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

MARIA AYALA, individually, and on behalf
of other members of the public similarly
situated, and on behalf of other aggrieved
employees pursuant to the California Private
Attorneys General Act; ROSA HANDS,
individually, and on behalf of other members
of the public similarly situated, and on behalf
of other aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiffs,

vs.

SDH SERVICES WEST, LLC, a Delaware
limited liability company; SODEXO, INC., a
Delaware corporation; and DOES 1 through
25, inclusive,

Defendants.

Case No. BCV-21-101933

Honorable Thomas S. Clark
Department 17

**PLAINTIFFS' MOTION FOR APPROVAL OF
ATTORNEYS' FEES AND EXPENSES,
CLASS REPRESENTATIVE SERVICE
AWARDS, AND SETTLEMENT
ADMINISTRATION COSTS**

Date: May 17, 2024
Time: 8:30 a.m.
Dept.: 17

Complaint Filed: August 20, 2021
Trial Date: Not Set

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on **May 17, 2024** at **8:30 a.m.** in Department 17 of the
3 above-captioned Court located at 1415 Truxton Avenue, Bakersfield, California 93301, Plaintiffs
4 Maria Ayala and Rosa Hands (together, “Plaintiffs”) will and hereby do move the Court for an Order
5 (1) awarding Class Counsel’s attorneys’ fees in the amount of Two Hundred Thousand Dollars and
6 Zero Cents (\$200,000.00); (2) awarding Class Counsel’s actual litigation costs and expenses in the
7 amount of Sixteen Thousand Four Hundred Seventy-Six Dollars and Two Cents (\$16,476.02); (3)
8 approving the Class Representative Service Awards in the amounts of Five Thousand Dollars and
9 Zero Cents (\$5,000.00) each (total, \$10,000.00) to Plaintiffs in recognition of their services to the
10 Class; and (4) approving the Settlement Administration Costs in the amount of Nine Thousand Nine
11 Hundred Fifty-Seven Dollars and Forty-Six Cents (\$9,957.46).

12 This Motion is made pursuant to California Rules of Court, Rule 3.769, which requires court
13 approval of the settlement of class actions. This Motion will be based on the Memorandum of Points
14 and Authorities, the Stipulation of Class Action Settlement, the Declarations of Class Counsel
15 (Jonathan M. Genish and Miriam L. Schimmel), the Class Representatives (Maria Ayala and Rosa
16 Hands), and the Settlement Administrator (Nick Castro of ILYM Group, Inc.), the pleadings and other
17 records on file with the Court in this matter, and such evidence or oral argument as may be presented
18 at the hearing on this Motion.

19 Respectfully submitted,

20 Dated: April 25, 2024

BLACKSTONE LAW, APC

21 By: 

22 Jonathan M. Genish
23 Miriam L. Schimmel
24 Attorneys for Plaintiffs Maria Ayala
25 and Rosa Hands
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Maria Ayala and Rosa Hands (together, “Plaintiffs” or “Class Representatives”)
4 move for an award of the Attorneys’ Fees and Expenses, approval of the Class Representative Service
5 Awards to Plaintiffs as the Class Representatives, and approval of the Settlement Administration Costs
6 to ILYM Group, Inc. As discussed in the Motion for Final Approval of Class Action Settlement
7 submitted concurrently herewith, Plaintiffs and Defendants SDH Services West, LLC and Sodexo,
8 Inc. (together, “Defendants”) (collectively, with Plaintiffs, the “Parties”) have settled the Class claims
9 as defined in the Parties’ Stipulation of Class Action Settlement (“Settlement Agreement” or
10 “Settlement”) for an escalated Maximum Settlement Amount of Six Hundred Sixteen Thousand Eight
11 Hundred Sixty Dollars and Zero Cents (\$616,860.00), inclusive of any employer-side payroll taxes.
12 (See Declaration of Jonathan M. Genish in Support of Plaintiffs’ Motion for Final Approval of Class
13 Action Settlement [“Genish Decl.”], ¶ 21, Exhibit A thereto).

14 The Parties reached the Settlement based on an assumption of approximately 30,421
15 workweeks (“Certified Workweek Amount”). (Settlement Agreement, ¶ 46; Genish Decl., ¶ 21).
16 However, Defendants represented that the actual number of workweeks for all Class Members during
17 the Class Period was approximately 34,404. (Settlement Agreement, ¶ 46; Genish Decl., ¶ 21).
18 Pursuant to Paragraph 46 of the Settlement Agreement, to the extent the percentage of actual
19 workweeks exceed the Certified Workweek Amount, Defendants agreed to increase the Maximum
20 Settlement Amount by the additional percentage over ten percent (10%) above the Certified
21 Workweek Amount. (Settlement Agreement, ¶ 46; Genish Decl., ¶ 21). Accordingly, the workweeks
22 increased by two point eighty-one percent (2.81%) above the ten percent (10%) threshold over the
23 Certified Workweek Amount. (Genish Decl., ¶ 21). This resulted in an escalated Maximum
24 Settlement Amount of Six Hundred Sixteen Thousand Eight Hundred Sixty Dollars and Zero Cents
25 (\$616,860.00) (from the original Maximum Settlement Amount of \$600,000.00). (Ibid).

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1 The Court conditionally certified, for settlement purposes only, the Class defined as: “All
2 individuals who worked for Defendant SDH Services West, LLC at Long Beach Memorial Medical
3 Center as a non-exempt, hourly-paid employee at any time during the period from August 20, 2017
4 through June 30, 2021, and who were terminated on June 30, 2021” (“Class” or “Class Members”).
5 (Settlement Agreement, ¶ 5; Genish Decl., ¶ 20). The “Class Period” is defined as the period from
6 August 20, 2017 through June 30, 2021. (Settlement Agreement, ¶ 7; Genish Decl., ¶ 20). The
7 “Settlement Class Members” consists of Plaintiffs and all other Class Members who did not submit a
8 valid and timely Request for Exclusion. (Settlement Agreement, ¶ 30; Genish Decl., ¶ 20). The
9 Settlement does not require Settlement Class Members to submit claims as a prerequisite to receiving
10 their amount payable from the Net Settlement Amount (“Individual Settlement Payment”).
11 (Settlement Agreement, ¶ 15 & 44.a; Genish Decl., ¶ 20).

12 No Class Members have submitted a Request for Exclusion or Notice of Objection.
13 (Declaration of Nick Castro of ILYM Group, Inc. Regarding Notice and Settlement Administration
14 [“Castro Decl.”], ¶¶ 9 & 10).

15 The estimated *average* gross Individual Settlement Payment is \$1,227.70, the estimated
16 *highest* gross Individual Settlement Payment is \$2,388.19, and the estimated *lowest* gross Individual
17 Settlement Payment is \$50.00. (Castro Decl., ¶ 13).¹ These amounts are subject to employee-side and
18 employer-side taxes and withholdings. (Ibid).

19 Because the Settlement achieves outstanding results for the Settlement Class Members,
20 Plaintiffs respectfully request, on behalf of the Class and without opposition from Defendants, that the
21 Court approve the Settlement as fair, adequate, and reasonable, and enter judgment in accordance with
22 the Settlement’s terms.

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27 ¹ The actual highest and average Individual Settlement Payments will be larger than the amounts states in the Castro Decl.
28 because the Net Settlement Amount is larger due to Class Counsel’s request for reimbursement of litigation costs and
expenses in an amount that is less than \$20,000.00 (the difference between the amount sought and the amount authorized
under the Settlement. i.e., \$3,523.98, will be part of the Net Settlement Amount.

1 Plaintiffs seek the Court's approval of an attorneys' fee award of Two Hundred Thousand
2 Dollars and Zero Cents (\$200,000.00) (i.e., 32.42% of the escalated Maximum Settlement Amount),
3 plus reimbursement of Sixteen Thousand Four Hundred Seventy-Six Dollars and Two Cents
4 (\$16,476.02) in actual litigation costs and expenses. Class Counsel's request for an award of attorneys'
5 fees and costs is reasonable and appropriate in light of the outstanding work performed by Class
6 Counsel in the matter, the contingent nature of this action, and the results achieved under the
7 Settlement. (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19).

8 Plaintiffs also request the Court confirm the amount of the Class Representative Service
9 Awards agreed to be paid to Plaintiffs in the amounts of Five Thousand Dollars and Zero Cents
10 (\$5,000.00) each (total, \$10,000.00). These amounts proposed to be awarded to Plaintiffs are fair and
11 reasonable for the reasons Plaintiffs provided in their declarations. (*See* Declaration of Plaintiff Maria
12 Ayala in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement ["Ayala Decl."]
13 and Declaration of Plaintiff Rosa Hands in Support of Plaintiffs' Motion for Final Approval of Class
14 Action Settlement ["Hands Decl."] filed concurrently herewith). Courts approve incentive awards to
15 plaintiffs when justified and appropriate to compensate plaintiffs for their time, effort, and
16 inconvenience. (*See e.g., Van Vranken v. Atlantic Ricliffeld Co.* (N.D. Cal. 1995) 901 F. Supp. 294,
17 299).

18 Finally, Plaintiffs request that the Court approve the payment of Nine Thousand Nine Hundred
19 Fifty-Seven Dollars and Forty-Six Cents (\$9,957.46) to ILYM Group, Inc. ("Settlement
20 Administrator" or "ILYM Group") as compensation for its administration services it has and will
21 provide in connection with the Settlement. (*See, generally,* Castro Decl.).

22 After the above Court-approved amounts are deducted from the escalated Maximum
23 Settlement Amount, the Settlement Class Members will share in a Net Settlement Amount of
24 approximately Three Hundred Eighty Thousand Four Hundred Twenty-Six Dollars and Fifty-Two
25 Cents (\$380,426.52). (Genish Decl., ¶ 22).

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II. STATEMENT OF FACTS

Defendant Sodexo, Inc. (“Sodexo”) is a French-based company that provides a variety of services to businesses around the world. (Genish Decl., ¶ 9). Defendant SDH Services West, LLC (“SDH”) is a wholly owned subsidiary of Sodexo with its corporate headquarters located in Bakersfield, California. (Ibid).

Plaintiff Maria Ayala was employed by SDH as an hourly-paid, non-exempt Housekeeper at Long Beach Memorial Medical Center from approximately 1990 to approximately June 30, 2021. (Ayala Decl., ¶ 2). Plaintiff Rosa Hands was employed by SDH as an hourly-paid, non-exempt Housekeeper at Long Beach Memorial Medical Center from approximately October 2013 to approximately June 30, 2021. (Hands Decl., ¶ 2).

On July 22, 2021, Plaintiffs provided written notice to the Labor and Workforce Development Agency (“LWDA”) by online submission and to Defendants via Certified U.S. Mail, pursuant to California Labor Code § 2699.3, providing notice of the specific provisions of the California Labor Code which Plaintiffs alleged Defendants violated, including the facts and theories to support the allegations. (Genish Decl., ¶ 10).

On August 20, 2021, Plaintiffs filed their Class Action Complaint for Damages and Enforcement Action Under the Private Attorneys General Act, California Labor Code §§ 2698 Et Seq. (“Complaint”) in the action entitled *Maria Ayala, et al. v. SDH Services West, LLC, et al.*, Kern County Superior Court, Case No. BCV-21-101933 (“Action”). (*Id.*, ¶ 11). The Complaint alleges nine (9) causes of action for: (1) failure to pay overtime wages (Labor Code §§ 510 and 1198), (2) failure to pay minimum wages (Labor Code §§ 1194, 1197, and 1197.1), (3) failure to pay vested vacation wages (Labor Code § 227.3), (4) failure to provide meal periods (Labor Code §§ 226.7 and 512(a)), (5) failure to provide rest periods (Labor Code § 226.7), (6) failure to provide accurate itemized wage statements (Labor Code § 226(a)), (7) failure to timely pay wages upon termination (Labor Code §§ 201, 202, and 203), (8) unfair competition (Business & Prof. Code §§ 17200, et seq.), and (9) violation of the Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.). (Ibid).

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1 On October 21, 2021, Plaintiffs propounded multiple sets of formal written discovery requests
2 onto Defendants (specifically, Form Interrogatories – General (Set One), Special Interrogatories (Set
3 One), and Request for Production of Documents (Set One)). (*Id.*, ¶ 12). Thereafter, on January 28,
4 2022, Defendants responded to Plaintiffs’ discovery requests. (*Ibid*).

5 The Parties met and conferred with respect to the potential resolution of the Action by means
6 of a private mediation and agreed to exchange informal discovery as part of that process. (*Id.*, ¶ 13).
7 Pursuant to their agreement to mediate, Defendants produced a random sampling of putative class
8 members’ time and pay data, as well as information and documents concerning the claims set forth in
9 Plaintiffs’ Complaint, including but not limited to, Defendants’ employee handbooks and relevant
10 wage and hour policies and procedures. (*Ibid*).

11 On September 13, 2022, after a thorough investigation and analysis of these documents and
12 data, the Parties attended a formal mediation with Jeffrey Krivis, Esq., a neutral and respected mediator
13 with extensive experience in complex wage and hour matters. (*Id.*, ¶ 14). At the mediation, the Parties
14 engaged in intensive settlement discussions during which they debated their respective positions and
15 exchanged views regarding the strengths and weaknesses of the alleged claims. (*Ibid*). After a full
16 day of mediation, and with the help of the mediator, the Parties were able to reach an agreement to
17 resolve this dispute on a class basis, and shortly thereafter executed a memorandum of understanding
18 memorializing the key settlement terms. (*Ibid*).

19 Following mediation, the Parties worked diligently to negotiate and memorialize the terms in
20 a long form settlement agreement. (*Id.*, ¶ 15). On December 14, 2022, after additional discussions
21 and revisions to the agreement, the Settlement Agreement was fully executed. (*Id.*, ¶ 15 & Exh. A).
22 At all times, Plaintiffs were willing and prepared to litigate this matter through class certification and
23 trial if the Parties had been unable to reach a favorable resolution. (*Ibid*).

24 On May 12, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action
25 Settlement (“Original Motion for Preliminary Approval”) and supporting documents. (*Id.*, ¶ 16). On
26 June 27, 2023, a hearing was held on the Original Motion for Preliminary Approval during which the
27 Court raised multiple issues regarding the Original Motion for Preliminary Approval and denied the
28 Original Motion for Preliminary Approval without prejudice. (*Ibid*).

1 On October 12, 2023, Plaintiffs filed a Renewed Motion for Preliminary Approval of Class
2 Action Settlement (“Renewed Motion for Preliminary Approval”) and supporting documents. (*Id.*, ¶
3 17). On December 4, 2023, a hearing was held on the Renewed Motion for Preliminary Approval
4 during which the Court ordered Plaintiffs’ counsel to serve the Settlement Agreement, Renewed
5 Motion for Preliminary Approval, and documents in support of the Renewed Motion for Preliminary
6 Approval on the LWDA and file a Proof of Service with the Court. (*Ibid.*).

7 On December 13, 2023, Plaintiffs’ counsel uploaded the Settlement Agreement, Renewed
8 Motion for Preliminary Approval, and documents in support of the Renewed Motion for Preliminary
9 Approval to the LWDA’s website and filed a Proof of Service with the Court. (*Id.*, ¶ 18). The LWDA
10 has not objected to or otherwise responded to the submission. (*Ibid.*).

11 On January 10, 2024, the Court entered the Order Granting Preliminary Approval of Class
12 Action Settlement (“Preliminary Approval Order”), which granted Plaintiffs’ Renewed Motion for
13 Preliminary Approval and provisionally certified the Class, finding that the Settlement appeared to be
14 within the range of reasonableness of settlements that could ultimately be given final approval. (*Id.*,
15 ¶ 19 & Exh. B). The Court also approved the distribution of the revised Notice of Class Action
16 Settlement (“Class Notice”) and set the Final Approval Hearing. (*Ibid.*).

17 The Parties agree that the Class described herein may be certified for settlement purposes only.
18 If for any reason the Settlement is not approved, the certification will have no force or effect and will
19 immediately be revoked. The Parties further agree that certification for purposes of approving the
20 Settlement Agreement is in no way an admission that class certification is proper under the more
21 stringent standard applied for litigation and that evidence of this limited stipulation for settlement
22 purposes only will not be admissible for any purpose in this or any other proceeding.

23 **D. Summary of Settlement Terms**

24 **1. Benefits to the Class and the Public**

25 The Settlement provides that (a) the Court may certify the Class as described in the Settlement
26 on a provisional, non-mandatory basis for the purposes of the Settlement only, conditioned upon the
27 Court granting final approval of the Settlement; and (b) Defendants shall pay the total, non-
28 reversionary escalated Maximum Settlement Amount of Six Hundred Sixteen Thousand Eight

1 Hundred Sixty Dollars and Zero Cents (\$616,860.00), which will be used to cover all payments to
2 Settlement Class Members, the Attorneys' Fees and Expenses, the Class Representative Service
3 Awards, the Settlement Administration Costs, and the employer-side payroll taxes. (Settlement
4 Agreement, ¶ 17).

5 The Settlement Agreement is a non-reversionary and non-claims made settlement. (Settlement
6 Agreement, ¶ 44.a; Genish Decl., ¶ 26). All money from the Net Settlement Amount will be
7 distributed to Settlement Class Members. (Settlement Agreement, ¶ 44.a; Genish Decl., ¶ 26). No
8 money will revert to Defendants. (Settlement Agreement, ¶ 44.a; Genish Decl., ¶ 26).

9 The Settlement Agreement further provides that Class Counsel may request an award of
10 attorneys' fees not to exceed Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) and seek
11 reimbursement of reasonable litigation costs and expenses necessarily incurred in pursuing this matter
12 not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00). (*Id.*, ¶ 44.c). It also provides
13 that Plaintiffs will seek, and Defendants will not oppose, Class Representative Service Awards to the
14 named Plaintiffs in the amounts of Five Thousand Dollars and Zero Cents (\$5,000.00) each (total,
15 \$10,000.00). (*Id.*, ¶ 44.b).

16 The Court appointed ILYM Group, an experienced and competent settlement administration
17 company, to administer the Settlement. (Genish Decl., ¶ 52). ILYM Group's quote for their work
18 performed in this matter is Nine Thousand Nine Hundred Fifty-Seven Dollars and Forty-Six Cents
19 (\$9,957.46). (*Ibid.*).

20 2. Notice Process

21 On January 10, 2024, ILYM Group received the Court approved text for the Class Notice from
22 Class Counsel. (Castro Decl., ¶ 4).

23 On January 10, 2024, ILYM Group received the Class data file ("Class Information") from
24 counsel for Defendants, which contained the full name, employer number, social security number, last
25 known mailing address, number of workweeks, number of pay periods, and employment dates for
26 each Class Member. (*Id.*, ¶ 5). The Class Information was uploaded to ILYM Group's database and
27 checked for duplicates and other possible discrepancies. (*Ibid.*). The Class Information contained 307
28 individuals identified as Class Members who worked 34,404 weeks during which they performed a

1 full week of work during the Class Period (“Compensable Workweeks”). (Settlement Agreement, ¶
2 9; Castro Decl., ¶ 5).

3 As part of the preparation for mailing, all 307 names and addresses contained in the Class
4 Information were then processed against the National Change of Address (“NCOA”) database,
5 maintained by the United States Postal Service (“USPS”), for purposes of updating and confirming
6 the mailing addresses of the Class Members before mailing of the Class Notice. (Castro Decl., ¶ 6).
7 The NCOA contains requested change of addresses filed with the USPS. (Ibid). To the extent that an
8 updated address was found in the NCOA database, the updated address was used for the mailing of
9 the Class Notice. (Ibid). To the extent that no updated address was found in the NCOA database, the
10 original address provided by counsel for Defendants was used for the mailing of the Class Notice.
11 (Ibid).

12 On January 23, 2024, the Class Notice was mailed, via U.S First Class Mail, to all 307
13 individuals identified as Class Members contained in the Class Information. (*Id.*, ¶ 7 & Exh. A).

14 As of the date this Motion was filed, 8 Class Notices were returned to ILYM Group as
15 undeliverable without forwarding addresses. (*Id.*, ¶ 8). ILYM Group performed a computerized skip
16 trace on the 8 returned Class Notices in an effort to obtain an updated address for the purpose of re-
17 mailing the Class Notice. (Ibid). As a result of this skip trace, 7 updated addresses were obtained and
18 the Class Notice was promptly re-mailed to those Class Members, via U.S First Class Mail. (Ibid).
19 As of the date this Motion was filed, a total of 1 Class Notice has been deemed undeliverable as no
20 updated address was found notwithstanding the skip tracing. (Ibid).

21 The deadline to submit a Request for Exclusion, Notice of Objection, or dispute regarding the
22 number of Compensable Workweeks was March 8, 2024 (“Response Deadline”). (Settlement
23 Agreement, ¶ 26; Castro Decl., ¶¶ 9-11). ILYM Group did not receive any Requests for Exclusion,
24 Notices of Objection, or disputes regarding the number of Compensable Workweeks. (Castro Decl.,
25 ¶¶ 9-11). There are 307 Settlement Class Members representing one hundred percent (100%) of the
26 Class. (*Id.*, ¶ 12).

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1 The estimated *average* gross Individual Settlement Payment is \$1,227.70, the estimated
2 *highest* gross Individual Settlement Payment is \$2,388.19, and the estimated *lowest* gross Individual
3 Settlement Payment is \$50.00. (Castro Decl., ¶ 13).² These amounts are subject to employee-side and
4 employer-side taxes and withholdings. (Ibid).

5 **III. ARGUMENT**

6 **A. Class Counsel Requests an Award Under the Common Benefit Doctrine**

7 **1. The Requested Award is Reasonable Here**

8 Class Counsel respectfully requests that this Court approve the fees and costs to be paid in this
9 matter. This Motion is made pursuant to California Rules of Court, Rule 3.769 which requires court
10 approval of the fees paid through settlement in a class action.

11 Class Counsel seeks attorneys' fees in the amount of Two Hundred Thousand Dollars and Zero
12 Cents (\$200,000.00) (i.e., 32.42% of the escalated Maximum Settlement Amount) under the "common
13 fund" doctrine. Courts have long recognized the "common fund" or "common benefit" doctrine, under
14 which attorneys who create a common fund or benefit for a group of persons may be awarded their
15 fees and costs to be paid out of the fund. (*See Serrano v. Priest* ("*Serrano III*") (1977) 20 Cal.3d 25,
16 34, quoting *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1; *Glendale City Employees'*
17 *Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19; *Quinn v. State of California* (1995)
18 15 Cal.3d 162, 167; *see also Boeing Co. v. Van Gernert* (1980) 444 U.S. 472,478; *Mills v. Electric*
19 *Auto-Lite Co.* (1970) 396 U.S. 375, 391-392).

20 The California Supreme Court has held that, "when a number of persons are entitled in
21 common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results
22 in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorneys' fees
23 out of the fund." (*Serrano III, supra*, 20 Cal.3d at 34, quoting *D'Amico*, 11 Cal.3d 1; *see also Boeing,*
24 *supra*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the benefit of persons other than
25 himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."); *Mills, supra*,

26
27 ² The actual highest and average Individual Settlement Payments will be larger than the amounts states in the Castro Decl.
28 because the Net Settlement Amount is larger due to Class Counsel's request for reimbursement of litigation costs and
expenses in an amount that is less than \$20,000.00 (the difference between the amount sought and the amount authorized
under the Settlement. i.e., \$3,523.98, will be part of the Net Settlement Amount.

1 396 U.S. at 391-392 (United States Supreme Court endorsing the common fund approach in class
2 actions)). California Practice Guide: Civil Trials and Evidence (The Rutter Group) at § 17:172.3
3 explains the common fund doctrine as follows:

4 Where the lawsuit results in the recovery of a fund or property benefiting
5 others as well as plaintiff (e.g., a class action), the court has inherent
6 equitable power to order plaintiffs attorney fees paid out of the common
fund or property [citations]. Such fee spreading assures that all of those
benefited by the litigation pay their fair share of obtaining the recovery.

7 The percentage-of-the-fund approach appears to be the preferred method of awarding fees in
8 traditional common fund cases, such as this case. Where the settlement amount is a “certain or easily
9 calculable sum of money,” use of the percentage-of-the-fund method is appropriate. (*Serrano III*, 20
10 Cal. 3d at 35).

11 In *Glendale City Employees’ Association v. City of Glendale* (1975) 15 Cal.3d 328, 341 fn.19,
12 the California Supreme Court upheld an attorneys’ fee award based on a percentage of the common
13 benefit obtained in a lawsuit by a city employees’ association for retroactive wages:

14 It is not necessary to find this suit a proper class action in order to uphold
15 the portion of the judgment awarding counsel for plaintiffs 25 percent of
16 all retroactive salaries and wages received. That award may be sustained
17 under the rule that a litigant who creates a fund in which others enjoy
beneficial rights may require those beneficiaries to pay their fair share
of the expense of litigation. (*See Sprague v. Ticonic National Bank* (1939)
307 U.S. 161, 159; *Estate of Stauffer* (1959) 53 Cal.2d 124, 132).

18 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the California Supreme Court stated:
19 “[O]ne who expends attorneys’ fees in winning a suit which creates a fund from which others derive
20 benefits may require those passive beneficiaries to bear a fair share of the litigation costs.” Similarly,
21 in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-111, the California Supreme
22 Court recognized that the common benefit doctrine has been applied “consistently in California when
23 an action brought by one party creates a fund in which other persons are entitled to share.”

24 Numerous appellate courts have similarly found. (*See e.g., Knoff v. City and County of San*
25 *Francisco* (1969) 1 Cal.App.3d 184, 203-204 (court upheld a “contingent percentage” award of
26 attorneys’ fees in a representative action as the proper exercise of the court’s broad equitable powers);
27 *Rider v. County of San Diego* (1992) 1 I Cal.App.4th 1410, 1423 (attorneys’ fees and expenses properly
28 awarded from common benefit composed of illegally imposed sales and use tax); *Bank of America v.*

1 *Cory* (1985) 164 Cal.App.3d 66, 89-92 (fees awarded from common benefit created by action
2 compelling state to claim dormant bank accounts); *Parker v. Los Angeles* (1974) 44 Cal.App.3d 556,
3 567-568 (court upheld fee award equal to one-third of the damages to owners of residential property
4 in an inverse condemnation action)).

5 Moreover, at least eight federal courts of appeal-the First, Third, Sixth, Seventh, Ninth, Tenth,
6 and Eleventh and the D.C. Circuit-have endorsed the “percentage fee” method for determining
7 reasonable attorneys’ fees in common benefit cases. (*See e.g., In re Sumitomo Copper Litig.* (S.D.N.Y.
8 1999) 74 F. Supp. 2d 393, 396-398 (describing the overwhelming weight off federal authority in favor
9 of the percentage fee method); *see also, Lealao, supra*, 82 Cal.App.4th at 30-31 (describing same)).

10 Attorneys’ fees awards in line with the amount sought here are frequently upheld. (*See e.g.,*
11 *In re Activision Sec. Litig.* (9th Cir. 1989) 723 F. Supp. 1373, 1375). The California Supreme Court
12 recently confirmed the validity of this position in the context of a similar wage and hour class action
13 settlement:

14 [U]se of the percentage method to calculate a fee in a common fund case,
15 where the award serves to spread the attorney fee among all the
16 beneficiaries of the fund, does not in itself constitute an abuse of
17 discretion. We join the overwhelming majority of federal and state courts
18 in holding that when class action litigation establishes a monetary fund
19 for the benefit of the class members, and the trial court in its equitable
20 powers awards class counsel a fee out of that fund, the court may
21 determine the amount of a reasonable fee by choosing an appropriate
percentage of the fund created. 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.

22 (*Laffitte v. Robert Half Intern. Inc.* (2016) I Cal.5th 480, 503 (internal citations omitted)).

23 The requested fee falls well within – even below – the percentages awarded in other class
24 action litigation by this Court and numerous California trial courts. As the cases cited above
25 demonstrate, attorneys’ fee awards in the amount sought here are well-established by California law
26 and practice. Accordingly, Class Counsel’s fee request is fair and reasonable and is consistent with
27 the awards in California and the Ninth Circuit. It is also reasonable given the history of this matter
28 and the results obtained by Class Counsel.

1 **2. The Circumstances of this Case Support the Fee Award**

2 Given the significant results achieved under the circumstances of this litigation, the requested
3 fee award is reasonable. As discussed in *Sumitomo Copper Litigation, supra*, 74 F. Supp. 2d at 396:

4 No one expects a lawyer whose compensation is contingent on the
5 success of his services to charge , when successful, as little as he would
6 charge a client who in advance of the litigation has agreed to pay for his
7 services, regardless of success. Nor, particularly in complicated cases
8 producing large recoveries, is it just to make a fee depend solely on the
9 reasonable amount of time expended.

10 In that vein, this Court should consider the contingent nature of this case, the uncertainty of
11 the outcome, the quality of the counsel, and the preclusion from other employment.

12 **3. The Contingent Nature of This Matter**

13 From the outset of the Action to the present, prosecution of this matter has involved significant
14 financial risk for Class Counsel. Class Counsel undertook this matter solely on a contingent basis,
15 with no guarantee of recovery. Class Counsel has placed its own resources at risk to prosecute this
16 matter with no guarantee of success. The risks of this matter are apparent in that class certification
17 would likely have been a hard-fought issue, especially given the uncertainty regarding certification of
18 cases such as this. Moreover, even if class certification were granted over Defendants’ opposition,
19 there was no assurance that Plaintiffs would succeed at trial. (Genish Decl., ¶¶ 40-46). Despite such
20 challenges, Class Counsel was able to persuade Defendants that they faced significant liability
21 exposure such that they were willing to pay an escalated amount of Six Hundred Sixteen Thousand
22 Eight Hundred Sixty Dollars and Zero Cents (\$616,860.00) to settle the Class Members’ claims.

23 **4. The Experience, Reputation, Ability of Counsel, and Skill in Litigation**

24 Class Counsel has substantial experience in wage-and-hour and other class action litigation,
25 including litigation involving the legal issues in this matter. (Declaration of Miriam L. Schimmel in
26 Support of Motion for Approval of Attorneys’ Fees and Expenses, Class Representative Service
27 Awards, and Settlement Administration Costs [“Schimmel Decl.”], ¶¶ 3-10; Genish Decl., ¶¶ 3-8).
28 Class Counsel’s skill in developing a factual record and convincing Defendants of their litigation
exposure under California law was essential to achieving the Settlement. Through its skill and
reputation, Class Counsel was able to obtain a settlement that provides an outstanding result for Class
Members. (*See generally* Schimmel and Genish Decls.).

5. The Results Achieved

The excellent results achieved by the Settlement support Class Counsel's request for attorneys' fees. Class Members' support for the results achieved by Class Counsel is demonstrated by the absence of any objections to either the Settlement or to Class Counsel's request for fees, both of which were described clearly in the Class Notice. As of the date of this Motion, Settlement Class Members will be paid, on average, approximately \$1,227.70 each, which is intended to compensate them for the alleged wage and hour violations they suffered during their employment. (Genish Decl., ¶ 24). This is a significant benefit for the Settlement Class Members here as it represents a recovery for highly disputed claims.

Furthermore, the efficiency with which this litigation was conducted and resolved should be rewarded. After preparing and investigating the case prior to filing the Action, Class Counsel strongly litigated and then resolved the case in an efficient manner. The Class Members will directly benefit from the prompt and fair resolution of their claims. They will be receiving a significant award in a relatively short period of time, as opposed to waiting years to recover some undetermined amount if they succeeded at trial, which is an uncertainty in itself.

6. Preclusion of Other Employment

As California law recognizes, Class Counsel's commitment to this litigation should not be assessed in a vacuum. (*See Serrano, supra*, 20 Cal.3d at 49). A relevant factor in determining attorneys' fees is whether the litigation required Class Counsel to forego other employment. (*See ibid*). Class Counsel had to consider its workload during this litigation when considering taking on additional work that was available, and which Class Counsel had to forego in order to devote the time necessary to pursue this litigation. (Schimmel Decl., ¶ 14).

B. The Requested Fees Are Also Justified Under the Lodestar Method

Fee calculations under the lodestar method would result in a similar award, demonstrating the fairness of Class Counsel's percentage fee request. 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. The base amount is then adjusted by use of a multiplier in light of various factors. (*Serrano III, supra*, 20 Cal.3d at 48). Class Counsel's hourly rates are summarized

1 in the Declaration of Miriam L. Schimmel at ¶¶ 6-11.

2 One difficulty in determining the hourly rate of attorneys of similar skill and experience in the
3 relevant community is the scarcity of hourly fee-paying clients in class action litigation. (Schimmel
4 Decl., ¶ 13). As a practical matter, few if any employees or consumers pay attorneys' fees on an
5 hourly basis for such extensive litigation, and thus retainer agreements in such cases are based on a
6 stepped-up contingency fee (with the percentage increasing from one third to forty-five – and
7 sometimes even fifty percent, which is on par with personal injury contingency fee agreements – if
8 the case goes to trial). (Ibid). Therefore, there is no customary hourly billing rate for work that is
9 routinely based on a contingent fee relationship, but the nature of class action work should be strongly
10 considered by the Court. (Ibid). Wage and hour work presents a specialized and challenging area of
11 law that is not within the knowledge of many lawyers. (Ibid). This kind of class action work requires
12 specialized learning and the willingness to take large risks. (Ibid).

13 Class Counsel has spent approximately 170.30 total hours litigating these claims to date.³ (*Id.*,
14 ¶ 11). Class Counsel expects to spend another 10 hours in connection with the final approval process
15 (including finalizing the Motions, preparing for and attending the Final Approval Hearing, and
16 managing the Settlement through its conclusion, including anticipated communications with defense
17 counsel, the Settlement Administrator, our clients, and Class Members). (*Id.*, ¶ 12). In addition to
18 time spent during litigation, reasonable hours also include the time spent before the Action was filed,
19 including time spent interviewing the clients, investigating the facts and the law, preparing the initial
20 pleadings, as well as litigating the case. (*Webb v. Board of Educ.* (1985) 471 U.S. 234). Further, the
21 fee award should include fees incurred to establish and defend the attorneys' fee claim. (*Serrano v.*
22 *Priest* (1982) 32 Cal .3d 621, 639 (“*Serrano IV*”). Based on the rates of Class Counsel, the total fees
23 incurred to date are \$152,942. (Schimmel Decl., ¶ 11). By the conclusion of this matter, the total fees
24

25 ³ In *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, the court addressed the issue of what evidence
26 is required in California to support a fee application. The court held: “Testimony of an attorney as to
27 the number of hours worked on a particular case is sufficient evidence to support an award of attorney
28 fees, even in the absence of detailed time records.” *Id.* There is no need to attach the voluminous
invoices prepared in a case as a basis for an award of fees and costs. *Id.* Through Class Counsel's
declarations in support of this application, however, Plaintiff presents a thorough breakdown of the
hours spent and costs incurred in prosecuting this class action. Pursuant to *Martino, supra*, this
presentation is sufficient to support the amount requested.

1 are estimated to be approximately \$163,442. (*Id.*, ¶ 12).

2 In cases where a common fund analysis is not used, once the court establishes the lodestar
3 amount, it should adjust the fee award by a multiplier in order to make an appropriate fee award.
4 (*Serrano III, supra*, 20 Cal.3d at 48). In applying the multiplier, *Newberg on Class Actions* states that
5 “[m]ultiples ranging from one to four frequently are awarded in common fund cases when the lodestar
6 method is applied. A large common fund award may warrant an even larger multiplier.” (4 *Newberg*
7 *on Class Actions* 4th (4th ed. 2002) § 14.6). If the class members paid the fees that the market would
8 bear, they would pay a fee of anywhere from one-third to forty-five percent of any recovery. Since
9 this is the market rate, the lodestar calculation should be enhanced to reflect what the class members
10 would pay on the open market. (*Lealao, supra*, 82 Cal.App.4th at 47-48).

11 In *Lealao*, the court held that trial courts should award lodestar fees by examining the
12 percentage-of-the-benefit and adjusting the lodestar calculation accordingly. (*Id.* at 49, 53). The court
13 indicated that this is an upward adjustment and should be akin to a contingency fee recovery; the court
14 stated, “[a]n adjustment reflecting the amount of the class recovery is not significantly different from
15 an adjustment reflecting a percentage of that amount; and California courts have evaluated a lodestar
16 as a percentage of the benefit.” (*Id.* at 46). The *Lealao* method appears particularly appropriate
17 because class actions generally are contingency fee cases for plaintiffs - and the class action clients do
18 not expect to pay an hourly fee.

19 The rationale of *Lealao* comports with the purpose of the multiplier. The multiplier is
20 “primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of
21 nonpayment in contingency cases.” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138). The *Lealao*
22 court reasoned:

23 Given the unique reliance of our legal system on private litigants to
24 enforce substantive provisions of law through class and derivative
25 actions, attorneys providing the essential enforcement services must be
26 provided incentives roughly comparable to those negotiated in the
27 private bargaining that takes place in the legal marketplace, as it will
28 otherwise be economic for defendants to increase injurious behavior. It
has therefore been urged (most persistently by Judge Richard Posner)
that in defining a reasonable fee in such representative actions, the law
should mimic the market.

In the class action context, that would mean attempting to award the fee
that informed private bargaining, if it were truly possible, might have

1 reached. The simplest way for the law to duplicate the bargain that
2 informed parties would reach if agency costs were low is to look to fee
3 award levels in actions brought by sophisticated private parties under the
4 same or comparable statutes.

5 (*Lealao*, 82 Cal.App.4th at 47-48 (internal citations and quotations omitted)). The court added:

6 [T]rial judges need the flexibility *Serrano III* provides, as it enables them
7 to relate fee awards to the economic realities that determine the efficacy
8 of the private enforcement contemplated by our civil justice system.

9 Accordingly, we hold that, in cases in which the value of the class
10 recovery can be monetized with a reasonable degree of certainty and it
11 is not otherwise inappropriate, a trial court has discretion to adjust the
12 basic lodestar through the application of a positive or negative multiplier
13 where necessary to ensure that the fee awarded is within the range of fees
14 freely negotiated in the legal marketplace in comparable litigation.

15 (*Id.* at 49-50).

16 In looking at similar cases, including those set forth above, Class Counsel's requested fee
17 comports to the market. Based on the reasonable hourly rates suggested by Class Counsel and the
18 collective hours worked in this matter, the requested fee award would represent a multiplier of about
19 1.31 over the current total fee lodestar – an amount well within, and even below, the accepted range
20 for class action cases. In this regard, Class Counsel's fee request is reasonable.

21 **C. No Class Member Objected to the Requested Attorneys' Fee Award**

22 Class Counsel's intention to request the Court's approval for payment of attorneys' fees was
23 clearly disclosed to each Class Member in the Court-approved Class Notice. (*See Genish Decl.*, ¶ 50;
24 *See also*, *Castro Decl.*, Exhibit A). As of the filing of this Motion, there has not been a single objection
25 to the request for attorneys' fees. (*Castro Decl.*, ¶ 10). It is fair to conclude that the Class approves
26 of/does not take issue with the requested award of attorneys' fees. Based thereon, Class Counsel's
27 request for Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) in attorneys' fees,
28 representing 32.42% of the escalated Maximum Settlement Amount should be granted.

29 **D. Class Counsel's Request for Costs and Expenses Is Reasonable**

30 Pursuant to the Settlement Agreement, Class Counsel may request reimbursement of
31 reasonable costs and expenses not more than Twenty Thousand Dollars and Zero Cents (\$20,000.00).
32 (Settlement Agreement, ¶ 44.c). Class Counsel seeks reimbursement of Sixteen Thousand Four
33 Hundred Seventy-Six Dollars and Two Cents (\$16,476.02) in costs and expenses in this matter, which
34 includes reasonable future costs for filing the Motions. (*Genish Decl.*, Exhibit C). These costs were

1 reasonably incurred in prosecution of this matter.

2 **E. The Requested Class Representative Service Awards are Also Reasonable**

3 The named Plaintiffs should be awarded Class Representative Service Awards in the amounts
4 of Five Thousand Dollars and Zero Cents (\$5,000.00) each (total, \$10,000.00) for their services as the
5 Class Representatives and the risks in connection with that role. (*Id.*, ¶ 51). Enhancement awards in
6 wage and hour cases typically range from \$5,000.00 to \$20,000.00, although some awards are higher.
7 (*Ibid.*).

8 Often, multiple class representatives receive awards in the above range. (*See e.g., Munoz v.*
9 *BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 [approving an
10 enhancement request of \$10,000.00 per named plaintiff in a 188 member class]; *Cook v. Niedert*, 142
11 F.3d 1004, 1016 (7th Cir. 1998); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir.
12 1974) [“We also think there is something to be said for rewarding those drivers who protect and help
13 to bring rights to a group of employees who have been the victims of discrimination.”]). Here, the
14 requested Class Representative Service Awards are modest, reasonable, and should be approved.

15 Plaintiffs’ actions establish that: (1) they sought to protect the interests of the Class above their
16 own personal interests; (2) the Settlement Class Members will be benefitted from their actions by
17 receiving a payment without having to do anything; and (3) Plaintiffs have put forth a significant
18 amount of time and effort pursuing the litigation and seeing it through to resolution. (*See, generally,*
19 *Ayala Decl. and Hands Decl.*; *see also Clark v. American Residential Services LLC* (2009) 175
20 Cal.App.4th 785, 804 (discussing the criteria for determining class representative enhancement awards
21 in concluding that a requested award of \$25,000 for two class representatives was too high)).

22 The requested awards for Plaintiffs are also reasonable given the financial and personal risk
23 they took in commencing the Action, and in light of the benefits that their actions have conferred upon
24 the Class. (*Ayala Decl.*, ¶ 7; *Hands Decl.*, ¶ 7; *See also Van Vranken v. Atl. Richfield Co.* (N.D.Cal.
25 1995) 901 F.Supp. 294, 299-300). Additionally, in considering a requested class representative
26 enhancement award, courts take into consideration a plaintiff’s reasonable fear of retaliation. (*Staton*
27 *v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 977). Here, it is easy to see that a potential future employer
28 could expend little effort to discover Plaintiffs brought the lawsuit – and based thereon, decline to

1 offer Plaintiffs employment.

2 In sum, Plaintiffs have performed considerable services on behalf of the Class during the
3 litigation. (*See*, generally, Ayala Decl. and Hands Decl.). Class Counsel cannot understate the
4 importance of the role of an employee who is willing to search out an attorney and step forward to
5 assume the risk of litigation and retaliation in order to represent a class and put the interests of the
6 class before his or her interests. Plaintiffs have understood that this is a class action where they are
7 serving as the Class Representatives and must protect the Class Members' interests. (Ayala Decl., ¶
8 10; Hands Decl., ¶ 10). Plaintiffs were the catalyst to the benefit reached for the Class Members and
9 have actively protected the Class Members' interests during the pendency of this matter and will
10 continue to do so even if the case was required to go to trial. (Ayala Decl., ¶ 6; Hands Decl., ¶ 6).
11 Plaintiffs spent numerous hours participating in this matter by searching for an attorney,
12 communicating with their attorneys on numerous occasions, searching for and producing relevant
13 documents related to their employment, responding to their attorneys' telephone inquiries, assisting
14 their attorneys with preparation for mediation, providing necessary information for settlement
15 discussions, reviewing the settlement documents, and approving the Settlement on behalf of all Class
16 Members. (Ayala Decl., ¶¶ 3-9; Hands Decl., ¶¶ 3-9).

17 Plaintiffs also undertook the significant risks associated with acting as class representatives,
18 including without limited to the risk for retaliation by future employers who may not approve that they
19 sued their former employer. (Ayala Decl., ¶ 7; Hands Decl., ¶ 7).

20 In contrast, without having to take on any of the risk incurred by Plaintiffs or time spent by
21 Plaintiffs in litigating this matter, Settlement Class Members will automatically receive a payment for
22 their claims. It appears that the Settlement Class Members recognize these enhancements were
23 justified because since the time the Class received notice of the requested Class Representative Service
24 Awards, no one has objected to the requests. (Castro Decl., ¶ 10). Thus, the Class Representative
25 Service Awards to Plaintiffs are warranted to compensate them for their time and effort, the fear and
26 stress associated with assuming the responsibility of serving as the Class Representatives, and the
27 concrete risks they assumed as the Class Representatives.

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