in light of its goals to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws is still developing in California state court, the federal district courts suggest that a sufficiently "robust" settlement amount is enough to fulfill that obligation.

With this background, the court is once again troubled by plaintiff's briefing. Despite the court's detailed tentative offered for preliminary approval, in which those standards were discussed, plaintiff's counsel in the final approval briefing ignores *Moniz* and thus the appropriate standards this court must apply to assess the reasonableness of the PAGA settlement. This is so even though the court directed counsel to address *Moniz* and progeny at the preliminary approval hearing, which Mr. Tuvia Korobkin did on February 6, 2024, as reflected in minute order of that date; and even though class counsel asks the court for final approval of the PAGA settlement amount. The court is perplexed by class counsel's reluctance to acknowledge, let along cite to and address, *Moniz* and progeny, even after court directives. It is worth reiterating that trial courts are ***required*** to review a PAGA settlement to ascertain whether it is fair, adequate, and reasonable through the prism of ***PAGA's purposes and policies***, for a PAGA claim is " 'legally and conceptually different' " from an employee's individual claim for damages and statutory penalties. Appellate courts have been clear: "We emphasize that in any case involving a proposed PAGA settlement, the trial court must review the settlement for fairness and 'scrutinize whether, in resolving the action, a PAGA plaintiff has adequately represented the state's interests, and hence the public interest.'" (*Shaw v. Superior Court of Contra Costa County* (2022) 78 Cal.App.5th 245, 263, citing *Moniz, supra]; see also LaCour v. Marshalls of California, LLC* (2023) 94 Cal.App.5th 1172, 1195 ["We went on to hold [in *Moniz*] that trial courts 'should evaluate . . . PAGA settlement[s] to determine whether [they are] fair, reasonable,

and adequate ***in view of PAGA's purposes to remediate present labor law violations, deter future ones, and to maximize enforcement of state labor laws***"], bold and italics added.) While the factors associated with the class action settlement are relevant, plaintiff's counsel continues to make no effort to incorporate the standards enunciated in *Moniz* into the calculus. The court's acceptance of oral argument on this point at the hearing on preliminary approval does not alleviate the moving party from supporting its request in this separate motion for final approval, which is expressly requested. The court is perplexed why counsel would again ignore an issue that was so clearly brought to its attention. This alone is reason to deny the motion. (See *Quantum Cooking Concepts, Inc. v. LV Associates, Inc*. (2011) 197 Cal.App.4th 927, 934.)

The court is nevertheless sensitive to the potential implications from a denial, even without prejudice. Accordingly, the court again directs plaintiff's counsel to appear at least by Zoom at the final approval hearing, and to address the following issues:

First, counsel should explain why he/she/they continue to ignore *Moniz* despite its detailed mention in the preliminary approval order. The court observes that under the heading "State Cases" in the motion's "Table of Authorities," the most recent Court of Appeal case cited is from 2012. Is counsel relying on rote, antiquated briefing? The court notes with a twinge of irony that class counsel asks the court to rely on their expertise in determining the settlement amount is fair, adequate and reasonable, and yet at the same time counsel overlooks case law that would counter such self-assessment.

Second, defendants deny any wrongdoing, as reflected in paragraphs 12 and 13 of the settlement agreement.[2] That is not language that assures the court of future compliance with California wage and hour laws.

Third, counsel should explain whether the settlement amounts at issue are themselves sufficient to ensure defendants' ***future compliance with existing state labor laws*** (in line with the purposes of PAGA). Is $40,000 itself substantial for this purpose? If not, it may be argued that the *class* settlement is $350,000 is sufficiently robust for this purpose A settlement of this amount ***may*** serve the purpose of future deterrence, at least as to this employer. Plaintiff's counsel, however, completely ignores this issue in briefing, and further explanation is required, The final approval hearing is intended to be more, not less, rigorous, and further explanations are required.

Approval of the settlement (commensurate with the remaining portions of this order) will be given ***only*** if the court is satisfied with counsel's oral explanations as to why counsel overlooked *Moniz* and progeny, which the court clearly identified in the preliminary approval tentative, and how in fact the PAGA settlement here furthers the law enforcement purposes of the PAGA.

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[2] This paragraph provides in relevant part that "Defendants deny liability as to matters alleged in the Action. Nothing in this Settlement shall operate to be construed as an admission of any liability of that class certification is appropriate in any context other than Settlement. . . ." And in Paragraph 13, defendants insist further than nothing in the settlement can be disclosed or publicized.

3. Preliminary Certification of Class

Class action certification questions are essentially procedural, and involve an assessment of whether there is a common or general interest between numerous people. The burden is on the proponent to show an ascertainable class with a well-defined community interest, meaning predominant commons question of law or fact, class representatives with claims or defenses typical of class, and class representatives who can adequately represent the class. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

The court previously found there to be a sufficient showing to certify the class for purposes of settlement. There is no reason to revisit that conclusion here.

4. Settlement Administrator's Fees/Costs

The court preliminarily approved the appointment of ILYM Group, Inc, as the third party settlement administrator, and at that time authorized up to $7,500 in costs/fees. Plaintiff asks the court to approve $6,000 in settlement administration costs, as detailed in the declaration of Nick Castro; this request consists of "the fees and costs incurred to date, as well as anticipated fees and costs from completion of the settlement administration . . . ." (Nick Castro Dec., ¶ 15.) The amount requested appears reasonable, and the court approves ILYM Group, Inc, as the settlement administrator and its request of $6,000 for fees/costs.

5. Class Counsel's Request for Fees and Litigation Costs

Counsel asks the court to approve class fees of $116,666.67, along with litigation costs of $10,034.59. As noted above, CRC 3.769(b) requires that any attorney fee agreement, express or implied, that has been entered into with respect to payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the of the settlement that has been certified as a class action. Also as noted above, plaintiff has satisfied this requirement.

On the merits, the attorney fee amount seems appropriate. (See, e.g., *Graham v. DaimlerChrysler Corp*. (2004) 34 Cal.4th 553, 578 [it is well settled that attorney fees under CCP § 1021.5 may be awarded for class action suits benefiting a large number of people]; see also *Clark, supra*, 175 Cal.App.4th at p. 791.) The court has a duty to review and approve attorney's fees, even where the parties agree on the amount. (*Garabedian v. Los Angeles Cellular Telephone Co*. (2004) 118 Cal.App.4th 123, 127-128.) Use of the percentage method in common fund cases is permissible, although there must be evidence that the parties intended the attorney fees would be paid out of any common fund that had been created. That appears to be the case here. Further, the method is permissible when the amount is certain or easily calculable sum, as it is here. (*Dunk v. Ford Motor Co., supra*, at p. 1809.) The court generally "double checks" the reasonableness of the fees requested under the lodestar method. (See, e.g., *Lafitte v. Robert Half Internat., Inc*. (2016) 1 Cal.5th 480, 504 [no abuse of discretion in court's decision to double check reasonableness of contingency method by looking to lodestar method for determining attorney's fees].)

Both methods justify the amount requested. Under the percentage method (common fund), .33333334 (i.e., 1/3rd) of the gross settlement amount is standard fare. Here, .33333333 of the $350,000 amounts to approximately $116,666.67, as requested. This amount also seems justified by an unadorned method calculation (without a modifier), based on the number of hours spent multiplied by the hourly rate. According to the evidentiary proffer, Attorney Korobkin and Attorney Larsen bill at $650 an hour, while attorney McNally bills at $375 an hour. Attorney Korobkin worked 135.5 hours, while Attorney Larsen worked 48.3 hours, totaling $122,857.5; Attorney NcNally worked 22.5 hours, for a total of $8,437.5. Finally, paralegals/law courts, which billed at $200, worked 15.1 hours, for total amount of $3,020. The total is $134,315. The court acknowledges that attorney billing rates in the Los Angeles area are higher than local attorney billing rates. Yet even if the court reduces the award to reflect billing rates more in line with experienced attorneys in the local area (between $500 and $550[3]), and uses $550 as the billable hour rate for the most experienced attorneys in line with local practice, the total amount would be approximately $113,000, which is commensurate with the requested amount. The court approves the appointment of class counsel and finds attorney fees of $116,666.67 as reasonable.

Class Counsel requests costs in the amount of $10,034.51. (Neil Larson's Dec., ¶ 23, and Exhibit B), which includes a mediation fee, expert fees, and filing and service fees. The expenses appear reasonable.

6. Enhancement for Class Representative

Plaintiff requests an incentive award of $7,500. It is established that a named plaintiff is eligible for reasonable incentive payments to compensate him or her for the expense or risk they have incurred in conferring benefit on other members of the class. (*Munoz, supra*, 186 Cal.App.4th at p. 412.) Relevant factors include actions the plaintiff has taken to protect the interests of the class, the degree to which the class had benefited from those actions, the amount of time and effort the plaintiff has expended, the risk to the class representative of commencing suit, the notoriety and personal difficulties encountered by the class representative, the duration of the litigation, and the personal benefit enjoyed by the class representative. (*Clark, supra*, 175 Cal.App.4th at p. 804.) The rationale in the end is to compensate class representatives for the expense or risk they have incurred in conferring a benefit on other members of the class. (*Id*. at p. 806.) Specificity, however, is required. (*Id*. at p. 807; *Cellphone Termination Fee Cases*

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[3] Plaintiff's counsel relies on the "*Laffey* Matrix" as its claimed basis for the hourly rate. "The *Laffey* Matrix is a United States Department of Justice billing matrix that provides billing rates for attorneys at various experience levels in the Washington, D.C., area and can be adjusted to establish comparable billing rates in other areas using data from the United States Bureau of Labor Statistics." (*Pasternack v. McCullough* (2021) 65 Cal.App.5th 1050, 1057, fn. 5.) It is clear, however, that this court is not required to follow the *Laffey* Matrix, nor is it required to adopt the rate defense counsel opined was the "market rate' for service of this type. (*Syers Properties III, Inc., v. Tankin* (2014) 226 Cal.App.4th 691, 702.) Instead, a court "may rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009.)

(2010) 186 Cal.App.4th 1380, 1395 [these "incentive awards" to class representatives must not be disproportionate to the amount of time and energy expended in pursuit of the lawsuit].) Similarly, a PAGA plaintiff who prevails in or settles a case on behalf of the LWDA generally seeks an "incentive" or "service" payment that is paid from the penalties that the defendant must pay to the LWDA. These payments are non-statutory creations of the court similar to the "incentive" or "service" payments that are paid to class representatives. (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-1395.)

Courts have expressed concern when there is a large disparity between an incentive award and the recovery of individual class members through a class enhancement. (*Clark, supra*, 175 Cal.App.4th at p. 806, fn. 14, citing *Alberto v. GMRI, Inc.* (2008) 252 F.R.D. 652, 669 [given a proposed $5,000 incentive aware and an average $24.17 recovery (a multiple of just over 20), when there was no evidence demonstrating the quality of plaintiff's representative service; plaintiff should be prepared to present evidence of the named plaintiff's "substantial efforts" as class representative to justify the discrepancy between the award and those of the unnamed plaintiffs"]; see also *Stanton v. Boeing Co.* (9th Cir, 2003) 327 F.3d 938, 975 [condemning a class enhancement of $30,000 when average payout was $1,000, a multiplier of 30]; compare with *Munoz, supra*, 186 Cal.App.4th at p. 412 [noting there that class representatives would receive more than twice as much as the average payment to class members, in contrast to the multipliers of 30 and 44 in *Stanton* and *Clark*, respectively].)

Here, the average recovery of each class member is estimated to be approximately $593.40, meaning plaintiff's enhancement amount of $7,500 involves an approximate multiplier of 12.626 (i.e., over the average payout). While certainly not as high as some multipliers identified in case law, as detailed above, it is not insignificant. According to Mr. Rivera's declaration, he has been actively involved in the case, having many discussion with the plaintiff's attorneys throughout the litigation; he has discussed defendant's policies and practices, identified potentially helpful documents and witnesses, and discussed case strategy. He spent "significant time searching my own documents, and I also spent time reviewing the Settlement Agreement with my attorneys, " for an total estimated time of "at least 30 hours. . . ." If the court uses the 30 hours at the hours spent, Mr. Rivera is requesting $250 an hour, also not an insignificant amount.

If this were the only evidenced presented by Mr. Rivera, the court might have concerns that the class enhancement of $7,500 is unreasonable. Significantly, however, Mr. Rivera goes into detail about the financial impact his association with this lawsuit has caused, giving reasoned explanations about the risks incurred and the costs suffered. (*Clark, supra,* 175 Cal.App.4th at p. 807 [the class representative must provide more than pro forma claims of "potential stigma" and "potential risk" to justify a class enhancement].) Mr. Rivera declares that after the lawsuit was filed, his "reputation among my former co-workers and potential future employers in my field of employment [as a bartender] was significantly harmed. For example, my co-workers no longer interact[ed] with me or [took] my calls or repl[ied] to my messages." He claims that as a result he lost approximately "$3,000 in income from his separate business of crafting and selling custom t-shirts, as his former co-workers were "regular customers . . . ." Additionally, and not inconsequently, after this lawsuit was filed, Mr. Rivera declares that "I applied to more than 50 jobs I was qualified for in the local Solvang area, and did not receive a

single offer of employment. Eventually, I was able to secure employment, but in a small town approximately 45 minutes away from the Solvang area. As a result, I ended up having to relocated away from the Solvang area." There is absolutely no reason to discount Mr. Rivera's tribulations, and given his declaration's reasoned explanations, the court finds the $7,500 enhancement reasonable.

7. Class Certification Efforts, Notices, Class Procedures, and Disbursements

Plaintiff asks the court to approve the class action procedures contemplated by the settlement agreement, including the timing mechanisms and disbursement provisions. The gross settlement amount is $350,000, with a Net Settlement Amount of $169,798.74, arrived at after the following subtractions: attorney's fees of $116,666,67; litigation costs of $10,034.59; ILYM Group fees/costs of $6,000; the PAGA settlement of $40,000 (with $30,000 sent to the LWDA and $10,000 added back into the overall net settlement amount); and a class enhancement of $7,500.

From the Net Settlement Amount of $169,798.74, there are three categories from which disbursements will be made: 1) the "Participating Class Allocation" of $135,838.08, which consists 80% of the Net Settlement Amount; 2) the "Waiting Time Amount" of $16,979.88, which consists of 10% of the Net Settlement Amount; and 3) the "Wage Statement Amount" of $16,979.88, which also consists of $10% of the Net Settlement Amount. All class members who returned "Notice Packets" will receive equal shares of the "Waiting Time Amount." However, each participating member will receive a pro rata portion of both the "Wage Statement Amount" and the "Participating Class Amount," based on a proportionate number of pay periods the member was employed by defendants. The highest gross payout under these calculations will be $2,454.97; the lowest payout under these calculations will be $27.58; and the average payout will be $593.40. (Nick Castro's Dec. ¶ 14.) Within five (5) business days of approval of the individual settlement award calculations, the third party administrator will mail individual settlement awards. All payments from PAGA will be deemed penalties, while payments other payments from the NET Settlement Amount will be classified as 33.33% wages and 66.7% penalties and interest, and will be reported accordingly on all W-2 forms, with the remaining non-wage payments reported on IRS Form-1099.

Further, on April 3, 2024, the class notice and other documents describing the class settlement in detail (all part of the Notice Packet) in both English and Spanish (as approved by the court at the preliminary approval hearing) were mailed to the 303 putative class members. According to the declaration of Nick Castro, a case manager for ILYM Group, Inc., thirty-six (36) Notice Packets have been returned as undeliverable. Skip traces were made, and twelve (12) updated addresses were found. There remain 24 undeliverable Notice Packets. Attached to Nick Castro's declaration are the contents to the Notice Packets, containing the following documents in both English and Spanish: 1) Notice of Pendency of Class Action and Proposed Settlement, explaining the lawsuit, the attorneys, the terms of the settlement, including the release, the class members options (including dates for objections and opt outs), the next step (the final approval hearing), and a class member can obtain additional information; and 2) the Notice of Estimated Settlement Award, with explanations as to the calculation for each settlement award. Finally, the settlement will be funded in two payments:1) $100,000 deposited

no later court's preliminary approval (that payment has already been made); and 2) $250,000 to be deposited no later than 30 days after final approval. There have been no objections and no opt outs have been made.

The court determines these efforts, notices, procedures and disbursement time frames are all reasonable.

8. Summary of Court's Conclusions

- Before final approval, plaintiff's counsel is directed to file a notice of settlement that comports with CRC 3.1385.
- The court directs plaintiff's class counsel to appear at least by Zoom at the final approval hearing, in Department 2, on June 25, 2024, at 8:30 a.m., in Santa Maria. Counsel should address the following issues with the court as to the reasonableness of the $40,000 PAGA settlement:
    - Why counsel continue to ignore *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, despite its detailed mention in the written preliminary approval order, despite the fact at the preliminary approval hearing the court directed counsel to appear and discuss *Moniz* and progeny, and despite the fact counsel asks for the court's final approval of the PAGA settlement amount in its most recent submissions. The court observes that in counsel's final approval motion, under the heading "State Cases" in the "Table of Authorities[,]" the most recent published Court of Appeal case cited is from 2012. Is counsel relying on rote, antiquated briefing? The court also notes that class counsel asks the court to rely on their expertise in determining whether the settlement amounts are fair, adequate and reasonable; *consistent* failure to cite and discuss ***all*** relevant, recent case law that frames ***all*** issues and dictates the nature of the court's inquiries does not foster confidence in counsels' claimed expertise.
    - Second, defendants deny any wrongdoing, as reflected in Paragraphs 12 and 13 of the Settlement Agreement. This is not language that assures the court of defendant's *future* compliance with California wage and hour laws, which is part of the PAGA assessment calculus.
    - Third, counsel should explain whether the settlement amounts at issue are themselves sufficient to ensure defendants' ***future compliance with existing state labor laws*** (in line with the purposes of PAGA). Is $40,000 itself substantial for this purpose? If not, is the *class* settlement amount of $350,000 sufficiently robust for this purpose? A settlement of this amount ***may*** serve the purpose of future deterrence, at least as to this employer. Plaintiff's counsel, however, completely ignores this issue in briefing, and further explanation is required. A final approval hearing is intended to be more, not less, rigorous, and all of these topics must be explored.
- The court will want assurances from plaintiff's counsel that counsel will comply with section 2699, subdivision (l)(3), which requires counsel to submit the final approval order/judgment with the LWDA should final approval be given.

- If (*and only if*) counsel's explanations satisfy the court, will the court then determine, commensurate with written portions of this order, that the overall gross settlement of $350,000 is fair, reasonable and adequate, including the $40,000 PAGA settlement (with $30,000 going to the state and $10,000 going to the aggrieved employees); finally approve certification of the class; finally approve appointment of class counsel, the class representative, and the settlement administrator; approve attorney's fees of $116,666.67, litigation costs of $10,034.59, the settlement administrator costs of $6,000, and the class enhancement of $7,500; finally approve of the class certification efforts, notices, procedures, and disbursement time frames; and sign the proposed order/judgment.