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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

KATHLEEN O'BRIEN, AURORA GALVAN,
and CARA LISH individuals, on behalf of
themselves and on behalf of all persons
similarly situated,

Plaintiffs,

vs.

CERIDA INVESTMENT CORP., a
Corporation; DELOITTE CONSULTING L.P.,
a Limited Partnership, and DOES 1 to 50,
inclusive,

Defendants

Case No.: 21CV384527

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

Date: December 11, 2024

Time: 1:30 p.m.

[Hearing set by Order dated August 8, 2024]

Assigned for All Purposes To:

Hon. Theodore C. Zayner

Dept.: 19

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1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on December 11, 2024 at 1:30 p.m. or as soon thereafter as
3 the matter may be heard in Department 19 of the above captioned Court, before the Honorable
4 Theodore C. Zayner, Plaintiffs Kathleen O'Brien, Aurora Galvan, and Cara Lish (together
5 "Plaintiffs"), by and through Plaintiffs' counsels of record, will and hereby do move the Court for
6 Final Approval of the Class Action and PAGA Settlement Agreement (hereinafter "Agreement"),
7 awarding attorneys' fees, costs, and Service Awards to the Plaintiffs, and entering final approval
8 and judgment.

9 This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor Code
10 section 2699(1). This Motion is based on this Notice of Motion and Motion, the attached
11 Memorandum of Points and Authorities, the accompanying Declarations of Haig B. Kazandjian,
12 Kyle R. Nordrehaug, James R. Hawkins, Cassandra Polices of ILYM Group, Inc., the declarations
13 of the Plaintiffs, the Agreement, the argument of counsel, all papers and pleadings filed in the action,
14 and upon any further information or evidence requested by the Court at the time of hearing on this
15 Motion.

16
17 Dated: November 15, 2024

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

18
19 By:


Kyle Nordrehaug

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

I. INTRODUCTION

This Court preliminary approved the class settlement by Order dated July 22, 2024. Plaintiffs Kathleen O'Brien, Aurora Galvan, and Cara Lish (together "Plaintiffs"), now respectfully request that this Court grant final approval of the Class Action and PAGA Settlement Agreement (hereinafter "Agreement") attached to the Declaration of Kyle Nordrehaug ("Nordrehaug Decl.") as **Exhibit 1**, which seeks to resolve claims against defendants Cerida Investment Corporation ("Cerida") and Deloitte Consulting LLP ("Deloitte") (collectively "Defendants") (collectively with Plaintiffs, the "Parties") in exchange for a non-reversionary Gross Settlement Amount of Nine Hundred Thirty Eight Thousand Six Hundred Eleven Dollars and Sixty Nine Cents (\$938,611.69). The Class Members overwhelmingly supported the Settlement, as there is a 99.75% participation rate, with no objections. The proposed Settlement is projected to pay an estimated average gross payment \$668.08 per Class Member, with the highest estimated gross payment at \$8,901.65. (Administrator Decl. of Cassandra Polites-hereinafter "Polites", ¶16).

Plaintiffs also move for the following additional relief. First, Plaintiffs move for final approval of Class Counsel Fees Payment in the amount of \$312,870.56 which is one-third of the Gross Settlement Amount. As will be demonstrated herein, Class Counsel's attorney fee request is supported using the percentage fee method and the lodestar method. Second, Plaintiffs move for final approval of payment of the Class Counsel Litigation Expenses Payment in the amount of \$20,859.41, all of which was incurred in litigating this matter. Third, Plaintiffs move for final approval of the Class Representative Service Payments to plaintiffs O'Brien, Galvan and Lish in the amount of \$5,000 each to compensate them for their service as Class Representatives and providing a general release of their claims against Defendant – a release significantly greater than the Class Members provided – and for the risks absorbed and time spent litigating the Action. Plaintiffs played a vital role in representing Class Members in this case and spearheading the lawsuit to seek monetary relief on behalf of all Class Members. Fourth, Plaintiffs move for final approval of the payment of \$16,600 for Administration Expenses Payment to ILYM Group, Inc. Fifth, Plaintiffs move for final approval of the \$20,000 PAGA Penalties and the payment to the Labor and Work Development

Agency (“LWDA”) for its share of the PAGA Payment (\$15,000), with the remaining \$5,000 distributed to the Aggrieved Employees.

This case required many hours of attorney time from Class Counsel and sought relief on behalf of 809 potential class members within the State of California: All individuals employed by Defendant Cerida in California and classified as hourly, non-exempt employees at any time during the Class Period of July 20, 2017, through February 28, 2022, including those Cerida employees who provided services in California that Cerida had contracted with Deloitte to provide to a third party. (Settlement at ¶¶ 1.5 and 1.13.).

This litigation involved the review and analysis of documents, policies, and practices, as well as a full day of mediation. Most importantly, the Settlement and all its terms received overwhelming support from Class Members, as there were no objections and only two (2) requests for exclusion. Therefore, Plaintiffs respectfully request the Court grant final approval of the Settlement, Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Class Representative Service Payments, Administration Expenses Payment, and the PAGA Penalties in the amounts preliminarily approved by the Court and as fully disclosed to Class Members.

II. BACKGROUND, INVESTIGATION, DISCOVERY

On July 20, 2021, Plaintiff O’Brien filed a Class Action Complaint against Defendants in the Superior Court of the State of California, County of Santa Clara (the “O’Brien Class Action”). Plaintiff O’Brien’s Complaint asserted claims that Defendants: (a) Violated California Business and Professions Code § 17200 et seq.; (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197, and 1197.1; (c) Failed to pay overtime wages in violation of California Labor Code §§ 510, et seq.; (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order; (f) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802. (g) Failed to provide accurate itemized wage statements in violation of California Labor Code § 226; and, (h) Failed to pay final wages upon termination in violation of California Labor Code §§ 201, 202 and 203. On October 1, 2021, Cerida filed an Answer with thirty-five (35) affirmative

defenses; and Deloitte filed an Answer with thirty-seven (37) affirmative defenses. (Nordrehaug Decl. ¶6.) On July 20, 2021, Plaintiff O’Brien also filed a separated Representative Action Complaint against Defendants in the Superior Court of the State of California, County of Santa Clara (the “O’Brien PAGA Action”) Plaintiff O’Brien’s Complaint asserted a single cause of action against Defendants for Civil Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 204 et seq., 210, 221, 226(a), 226.7, 233, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, subdivision 5(A)-(B). On October 1, 2021, Defendants filed separate Answers, each asserting thirty-four (34) affirmative defenses. (*Id.*).

On August 13, 2022, Plaintiff Galvan filed a Representative Action Complaint against Cerida in the Superior Court of the State of California, County of Los Angeles (the “Galvan PAGA Action”). Plaintiff Galvan’s Complaint asserted a single cause of action against Cerida for violation of California Labor Code § 2698, et seq (California Labor Code Private Attorneys General Act of 2004). On February 23, 2022, Plaintiff Lish filed a Class Action Complaint against Cerida in the Superior Court of the State of California, County of Sacramento (the “Lish Class Action”). Plaintiff Lish’s Complaint asserted claims that Cerida: (a) Failed to pay minimum wages; (b) Failed to pay overtime; (c) Failed to provide lawful meal periods; (d) Failed to provide authorize and permit rest periods; (e) Failed to timely pay wages during employment; (f) Failed to timely pay wages owed upon separation of employment; (g) Failed to reimburse necessary expenses; (h) Knowingly and intentionally failed to comply with itemized wages statement provisions; and (i) Violated the Unfair Competition Law. On May 2, 2022, Plaintiff Lish filed a separate Representative Action Complaint against Cerida in the Superior Court of the State of California, County of Sacramento (the “Lish PAGA Action”) (*Id.*).

On October 21, 2022, the Parties filed, and the Court approved, the Joint Stipulation And Order To Consolidate Cases For Settlement Approval And For Leave To File Amended Complaint For Settlement Purposes, consolidating the O’Brien Class Action and PAGA Action and amending the consolidated O’Brien Action to include Plaintiffs Galvan and Lish as additional Class Representatives. This consolidated complaint is now the operative complaint in the O’Brien Action

1 and is referred to herein as the “Operative Complaint”. Following consolidation of matter and
2 amendments of the Operative Complaint, the Galvan PAGA Action, the Lish Class Action and the
3 Lish PAGA action were dismissed without prejudice and Plaintiff’s Galvan, Lish and O’Brien
4 therefore seek approval of the settlement in the consolidated O’Brien Action. Plaintiffs have entered
5 into a joint prosecution agreement in this case and have consented to the agreement in writing.
6 (Nordrehaug Decl. ¶ 7.)

7 Class Counsel conducted a thorough investigation into the factual and legal issues implicated
8 by Plaintiffs’ claims and were able to objectively assess the settlement’s reasonableness. The Parties
9 engaged in meet and confer discussions regarding potential discovery issues, potential law and
10 motion matters, and the merits of the case, and ultimately agreed to attempt early mediation. They
11 then engaged in significant informal discovery to facilitate an exchange of information necessary to
12 engage in a meaningful mediation. Consequently, Plaintiffs’ counsel reviewed time records, payroll
13 records, personnel policies/handbooks, meal break policies, personnel files, and a random sampling
14 of paystubs produced by Cerida. Defendant also provided documents and information reflecting the
15 estimated total amount of workweeks and pay periods they worked, and average hourly pay rates,
16 among other relevant data. Plaintiffs had this information reviewed and analyzed by consulting
17 expert Berger Consulting Group to assist with, inter alia, determining potential meal/rest period
18 violation rates, the amount of potential “off the clock” work, etc., and formulating a damages model.
19 The document and data exchanges allowed Class Counsel to fully assess the nature and magnitude
20 of the claims being settled, as well as the impediments to recovery, and ultimately enabled Class
21 Counsel so as to make an independent assessment of the reasonableness of the settlement’s terms.
22 (Nordrehaug Decl. ¶ 8).

23 The Parties then engaged Jeffrey Krivis, Esq., a respected mediator with extensive wage and
24 hour class action experience and on June 15, 2022 participated in a full day mediation with Mr.
25 Krivis. Throughout the day, the arms-length negotiations were hard-fought and adversarial as the
26 Parties exchanged extensive information on their legal and factual positions, and made numerous
27 offers and counter-offers. Following the mediation, each side, represented by its respective counsel,
28 were able to agree to settle the Action, memorialized in the form of a Memorandum of

Understanding, executed by all parties on or about August 23, 2022. The Parties later negotiated the Agreement setting forth the full and final settlement terms. (Nordrehaug Decl. ¶ 9).

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

A. The Settlement Provides Reasonable Compensation to Class Members

As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement Amount of \$938,611.69 (Nordrehaug Decl., Ex. 1- Agreement at ¶1.22.). Based on their own respective independent investigations and evaluations, and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution of the case, and the monetary benefits received under the Settlement, Class Counsel is of the opinion that Settlement for the consideration and on the terms set forth in the Agreement is fair, reasonable and adequate and is in the best interests of the Class Members. (Nordrehaug Decl. ¶ 10; *See* Declaration of Haig B. Kazandjian, ¶12. Declaration of James Hawkins, ¶¶ 7-10).

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

As explained at preliminary approval, accounting for the risks of continued litigation and impediments to discovery, Plaintiffs determined that a settlement amounting to \$938,611.69 was fair and reasonable, and accounts for an approximate 27% of total possible recovery and courts have routinely approved settlements that provided a similar discounted range of the maximum potential recovery. (Nordrehaug Decl. ¶¶ 11-21). *See, e.g., Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. 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 Nine Hundred Thirty Eight Thousand Six Hundred and Eleven Dollars and Sixty Nine Cents (\$938,611.69). (Settlement at ¶ 1.22)) Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) automatic payments to all Participating Class Members—meaning, all Class Members except those who submit valid Requests for Exclusion—from the Net Settlement Amount; (2) \$312,870.56 in Class Counsel Fees Payment (i.e., one-third of the common fund) and \$20,859.41 in Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment of \$16,600; (4) PAGA Penalties in the amount of \$20,000 (payment to the LWDA of \$15,000 and a \$5,000 payment to Aggrieved Employees); and (5) Class Representative Service Payments of \$5,000.00 to plaintiffs O'Brien, Galvan and Lish for their service on behalf of the Class, the risks they took in bringing their representative claims, and for their general release provided to the Released Parties. (Settlement at ¶ 1.15, 3.2.)

The Gross Settlement Amount does not include Defendant's employer side taxes. (Settlement at ¶ 1.22.) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Settlement at ¶ 1.22.)

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 **B. Released Claims**

2 In exchange for the Gross Settlement Amount, Plaintiffs and Participating Class Members will
3 agree to release the Released Claims during the Settlement Period: “Released Class Claims” means the
4 claims released by Participating Class Members, and include:

5 As of the Effective Date and upon full funding of the Gross Settlement Amount by Cerida,
6 all Participating Class Members, on behalf of themselves and their respective
7 former and present representatives, agents, attorneys, heirs, administrators, successors, and
8 assigns, release Released Parties from the Released Class Claims. The “Released Class
9 Claims” are all class claims pled or which could have been pled based on the factual
10 allegations contained in the Operative Complaint which occurred during the Class Period
11 of July 20, 2017, through February 28, 2022. Except as expressly set forth in this
12 paragraph, Participating Class Members do not release any other claims, and expressly
13 exclude all other claims, including claims for vested benefits, wrongful termination,
14 violation of the Fair Employment and Housing Act, unemployment insurance, disability,
15 social security, workers’ compensation, or class claims based on facts occurring outside
16 the Class Period.

17 (Ex. 1, Settlement, ¶¶ 1.38, 6.2.)

18 **C. The Class Members Support the Settlement – Zero (0) Objections and Only Two**
19 **(2) Opt-Outs**

20 By order dated August 8, 2024, the Court granted Preliminary Approval of the Settlement,
21 conditionally certified the class for settlement purposes, appointed ILYM Group, Inc. to act as the
22 Administrator, approved the Class Notice to be sent to the Class, and directed that the Notice be
23 mailed to the Class via U.S. First Class Mail. On September 17, 2024, ILYM mailed the Class
24 Notices to 809 Class Members. (Polites Decl. ¶7). In response, ILYM received no objections and
25 only two (2) requests for exclusion. (Polites Decl. ¶¶11-12). As a result of the mailing, there is a
26 99.75% participation rate and 807 Participating Class Members will be mailed a settlement check.
27 (*Id.* ¶ 15).

28 Checks issued to Participating Class Members or Aggrieved Employees will remain valid
and negotiable for 180 days from their date of issuance. The checks will become void on the 181st
day after mailing. (Ex. 1, Settlement, ¶ 5.2.) Any amounts attributable to checks that remain
uncashed by the Void Date shall be transmitted to a *cy pres* charity, Legal Aid at Work. (Preliminary
Approval Order, 5:22-28.)

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Settlement Satisfies the Standard for Final Approval

California Rule of Court, Rule 3.769, requires court approval for class action settlements. Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior 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’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 only two (2) opt outs of the settlement, **resulting in a 99.75% participation rate from the Class.** (Polites Decl. ¶ 11). Thus, the proposed Settlement is entitled to the presumption that it is fair, adequate, reasonable and in all other respects proper and should be finally approved.

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

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

4 Class Counsel applies for an award of attorneys’ fees in the sum of \$312,870.56 of the Gross
5 Settlement Amount, and litigation costs of \$20,859.41. (Nordrehaug Decl. ¶¶ 22-27; Hawkins Decl.,
6 ¶¶ 27-31, Kazandjian Decl., ¶¶ 17-19). When a settlement results in a common fund for the benefit
7 of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba*,
8 *supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California
9 Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method
10 survives in California class action cases.” 1 Cal.5th 480, 506 (2016), in stating:

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

17 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
18 (“when a number of persons are entitled in common to a specific fund, and an action brought by a
19 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
20 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d
21 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the
22 trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Wershba*
23 *v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 254 (2001); *Boeing Co. v. Van Gemert*, 444 U.S.
24 472, 478 (1980); *Vincent v. Hughes Air West, Inc.*, 557 F.2d 759, 769 (9th Cir. 1997).²

25 The purpose of the common fund/percentage approach is to “spread litigation costs
26 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire

27

² *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such
28 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”).

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 be successful.” *Id.* Because there is a defined and clearly traceable benefit to the Class, the Court can base an award of attorneys’ fees using a ‘common fund’ approach to compensate Class Counsel.

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

The requested fee of one-third of the Gross Settlement Amount 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. In *Laffitte v. Robert Half Int’l*, 1 Cal.5th 480, 503 (2016), the California Supreme Court both endorsed the award of a fee as a percentage of that fund, and expressly approved one-third (1/3) as a reasonable percentage in a contingent common fund class

1 settlement. Numerous courts in California routinely approve fee requests equal to or greater than
2 one-third of the common fund. *See e.g. Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796,
3 *22-23 (S.D. Cal. 2011) (collecting cases); *Rippee v. Boston Mkt. Corp.*, 2006 U.S. Dist. LEXIS
4 101136, at *12 (S.D. Cal. 2006) (awarding a 40% fee on a \$3.75 million wage and hour class action
5 settlement). Such similar awards by other Courts are set forth in the Nordrehaug Decl. at ¶ 26.

6 Additionally, Class Counsel executed a joint prosecution agreement and agreed to split the
7 requested fees on a 47.5/47.5/5 basis. (Nordrehaug Decl. ¶ 22). In short, Class Counsels' fee request
8 of \$312,870.56 (one-third of the common fund) is in line with awards in similar cases in California
9 and demonstrates that Class Counsels' fee request is consistent with market rates and is reasonable.

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

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

19 As of the date of filing, the Class Counsel Fees Payment is less than the current lodestar of
20 \$412,997.50, representing a "negative multiplier of 0.8, and is therefore reasonable under *Laffitte*.³
21 All of the work and tasks performed by Class Counsel were reasonable and necessary to the
22 prosecution of this Action. (Nordrehaug Decl. ¶ 24; Hawkins Decl. ¶¶ 23-28; Kazandjian Decl. ¶¶
23 17-18).

24 ³ *See Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with multiplier of 2.13); *Vizcaino*
25 *supra*, at 1051 (3.65 multiplier approved); *Pellegrino v. Robert Half Intern., Inc.*, 182 Cal.App.4th
26 278 (2010) (in class actions reasonable multipliers of 2.0 to 4.0 are often applied); *Wershba*,
27 *supra*, 91 Cal. App. 4th at 255 ("multipliers can range from 2 to 4 or even higher."); *In re Sutter*
28 *Health Uninsured Pricing Cases*, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as
"fair and reasonable"); *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 (2008) (multiplier of 2.53);
Taylor v. Fedex Freight, Inc., 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (2.26 multiplier).

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

2 Class Counsels’ hourly rates are between \$250 and \$1050 and are in line with rates typically
3 approved in wage and hour class action litigation and which rates have been approved by Courts in
4 California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County
5 Superior Courts. (Nordrehaug Decl. ¶ 25; Hawkins Decl. ¶ 28; Kazandjian Decl. ¶ 18). *See*
6 *Children’s Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were
7 reasonable where they were “within the range of reasonable rates charged by and judicially awarded
8 comparable attorneys for comparable work”).

9 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
10 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095.
11 When determining a reasonable hourly rate, courts may consider factors such as skill and
12 experience, the nature of the work performed, the relevant area of expertise and the attorney’s
13 customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.
14 Class Counsels’ skill and experience support their hourly rates. Their practices are limited
15 exclusively to litigation, focusing on the representation of employees in wage and hour and
16 consumer class action matters. (Nordrehaug Decl. ¶¶ 23-25; Hawkins Decl., ¶¶ 11-20; Kazandjian
17 Decl., ¶¶ 2-4). As prominent attorneys in the field of wage and hour class action litigation, Class
18 Counsel continually monitors the prevailing market rates charged by both defense and plaintiff law
19 firms and set the billing rates of their attorneys and paralegals to be consistent with the prevailing
20 market rates in the private sector for attorneys and staff of comparable skill, qualifications and
21 experience. Other wage and hour attorneys working as class counsel before California courts charge
22 comparable if not higher rates. Therefore, as they are in line with those of the relevant community,
23 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 Club,*
28 *Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to establish and

1 defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

2 The work performed to achieve a settlement that will provide valuable consideration to the
3 Class, is summarized by Class Counsel in the declaration submitted herewith. (Nordrehaug Decl. ¶¶
4 24 and Exhibits #3 and #4 [lodestar of \$209,033.75]; Hawkins Decl., ¶ 27 [lodestar of \$67,772.50],
5 Kazandjian Decl., ¶ 17 [lodestar of \$136,191.25]); *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th
6 691, 699 (2014) ("Because time records are not required under California law ... , there is no
7 required level of detail that counsel must achieve.") (internal quotations omitted). All tasks and work
8 performed were reasonable and necessary to the prosecution of this Action. The work performed
9 was justified in light of the result achieved.

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

11 Class Counsel seeks reimbursement of the litigation costs and expenses of \$20,859.41. The
12 requested award is the amount of the actual costs incurred. These costs were reasonable and
13 necessary to prosecute this case and the results achieved and are fair, and reasonable. (Nordrehaug
14 Decl. ¶ 27, Exhibits #3 and 4 [costs of \$9,422.73]; Hawkins Decl., ¶ 31 [costs of \$4,278.92],
15 Kazandjian Decl., ¶ 19 [costs of \$7,157.76]).

16 **VI. THE CLASS REPRESENTATIVE SERVICE AWARDS ARE REASONABLE**

17 Class Counsel seeks approval of \$5,000 Class Representative Service Payments to plaintiffs
18 O'Brien, Galvan and Lish, each, as the named Plaintiffs/Class Representatives. The requested
19 service awards are reasonable in light of the general releases of all claims Plaintiffs are providing,
20 greater than the release given by Participating Class Members, the benefits Plaintiffs conferred upon
21 the entire Class resulting in payments to all Participating Class Members, the time spent assisting
22 counsel with the investigation and prosecution of these claims, commitment to responding to
23 discovery, and consenting to the proposed Settlement. Furthermore, in pursuing this Action on
24 behalf of the Class, Plaintiffs risked a judgment for attorneys' fees and costs in the event this matter
25 had been lost. (Nordrehaug Decl. ¶ 28.)

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

1 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
2 representatives); *Andrews v. Plains All Am. Pipeline L.P.*, 2022 U.S. Dist. LEXIS 172183, at *11
3 (C.D. Cal. 2022) (service awards of \$15,000 each are appropriate); *Mathein v. Pier 1 Imps. (U.S.)*,
4 *Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018) (awarding \$12,500). Based on the foregoing,
5 the requested service awards are fair, appropriate, and justified as part of the overall settlement.

6 **VII. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**

7 The Parties agreed to hire ILYM Group, Inc. as the Administrator, and the Court approved
8 this choice. The Administrator was responsible for formatting, printing and mailing the Notice. It
9 was also responsible for updating addresses and re-mailing Notices returned as undeliverable,
10 responding to Class Member inquiries, answering questions from Counsel for the Parties, and
11 providing a declaration to document its duties and responsibilities under the settlement. Plaintiffs
12 now request that the Court approve the \$16,600 fee to ILYM Group, Inc. for services rendered and
13 to be rendered. (Polites Decl. ¶19). Following the granting of final approval, the Administrator's
14 duties will continue in order to calculate and mail Class Member Payment checks to Participating
15 Class Members, perform tax reporting obligations, disburse other payments as ordered by the Court,
16 and perform such other duties as set forth in the Agreement. The fee of \$16,600 for services rendered
17 and to be rendered is fair and reasonable and should be granted.

18 **VIII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE**

19 The PAGA Penalties of \$20,000 to resolve the applicable penalties claimed under the
20 California Labor Code's Private Attorney General Act of 2004, as amended ("PAGA"), is
21 reasonable under the circumstances. The Parties negotiated a good faith amount to be allocated t the
22 LWDA and the Aggrieved Employees. The sum to be paid was not the result of self-interest at the
23 expense of other Class Members. The LWDA was provided notice of the Settlement concurrently
24 with the filing of the preliminary approval motion and the instant motion. Plaintiffs did not receive
25 a response or objection to the Settlement from the LWDA. Thus, Plaintiffs request the Court finally
26 approve the sum of \$20,000 for the PAGA Penalties.

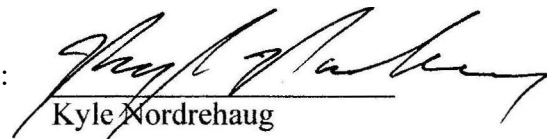
1 **IX. CONCLUSION**

2 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
3 of the Settlement, and (1) award the Class Counsel Fees Payment in the sum of \$312,870.56 and
4 Class Counsel Litigation Expenses Payment of \$20,859.41; (2) award the named Plaintiffs the Class
5 Representative Service Payments in the sum of \$5,000 to plaintiffs O'Brien, Galvan and Lish, each;
6 (3) award \$16,600 to ILYM Group, Inc., for the Administration Expenses Payment, and (4) approve
7 the PAGA Penalties of \$20,000 with a payment to the LWDA in the amount of \$15,000 and payment
8 to Aggrieved Employees in the amount of \$5,000.

9
10 Dated: November 15, 2024

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

11
12 By:


Kyle Nordrehaug

13
14 Attorney for Plaintiffs and Class Counsel