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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

JOSE L. DIAZ, et al.

Plaintiffs,

v.

SANTA BARBARA TRANSPORTATION
CORPORATION, et al,

Defendants.

Lead Case No.: CIVDS1920120

Consolidated with:

Santa Barbara County Case No. 19CV04466

Los Angeles County Case No. 20STCV03328

Los Angeles County Case No. 20STCV12806

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: August 10, 2021

Time: 10:00 a.m.

Dept: S26

Honorable David Cohn

Department S26

KRYSTLE SHAY, et al.

Plaintiffs,

v.

SANTA BARBARA TRANSPORTATION, et
al.

Santa Barbara County Superior Court
Case No.: 19CV0446

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

DEIDRE R. CHILDRESS, et al.

Plaintiffs,

v.

SANTA BARBARA TRANSPORTATION, et
al.

Defendants.

Los Angeles County Superior Court
Case No. 20STCV03328

DEIDRE R. CHILDRESS, et al.

Plaintiffs,

v.

SANTA BARBARA TRANSPORTATION
CORPORATION, et al.,

Defendants.

Los Angeles County Superior Court
Case No. 20STCV12806

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Krystle Shay, Jose L. Diaz, and Deidre R. Childress (collectively “Plaintiffs”),
4 on behalf of participating class members of the conditionally certified class, respectfully request
5 that this Court grant final approval of the settlement, which seeks to resolve claims against
6 Defendants Santa Barbara Transportation Corporation and Student Transportation of America,
7 Inc., (“Defendants”) in exchange for a non-reversionary Maximum Settlement Amount
8 (“MSA”) totaling Three Million Dollars and Zero Cents (\$3,000,000.00). The Class Members
9 overwhelmingly supported the Settlement, as there were zero (0) objections and only three (3)
10 exclusions out of the 3,262 class members representing 99.91% participation rate. (Declaration
11 of Administrator Nathalie Hernandez, hereinafter “Hernandez Decl.”, ¶¶ 11-14). The class
12 members will receive an *average* settlement payment of approximately \$505.06 and the *highest*
13 settlement payment is \$2,121.97. (*Id.*)

14 Plaintiffs also move for final approval of attorneys’ fees in the amount of \$1,050,00.00
15 of the MSA. As will be demonstrated herein, Class Counsel’s attorney fee request is supported
16 using the percentage fee method and the lodestar method. Second, Plaintiffs move for final
17 approval of payment of the litigation costs of approximately \$28,639.39, all of which were
18 incurred in litigating this matter. Third, Plaintiffs move for final approval of the Class
19 Representative Service Award payments to Plaintiffs in the sum of \$7,500.00 each, to
20 compensate the Class Representatives for their work to obtain the settlement and benefits upon
21 the class, providing a general release of their claims against Defendant – a release significantly
22 greater than the Class Members provided – and for the risks absorbed and time spent litigating
23 the case. Plaintiffs played a vital role in representing Class Members in this case and
24 spearheading the lawsuit to seek monetary relief on behalf of all Class Members. Fourth,
25 Plaintiffs move for final approval of the payment of approximately \$30,000.00 in administrative
26 costs to ILYM Group, Inc. (Declaration of Gregory Mauro hereinafter “Mauro Decl.” Exh. 1
27 “Settlement Agreement”).

28 This case required many hours of attorney time beyond what is requested from

Class Counsel and sought relief on behalf of 3,262 non-exempt employees employed for Defendants at any time between July 10, 2015 and April 26, 2021, and who did not opt out of the proposed settlement. (Settlement Agreement ¶ 51). This litigation involved interviews with Class Members; the review and analysis of documents, policies, and practices; the exchange of discovery, and a full day of mediation. Most importantly, the Settlement and all its terms received overwhelming support from Class Members, as there were zero (0) objections and 99.91% participation. Therefore, Plaintiff respectfully requests the Court grant final approval of the Settlement, attorneys' fees, litigation costs, service award payments, and administration costs, in the amounts preliminarily approved by the Court and as fully disclosed to Class Members.

II. BACKGROUND, INVESTIGATION, DISCOVERY

Defendant Student Transportation of America is a major provider¹ of student bus transportation throughout the United States. Defendant Santa Barbara Transportation was a local company based in Goleta, California providing transportation in the Santa Barbara and Ventura County areas. (Mauro Decl. ¶ 8).

The proposed Class Representatives are adequate Class Representatives because they will adequately and fairly represent the Class and will not place their interests above any Member of the Class. Class Representative Krystle Shay was a Non-Exempt Employee working as a bus driver during the liability period until her separation from Defendants' employ in approximately April 20, 2019. Plaintiff, Jose Diaz was employed by Defendants from approximately 2008 as a Non-Exempt Employee working as a mechanic until his separation from Defendants' employ in approximately August 2018. Plaintiff, Deidre R. Childress was employed by Defendants in approximately September 2017 as a Non-Exempt Employee working as a bus driver until her separation from Defendants' employ in approximately April 2019. Plaintiffs were subjected to the same compensation, meal and rest period and split shift

¹ Student Transportation of America is North America's safest independent provider of school bus transportation services, with an industry-leading safety rating and the youngest fleet in the business, operating more than 16,000 vehicles serving more than 325 school districts.
<https://www.ride.sta.com/about>.

1 policies and practices, and issued the same wage statements, as all other Class Members during
2 the Class Period. (Mauro Decl. ¶ 9).

3 This case was settled through arms-length negotiation. Class Counsel submits that the
4 settlement amount recoverable for each Class Member in the Class is fair and reasonable based
5 in a review of all objective evidence. The settlement that has been reached, subject to this
6 Court's approval, is the product of tremendous effort, and a great deal of expense by the Parties
7 and their counsel. The settlement was reached after extensive factual and legal research and
8 discovery. The parties attended a full-day of mediation on February 1, 2021 before Michael
9 Dickstein, Esq, which resulted in this Settlement. The parties executed a Memorandum of
10 Understanding within a day of the mediation, and spent approximately the next month ironing
11 out the details of the long form settlement agreement that is memorialized in the Joint
12 Stipulation of Class Action and PAGA Settlement and Release. (Mauro Decl., ¶ 10, Exh. 1).

13 To prepare for the mediation, Defendant provided extensive documentation and data
14 related to the claims asserted in this case, including but not limited to pay policies, and a
15 sampling of payroll records, time records and pay stubs, as well as a number of workweeks/pay
16 periods, class size and other necessary information for Plaintiffs to create a damage exposure
17 analysis. Plaintiffs hired an expert economist to prepare damage calculations and an exposure
18 analysis for the mediation. (Mauro Decl., ¶ 3).

19 Defendant has steadfastly denied Plaintiffs' allegations and raised defenses to the
20 claims, individually and on a class wide basis. Defendants maintains that its policies and
21 practices meet the requirements of the Labor Code and applicable Wage Order with regard to
22 the provision of meal and rest breaks and the payment of all compensation owed to its
23 employees. To date, no motion for class certification has been filed, no class has been certified,
24 and the Court has not made any findings that Defendant engaged in any wrongdoing or in
25 violation of any state law, rule, or regulation, with respect to the issues presented in the
26 litigation. (See Mauro Decl., ¶ 6).

27 Class Counsel are knowledgeable about and have done extensive research with respect
28 to the applicable law and potential defenses to the claims of the Settlement Class. Based on the

1 extensive discovery, litigation, documents and information provided by Defendant, and its own
2 independent investigation and evaluation, Class Counsel and Plaintiffs are of the opinion that
3 the Settlement with Defendant for the consideration and on the terms set forth in this Settlement
4 is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all
5 known facts and circumstances, including the risk of significant delay and uncertainty
6 associated with litigation, various defenses asserted by Defendant, and numerous potential
7 appellate issues. (Mauro Decl., ¶¶ 4, 8, 34; Zachery “Crosner” Decl., ¶ 8; Marcus “Bradley”
8 Decl. ¶20).

9 The settlement amount is, of course, a compromise figure. Plaintiffs took into account
10 the risks related to proof of Plaintiffs’ claims and the strengths and weaknesses of Defendant’s
11 other defenses. Plaintiffs also took into account the possibility that if a settlement were reached
12 after additional years of litigation, the great expenses and attorneys’ fees of litigation would
13 reduce the amount of funds available to the Class Members for settlement. Furthermore,
14 Plaintiffs also took into consideration the time delay and financial repercussions of trial and the
15 possibility of an appeal by Defendant. The parties in this matter have agreed to the settlement
16 amount of \$3,000,000 on a class wide basis with no claims form requirement and with no
17 residual to revert to Defendant. (Mauro Decl., ¶ 11).

18 **III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS’** 19 **RESPONSE**

20 **A. Terms of the Settlement**

21 The Maximum Settlement Amount is Three Million Dollars and Zero Cents
22 (\$3,000,000.00). The Maximum Settlement Amount includes, without limitation, 35% of the
23 Maximum Settlement Amount in an amount not to exceed \$1,050,000.00 (“Attorneys’ Fees”);
24 (2) litigation costs and expenses not to exceed \$30,000.00 (“Litigation Costs”); (3) class
25 representative Service Awards in the amount of \$7,500.00 to each named Plaintiff (“Class
26 Representative Awards”); (4) all settlement administration fees and costs, including those of the
27 Settlement Administrator in the amount of \$30,000.00 (“Settlement Administration Fees”);
28 PAGA Penalties in the amount of \$250,000.00 with \$187,500.00 payable to the LWDA and

1 \$62,500.00 to be distributed to the Class; and (6) all payroll taxes and all other applicable
2 taxes, excluding the employer's portion of the payroll taxes ("Payroll Taxes"). (Settlement ¶¶ 3,
3 7, 17, 22,). The Maximum Settlement Amount has been agreed to by the Parties based on the
4 aggregation of the agreed-upon settlement value of individual claims. This is a non-reversion
5 settlement. Thus, no part of the Maximum Settlement Amount will revert to Defendant.
6 (Settlement Agreement, ¶ 41 (h)). Any uncashed settlement payment checks remaining
7 uncashed after 180 days shall be the expiration of the unclaimed shall be tendered to distributed
8 to the State Controller's Office. (Settlement Agreement ¶ 57 (a)(viii)).

9 **1. Released Claims**

10 Subject to approval by this Court, and in exchange for the consideration recited in the
11 Settlement Agreement, the Class Released Claims are limited to the wage and hour claims
12 asserted in the complaint. (Settlement Agreement ¶ 28).

13 The named Plaintiffs agreed to a general release which releases unknown claims under
14 Civil Code § 1542, but there is no such release as to class members. (Settlement Agreement ¶
15 53).

16 **2. The Class Members Support the Settlement – Zero (0) Objections and** 17 **99.91 % Participation**

18 On April 26, 2021, the Court granted Preliminary Approval of the Settlement,
19 conditionally certified the Class, appointed ILYM Group, Inc., to act as the administrator,
20 approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class
21 via U.S. First Class Mail. On May 20, 2021 ILYM Group, Inc. mailed the Notices to 3,626
22 Class Members. (Hernandez Decl. ¶7). There were zero (0) objections received, and three (3)
23 requests for exclusion, representing a 99.91% participation rate. (*Id.* ¶¶ 12-14).

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

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

26 California Rule of Court, Rule 3.769, requires court approval for class action
27 settlements. Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior*
28 *Court* (1976) 62 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37

Cal. 2d 592, 602 (“[T]he law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what is otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 245.

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

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the Settlement as explained in the Notice. Subject only to the Class’ reaction to the Settlement, the Court preliminarily presumed the Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and adequate time provided to the Class to object to the Settlement, no class members submitted objections and only three class member chose to opt out. (Mauro Decl. ¶¶ 12-33; Hernandez Decl. ¶¶ 12-13). Thus, the proposed Settlement is entitled to the presumption that it is fair and in all other respects proper and should be finally approved.

V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS

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

Class Counsel applies for an award of attorneys’ fees in the sum of

1 \$1,050,000.00² and litigation costs of approximately \$28,369.39. (See Crosner Decl., ¶¶ 25-35;
2 Bradley Decl. ¶¶ 17-21, Exh. A; Mauro Decl. ¶¶ 42-50, Exhs. 2, 3). Counsel believes that this is
3 appropriate based upon a common fund and/or lodestar analysis. This settlement is for an
4 amount of \$3,000,000. Class Counsel believes that pursuant to *Laffitte v. Robert Half*
5 *International Inc.* (2016) 1 Cal.5th 480 and *Lealao v. Beneficial California, Inc.*, 82
6 Cal.App.4th 19, this request is fair and reasonable in view of the typical common fund
7 attorneys' fees awards and similar California class action wage and hour settlements and the
8 hours worked on this case. Likewise, Class Counsel has approximately \$28,369.39 in litigation
9 costs, not including the costs to administer the settlement fund. Class Counsel will file a
10 detailed statement of costs at the time of Final Approval. (See Crosner Decl., ¶¶ 25-35; Bradley
11 Decl. ¶¶ 17-21, Exh. A; Mauro Decl. ¶¶ 42-50, Exhs. 2, 3).

12 When a settlement results in a common fund for the benefit of a class, class counsel may
13 be awarded fees as a percentage of the common fund. See *Wershba, supra*, 91 Cal.App.4th at
14 254 (recognizing the "percentage of recovery" method). The California Supreme Court
15 confirmed in *Laffitte v. Robert Half Int'l, Inc.* that "[t]he percentage of fund method survives in
16 California class action cases." 1 Cal.5th 480, 506 (2016), in stating:

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

23 *Id.* at 503 (internal citation omitted); see also e.g., *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
24 ("when a number of persons are entitled in common to a specific fund, and an action brought by
25 a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,
such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); *Serrano v. Unruh*,

26 ² Plaintiffs have agreed to a fee split as follows: 40% to Crosner Legal, P.C.; 35% to Bradley Grombacher LLP
27 and Law Offices of Sahag Majarian II, and 25% to James Hawkins APLC. Plaintiffs have agreed to this fee split in
28 writing. Plaintiffs and Counsel agree that this fee split is fair and reasonable. (Crosner Decl., ¶ 24).

32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorney's fees more accurately reflects the results achieved for the putative class than the lodestar method and "establishes reasonable expectations on the part of plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'").³

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

³ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 ("We hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee").

1 be successful.” *Id.*

2 Because there is a defined and clearly traceable benefit to the Class, the Court can
3 base an award of attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.
4 A fee award in the amount of 33% of the common fund is also reasonable because it best
5 reflects the market rate for contingency fees. *See Lealao*, 82 Cal. App. 4th at 47 (“attorneys
6 providing the essential enforcement services must be provided incentives roughly comparable to
7 those negotiated in the private bargaining that takes place in the legal marketplace. . . .”). Fees
8 representing 30-33% of the recovery reflect the rate negotiated in “typical contingency fee
9 agreements [which] provide that class counsel will recover 33% if the case is resolved before
10 trial and 40% if the case is tried.” *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149
11 MMM SHX, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (citing an academic study
12 collecting contingency fee agreements and finding that a fee award constituting 34% of the
13 fund is reasonable on that basis). Because the negotiated fee structure mimics the marketplace,
14 it is reasonable and should be approved.

15 Furthermore, courts have recognized that the negotiated fee is the best indication of the
16 market price for fees. In a common fund case, the object “is to give the lawyer what he would
17 have gotten in the way of a fee in an arm’s-length negotiation, had one been feasible.” *Matter*
18 *of Cont’l Illinois Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992), as amended on denial of reh’g
19 (May 22, 1992). In *Matter of Cont’l Illinois Sec. Litig.*, Judge Posner reasoned that the
20 negotiated fee reflects a market-based price because it encompasses both parties’ best estimate
21 and view as to the value of the legal services and what the court might have awarded if the
22 matter had been litigated. *Id.* For this reason, courts generally defer to the parties regarding the
23 reasonableness of the negotiated attorneys’ fees. Indeed, because “the parties are compromising
24 to avoid litigation,” the court “**need not inquire into the reasonableness of the fees at even**
25 **the high end** with precisely the same level of scrutiny as when the fee amount is litigated.”
26 *Laguna v. Coverall No. Am.*, 753 F.3d 918, 922 (9th Cir. 2014) (internal quotations omitted;
27 emphasis added). Stated differently, while the Court must conduct an independent inquiry into
28 the reasonableness of fee request, it should give substantial weight the Parties’ agreement

on fees, which is the product of negotiations in the legal marketplace.

1. The Requested Attorneys' Fee is Within the Range of Fees Approved in Comparable Common Fund Cases

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

The requested fee falls in the mid-range of percentage class fee awards, which generally range from 25% to 40% of a common fund, and it constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous state and federal courts in California routinely approve fee requests equal to or greater than 33% of the common fund. Indeed, courts have found that an award of 33% of the common fund represents the “benchmark” in California.⁵ In short, Class Counsels' fee request of \$1,050,000.00 (35% of the MSA) is in line with awards in similar cases in California and nationwide and demonstrates that Class Counsels' fee request is consistent with market rates and is reasonable.

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

Class Counsels' fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time

⁴See, e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have shown that “fee awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel's Response*, 17 Rev. Litig. 525, 546 ; T. 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”).

⁵ *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 WL 163293, *5 (“These percentages compare favorably with both California (33%) and federal (25%) benchmarks.”); *Dennis v. 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 reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano*,
2 20 Cal. 3d at 48. The court then may enhance this lodestar figure by a “multiplier” to account
3 for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and
4 the degree of success achieved. *Id.* at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36
5 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), “[t]here is no...rule
6 limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar”].

7 As of the date of filing, Class Counsel’s base lodestar is \$685,535. (Crosner Decl., ¶¶
8 20-33; Bradley Decl. ¶¶ 17-21, Exh. A; Mauro Decl. ¶¶ 42-50, Exhs. 2, 3). All of the work and
9 tasks performed by Class Counsel were reasonable and necessary to the prosecution of this
10 case. (*Id.*) Based on the fee request, Class Counsel request a modest lodestar fee enhancement
11 of approximately .65. Where a fee must be based on lodestar, a court may adjust it upward by
12 using a positive multiplier to reflect "reasonableness" factors, including: (1) quality of
13 representation, (2) class benefits, (3) complexity and novelty of issues presented, and (4) risk
14 of nonpayment. *In re Bluetooth Headset Products Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir.
15 2011). "Multipliers can range from 2 to 4 or even higher." *Wershba v. Apple Computer, Inc.*,
16 91 Cal. App. 4th 224, 255 (2001). As discussed herein, and as a result of the outstanding
17 recovery for each class member, Plaintiffs request a modest multiplier of .65 which is believed
18 to be reasonable given the results achieved.

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

20 Class Counsels’ hourly rates are between \$600 and \$900 and are in line with rates
21 typically approved in wage and hour class action litigation and which rates have been approved
22 by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and
23 San Diego County Superior Courts.

24 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
25 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084,
26 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and
27 experience, the nature of the work performed, the relevant area of expertise and the attorney’s
28 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629,

632. Class Counsels’ skill and experience support their hourly rates. Their practice is limited exclusively to litigation, focusing on the representation of employees in wage and hour and consumer class action matters. (Crosner Decl., ¶¶ 22-33; Bradley Decl. ¶¶ 17-22; Mauro Decl. ¶¶ 42-49). As prominent attorneys in the field of wage and hour class action litigation, Class Counsel continually monitors the prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of their attorneys and paralegals to be consistent with the prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates. Therefore, as they are in line with those of the relevant community, Class Counsels’ hourly rates are reasonable.

4. Class Counsel’s Total Hours are Reasonable

In determining a lodestar fee, reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing clients, investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

Class Counsel expended approximately \$685,535 in documented hours on this case. (Crosner Decl., ¶¶ 22-33, Exh. 1; Bradley Decl. ¶¶ 17-22; Mauro Decl. ¶¶ 42-49, Exh. 2). All tasks and work performed were reasonable and necessary to the prosecution of this case. The work performed was justified in light of the result achieved.

5. Costs of Litigation are Reasonable

Class Counsel seeks reimbursement of the litigation costs and expenses of \$28,639.39. These costs were reasonable and necessary to prosecute this case and the results achieved and are fair, and reasonable. (Crosner Decl., ¶ 34; Bradley Decl. ¶¶ 21, 22, Exh. A ; Mauro Decl. ¶ 50, Exh. 3).

VI. PAGA PENALTIES

The parties have allocated \$250,000.00 to PAGA penalties, of which 75%, or \$187,500.00 will be paid to the LWDA. Plaintiffs submit this amount is appropriate. *See, e.g.,*

1 *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645 at *1 (N.D. Cal. 2011) (approving
2 \$7,500 PAGA payment out of \$6.9 million common-fund settlement); *Lazarin v. Pro Unlimited,*
3 *Inc.*, 2013 WL 3541217 (N.D. Cal. 2013) (approving \$7,500 PAGA payment out of \$1.25
4 million settlement). Pursuant to Labor Code § 2699(l)(2), Plaintiff submitted the proposed
5 settlement agreement to the LWDA when the motion preliminary approval, and has not received
6 any objections from the LWDA regarding the amount allocated to PAGA penalties. Notice of
7 this motion was served simultaneously to the filing of the motion as provided in the proof of
8 service filed herewith. (Settlement Agreement ¶ 22). The total number of Class Members
9 employed during the PAGA period is 2,319 who worked a total of 109,411 PAGA pay periods.
10 (Bradley Decl. ¶ 16).

11 **VII. THE CLASS REPRESENTATIVE AWARDS ARE REASONABLE**

12 Class Counsel seeks approval of \$7,500.00 Service Award payment to each of the
13 named Plaintiff/Class Representatives. The requested Service Awards are reasonable in light of
14 the benefits Plaintiffs conferred upon the entire Class, resulting in high average payments to all
15 Class Members, a general releases of all claims Plaintiff agreed to, greater than the release given
16 by Class Members, the time spent assisting counsel with the investigation and prosecution of
17 these claims, commitment to responding to discovery, preparing for their deposition,
18 communicating with class members before the settlement and during the class notice period 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. (Crosner Decl., ¶ 37; Bradley Decl., ¶¶ 24-30; Mauro Decl. ¶¶ 37, 38; *see also* Declarations
22 of Plaintiffs filed concurrently herewith).

23 Plaintiffs deserve the requested Class Representative Service Awards because they
24 "remained fully involved and expended considerable time and energy during the course of the
25 litigation." *See Schaffer v. Litton Loan Servicing, LP*, No. CV 05-07673 MMM JCX, 2012 WL
26 10274679, at *19 (C.D. Cal. Nov. 13, 2012) (citation omitted). The amount of the requested
27 Class Representative Service Award Payment is also reasonable by reference to the amounts
28 the California Superior Court has awarded for similar wage and hour

1 settlements.⁶

2 The Class Representative Service Awards are also appropriate because Plaintiffs would
3 otherwise “not gain any benefit beyond that he would receive as an ordinary class member.” *In*
4 *re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295
5 F.R.D. 438, 472 (C.D. Cal. 2014); *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299
6 (N.D. Cal. 1995) (holding that a substantial award is appropriate where a class representative’s
7 claim made up “only a tiny fraction of the common fund.”). Absent the Class Representative
8 Service Awards, Plaintiffs will recover no more than other Class Members, despite undergoing
9 personal sacrifice and reputational risk in pursuing this litigation on behalf of the Class.

10 Courts routinely approve service payments, or incentive awards, to compensate named
11 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
12 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v.*

13 _____
14 ⁶ *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000
15 Service Awards to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146 (El Dorado County
16 Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Singh v. American*
17 *Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016)
18 (awarding \$10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No.
19 CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000 Service Awards to the
20 named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016)
21 (awarding \$10,000 enhancement payment to the named plaintiff); *Restoration Hardware Wage and Hour Cases*,
22 No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding \$10,000 Service Awards to the named
23 plaintiffs); *Cook v. United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costs County Super. Ct. April
24 15, 2016) (awarding \$10,000 Service Awards to the named plaintiffs); *Quintana v. Claire’s Boutiques, Inc.*, No.
25 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 Service Awards to the named plaintiffs); *Paredes*
26 *v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17,
27 2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*,
28 No. BC511534 (L.A. County Super. Ct. July 16, 2015) (awarding \$10,000 enhancement payment to the named
plaintiff).

1 *Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
2 representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on
3 the foregoing, the \$7,500.00 service payment to each of the named Plaintiffs/Class
4 Representatives is fair, appropriate, and justified as part of the overall settlement.

5 **VIII. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**

6 The Parties agreed to hire ILYM Group, Inc. as the administrator, and the Court
7 approved this choice. The Administrator was responsible for formatting, printing and mailing
8 the Notice. It was also responsible for updating addresses and re-mailing Notices returned as
9 undeliverable, responding to Class Member inquiries, answering questions from Counsel for the
10 Parties, and providing a declaration to document its duties and responsibilities under the
11 settlement. Plaintiff now request that the Court approve the \$30,000.00 fee to ILYM Group, Inc.
12 for services rendered and to be rendered. (Hernandez Decl. ¶ 14). Following the grant of final
13 approval, the Administrator's duties will continue in order to calculate and mail the settlement
14 payment checks to Class Members, perform tax reporting obligations, disburse other payments
15 as ordered by the Court, and perform such other duties as set forth in the Amended Settlement
16 Agreement. The fee of \$30,000.00 for services rendered and to be rendered is fair and
17 reasonable and should be granted.

18 **IX. CONCLUSION**

19 Based on the foregoing, Class Counsel respectfully requests the Court grant final
20 approval of the Class Action Settlement, award Class Counsels' attorneys' fees in the sum of
21 \$1,050,000.00 and litigation costs of \$28,639.39, award the named Plaintiffs an enhancement
22 award payment in the sum of \$7,500.00 each, award \$30,000.00 to ILYM Group, Inc. for
23 settlement administration services, and approve the PAGA amount to be paid to the LWDA.

24
25 Dated: July 19, 2021

JAMES HAWKINS APLC

26 By: 

JAMES R. HAWKINS, ESQ.

GREGORY MAURO, ESQ.

27 MICHAEL CALVO, ESQ.

28 Attorneys for Plaintiff and for the Class