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

JEREMY R. RODRIGUEZ and VAQAR
HUSSAIN, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

KELLES TRANSPORT SERVICE LLC dba SOAR
TRANSPORTATION GROUP; a Utah Limited
Liability Company, and DOES 1 through 50,
inclusive,

Defendants.

Case No. CIVDS2015275

**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; DECLARATIONS OF
CLASS COUNSEL KYLE NORDREHAUG
AND JAMES HAWKINS.**

Date: June 30, 2023

Time: 8:30 a.m.

Dept: 29

Judge: Hon. Janet M. Frangie

TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:
NOTICE IS HEREBY GIVEN that on June 30, 2023 at 8:30 a.m. or as soon thereafter as the

1 matter may be heard in Department 29 of the above captioned Court, before the Honorable Janet M.
2 Frangie, Plaintiffs Jeremy Rodriguez and Vaqar Hussain (“Plaintiffs”), by and through Plaintiffs’
3 counsels of record, will and hereby do move the Court for Final Approval of the Class Action and
4 Private Attorneys General Act Settlement, awarding attorneys’ fees, costs, Enhancement Awards to
5 the Class Representatives, Settlement Administration Costs, and entering final approval and
6 judgment.

7 This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor Code
8 section 2699(1). This Motion is based on this Notice of Motion and Motion, the attached
9 Memorandum of Points and Authorities, the accompanying Declarations of James R. Hawkins, Kyle
10 Nordrehaug, Nathalie Hernandez of ILYM Group, Inc., the declarations of Plaintiffs Roriguez and
11 Hussain (attached to the Declaration of Nordrehaug), the Settlement Agreement and Release of
12 Class Action (hereinafter Settlement Agreement), argument of counsel, all papers and pleadings
13 filed in the action, and upon any further information or evidence requested by the Court at the time
14 of hearing on this Motion.

15
16 Dated: June 6, 2023

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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18 By:


Kyle Nordrehaug

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20 Attorney for Plaintiffs and Class Counsel
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court preliminary approved the settlement by Order dated February 9, 2023. Plaintiffs
4 Jeremy Rodriguez and Vaqar Hussain (“Plaintiffs”), now respectfully request that this Court grant
5 final approval of the settlement attached to the Declaration of Kyle Nordrehaug (“Decl.
6 Nordrehaug”) as **Exhibit 1**, which seeks to resolve claims against Defendant Kelle’s Transport
7 Service, LLC (Erroneously Sued And Served As "Kelles Transport Service LLC dba SOAR
8 Transportation Group"; “Defendant” or “Kelles”) (collectively with Plaintiffs, the “Parties”) in
9 exchange for a non-reversionary Gross Settlement Amount of Ninety-One Thousand Dollars and
10 Zero Cents (\$91,000.00). The Class Members overwhelmingly supported the Settlement, as there
11 is a 100% participation rate, with zero objections and 91 out of 91 Participating Class Members
12 with no requests for exclusion from the Settlement. The proposed Settlement is projected to pay
13 an estimated average gross payment \$271 per Class Member, with the highest estimated gross
14 payment at \$968. (Administrator Decl. of Nathalie Hernandez-hereinafter “Hernandez”, ¶ 14).

15 Plaintiffs also move for final approval of attorneys’ fees in the amount of \$30,333.33
16 which is one-third of GROSS SETTLEMENT AMOUNT. As will be demonstrated herein, Class
17 Counsel’s attorney fee request is supported using the percentage fee method and the lodestar
18 method. Second, Plaintiffs move for final approval of payment of the litigation costs in the amount
19 of \$15,000, all of which was incurred in litigating this matter. Third, Plaintiffs move for final
20 approval of the Enhancement Awards to Plaintiffs in the sum of \$4,000 each, to compensate the
21 Class Representatives for their service as a Class Representative and providing a general release of
22 their claims against Defendant – a release significantly greater than the Class Members provided –
23 and for the risks absorbed and time spent litigating the case. Plaintiffs played a vital role in
24 representing Class Members in this case and spearheading the lawsuit to seek monetary relief on
25 behalf of all Class Members. Fourth, Plaintiffs move for final approval of the payment of \$4,000
26 in administrative costs to ILYM Group, Inc. Fifth, Plaintiffs move for final approval of the \$9,000
27 PAGA Payment and the payment to the Labor and Work Development Agency (“LWDA”) for its
28 share of the PAGA Payment (\$6,750), with the remaining \$2,250 distributed to the PAGA

1 Settlement Class.

2 This case required many hours of attorney time from Class Counsel and sought relief on
3 behalf of 91 potential class members within the State of California: All persons who are or have
4 been employed by Defendant as Non-Exempt Employees or equivalent positions, however titled,
5 in the state of California any and all current and former hourly-paid or non-exempt employees
6 who worked for Defendant within the State of California at any time from August 1, 2018 through
7 November 27, 2022. (Settlement at ¶ 1.38.).

8 This litigation involved the review and analysis of documents, policies, and practices, as
9 well as a full day of mediation. Most importantly, the Settlement and all its terms received
10 overwhelming support from Class Members, as there were no objections and no requests for
11 exclusion. Therefore, Plaintiffs respectfully request the Court grant final approval of the
12 Settlement, attorneys' fees, litigation costs, Enhancement Awards, Settlement Administrator
13 Costs, and The PAGA Penalties payment in the amounts preliminarily approved by the Court and
14 as fully disclosed to Class Members.

15 **II. BACKGROUND, INVESTIGATION, DISCOVERY**

16 On July 16, 2020, Plaintiff Rodriguez filed a Class Complaint entitled *Jeremy R.*
17 *Rodriguez, et. al. vs. Kelles Transport Service, LLC, dba Soar Transportation Group; a Utah*
18 *Limited Liability Company, and Does 1 through 50, inclusive*, (San Bernardino County Case No.
19 CIVDS2015275) on behalf of Defendant's non-exempt employees in California seeking civil
20 penalties for Defendant's alleged failure to: (1) pay wages, (2) provide meal periods, (3) authorize
21 and permit rest periods, (4) timely pay wages, and (5) provide accurate itemized wage statements;
22 (6) Failure to indemnify necessary business expenditures; and (7) unfair competition. On or about
23 September 21, 2020 Plaintiff Rodriguez filed a separate PAGA Action in this Court entitled-
24 *Jeremy R. Rodriguez, et. al. vs. Kelles Transport Service, LLC, dba Soar Transportation Group; a*
25 *Utah Limited Liability Company, and Does 1 thorough 50, inclusive*, (San Bernardino County Case
26 No. CIVDS2020632). (Nordrehaug Decl. ¶ 6.) Plaintiff Hussain filed a class action complaint
27 initiating the action *Hussain v. Kelle's Transport Service, LLC* (San Diego County Case No. 37-
28 2020-00043802-CU-OE-CTL) ("*Hussain Action*") on December 1, 2020. On or about October

1 18, 2021, Plaintiff Rodriguez and Hussain consolidated all three actions and filed a second
2 amended class action complaint consolidating the separate cases into the Rodriguez case
3 CIVDS2015275. (Nordrehaug Decl. ¶ 7.)

4 Plaintiff's Counsel conducted a thorough investigation into the factual and legal issues
5 implicated by Plaintiffs' claims and were able to objectively assess the settlement's reasonableness.
6 For example, prior to filing the action, Plaintiff contacted Plaintiff's Counsel to discuss the factual
7 bases for pursuing their actions against Defendant for Labor Code violations. Plaintiff was
8 intimately familiar with Defendant's labor policies and practices, and over the course of multiple
9 interviews, knowledgeably summarized those policies and practices to Plaintiff's Counsel. During
10 those conversations, Plaintiff's Counsel explained how the policies and practices were instituted and
11 provided valuable insight into how they gave rise to the alleged Labor Code violations. Based on
12 these interviews with Plaintiff, Plaintiff's Counsel determined that there were legally sufficient
13 grounds for pursuing the Actions against Defendant. And in preparation for drafting the complaints,
14 Plaintiff's Counsel conducted their own independent preliminary investigations into the factual
15 bases for Plaintiff's claims, which entailed, *inter alia*, a careful examination of Plaintiffs' personnel
16 files and associated records. Plaintiff's Counsel received a considerable amount of documents and
17 data, including employee demographic data, Defendant's policies and procedures manuals which
18 covered a broad range of topics including, *inter alia*, employee clock-in policies and procedures,
19 attendance policies, meal periods/rest periods, overtime & premium pay, etc. and sampled time and
20 pay records for approximately 20% of the Class Members. The document and data exchanges
21 allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims being settled, as
22 well as the impediments to recovery, and ultimately enabled Plaintiff's Counsel so as to make an
23 independent assessment of the reasonableness of the settlement's terms. (Nordrehaug Decl. ¶ 8).

24 In summary, Plaintiff's Counsel performed a thorough investigation into the claims at issue,
25 which included: (1) determining Plaintiffs' suitability as private attorneys general and class
26 representatives through interviews, background investigations, and analyses of their employment
27 files and related records; (2) evaluating all of Plaintiff's potential representative claims; (3)
28 researching similar wage and hour class actions as to the claims brought, the nature of the positions,

1 and the type of employer; (4) analyzing employees' time and wage records; (5) reviewing
2 Defendant's employment policies and practices; (6) researching settlements in similar cases; (7)
3 evaluating Plaintiffs' claims and estimating Defendant's liability for purposes of settlement;
4 (8) drafting the mediation brief; and (9) participating in the mediation. (Nordrehaug Decl. ¶ 9).

5 The Class Representatives have vigorously prosecuted this case, and Defendant has vigorously
6 contested it. (Nordrehaug Decl. ¶ 9). The Parties engaged in sufficient investigation and informal
7 discovery to assess the relative merits of the claims of the Class and of Defendant's defenses to
8 them. *Id.* Defendant has denied all of Plaintiffs' allegations in their entirety and any liability or
9 wrongdoing of any kind. *Id.*

10 **A. The Settlement Provides Reasonable Compensation to Class Members**

11 As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement
12 Amount of \$91,000.00 (Nordrehaug Decl., Ex. 1-Settlement Agreement at ¶ 5.1). Based on their
13 own respective independent investigations and evaluations, and after taking into account the sharply
14 disputed factual and legal issues involved in this matter, the risks attending further prosecution of
15 the case, and the monetary benefits received under the Settlement despite the questionable nature of
16 the claims, Plaintiffs' counsel is of the opinion that Settlement for the consideration and on the terms
17 set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of
18 the Class Members. (Nordrehaug Decl. ¶ 10 *See* Declaration of James Hawkins, ¶6).

19 Even without the presumption of fairness and reasonableness, the settlement clearly is
20 within the range of reasonableness as thoroughly discussed in detail in the motion for preliminary
21 approval, and as considered by the Court in granting preliminary approval.

22 As explained at preliminary approval, accounting for the risks of continued litigation and
23 impediments to discovery, Plaintiffs determined that a settlement amounting to \$91,000.00 was fair and
24 reasonable, and accounts for an approximate 21% of total possible recovery and courts have routinely
25 approved settlements that provided a similar discounted range of the maximum potential recovery.
26 (Nordrehaug Decl. ¶¶ 11-21). *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D.
27 Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated
28 damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with

a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).¹ (Id.)

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS’ RESPONSE

A. Terms of the Settlement

The Gross Settlement Amount is Ninety-One Thousand Dollars and Zero Cents (\$900,000.00). The Gross Settlement Amount includes: (1) automatic payments from the Net Settlement Amount to all Class Members who do not opt out; (2) attorneys’ fees in the amount of up to \$33,333.33 and reimbursement of litigation costs and expenses in the amount of up to \$15,000.00 to Class Counsel (“Attorneys’ Fees and Costs”); (3) service award to Plaintiffs in the amount of \$4,000.00 each (“Enhancement Award”); (4) fees and expenses of administration of the Settlement to the Settlement Administrator in an amount not to exceed \$4,000.00 (“Settlement Administration Costs”); (5) \$9,000 to PAGA with twenty-five percent (25%) share of the PAGA Penalties to be a part of the Net Settlement Sum that will be distributed to Class Members in the

¹ See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and costs.”).

1 PAGA Settlement Class in the amount of \$2,250.00; and (5) the seventy-five percent (75%) share
2 of PAGA Penalties (“LWDA Payment”) in the amount of \$6,750 to the California Labor and
3 Workforce Development Agency (“LWDA”). (Settlement Agreement ¶¶ 5.1 - 5.4.)

4 The Settlement is a common fund settlement with no reversion to Defendant. Thus, each
5 of the participating Settlement Class Members will be paid his or her pro-rata share of the NSA.

6 **B. Released Claims**

7 In exchange for the Gross Settlement Amount, Plaintiffs and Participating Class Members will
8 agree to release the Released Claims during the Settlement Period: “Released Claims” shall mean those
9 claims arising out of or related to the allegations set forth in the Complaint and/or PAGA notices to the
10 LWDA or any other claims or allegations that could have been asserted in the Complaint and/or PAGA
11 notices to the LWDA based on similar operative facts, conduct, and or omissions, which arose during the
12 Class Period, including claims for: (1) failure to pay minimum and regular wages; (2) failure to provide
13 compliant meal periods and pay proper missed meal period premiums; (3) failure to provide compliant rest
14 periods and pay proper missed rest period premiums; (4) failure to pay all wages due upon separation of
15 employment; (5) failure to provide accurate itemized wage statements; (6) failure to indemnify all
16 necessary business expenditures; (7) unlawful deductions from wages; (8) statutory penalties
17 pursuant to PAGA (Lab. Code, §§ 2698-2699.6); (9) violations of the Unfair Competition Law;
18 and (10) all claims for liquidated damages, penalties, interest, fees, costs based on the foregoing.
19 (Settlement Agreement ¶¶ 1.33 and 11.1). Further, Class Members will not be able to opt out of the
20 Released PAGA Claims and will be entitled to their PAGA portion for the Released PAGA Claims during
21 the PAGA Period. (Settlement Agreement ¶ 7.3.)

22 **C. The Class Members Support the Settlement – Zero (0) Objections and Zero (0)**
23 **Opt-Outs**

24 By order dated February 9, 2023, the Court granted Preliminary Approval of the Settlement,
25 conditionally certified the class for settlement purposes, appointed ILYM Group, Inc. to act as the
26 administrator, approved the Notice to be sent to the Class, and directed that the Notice be mailed to
27 the Class via U.S. First Class Mail. On March 9, 2023, ILYM mailed the Notices to 91 Class
28 Members. (Hernandez Decl. ¶7). Out of the 91 Notices, only 5 were deemed undeliverable after

1 attempts to ascertain the addresses. (Hernandez Decl. ¶¶ 9-10). As a result of the mailing, there is a
2 100% participation rate and 91 Class Members will be mailed a settlement check. (*Id.* ¶ 13).

3 For any funds that were not claimed by cashing their respective settlement checks before
4 the deadline to do so, that remaining amount shall be donated under the doctrine of cy pres. No
5 portion of the Gross Settlement Amount will revert to Defendant for any reason. (Settlement at ¶
6 8.8).

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

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

9 California Rule of Court, Rule 3.769, requires court approval for class action settlements.
10 Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court*
11 (1976) 62 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592,
12 602 (“[T]he law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what
13 is otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer, Inc.*
14 (2001) 91 Cal. App. 4th 224, 245.

15 In deciding whether to approve a class settlement, a court evaluates whether the proposed
16 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,
17 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. Of S.F.* (9th Cir. 1982) 688
18 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal.
19 App. 4th at 1801. However, “a presumption of fairness exists where: (1) the settlement is reached
20 through arms-length bargaining; (2) investigation and discovery are sufficient to allow counsel and
21 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
22 of objectors is small.” *Id.* at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a court
23 should consider additional relevant factors, including the strength of the plaintiffs’ case compared
24 to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation;
25 and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802.

26 At the time of preliminary approval, the Court was provided with sufficient information to
27 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
28 until after the Class had an opportunity to respond to the Settlement as explained in the Notice.

Subject only to the Class’s 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 member submitted objections and no opt outs of the settlement, **resulting in a 100% participation rate from the Class.** (Hernandez Decl. ¶ 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, Calculated as a Percentage of a Common Fund

Class Counsel applies for an award of attorneys’ fees in the sum of \$30,333.33 of the Gross Settlement Amount, and litigation costs of \$15,000 (Nordrehaug Decl. ¶¶ 22-27; Hawkins Decl., ¶¶ 3-5). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method survives in California class action cases.” 1 Cal.5th 480, 506 (2016), in stating:

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

Id. at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common to a specific fund, and an action brought by 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*, 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

1 class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’
2 attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted
3 litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The
4 percentage-of-recovery method is generally favored in common fund cases because it allows courts
5 to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for
6 failure.’”).²

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

24 **1. The Requested Attorneys’ Fee is Within the Range of Fees Approved in**

25 _____
26 ² *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such
27 as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further
28 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”).

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 Defendant or objectors – the only parties with standing to appeal. *Wershba*, 91 Cal.App.4th at 236.

The requested fee falls in the mid-range of percentage class fee awards, which generally range from 20% to 50% 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 courts in California routinely approve fee requests equal to or greater than one-third of the common fund. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement). In fact, the Sacramento County Superior Court has awarded fees of 35% of the common fund in wage and hour class actions. (Berzin Decl., ¶ 13, Ex. B); *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269; *Uribe v. EcoGuard Pest Management, Inc.*, Case No. 34-2021-00300650; *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634; *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156.

Additionally, Plaintiffs’ counsel have prosecuted a joint prosecution agreement and agreed to split the requested fees on a 60/40 basis. (Nordrehaug Decl. ¶ 22). In short, Class Counsels’ fee request of \$30,333.33 (one-third of the common fund) is in line with awards in similar cases in California 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 reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at 48.

1 The court then may enhance this lodestar figure by a “multiplier” to account for a range of factors,
2 such as the novelty and difficulty of the case, its contingent nature, and the degree of success
3 achieved. *Id.* at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells*
4 *Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), “[t]here is no...rule limiting the factors that
5 may justify an exercise of judicial discretion to [adjust the] lodestar”].

6 As of the date of filing, the total lodestar for Class Counsel is in excess of the fees Class
7 Counsel is requesting. All of the work and tasks performed by Class Counsel were reasonable and
8 necessary to the prosecution of this case. (Nordrehaug Decl. ¶ 24; Hawkins Decl. ¶¶ 3-4).

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

10 Class Counsels’ hourly rates are between \$200 and \$950 and are in line with rates typically
11 approved in wage and hour class action litigation and which rates have been approved by Courts in
12 California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County
13 Superior Courts. (Nordrehaug Decl. ¶ 25; Hawkins Decl. ¶ 2; *Children’s Hosp. and Med. Ctr. v.*
14 *Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were reasonable where they were “within the
15 range of reasonable rates charged by and judicially awarded comparable attorneys for comparable
16 work”).

17 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
18 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095.
19 When determining a reasonable hourly rate, courts may consider factors such as skill and
20 experience, the nature of the work performed, the relevant area of expertise and the attorney’s
21 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.
22 Class Counsels’ skill and experience support their hourly rates. Their practices are limited
23 exclusively to litigation, focusing on the representation of employees in wage and hour and
24 consumer class action matters. (Nordrehaug Decl. ¶¶ 23-25; Hawkins Decl., ¶ 2). As prominent
25 attorneys in the field of wage and hour class action litigation, Class Counsel continually monitors
26 the prevailing market rates charged by both defense and plaintiff law firms and set the billing rates
27 of their attorneys and paralegals to be consistent with the prevailing market rates in the private sector
28 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.

The work performed to achieve a settlement that will provide valuable consideration to the Class, is summarized by Class Counsel in the declaration submitted herewith. (Nordrehaug Decl. ¶¶ 24 and Exhibits #3 and #4; Hawkins Decl., ¶¶ 3-4); *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) ("Because time records are not required under California law ... , there is no required level of detail that counsel must achieve.") (internal quotations omitted). 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 \$15,000. These costs were reasonable and necessary to prosecute this case and the results achieved and are fair, and reasonable. (Nordrehaug Decl. ¶ 27, Ex.3 and 5); (Hawkins Decl. ¶ 5, Ex. 1).

VI. THE CLASS REPRESENTATIVE ENHANCEMENT AWARDS ARE REASONABLE

Class Counsel seeks approval of a \$4,000 enhancement award to each of the named Plaintiffs/Class Representatives. The requested enhancement awards are reasonable in light of the general releases of all claims Plaintiffs agreed to, greater than the release given by Class Members, the benefits Plaintiffs conferred upon the entire Class resulting in payments to all Class Members, the time spent assisting counsel with the investigation and prosecution of these claims, commitment to responding to discovery and depositions, and consenting to the proposed Settlement.

Furthermore, in pursuing this action on behalf of the Class, Plaintiffs risked a judgment for attorneys' fees and costs in the event this matter had been lost. (Nordrehaug Decl. ¶ 28; See also declarations of Plaintiffs Jeremy Rodriguez and Vaqar Hussain, attached as Exhibits #6 and 7 to the Nordrehaug Decl.)

Courts routinely approve service payments, or incentive awards, to compensate named plaintiffs for the services they provide and the risks they incur during class litigation. *See In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the total \$8,000.00 Enhancement Award with \$4,000.00 to each Named Plaintiff continues to be fair, appropriate, and justified as part of the overall settlement.

VII. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

The Parties agreed to hire ILYM Group, Inc. as the administrator, and the Court approved this choice. The Administrator was responsible for formatting, printing and mailing the Notice. It was also responsible for updating addresses and re-mailing Notices returned as undeliverable, responding to Class Member inquiries, answering questions from Counsel for the Parties, and providing a declaration to document its duties and responsibilities under the settlement. Plaintiff now request that the Court approve the \$4,000 fee to ILYM Group, Inc. for services rendered and to be rendered. (Hernandez Decl. ¶¶ 3-15). Following the grant of final approval, the Administrator's duties will continue in order to calculate and mail the Individual Settlement Payment checks to Class Members, perform tax reporting obligations, disburse other payments as ordered by the Court, and perform such other duties as set forth in the Settlement Agreement. The fee of \$4,000 for services rendered and to be rendered is fair and reasonable and should be granted.

VIII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE

The PAGA Payment of \$9,000.00 to resolve the applicable penalties claimed under the California Labor Code's Private Attorney general Act of 2004, as amended ("PAGA"), is reasonable under the circumstances. The Parties negotiated a good faith amount to be allocated to the LWDA and the PAGA Settlement Class members. The sum to be paid was not the result of self-interest at

1 the expense of other Class Members. The LWDA was provided notice of the Settlement
2 concurrently with the filing of the preliminary approval motion and the instant motion. Plaintiffs did
3 not receive a response or objection to the Settlement from the LWDA. Thus, Plaintiffs request the
4 Court finally approve the sum of \$9,000 for the PAGA Payment.

5 **IX. CONCLUSION**

6 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
7 of the Class Action Settlement, award (1) Class Counsels' fees in the sum of \$30,333.33 and
8 litigation costs of \$15,000; (2) award the named Plaintiffs of Enhancement Awards in the sum of
9 \$4,000 each; (3) award \$4,000 to ILYM Group, Inc., for settlement administration services, and (4)
10 approve the PAGA Penalties of \$9,000 with a payment to the LWDA in the amount of \$6,750.00
11 and payment to PAGA Members in the amount of \$2,250.00.

12
13 Dated: June 6, 2023

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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15 By:


Kyle Nordrehaug

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17 Attorney for Plaintiffs and Class Counsel
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