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Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

SHARRY BOLLINGER-FELT and
JENNIFER U. YANG, individuals on
behalf of themselves, the State of
California, as a private attorneys general,
and on behalf of all others similarly
situated,

Plaintiffs,

v.

PACIFIC BELLS, LLC, a Washington
Limited Liability Company; and DOES 1
TO 50,

Defendants.

CASE NO.: CV-20-000680
[Unlimited Jurisdiction]

*Assigned for all purposes to the
Honorable Stacy P. Speiller, Dept. 22*

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; ATTORNEYS' FEES, COSTS,
ENHANCEMENT AWARD AND
ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: January 25, 2022
Time: 8:30 a.m.
Dept.: 22

1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on January 25, 2022 at 8:30 a.m. or as soon thereafter as the
3 matter may be heard in Department 2 the Sixth Floor of the City Towers Courthouse, 801 10th
4 Street, Modesto, California 95354, before the Honorable Stacy P. Speiller, Plaintiffs Sharry
5 Bollinger-Felt and Jennifer U. Yang (“Plaintiffs”), by and through Plaintiffs’ counsel of record,
6 will and hereby does move the Court for Final Approval of the Class Action Settlement, awarding
7 attorneys’ fees, costs enhancements award, administration costs and entering judgment.
8

9 This Motion is made pursuant to Rule 3.769 of the California Rules of Court. This
10 Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and
11 Authorities, the accompanying Declarations of James R. Hawkins, Declaration of Martin
12 Sullivan, and the Declaration of Natahlie Hernandez, the proposed Stipulation for Non
13 Reversionary Class Settlement and Release (the “Settlement Agreement”), argument of counsel,
14 all papers and pleadings filed in the action, and upon any further information or evidence
15 requested by the Court at the time of hearing on this Motion.
16

17
18 Dated: December 29, 2021

MELMED LAW GROUP P.C.
JAMES HAWKINS, APC



MARTIN SULLIVAN
JAMES R. HAWKINS

Attorneys for Plaintiffs, the Putative Class, and
the Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Sharry Bollinger-Felt and Jennifer U. Yang (“Plaintiffs”), on behalf of the
4 11,227 members conditionally certified class, respectfully request that this Court grant final
5 approval of the settlement, which seeks to resolve claims against Pacific Bells, LLC
6 (“Defendant”) in exchange for a non-reversionary Gross Settlement Amount (“GSA”) of Eight-
7 Hundred Seventy-Five Thousand Dollars and Zero Cents (\$875,000.00). The Class Members
8 overwhelmingly supported the Settlement, as there were no objections and only five (5) requests
9 for exclusions from the Settlement representing 99.96% of the 11,227 Settlement Class
10 Members. The proposed Settlement is projected to pay an average of \$39.75 per Class Member,
11 with the highest estimated payment at \$255.40. (Administrator Decl. of Nathalie Hernandez-
12 hereinafter “Hernandez”, ¶¶ 12, 14).

13 Plaintiffs also moves for final approval of attorneys’ fees in the amount of \$291,666.63
14 of the GSA. As will be demonstrated herein, Class Counsel’s attorney fee request is supported
15 using the percentage fee method and the lodestar method. Second, Plaintiff moves for final
16 approval of payment of the litigation costs in the amount of \$26,000.00, all of which was incurred
17 in litigating this matter. Third, Plaintiffs move for final approval of the Class Representative
18 Service Award to Plaintiff in the sum of \$7,500.00, to compensate the Class Representative for
19 providing a general release of their claims against Defendant – a release significantly greater than
20 the Class Members provided – and for the risks absorbed and time spent litigating the case.
21 Plaintiff played a vital role in representing Class Members in this case and spearheading the
22 lawsuit to seek monetary relief on behalf of all Class Members. Fourth, Plaintiff moves for final
23 approval of the payment of \$70,000.00 in administrative costs to ILYM Group, Inc.. Fifth,
24 Plaintiff moves for final approval of the \$35,000.00 PAGA Payment and the payment to the
25 Labor and Work Development Agency (“LWDA”) for its share of the PAGA Payment
26 (\$26,250.00, which is 75% of \$35,000.00; with the remaining \$8,750.00 payable to Class
27 Members).

1 This case required many hours of attorney time from Class Counsel and sought relief on
2 behalf of 11,227 persons within the State of California who are or were employed by Defendant
3 as drivers in California during the Class Period of January 24, 2016 through July 13, 2021.
4 (Settlement at 8, ¶ 24). This litigation involved interviews with Class Members; the review and
5 analysis of documents, policies, and practices; the exchange of discovery and a full day of
6 mediation. Most importantly, the Settlement and all its terms received overwhelming support
7 from Class Members, as there were no objections and only no requests for exclusion. Therefore,
8 Plaintiff respectfully requests the Court grant final approval of the Settlement, attorneys' fees,
9 litigation costs, class representative payment, administration costs, and payment to the LWDA in
10 the amounts preliminarily approved by the Court and as fully disclosed to Class Members.
11 (Hawkins Decl. ¶¶ 6-9).

12 **II. BACKGROUND, INVESTIGATION, DISCOVERY**

13 Defendant is a franchise organization comprised of Taco Bell and Buffalo Wild Wings
14 restaurants. It is separate from Yum! Brands, Inc. and Taco Bell corporate. Pacific Bells operates
15 approximately 243 Taco Bell restaurants in seven states, including California. Pacific Bells also
16 operates more than 20 Buffalo Wild Wings locations. (Hawkins Decl., ¶ 3.)

17 Plaintiffs are former non-exempt hourly employees of Defendant's who worked at
18 separate Taco Bell franchises in California. They worked as crew members whose hourly rates
19 were set at approximately minimum wage or slightly above minimum wage at various times
20 during their employment. Defendants' employees—including Plaintiffs, the Class Members, and
21 the Aggrieved Employees—were hired as hourly non-exempt fast-food workers. Their duties
22 ranged from preparing food, taking customer orders, cleaning, stocking, and other general duties
23 required in a fast-food restaurant. (Hawkins Decl., ¶ 4.)

24 On January 24, 2020, Plaintiff Jennifer Yang provided notice to the California Labor and
25 Workforce Development Agency ("LWDA") to seek civil penalties against Defendant under the
26 California Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698 through
27 2699.6 ("PAGA"), for numerous alleged violations of the Labor Code. (Hawkins Decl., ¶ 5.)
28

1 On January 30, 2020, Plaintiff Sharry Bollinger-Felt filed a class action complaint against
2 Defendant in the Superior Court for the State of California, County of Stanislaus, entitled
3 *Bollinger-Felt v. Pacific Bells, LLC*, Stanislaus Case No. CV-20-000680 (the “Bollinger-Felt
4 Class Action”). (Sullivan Decl., ¶ 21.) Bollinger-Felt sought to represent all persons employed
5 by Defendant within the State of California in hourly or non-exempt positions at any time during
6 the period from January 30, 2016, to resolution of the lawsuit. The Bollinger-Felt Class Action
7 alleged causes of action for:

- 8 (1) Failure to pay all wages as required by Labor Code section 1194;
- 9 (2) Failure to pay overtime wages as required by Labor Code section 510;
- 10 (3) Failure to provide meal periods as required by Labor Code sections 226.7, 512,
11 and the applicable Industrial Welfare Commission (“IWC”) Wage Orders;
- 12 (4) Failure to provide rest periods as required by Labor Code sections 226.7, 512, and
13 the applicable IWC Wage Orders;
- 14 (5) Failure to pay timely wages as required by Labor Code sections 203 and 201.3;
- 15 (6) Failure to provide accurate itemized wage statements as required by Labor Code §
16 226; and
- 17 (7) Violation of California Business and Professions Code sections 17200, *et seq.*
18 (Hawkins Decl., ¶ 6.)

19 On January 30, 2020, Bollinger-Felt provided notice to the LWDA of her intent to seek
20 civil penalties against Defendant under PAGA for numerous alleged violations of the Labor
21 Code. (Hawkins Decl., ¶ 7.)

22 On February 28, 2020, Yang filed a class action complaint against Defendant in the
23 Superior Court for the State of California, County of Stanislaus, entitled *Yang v. Pacific Bells,*
24 *LLC*, Stanislaus Case No. CV-20-001362 (the “Yang Action”). Yang sought to represent all
25 persons employed by Defendant within the State of California in hourly or non-exempt positions
26 at any time during the period from February 28, 2016, to the present. (Hawkins Decl., ¶ 8.) The
27 Yang Action alleged causes of action for:
28

- (1) Failure to pay overtime per Labor Code sections 510, 1198, and the applicable IWC Wage Order;
- (2) Failure to provide rest periods and pay missed rest period premiums per Labor Code section 226.7 and the applicable IWC Wage Order;
- (3) Failure to provide meal periods and pay missed meal period premiums per Labor Code section 226.7, 512, subdivision (a), and the applicable IWC Wage Order;
- (4) Failure to pay all minimum wages per Labor Code sections 1194, 1194.2, 1197, 1197.1, and the applicable IWC Wage Order;
- (5) Wage gender discrimination per Labor Code sections 1197.5, 1199.5, and the applicable IWC Wage Order;
- (6) Failure to provide adequate seating per Labor Code section 1198 and the applicable IWC Wage Order;
- (7) Failure to provide split shift pay per the applicable IWC Wage Order;
- (8) Failure to provide reporting time pay per the applicable IWC Wage Order;
- (9) Failure to pay vacation at separation per Labor Code section 227.3;
- (10) Failure to reimburse necessary business expenses per Labor Code section 2802;
- (11) Failure to pay all wages earned and unpaid at separation per Labor Code sections 201 through 203;
- (12) Failure to pay wages timely during separation per Labor Code sections 204, 1198, and the applicable IWC Wage Order;
- (13) Failure to furnish accurate itemized wage statements per Labor Code section 226, subdivision (a);
- (14) Violations of California's Unfair Competition Law ("UCL") (Bus. & Prof. Code, §§ 17200–17204); and
- (15) PAGA civil penalties pursuant to Labor Code sections 2698 through 2699.6 for violations of Labor Code sections 201–204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 1199, 1199.5, 2802, and IWC Wage Order 5-2001. (Hawkins Decl., ¶ 8.)

1 On April 6, 2020, Bollinger-Felt filed a separate representative civil action against
2 Defendant in the Superior Court for the State of California, County of Stanislaus, entitled
3 *Bollinger-Felt v. Pacific Bells, LLC*, Stanislaus Case No. CV-20-001950 (the “Bollinger-Felt
4 PAGA Action”). In the Bollinger-Felt PAGA Action, Bollinger-Felt sought civil penalties under
5 PAGA for the same violations of the California Labor Code that she alleges in the Bollinger-Felt
6 Class Action. (Hawkins Decl., ¶ 9.)

7 On July 1, 2020, Yang filed an amended complaint in the Yang Action with minor
8 typographical changes. Together, the Bollinger-Felt Class Action, the Bollinger-Felt PAGA
9 Action, and the Yang Action are referred to as the “Actions.” (Hawkins Decl., ¶ 10.)

10 Plaintiffs’ counsel in the Actions—James Hawkins APLC and Melmed Law Group P.C.
11 (“Class Counsel” or “Plaintiffs’ Counsel”)—proceeded to diligently investigate the proposed
12 Class Members’ claims against Defendant, including any and all applicable defenses and the
13 applicable law. The investigation included, among other things, the exchange of information
14 pursuant to formal and informal discovery methods and the review of numerous corporate
15 policies and practices. (Hawkins Decl., ¶ 11.)

16 On October 5, 2020, the Parties participated in mediation of the Actions, before Steve
17 Rottman, Esq. (the “Mediator”), a respected and experienced mediator of wage and hour class
18 actions. After a full day of negotiations and continued negotiations in the following weeks, the
19 Mediator proposed the principal terms of a comprehensive class action settlement for the three
20 Actions. Thereafter, the Parties accepted the Mediator’s proposal and stipulated to the material
21 terms of this Settlement Agreement now before this Court for preliminary approval. The
22 Mediator’s supervision of the mediation and negotiations was critical in managing the
23 expectations of the Parties and providing a useful and neutral analysis of the issues and risks to
24 both sides. (Hawkins Decl., ¶ 12.)

25 The settlement discussions during and after mediation were conducted at arm’s-length and
26 the Settlement Agreement reached is the result of an informed and detailed analysis of
27 Defendant’s potential liability of total exposure in relation to the costs and risks associated with
28 continued litigation. Based on the data produced pursuant to formal and informal discovery, as

1 well as Class Counsel’s own independent investigation and evaluation, and the Mediator’s efforts,
2 Class Counsel determined that the settlement with Defendant for the consideration and on the
3 terms set forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best
4 interest of the Class Members in light of all known facts and circumstances. (Hawkins Decl., ¶
5 13.)

6 On July 6, 2021, Plaintiffs filed a First Amended Consolidated Complaint to include
7 Bollinger-Felt’s PAGA claim and Plaintiff’s Jennifer Yang’s class and PAGA claims pursuant to
8 the terms of the Settlement Agreement. Thereafter, the Bollinger-Felt dismissed without
9 prejudice the Bollinger-Felt PAGA Action and the Yang Action. (Hawkins Decl., ¶ 15.)

10 Defendant denies any wrongdoing and denies liability with respect to the matters alleged
11 in the Complaints, and believes that it has valid defenses to all of Plaintiff’s claims including an
12 arbitration agreement. Defendant further contends that it has complied with all wage and hour
13 laws applicable to the employment of Plaintiff and the proposed Class Members. (Hawkins Decl.
14 ¶ 16).

15 **1. The Settlement Provides Reasonable Compensation to Class Members**

16 As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement
17 Amount (“GSA”) of \$875,000.00. (Settlement ¶ 31). Based on their own respective independent
18 investigations and evaluations, and after taking into account the sharply disputed factual and legal
19 issues involved in this matter, the risks attending further prosecution of the case, the Defendant’s
20 financial viability, and the monetary benefits received under the Settlement despite the
21 questionable nature of the claims, Plaintiffs’ counsel is of the opinion that Settlement for the
22 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and
23 adequate and is in the best interests of the Class Members.

24 Even without the presumption of fairness and reasonableness, the settlement clearly is
25 within the range of reasonableness. Here, the main thrust of Plaintiffs’ claims against Defendant
26 centers around the failure to pay wages for alleged off the clock work including overtime after
27 their shifts, and at times during meal periods in violation of the California Labor Code. Despite
28 arguably compliant written policies, its everyday practices violated its own policies regarding the

1 matter. Specifically, Class Members in certain positions would periodically work solo shifts,
2 without any other employee to provide relief to take meal breaks. Plaintiff alleged that, during
3 such shifts, the Class Members' meal breaks were periodically interrupted by the press of
4 business and this time was not captured on the clock and thus resulted in underpayments of
5 regular wages, overtime, and minimum wages. As a result, Plaintiff asserts Defendant maintained
6 its control over its employees at all times, even during lunches and rest breaks. Thus, Plaintiff and
7 aggrieved employees were at times unable to receive uninterrupted meal and rest breaks.
8 (Hawkins Decl. ¶ 20).

9 Accordingly, Plaintiffs and the Class members were not compensated for time spent
10 working during meal periods when their meal periods were interrupted by Defendant. Further,
11 due to the work demands of Defendant, it is alleged the rest periods and meal periods were not
12 provided according to California law and were either untimely, short or not provided at all.
13 (Hawkins Decl., ¶ 21).

14 Plaintiffs asserted he was not paid all wages owed due to the unlawful auto deduct
15 policy. Labor Code section 204 establishes the fundamental right of all employees in the State of
16 California to be paid wages, including minimum wage, straight time and overtime, in a timely
17 fashion for their work. Labor Code section 1194 (a) reads that notwithstanding any agreement to
18 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
19 overtime compensation applicable to the employee is entitled to recover in a civil action the
20 unpaid balance of the full amount of this minimum wage or overtime compensation, including
21 interest thereon, reasonable attorney's fees, and costs of suit. Labor Code section 510(a) reads in
22 pertinent part: "Any work in excess of eight hours in one workday and any work in excess of 40
23 hours in any one workweek ... shall be compensated at the rate of no less than one and one-half
24 times the regular rate of pay for any employee." (*Id.*).

25 Plaintiffs asserted they and the Class did not enjoy a full 30-minute meal period but had
26 30 minutes of time unlawfully deducted. Plaintiff and the Class must be compensated for this
27 time under the minimum wage and overtime laws. (*See Gonzalez v. Downtown LA Motors,*
28 *LP*, 215 Cal. App. 4th 36, 50 (2013).) As a result, Plaintiffs and the class members were also

1 deprived of overtime compensation due to Defendant's unlawful deduction policy. Plaintiffs also
2 alleged that under Section 512 of the California Labor Code, Defendant is liable for meal period
3 premiums. Here, the evidence demonstrates Defendant frequently failed to provide timely meal
4 periods, and many meal periods were also either less than 30 minutes and/or interrupted. Further,
5 Plaintiffs alleged that Defendant failed to pay for any meal period premiums during the Class
6 Period. As a consequence of the above-specified violations and its failure to pay premium
7 payments and all wages earned, Defendant violated the provisions of California Labor Code
8 sections 201-203 requiring the timely payment of wages at the time of employee's separation
9 from employment. Here, Defendant argued that it did not fail to pay wages in the first instance,
10 and that any failure to pay wages was an honest mistake and in good faith and not "willful." (*Id.*).

11 Plaintiffs also sought penalties under Cal. Lab. Code section 226 as Plaintiffs' alleged
12 Defendant's wage statements issued to Plaintiffs and the Class were non-compliant by virtue of
13 the above specified violations. Further, to the extent that Defendant failed to record and
14 compensate employees for meal and rest period premiums and failed to properly pay employees
15 for all hours worked, the "gross wages" earned is inaccurate in violation of Labor Code section
16 226(a)(1), becoming an alternative cause for penalties under section 226(e).

17 Labor Code section 2802 provides that "an employer shall indemnify his or her employees
18 for all necessary expenditures or losses incurred by the employee in direct consequence of the
19 discharge of his or her duties, or of his or her obedience to the directions of the employer." The
20 purpose of this section is to "prevent employers from passing along their operating expenses onto
21 their employees." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.) The duty
22 to reimburse extends to the use of equipment the employee may already own and would be
23 required to pay for anyway. (*Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th
24 1137, 1144 [employer must reimburse an employee for the reasonable expense of the mandatory
25 use of a personal cell phone].)

26 Plaintiffs alleged that the Class Members were required to correspond about business
27 issues with their managers via text message and were required to download a mobile application
28 on their smart phones related to their employment. To do this, the Class Members had to have a

1 cell phone and a data plan or a home internet plan through which they could connect to the
2 internet. Defendant never paid the Class Members for use of their cell phone or home internet
3 costs expended in service to the Company. (Hawkins Decl., ¶ 26.)

4 Defendant argued that it did not fail to pay wages in the first instance, and that any
5 failure to pay wages was an honest mistake and in good faith and not “willful.” Defendant
6 further argued it had lawful meal and rest periods policies in place during the Class Period and it
7 notified the Plaintiff and Class of their policies to provide meal periods and permit and authorize
8 rest periods according to California law. Defendant also pointed to its policy to require
9 employees to record their meal periods. (Hawkins Decl., ¶ 27.)

10 Defendant also disputed the propriety of certification in this case and contends that its
11 policies and practices concerning the claims asserted in this lawsuit are compliant with California
12 law. Accordingly, it denies it has any liability for the claims asserted by Plaintiffs. (Hawkins
13 Decl., ¶ 28.)

14 **III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS’** 15 **RESPONSE**

16 **A. Terms of the Settlement**

17 The GSA is Eight-Hundred Seventy-Five Thousand Dollars and Zero Cents
18 (\$875,000.00). The Gross Settlement Amount includes, without limitation, the Settlement
19 Administration Costs of \$70,000.00; the Class Representative Enhancement of up to \$7,500.00
20 each; Court-approved attorneys’ fees up to \$291,666.63, litigation costs to Class Counsel in the
21 amount of \$26,000.00; and Penalties paid pursuant to PAGA of \$35,000.00 with 75% paid to the
22 LWDA. The Net Settlement Amount (“NSA”) is approximately \$446,083.37. (Hernandez
23 Decl. ¶ 14). Additionally, Defendant’s share of employer taxes will be paid separate and apart
24 from the GSA. Participating Class Members’ Individual Settlement Amounts shall be based on a
25 *pro rata* value equal to the Net Settlement Amount multiplied by the ratio of (a) the number of
26 Eligible Workweeks. (Settlement at 12. ¶¶ 44, 54.).¹ The Settlement is a common fund

27 ¹ The class member increase since the date of preliminary approval to the date of final approval represents
28 approximately a 12% increase which is reasonable and expected increase due to the passage of time from the date of

1 settlement with no reversion to Defendant. Thus, each of the participating Settlement Class
2 Members will be paid his or her pro-rata share of the NSA. (*Id.*).

3
4 **B. Released Claims**

5 Subject to approval by this Court, and in exchange for the consideration recited in the
6 Settlement Agreement, the Class Released Claims are limited to the wage and hour claims asserted
7 in the complaints. (Settlement Agreement at 11, ¶ 40).

8 **C. The Class Members Support the Settlement – Zero (0) Objections and**
9 **Five (5) Opt-Outs**

10 On July 13 2021 the Court granted Preliminary Approval of the Settlement, conditionally
11 certified the Class, appointed ILYM Group, Inc. to act as the administrator, approved the Notice
12 to be sent to the Class, and directed that the Notice be mailed to the Class via U.S. First Class
13 Mail. On August 16, 2021, ILYM mailed the Notices to 11,227 Class Members. (Hernandez
14 Decl. ¶¶ 4-13). Out of the 11,227 Notices, 498 was deemed undeliverable after the Notices were
15 returned and ILYM had conducted a skip trace and National Change of Address search to find the
16 most recent addresses. (Hernandez Decl. ¶¶ 8-10). Therefore, there is a 99.96% participation rate
17 and 11,222 Class Members will be mailed a settlement check. (*Id.* ¶ 13).

18 The Parties agreed per Stipulation and Ordered by the Court that checks remaining
19 uncashed shall be distributed pursuant to California Code of Civil Procedure section 384 with the
20 funds for any uncashed checks will be tendered to the Children’s Rights Project at Public Counsel
21 in support of Pubic Counsel’s child advocacy programs.. (Settlement at 20 ¶ 68).

22 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

23 **A. The Settlement Satisfies the Standard for Final Approval**

24 California Rule of Court, Rule 3.769, requires court approval for class action settlements.
25 Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62
26 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602
27
28 mediation to the date of the order granting preliminary approval. (Hawkins Decl., ¶ 17).

1 (“[T]he law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what
2 is otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer,*
3 *Inc.* (2001) 91 Cal. App. 4th 224, 245.

4 In deciding whether to approve a class settlement, a court evaluates whether the proposed
5 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
6 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.* (9th Cir.
7 1982) 688 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination.
8 *Dunk*, 48 Cal. App. 4th at 1801. However, “a presumption of fairness exists where: (1) the
9 settlement is reached through arms-length bargaining; (2) investigation and discovery are
10 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
11 litigation; and (4) the percentage of objectors is small.” *Id.* at 1802; *accord Wershba*, 91 Cal.
12 App. 4th at 245. In addition, a court should consider additional relevant factors, including the
13 strength of the plaintiffs’ case compared to the settlement amount; the risk, expenses, complexity,
14 and likely duration of further litigation; and the fair treatment of class members in relation to each
15 other. *Dunk*, 48 Cal. App. 4th at 1802.

16 At the time of preliminary approval, the Court was provided with sufficient information to
17 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
18 until after the Class had an opportunity to respond to the Settlement as explained in the Notice.
19 Subject only to the Class’ reaction to the Settlement, the Court preliminarily presumed the
20 Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and
21 adequate time provided to the Class to object to the Settlement, no class members submitted
22 objections and only five (5) submitted opt outs of the settlement, **resulting in a 99.96%**
23 **participation rate from the Class.** (Hernandez Decl. ¶ 13). Thus, the proposed Settlement is
24 entitled to the presumption that it is fair and in all other respects proper and should be finally
25 approved.

26 **V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS**

27 **A. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage**
28 **of a Common Fund**

1 Class Counsel applies for an award of attorneys' fees in the sum of \$291,666.63 of the
2 GSA, and litigation costs of \$26,000.00. (Hawkins Decl. ¶¶ 28-42, Exh. 1); (Sullivan Decl. ¶ 27,
3 Exh. A). When a settlement results in a common fund for the benefit of a class, class counsel
4 may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at
5 254 (recognizing the "percentage of recovery" method). The California Supreme Court confirmed
6 in *Laffitte v. Robert Half Int'l, Inc.* that "[t]he percentage of fund method survives in California
7 class action cases." 1 Cal.5th 480, 506 (2016), in stating:

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

13 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34
14 (1977) ("when a number of persons are entitled in common to a specific fund, and an action
15 brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of
16 that fund, such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); *Serrano v.*
17 *Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the
18 benefit of all parties, the trial court acts within its equitable power to prevent the other parties'
19 unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir.
20 1993) (the percentage of the fund method for calculating attorney's fees more accurately reflects
21 the results achieved for the putative class than the lodestar method and "establishes reasonable
22 expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages
23 early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities*
24 *Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally
25 favored in common fund cases because it allows courts to award fees from the fund 'in a manner
26 that rewards counsel for success and penalizes it for failure.'").²

26 ² *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar
27 cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 ("We hold further that trial courts have discretion
28 to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-
check and use other means to evaluate the reasonableness of a requested percentage fee").

1 The purpose of the common fund/percentage approach is to “spread litigation costs
2 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
3 burden alone.” *Vincent, supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d
4 162, 167, the Court stated: “[O]ne who expends attorneys’ fees in winning a suit which creates a
5 fund from which others derive benefits may require those passive beneficiaries to bear a fair share
6 of the litigation costs.” Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th
7 105, 110, the California Supreme Court recognized that the common fund doctrine has been
8 applied “consistently in California when an action brought by one party creates a fund in which
9 other persons are entitled to share.” The reasons for applying the common fund doctrine include:
10 “...fairness to the successful litigant, who might otherwise receive no benefit because his
11 recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the
12 others who are entitled to share in the fund and who should bear their share of the burden of its
13 recovery; encouragement of the attorney for the successful litigant, who will be more willing to
14 undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he
15 is assured that he will be properly and directly compensated should his efforts be successful.” *Id.*
16 Because there is a defined and clearly traceable benefit to the Class, the Court can base an award
17 of attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.

18 **1. The Requested Attorneys’ Fee is Within the Range of Fees Approved in**
19 **Comparable Common Fund Cases**

20 Assessing an appropriate fee based on a percentage of the fund involves considering “all
21 of the circumstances of the case.” Appellate cases addressing fees arise almost exclusively where
22 awards were challenged by defendants or objectors – the only parties with standing to appeal.
23 *Wershba*, 91 Cal.App.4th at 236. Several studies of class action fee awards have found that the
24 median common fund fee award is approximately one-third of the total settlement fund.³

25 ³See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that “fee
26 awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich,
27 *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 546 ; T.
28 Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report*
to the Advisory Committee on Civil Rules, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in
the traditional range of approximately one-third of the total settlement”).

1 The requested fee falls in the mid-range of percentage class fee awards, which generally
2 range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking
3 complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates
4 Class Counsel for their efforts, as well as the result achieved for the benefit of the Class.
5 Numerous state and federal courts in California routinely approve fee requests equal to or greater
6 than 33% of the common fund. Indeed, courts have found that an award of 33% of the common
7 fund represents the “benchmark” in California.⁴ In short, Class Counsels’ fee request of
8 \$291,666.63 (33% of the GSA) is in line with awards in similar cases in California and
9 nationwide and demonstrates that Class Counsels’ fee request is consistent with market rates and
10 is reasonable.

11 **2. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee**

12 Class Counsels’ fee request is reasonable when calculated using the lodestar method.
13 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
14 spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at
15 48. The court then may enhance this lodestar figure by a “multiplier” to account for a range of
16 factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
17 success achieved. *Id.* at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer*
18 *v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), [“[t]here is no...rule limiting the factors
19 that may justify an exercise of judicial discretion to [adjust the] lodestar”].

20 As of the date of filing, Class Counsel worked 422.6 combined documented hours on this
21 case. Thus, the total lodestar for Class Counsel is approximately \$264,297.50. All of the work
22 and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this
23 case. (Hawkins Decl. ¶ 41) (Sullivan Decl. ¶¶ 15-16). As Class Counsel’s lodestar fee is in
24 excess of their fee request, a multiplier on their lodestar fee is not sought herein. In fact, the

25 _____
26 ⁴ *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 WL 163293, *5
27 (“These percentages compare favorably with both California (33%) and federal (25%) benchmarks.”); *Dennis v.*
28 *Kellogg Co.* (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 WL 6055326, at *7 (“This percentage compares
favorably with both California (33%) and federal (25%) benchmarks and the requested fee compares well with a
lodestar cross-check as well.”).

1 requested fee results in a so-called “negative multiplier” which suggests the percentage of the
2 fund amount is reasonable and fair. See *Chun-Hoon v. McKee Foods Corp.*, 716 F.Supp.2d 848,
3 854; *In re Portal Software, Inc. Securities Litigation*, 2007 U.S. Dist. LEXIS 88886, 2007 WL
4 4171201, at *16 (N.D. Cal. 2007).

5 **3. Class Counsel’s Hourly Rates are Reasonable**

6 Class Counsels’ hourly rates are between \$225 and \$850 and are in line with rates
7 typically approved in wage and hour class action litigation and which rates have been approved
8 by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and
9 San Diego County Superior Courts.

10 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
11 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084,
12 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and
13 experience, the nature of the work performed, the relevant area of expertise and the attorney’s
14 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.
15 Class Counsels’ skill and experience support their hourly rates. Their practice is limited
16 exclusively to litigation, focusing on the representation of employees in wage and hour and
17 consumer class action matters. (Hawkins Decl. ¶ 39). As prominent attorneys in the field of wage
18 and hour class action litigation, Class Counsel continually monitors the prevailing market rates
19 charged by both defense and plaintiff law firms and set the billing rates of their attorneys and
20 paralegals to be consistent with the prevailing market rates in the private sector for attorneys and
21 staff of comparable skill, qualifications and experience. Other wage and hour attorneys working
22 as class counsel before California courts charge comparable if not higher rates. Therefore, as they
23 are in line with those of the relevant community, Class Counsels’ hourly rates are reasonable.

24 **4. Class Counsel’s Total Hours are Reasonable**

25 In determining a lodestar fee, reasonable hours include, in addition to time spent during
26 litigation, the time spent before the action was filed, including time spent interviewing clients,
27 investigating the facts and the law, and preparing the initial pleadings. See *New York Gaslight*
28

1 *Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to
2 establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

3 Class Counsel expended a total of approximately 422.6 documented hours on this case.
4 The work performed to achieve a settlement that will provide valuable consideration to the Class,
5 is summarized by Class Counsel in the declaration submitted herewith. (Hawkins Decl. ¶ 41)
6 (Sullivan Decl. ¶ 15). All tasks and work performed were reasonable and necessary to the
7 prosecution of this case. The work performed was justified in light of the result achieved.

8 **5. Costs of Litigation are Reasonable**

9 Class Counsel seeks reimbursement of the litigation costs and expenses of \$26,000.00
10 These costs were reasonable and necessary to prosecute this case and the results achieved and are
11 fair, and reasonable. (Hawkins Decl. ¶ 42; Ex. 1) (Sullivan Decl. ¶ 16, Exh. A).

12 **VI. THE CLASS REPRESENTATIVE AWARDS ARE REASONABLE**

13 Class Counsel seeks approval \$7,5000.00 service awards to each of the named
14 Plaintiffs/Class Representatives. The requested service awards are reasonable in light of the
15 general releases of all claims Plaintiffs agreed to, greater than the release given by Class
16 Members, the benefits Plaintiffs conferred upon the entire Class, resulting in payments to all
17 Class Members, the time spent assisting counsel with the investigation and prosecution of these
18 claims, commitment to responding to discovery and to their anticipated depositions, and
19 consenting to the proposed Settlement. Furthermore, in pursuing this action on behalf of the
20 Class, Plaintiffs risked a judgment for attorneys' fees and costs in the event this matter had been
21 lost. (Mauro Decl., Exh 2 Bollinger-Felt Decl. ISO Preliminary Approval); (Yang Decl. ISO
22 Preliminary Approval).

23 Courts routinely approve service payments, or incentive awards, to compensate named
24 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
25 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers*
26 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
27 representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on
28

1 the foregoing, the \$7,500.00 service payment to the named Plaintiffs/Class Representatives is fair,
2 appropriate, and justified as part of the overall settlement.

3
4 **VI. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**

5 The Parties agreed to hire ILYM Group, Inc. as the administrator, and the Court approved
6 this choice. The Administrator was responsible for formatting, printing and mailing the Notice. It
7 was also responsible for updating addresses and re-mailing Notices returned as undeliverable,
8 responding to Class Member inquiries, answering questions from Counsel for the Parties, and
9 providing a declaration to document its duties and responsibilities under the settlement. Plaintiff
10 now request that the Court approve the \$70,000.00 fee to ILYM Group, Inc. for services rendered
11 and to be rendered. (Hernandez Decl. ¶¶ 2-15). Following the grant of final approval, the
12 Administrator's duties will continue in order to calculate and mail the Individual Settlement
13 Payment checks to Class Members, perform tax reporting obligations, disburse other payments as
14 ordered by the Court, and perform such other duties as set forth in the Settlement Agreement. The
15 fee of \$70,000.00 for services rendered and to be rendered is fair and reasonable and should be
16 granted.

17 **VII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE**

18 The payment of \$26,250.00 (75% of \$35,000.00) to the LWDA for its share of the
19 applicable penalties claimed under the California Labor Code's Private Attorney general Act of
20 2004, as amended ("PAGA"), is reasonable under the circumstances. The Parties negotiated a
21 good faith amount to the LWDA. The sum to be paid to the LWDA was not the result of self-
22 interest at the expense of other Class Members. The LWDA was provided notice of the
23 Settlement concurrently with the filing of the preliminary approval motion and the instant motion.
24 Plaintiff did not receive a response or objection to the Settlement from the LWDA. (Settlement at
25 10 ¶ 30). Thus, Plaintiffs request the Court finally approve the sum of \$26,250.00 for payment to
26 the LWDA.

1 **VIII. CONCLUSION**

2 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
3 of the Class Action Settlement, award Class Counsels' attorneys' fees in the sum of \$291,666.63
4 and litigation costs of \$26,000.000, award the named Plaintiffs an enhancement award payment in
5 the sum of \$7,500.00 each, award \$70,000.00 to ILYM Group, Inc. for settlement administration
6 services, and approve a payment to the LWDA in the amount of \$26,250.00.

7
8 Dated: December 29, 2021

MELMED LAW GROUP P.C.
JAMES HAWKINS APLC

9
10 

11 **MARTIN SULLIVAN**
JAMES R. HAWKINS

12 Attorneys for Plaintiffs, the Putative Class, and
13 the Aggrieved Employees
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1 **PROOF OF SERVICE, COUNTY OF ORANGE**

2
3 I am a resident of the State of California, County of Orange. I am over the age of
4 eighteen years and not a party to the within action. My business address is 9880
Research Drive., Suite 200, Irvine, California 92618.

5 On December 30, 2021, I served on the interested parties in this action the following
6 document(s) entitled:

- 7
- 8 • **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS**
 - 9 **ACTION SETTLEMENT; ATTORNEYS' FEES, COSTS, ADMINISTRATION**
 - 10 **COSTS; MEMORANDUM OF POINTS AND AUTHORITIES**
 - 11 • **DECLARATION OF JAMES HAWKINS IN SUPPORT OF PLAINTIFFS'**
 - 12 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
 - 13 • **DECLARATION OF MARLIN SULLIVAN IN SUPPORT OF PLAINTIFFS'**
 - 14 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
 - 15 • **DECLARATION OF HERNANDEZ OF ILYM GROUP, INC. IN SUPPORT OF**
 - 16 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
 - 17 • **[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR FINAL**
 - 18 **APPROVAL OF CLASS ACTION SETTLEMENT, ATTORNEYS' FEES,**
 - 19 **COSTS, CLASS REPRESENTATIVE AWARDS, AND ENTERING JUDGMENT**

20
21 [XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to
22 accept service by e-mail or electronic transmission, I caused the document(s) to be sent
23 from the email address Nicole@jameshawkinsaplc.com to the persons at the e-mail
addresses listed in the Service List below. I did not receive, within a reasonable time after
the transmission, any electronic message or other indication that the transmission was
unsuccessful.

24 **SERVICE LIST**

25 See Attached Serviced List

26 [XX] **STATE:** I declare under penalty of perjury, under the laws of the State of
27 California, that the above is true and correct.

28 Executed on December 30, 2021, at Irvine, California


Nicole Miccolis

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<http://www.dir.ca.gov/Private-Attorneys-General-Act>
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