

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiffs Maria Ayala and Rosa Hands

**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

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
THEREOF**

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, pursuant to
4 California Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court,
5 Plaintiffs Maria Ayala and Rosa Hands (together, “Plaintiffs”) will and hereby do move the Court for
6 an Order granting final approval of the proposed class action settlement between Plaintiffs and
7 Defendants SDH Services West, LLC and Sodexo, Inc. (together, “Defendants”).

8 Plaintiffs request that the Court enter an Order:

- 9 1. Granting final approval of the class action settlement;
- 10 2. Approving the settlement as fair, adequate, and reasonable, based upon the terms as set
11 forth in the Stipulation of Class Action Settlement (“Settlement Agreement” or “Settlement”),
12 including payment by Defendants of the escalated Maximum Settlement Amount of Six Hundred
13 Sixteen Thousand Eight Hundred Sixty Dollars and Zero Cents (\$616,860.00), equal to the amounts
14 to pay (1) the Settlement Class Members pursuant to the terms of the Settlement; (2) the Court-
15 approved Attorneys’ Fees and Expenses; (3) the Court-approved Class Representative Service
16 Awards; and (4) the Court-approved Settlement Administration Costs;
- 17 3. Approving Class Counsel’s request for attorneys’ fees in the amount of Two Hundred
18 Thousand Dollars and Zero Cents (\$200,000.00) plus reimbursement of actual costs and expenses in
19 the amount of Sixteen Thousand Four Hundred Seventy-Six Dollars and Two Cents (\$16,476.02);
- 20 4. Approving the Class Representative Service Awards to Plaintiffs in the amounts of
21 Five Thousand Dollars and Zero Cents (\$5,000.00) each (total, \$10,000.00) in recognition of their
22 services to the Class;
- 23 5. Approving the Settlement Administration Costs to ILYM Group, Inc. in the amount of
24 Nine Thousand Nine Hundred Fifty-Seven Dollars and Forty-Six Cents (\$9,957.46); and
- 25 6. Granting dismissal of the individual and representative PAGA claims in this action
26 *with* prejudice as to Plaintiffs, and *without* prejudice as to the representative group and the State of
27 California, pursuant to California Rules of Court, Rule 3.770.

28 ///

This Motion is based on the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Class Counsel (Jonathan M. Genish and Miriam L. Schimmel), the Class Representatives (Maria Ayala and Rosa Hands), and the Settlement Administrator (Nick Castro of ILYM Group, Inc.), the pleadings and other records on file with the Court in this matter, and such evidence or oral argument as may be presented at the hearing on this Motion.

Respectfully submitted,

Dated: April 25, 2024

BLACKSTONE LAW, APC

By:  _____
Jonathan M. Genish
Miriam L. Schimmel
Attorneys for Plaintiffs Maria Ayala
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”) seek
4 final approval of the class action settlement reached with Defendants SDH Services West, LLC and
5 Sodexo, Inc. (together, “Defendants”) (collectively, with Plaintiffs, the “Parties”) as provided in the
6 Stipulation of Class Action Settlement (“Settlement” or “Settlement Agreement”). (See Declaration
7 of Jonathan M. Genish in Support of Plaintiffs’ Motion for Final Approval of Class Action Settlement
8 [“Genish Decl.”], ¶ 15, Exh. A thereto).

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

24 As discussed herein, the proposed Settlement satisfies all the criteria for final settlement
25 approval under California law because it is fair, adequate, and reasonable. (*Id.*, Exh. A; *See also*,
26 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company*
27 (1996) 48 Cal.App.4th 1794, 180 l). The response of the Class to the Settlement confirms that final
28 settlement approval is appropriate. *There have been no objections to or requests to opt-out from the*

1 Settlement. (Declaration of Nick Castro of ILYM Group, Inc. Regarding Notice and Settlement
2 Administration [“Castro Decl.”], ¶¶ 9 & 10).

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

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

18 II. FACTUAL AND PROCEDURAL BACKGROUND

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

23 Plaintiff Maria Ayala was employed by SDH as an hourly-paid, non-exempt Housekeeper at
24 Long Beach Memorial Medical Center from approximately 1990 to approximately June 30, 2021.
25 (Declaration of Plaintiff Maria Ayala in Support of Plaintiffs’ Motion for Final Approval of Class
26 Action Settlement [“Ayala Decl.”], ¶ 2). Plaintiff Rosa Hands was employed by SDH as an hourly-
27 paid, non-exempt Housekeeper at Long Beach Memorial Medical Center from approximately October
28 2013 to approximately June 30, 2021. (Declaration of Plaintiff Rosa Hands in Support of Plaintiffs’

1 Motion for Final Approval of Class Action Settlement [“Hands Decl.”], ¶ 2).

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

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

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

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

28 ///

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

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

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

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

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

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

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

III. SUMMARY OF THE TERMS OF THE SETTLEMENT

Subject to Court approval pursuant to Section 382 of the California Code of Civil Procedure and Rule 3.769 *et seq.* of the California Rules of Court, the Parties have agreed to settle this matter by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement. A summary of the key terms of the Settlement is as follows:

1. The escalated Maximum Settlement Amount of Six Hundred Sixteen Thousand Eight Hundred Sixty Dollars and Zero Cents (\$616,860.00) includes: (1) Class Counsel’s fees in the amount of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00); (2) Class Counsel’s actual litigation costs and expenses in the amount of Sixteen Thousand Four Hundred Seventy-Six Dollars and Two Cents (\$16,476.02); (3) Class Representative Service Awards in the amounts of Five Thousand Dollars and Zero Cents each to Plaintiffs (total, \$10,000.00); and (4) Settlement Administration Costs in the amount of Nine Thousand Nine Hundred Fifty-Seven Dollars and Forty-Six Cents (\$9,957.46). (Genish Decl., ¶¶ 21 & 22). After the Court-approved amounts are deducted from the escalated Maximum Settlement Amount, the Settlement Class Members will share in a Net Settlement Amount of approximately Three Hundred Eighty Thousand Four Hundred Twenty-Six Dollars and Fifty-Two Cents (\$380,426.52). (*Ibid*).

2. The Net Settlement Amount will be distributed and paid to Settlement Class Members based on their total number of weeks worked during which the Settlement Class Member performed a full week of work during the Class Period (“Compensable Workweeks”). (Settlement Agreement, ¶¶ 9 & 44.a.i; Genish Decl., ¶ 23). The Individual Settlement Payments will be calculated by the Settlement Administrator by dividing the Net Settlement Amount by the total number of Compensable Workweeks for all Settlement Class Members resulting in a value for each week worked by the Settlement Class Members during the Class Period (“Workweek Value”); and then multiplying the number of Compensable Workweeks for each Settlement Class Member by the Workweek Value. (Settlement Agreement, ¶ 44.a.i; Genish Decl., ¶ 23). Any Settlement Class Member who previously settled and released their claims in the matter of *Geoffrey Gross and Leonard Pinckney v. Sodexo, Inc., et al.*, Kern County Superior Court Case No. BCV-18-101746, will have their workweeks released in that settlement excluded from their payout calculation in this matter. (Settlement Agreement, ¶ 44.a.i; Genish Decl., ¶ 23). If a Settlement Class Member’s Individual Settlement Payment is less than \$50.00, that Settlement Class Member will be issued \$50.00. (Settlement Agreement, ¶ 44.a.i; Genish Decl., ¶ 23).

3. Each Individual Settlement Payment will be allocated as twenty percent (20%) wages, forty percent (40%) non-wage interest, and forty percent (40%) non-wage penalties. (Settlement Agreement, ¶ 44.iv; Genish Decl., ¶ 25). All applicable payroll taxes on wages (including both employee-side and employer-side payroll taxes) will be deducted from the wage portion of each Settlement Class Member’s Individual Settlement Payment. (Settlement Agreement, ¶ 44.iv; Genish Decl., ¶ 25).

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

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1 5. Any Individual Settlement Payment checks remaining uncashed after one hundred and
2 eighty (180) calendar days will be transferred to the California State Controller’s Office Unclaimed
3 Property Fund in the name of the Settlement Class Member. (Settlement Agreement, ¶ 44.v; Genish
4 Decl., ¶ 27). As such, no “unpaid residue” under California Code of Civil Procedure section 384 will
5 result from the Settlement. (Settlement Agreement, ¶ 44.v; Genish Decl., ¶ 27).

6 6. Upon the Effective Date and the Settlement Administrator’s receipt of the escalated
7 Maximum Settlement Amount, Plaintiffs and all Settlement Class Members shall release Defendants
8 and their insurers, parents, subsidiaries, affiliated companies, charitable organizations, partners,
9 trustees, directors, officers, clients, agents, servants and employees, past and present and each of them
10 (“Released Parties) of all claims, demands, rights, liabilities, and/or causes of action of any nature and
11 discretion whatsoever, known or unknown, in law or in equity, whether or not concealed or hidden, that
12 have been asserted or that might have been asserted based on the facts and claims alleged in the
13 operative Complaint and arising during the period from and including August 20, 2017 through June
14 30, 2021 for unpaid wages (including premiums) or other compensation allegedly owed, or for
15 damages, penalties (including without limitation waiting time penalties under Labor Code section
16 203), restitution, interest, liquidated damages, attorneys’ fees, or costs, or any other recovery based on
17 or arising out of the claims and allegations alleged in the Lawsuit, including under the California Labor
18 Code and corresponding provisions of Wage Orders, for: (1) Failure to Pay Wages Including
19 Overtime; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Vested Vacation Wages; (4) Failure
20 to Provide Meal Periods; (5) Failure to Provide Rest Periods; (6) Failure to Provide Accurate Itemized
21 Wage Statements; (7) Failure to Timely Pay Wages Upon Termination; (8) Unfair Competition; and
22 (9) any and all corresponding claims that could have been brought under California law based on the
23 facts and claims alleged in the operative Complaint during the Class Period, including claims for
24 failure to pay wages (including overtime or premium wages). (Settlement Agreement, ¶ 42.a). It is
25 the intent of the Parties that the judgment entered by the Court shall have *res judicata* effect and be
26 final and binding upon Plaintiffs and all Class Members who have not expressly opted out of the
27 Settlement. (Ibid).

28 ///

1 **IV. DEFENDANT(S) IN CLASS DEFINITION AND RELEASE**

2 In one of the issues raised regarding the Original Motion for Preliminary Approval, the Court
3 requested clarification to explain why Sodexo is not part of the Class definition in the Settlement
4 Agreement, but is a defendant and part of the class definition in the Complaint, and is also part of the
5 Released Parties as defined in the Settlement Agreement. (Genish Decl., ¶ 29). Plaintiffs reiterate the
6 following explanation, which was provided in Plaintiffs’ Renewed Motion for Preliminary Approval:

7 Sodexo is a named defendant in the Action because Sodexo is a parent company of SDH. (*Id.*,
8 ¶ 30). At the time the Action was filed, Plaintiffs believed that Sodexo was an employing entity of
9 the employees who fell within the class definition. (*Ibid.*). Through litigation and discovery, Plaintiffs
10 learned that SDH was in fact the only entity that employed any of the class members. (*Ibid.*). Sodexo
11 never employed any of the Class Members. (*Ibid.*). However, Sodexo is still a named defendant and
12 therefore, is part of the Settlement and a proper party to be released. (*Ibid.*).

13 It is standard in class action settlements to define released parties to include the named
14 defendants and their “insurers, *parents*, subsidiaries, affiliated companies, charitable organizations,
15 partners, trustees, directors, officers, clients, agents, servants, and employees, past and present and
16 each of them.” (*Id.*, ¶ 31). Sodexo is a parent company, which was also a named defendant in the
17 Action. (*Ibid.*). Based thereon, the Parties assert that Sodexo is correctly included within the Released
18 Parties. (*Ibid.*).

19 Related thereto, the fact that Sodexo is not part of the Class definition also comports and aligns
20 with the above explanation. (*Id.*, ¶ 32). Sodexo never employed any Class Members; its subsidiary
21 SDH was the only entity that employed Class Members. (*Ibid.*). This is why the Class definition in
22 the Settlement Agreement only refers to SDH. (*Ibid.*).

23 **V. PAGA DISMISSAL**

24 A dismissal of a class action, or of any party or cause of action in a class action, requires court
25 approval. (Cal. Rules of Court, Rule 3.770(a)). The court may not grant a request to dismiss a class
26 action if the court has entered judgment following final approval of a settlement. (*Ibid.*). Requests for
27 dismissal must be accompanied by a declaration setting forth the facts on which the party relies. (*Ibid.*).
28 The declaration must clearly state whether consideration, direct or indirect, is being given for the

1 dismissal and must describe the consideration in detail. (Ibid). The court may grant the request
2 without a hearing. (Cal. Rules of Court, Rule 3.770(b)). If the court has certified the class, and notice
3 of the pendency of the action has been provided to class members, notice of dismissal must be given
4 to the class in the manner specified by the court. (Cal. Rules of Court, Rule 3.770(c)).

5 The Settlement is only a class action settlement and no settlement of or provision for any
6 PAGA allocation was made. (Genish Decl., ¶ 33). This is because the PAGA claim asserted in the
7 Action was previously settled and released in a settlement of a prior-filed PAGA action against
8 Defendants in the action entitled *Francisco Nodal v. Sodex, Inc., et al.*, Los Angeles Superior Court,
9 Case No. 20STCV40601. (Ibid). The *Nodal* settlement covers the time period of July 28, 2019
10 through September 30, 2021. (Ibid).

11 In the *Nodal* settlement, the settlement group members were defined as “Plaintiff and all other
12 non-exempt hourly-paid employees subject to California wage-and-hour laws who are or were
13 employed by Sodexo¹ or any Sodexo subsidiary or affiliate in California from July 28, 2019 through
14 September 30, 2021, other than those whose pay period during the PAGA Covered Period are entirely
15 covered by the *Gross v. Sodexo* Settlement” and the PAGA claim was based on the following alleged
16 California Labor Code violations: California Labor Code sections 201, 202, 203, 204, 226(a), 226.3,
17 226.7, 432, 510, 512, 558.1, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198.5, 2802, and 2810.5, as well
18 as California Business and Professions Code section 17200, et seq., and all applicable IWC Wage
19 Orders. (Declaration of Kimberly Shackleford in Support of Plaintiffs’ Renewed Motion for
20 Preliminary Approval of Class Action Settlement [“Shackleford Decl.”], ¶ 6, filed on October 12,
21 2023).

22 The Parties now seek to dismiss the individual and representative PAGA claims asserted in the
23 Action *with* prejudice as to Plaintiffs, and *without* prejudice as to the representative group and the
24 State of California, pursuant to California Rules of Court, Rule 3.770. (Genish Decl., ¶ 34). No
25 consideration is being offered to Plaintiffs or Plaintiffs’ counsel to dismiss the PAGA claims. (Ibid).
26 Notice of the dismissal will be given to the Class Members by way of the Final Approval Order and
27

28

¹ “Sodexo” as defined in the *Nodal* Settlement includes both Sodexo and SDH. (Shackleford Decl., ¶ 6)

Judgment by posting a copy of the Final Approval Order and Judgment on the Settlement Administrator's website for a period of at least sixty (60) calendar days after the date of entry of the Final Approval Order and Judgment. (Ibid). Additionally, notice of the dismissal will be given to the LWDA by way of the Final Approval Order and Judgment by uploading a copy of the Final Approval Order and Judgment to the LWDA's website. (Ibid).

For the foregoing reasons, Plaintiffs hereby request that this Court dismiss the individual and representative PAGA claims asserted in the Action *without* prejudice.

VI. CLASS NOTICE AND RESULTS OF THE NOTICE PROCEDURE

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

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

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

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

As of the date this Motion was filed, 8 Class Notices were returned to ILYM Group as undeliverable without forwarding addresses. (*Id.*, ¶ 8). ILYM Group performed a computerized skip trace on the 8 returned Class Notices in an effort to obtain an updated address for the purpose of re-

1 mailing the Class Notice. (Ibid). As a result of this skip trace, 7 updated addresses were obtained and
2 the Class Notice was promptly re-mailed to those Class Members, via U.S First Class Mail. (Ibid).
3 As of the date this Motion was filed, a total of 1 Class Notice has been deemed undeliverable as no
4 updated address was found notwithstanding the skip tracing. (Ibid).

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

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

15 **VII. EVALUATION OF SETTLEMENT FOR FINAL APPROVAL**

16 **A. The Legal Standard for Final Approval**

17 Before granting final approval of a class action settlement, the Court must review the
18 settlement for fairness. (Cal. Rules of Court, Rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48
19 Cal.App.4th 1794, 1801). A court must take into account relevant factors, including, for example, the
20 strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation,
21 the amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
22 the experience and views of counsel, and the reaction of the class members to the proposed settlement.
23 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45; *Dunk*, 48 Cal.App.4th at 1801
24 [“The list of factors is not exhaustive and should be tailored to each case”]; *Officers for Justice v. Civil*
25 *Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625). Considering such factors, a presumption of fairness
26 exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and

27
28 ² The actual highest and average Individual Settlement Payments will be larger than the amounts states in the Castro Decl.
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 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced
2 in similar litigation; and (4) the percentage of objectors is small. (*Wershba*, 91 Cal.App.4th at 245;
3 *Dunk*, 48 Cal.App.4th at 1802). “The settlement or fairness hearing is not to be turned into a trial or
4 rehearsal for trial on the merits. [The trial court is not] to reach any ultimate conclusions on the
5 contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty
6 of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
7 settlements.” (*Officers for Justice, supra*, 688 F.2d at 625).

8 **B. The Settlement Should be Finally Approved**

9 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
10 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
11 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
12 were at all times made at arm’s-length and were adversarial. (Genish Decl., ¶ 37). After a full day of
13 mediation, and with the help of the mediator, the Parties were able to reach an agreement to resolve
14 this dispute on a class basis, and shortly thereafter executed a memorandum of understanding
15 memorializing the key settlement terms. (*Id.*, ¶ 14). Following mediation, the Parties worked
16 diligently to negotiate and memorialize the terms in a long form settlement agreement. (*Id.*, ¶ 15). At
17 all times, Plaintiffs were willing and prepared to litigate this matter through class certification and trial
18 if the Parties had been unable to reach a favorable resolution. (*Id.*, ¶ 37).

19 **C. The Settlement is Fair and Reasonable**

20 Courts typically assess the status of discovery in determining whether a class action settlement
21 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). The volume of data and
22 documents that Class Counsel reviewed and analyzed included, but was not limited to, a random
23 sampling of putative class members’ time and pay data; Defendants’ employee handbooks and relevant
24 wage and hour policies and procedures; information regarding the number of putative class members;
25 the total workweeks and pay periods worked by the putative class members; and the rates of pay for
26 each putative class member. (Genish Decl., ¶¶ 13 & 35). This allowed Plaintiffs’ counsel to conduct
27 an informed assessment and analysis of the potential class-wide damages. (*Id.*, ¶ 35). Plaintiffs’
28 investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker*

1 *Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168
2 Cal.App.4th 116, 129-130.

3 After a thorough investigation and analysis of these documents and data, on September 13,
4 2022, the Parties attended a formal mediation with Jeffrey Krivis, Esq., a neutral and respected
5 mediator with extensive experience in complex wage and hour matters. (Genish Decl., ¶ 14). At the
6 mediation, the Parties engaged in intensive settlement discussions during which they debated their
7 respective positions and exchanged views regarding the strengths and weaknesses of the alleged
8 claims. (Ibid). Additionally, settlement negotiations were conducted by highly capable and
9 experienced counsel. Class Counsel are respected members of the California State Bar with strong
10 records of vigorous and effective advocacy and are experienced in handling complex wage and hour
11 class action litigation. (Genish Decl., ¶¶ 3-8; Declaration of Miriam L. Schimmel [“Schimmel Decl.”],
12 ¶¶ 3-10). Accordingly, Class Counsel had sufficient information and experience to act intelligently in
13 negotiating the Settlement.

14 A settlement is not judged against what might have been recovered had a plaintiff prevailed at
15 trial, nor does the settlement have to obtain 100% of the damages sought to be fair and reasonable.
16 (*Wershba*, 91 Cal.App.4th at 246, 250). In evaluating the reasonableness of a settlement, a trial court
17 must consider “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of
18 further litigation, the risk of maintaining class action status through trial, the amount offered in
19 settlement, the extent of discovery completed and the stage of the proceedings, the experience and
20 views of counsel, the presence of a governmental participant, and the reaction of the class members to
21 the proposed settlement.” (*Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008)).

22 Here, the reasonableness of the Settlement is underscored by the fact that Defendants have
23 legal and factual grounds for defending the Action. Based upon Class Counsel’s experience litigating
24 similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class
25 certification and the merits of the Action absent a settlement.

26 **1. Class Counsel’s Analysis of the Maximum Realistic Liability and Damages**

27 Prior to mediation, Class Counsel analyzed a sampling of time and payroll data provided by
28 Defendants and other relevant documents. (Genish Decl., ¶ 35). Class Counsel analyzed all available

1 data and estimated Defendants' maximum potential exposure to be approximately \$4,910,603.00,
2 assuming the litigation was successful at trial on all claims at issue, and then reduced this exposure
3 analysis based on the likelihood of obtaining class certification, prevailing at trial, and other attendant
4 risks. (Genish Decl., ¶ 39). This amount is based on the total estimated maximum liability for all the
5 workweeks at the time of mediation. (Ibid). This estimate is based off an estimated maximum liability
6 for the primary claims at issue as follows: \$1,092,492.00 for unpaid off-the-clock work, \$15,037.00
7 for unpaid meal break premiums and sick pay, \$3,759,643.00 for rest period violations, \$43,431.00
8 for unique meal break violations, and \$996,088.00 in total interest. (Ibid).

9 2. Class Counsel's Risk-Based Analysis and Risk-Based Adjustments

10 While Plaintiffs believe that Defendants faced significant exposure, substantial barriers to a
11 recovery existed. Defendants contended that Plaintiffs' claims are not suitable for class certification
12 because individual issues would predominate should this case go to trial. (*Id.*, ¶ 42); *See Brinker*
13 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th
14 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551(2011). While Plaintiffs and
15 Class Counsel disagree with Defendants' predictions, they also recognize that there is significant risk
16 that the Court may deny class certification. (Genish Decl., ¶¶ 42-46); *See also, Findings of the Study*
17 *of California Class Action Litigation*, 2000-2006, available at
18 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
actions were certified either as part of a settlement or as part of a contested certification motion).

19 For example, a large portion of Defendants' overall liability lies in Plaintiffs' meal period and
20 sick pay claims. (Genish Decl., ¶ 43). These claims have been increasingly difficult to certify in
21 recent years and Defendants contended their practices were lawful. (Genish Decl., ¶ 43; *See Brinker*,
22 53 Cal. 4th at 1034-35). Plaintiffs' theory of liability for meal period violations was based on
23 allegations that Defendants had failed to implement lawful policies and practices that allowed Class
24 Members to take meal breaks in the manner required under California law. (Genish Decl., ¶ 43; *See*
25 *Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129 (2012) (holding that "the lack of a meal/rest
26 break policy and uniform failure to authorize such breaks are matters of common proof.")). In contrast,
27 Defendants argued that their practices at all times during the Class Period were lawful. (Genish Decl.,
28 ¶ 43). Defendants argued that the rate of purported meal period violations reflected in the data would

1 require individualized inquiry and that such inquiry would prohibit a class from being certified. (Ibid).
2 Class Counsel disagreed with this assessment but had to consider the risk that the Court would find
3 validity in an individualized proof defense to certification of Plaintiffs' meal period claim. (Ibid).

4 Plaintiffs' rest period allegations were based on a similar lack of written policy and failure to
5 provide employees with timely, full, and uninterrupted rest periods. (*Id.*, ¶ 44). As with the meal
6 period allegations, Defendants contended that they provided rest breaks and relieved Class Members
7 of all duties as required under California law. (Ibid). Additionally, this claim was even more uncertain
8 given the difficulties associated with proving the alleged rest period violations, as Defendants were
9 not required to record these breaks. (Ibid). Given the lack of records demonstrating rest period
10 violations, there were legitimate concerns Plaintiffs would not be able to certify these claims or prove
11 substantial damages with requisite certainty. (Ibid).

12 Plaintiffs also faced challenges certifying and proving liability for their minimum wage and
13 overtime claims. (*Id.*, ¶ 45). These claims were largely based on unrecorded, off-the-clock work
14 performed by the Class Members both before and after their shifts and during purported meal periods.
15 (Ibid). As such, the individualized nature of why this work was performed and the individualized
16 nature of damages presented substantial concerns regarding the manageability of the case and the risk
17 the Court could find these issues prevented certification. (Ibid).

18 Class Counsel also recognized that, even if Plaintiffs prevailed at class certification, proving
19 the amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
20 proposition. (*Id.*, ¶ 46). In order to prove liability and damages, Class Counsel will need to request
21 and analyze thousands of pages of documents, obtain the Class Members' contact information, contact
22 them, and obtain their declarations at great expense. (Ibid). Moreover, even if Plaintiffs prevailed at
23 class certification and trial, possible appeals would substantially delay any recovery by the Class.
24 (Ibid).

25 In light of the Parties' respective legal positions and the risks of continued litigation, the
26 escalated Maximum Settlement Amount for resolution of the Class claims, is fair, adequate, and
27 reasonable. (*Id.*, ¶ 47).

28 ///

1 **VIII. THE REQUESTED ATTORNEYS' FEES AND EXPENSES ARE**
2 **REASONABLE AND SHOULD BE APPROVED**

3 Class Counsel seeks attorneys' fees in the amount of Two Hundred Thousand Dollars and Zero
4 Cents (\$200,000.00) (i.e., 32.42% of the escalated Maximum Settlement Amount) for the time spent
5 litigating this matter and reimbursement of actual costs and expenses totaling Sixteen Thousand Four
6 Hundred Seventy-Six Dollars and Two Cents (\$16,476.02) incurred in the prosecution of the Action,
7 which will be paid out of the escalated Maximum Settlement Amount, subject to approval by the
8 Court. (*Id.*, ¶ 48). The requested fees and costs are fair compensation for undertaking complex, risky,
9 expensive, and time-consuming litigation on a contingent fee basis, especially in light of the
10 substantial benefits achieved by Class Counsel for the Class Members. (*Ibid.*). Class Counsel's
11 requested fee award is addressed as follows but is more fully discussed in Plaintiffs' Motion for
12 Approval of Attorneys' Fees and Expenses, Class Representative Service Awards, and Settlement
13 Administration Costs ("Motion for Attorneys' Fees and Costs") filed concurrently herewith. (*Ibid.*).

14 **A. Plaintiffs' Fee Request is Proper Under the Common Fund Doctrine**

15 California state and federal courts have recognized that in a class action creating a common
16 fund distributed to the class, an appropriate method for determining an award of attorneys' fees is
17 based on a percentage of the total value of benefits to the class. (*Laffitte v. Robert Half Int'l Inc.*
18 (2016) 1 Cal.5th 480, 497-499, 503-506; *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van*
19 *Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 577 F.2d 759,
20 769). In *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, a wage and hour class action wherein
21 class counsel obtained a \$19 million non-reversionary settlement on behalf of the class, the California
22 Supreme Court approved the use of the percentage of fund or common fund method to award one-
23 third of the settlement amount or \$6,333,333.33 to class counsel for attorneys' fees. The Court stated:

24 Whatever doubts may have been created by *Serrano III*, supra, 20 Cal.3d 25, [], or the
25 Court of Appeal cases that followed, we clarify today that use of the percentage method
26 to calculate a fee in a common fund case, where the award serves to spread the attorney
27 fee among all the beneficiaries of the fund, does not in itself constitute an abuse of
28 discretion. We join the overwhelming majority of federal and state courts in holding
that when class action litigation established a monetary fund for the benefit of the class
members, and the trial court in its equitable powers awards class counsel a fee out of
that fund, the court may determine the amount of a reasonable fee by choosing an
appropriate percentage of the fund created. The recognized advantages of the percentage

1 method - including relative ease of calculation, alignment of incentives between counsel
2 and the class, a better approximation of market conditions in a contingency case, and
3 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.

4 (*Laffitte*, 1 Cal.5th at 503).

5 Under the “common fund” doctrine, “a litigant or a lawyer who recovers a common fund for
6 the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the
7 fund as a whole.” (*Boeing*, 444 U.S. at 478). The Supreme Court explained: “The doctrine rests on
8 the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are
9 unjustly enriched at the successful litigants’ expense. Jurisdiction over the fund involved in the
10 litigation allows a court to prevent this inequity by assessing attorney’s fees against the entire fund,
11 thus spreading fees proportionately among those benefitted by the suit.” (*Ibid*). Thus, the common
12 fund doctrine ensures that each member of the class contributes proportionately to the payment of the
13 attorneys’ fees recovered from monetary payments that the prevailing party recovered in the lawsuit.
14 “Put another way, in common fund cases, a variant of the usual rule applies, and the winning party
15 pays his or her own attorneys’ fees; in fee-shifting cases, the usual rule is rejected and the losing party
16 covers the bill.” (*Stanton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 967, citing *Wininger v. SI Mgmt.*
17 *L.P.* (9th Cir. 2002) 301 F.3d 1115).

18 The Supreme Court noted that several courts have expressed frustration with the alternative
19 “lodestar” approach for deciding fee awards, which usually involves wading through voluminous and
20 often indecipherable time records. (*Laffitte*, 1 Cal.5th at 503; see *Lealao v. Beneficial California, Inc.*
21 (2000) 82 Cal.App.4th 19, 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373,
22 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class
23 counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing
24 an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources.
25 (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79). The Ninth Circuit now routinely uses the
26 percentage of the common fund approach to determine the award of attorney’s fees. (*Lealao*, 82
27 Cal.App.4th at 30-31; see e.g., *In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79
28 (approving attorney’s fee of 33%)).

1 A fee of Two Hundred Thousand Dollars and Zero Cents (\$200,000.00) (i.e., 32.42% of the
2 escalated Maximum Settlement Amount) is easily within the range of reasonableness. Historically,
3 courts have awarded percentage fees in the range of 20% to 50%, depending on the circumstances of
4 the case. (*See In re Activision Sec. Litig.*, 723 F. Supp. at 1378). According to Professor Newberg:
5 “No general rule can be articulated on what is a reasonable percentage of a common fund...Usually
6 50 per cent of the fund is the upper limit on a reasonable fee award from a common fund, in order to
7 assure that fees do not consume a disproportionate part of the recovery obtained for the class, though
8 somewhat larger percentages are not unprecedented.” (Newberg on Class Actions (4th Ed.), §14.6).
9 Class Counsel’s requested fee, as more fully discussed in Plaintiffs’ Motion for Attorney’s Fees and
10 Costs, is reasonable and falls well within the historical range of attorney’s fee awards under the
11 common fund theory. Based on Class Counsel’s showing of reasonableness, the Court should approve
12 the requested fees pursuant to the common fund approach.

13 **B. Plaintiffs’ Fee Request is Reasonable Under the Lodestar Method**

14 In a common fund settlement “[t]he lodestar method is merely a cross-check on the
15 reasonableness of a percentage figure.” (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043,
16 1050, n.5). In this case, consideration of Class Counsel’s lodestar as a cross-check to the percentage
17 figure also strongly supports the reasonableness of the requested fee award. The base amount is then
18 adjusted in light of various factors. (*Serrano v. Priest*, 20 Cal.3d at 48). Class Counsel provides a
19 cross-check lodestar analysis in Plaintiffs’ Motion for Attorney’s Fees and Costs filed concurrently
20 herewith.

21 **C. Plaintiffs’ Cost Request is Reasonable**

22 Class Counsel seeks reimbursement of a total amount of Sixteen Thousand Four Hundred
23 Seventy-Six Dollars and Two Cents (\$16,476.02) in costs and expenses in this matter, which includes
24 reasonable future costs for filing the Motions. (Genish Decl., ¶48, Exh. C thereto). All costs and
25 expenses were reasonably incurred in prosecution of this matter.

26 ///

27 ///

28 ///

1 **IX. THE REQUESTED CLASS REPRESENTATIVE SERVICE AWARDS TO**
2 **PLAINTIFFS ARE REASONABLE**

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

14 As set forth in detail in Plaintiffs’ Declarations filed herewith, Plaintiffs have performed
15 significant services on behalf of the Class during the litigation. (*See, generally, Ayala and Hands*
16 *Decl.*). Class Counsel cannot understate the importance of the role of an employee who is willing to
17 search out an attorney and step forward to assume the risk of litigation and retaliation in order to
18 represent a class and put the interests of the class before his or her interests. Plaintiffs have understood
19 that this is a class action where they are serving as the Class Representatives and must protect the
20 Class Members’ interests. (Ayala Decl., ¶ 10; Hands Decl., ¶ 10). Plaintiffs were the catalyst to the
21 benefit reached for the Class Members and have actively protected the Class Members’ interests during
22 the pendency of this matter and will continue to do so even if the case was required to go to trial.
23 (*Ibid*). Plaintiffs spent numerous hours participating in this matter by searching for an attorney,
24 communicating with their attorneys on numerous occasions, searching for and producing relevant
25 documents related to their employment, responding to their attorneys’ questions, providing necessary
26 information for settlement discussions, reviewing the settlement documents, and approving the
27 Settlement on behalf of all Class Members. (Ayala Decl., ¶¶ 3-7; Hands Decl., ¶¶ 3-7).

28 ///

1 Plaintiffs also undertook the significant risks associated with acting as class representatives,
2 including, but not limited to, the risk for retaliation by future employers who may not approve that
3 they sued their former employer. (Ayala Decl., ¶ 7; Hands Decl., ¶ 7).

4 In contrast, without having to take on any of the risk incurred by Plaintiffs or time spent by
5 Plaintiffs in litigating this matter, Settlement Class Members will automatically receive a payment for
6 their claims. It appears that the Settlement Class Members recognize this enhancement was justified
7 because since the time the Class received notice of the requested Class Representative Service Awards,
8 no one has objected to the request. Thus, the Class Representative Service Awards to Plaintiffs are
9 warranted to compensate them for their time and effort, the fear and stress associated with assuming
10 the responsibility of serving as the Class Representatives, and the concrete risks they assumed as the
11 Class Representatives.

12 **X. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE**
13 **REASONABLE**

14 In Plaintiffs' Renewed Motion for Preliminary Approval, Plaintiffs requested, and the Court
15 approved, Settlement Administration Costs not to exceed Ten Thousand Dollars and Zero Cents
16 (\$10,000.00). (Genish Decl., ¶ 52). ILYM Group is the approved Settlement Administrator. (Ibid).
17 ILYM Group is an experienced class administrator and has adequately performed the administration
18 tasks required by the Preliminary Approval Order. ILYM Group's *actual* costs to administer the
19 Settlement are Nine Thousand Nine Hundred Fifty-Seven Dollars and Forty-Six Cents (\$9,957.46).
20 (Castro Decl., ¶ 14, Exh. B thereto). Based thereon, the requested costs should be approved.

21 **XI. THE CLASS RECEIVED THE BEST PRACTICABLE NOTICE**

22 California law vests the Court with broad discretion in fashioning an appropriate notice
23 program. (See California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-
24 74). To protect the rights of absent class members, the parties must provide class members with the
25 best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985)
26 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 [individual notice
27 must be sent to all class members who can be identified through reasonable efforts]; *Mullane v. Central*
28 *Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314 [best practicable notice is that which
is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of

1 the action and afford them an opportunity to present their objections”)). The content and method of
2 the notice should be designed to apprise the class members of the terms of the proposed settlement
3 and of the class members' rights regarding the settlement. (*See Mullane, supra*, 339 U.S. at 314;
4 *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323
5 F. Supp. 364, 378).

6 The Class Notice approved by the Court met these requirements: it identified the Parties and
7 described the Action, the Class, the settlement amount, the proposed method for distribution of the
8 escalated Maximum Settlement Amount, the amount proposed to be paid as the Class Representative
9 Service Awards to the named Plaintiffs, the amount of the Settlement Administration Costs to the
10 Settlement Administrator, and the requested amount for the Attorneys’ Fees and Expenses. (Genish
11 Decl., ¶ 53; *see also* Castro Decl., Exh. A thereto). The Class Notice described the proposed
12 Settlement with enough specificity to allow each Class Member to make an informed choice whether
13 to accept and participate in it. (*Ibid*). It also explained how and when Class Members may object to
14 or opt out of the Settlement. (*Ibid*). Finally, the Class Notice provided the date for the hearing on
15 final approval of the Settlement and informed Class Members how to obtain additional information
16 about the Settlement. (*Ibid*).

17 XII. CONCLUSION

18 For all of the foregoing reasons, Plaintiffs respectfully request that this Court grant Plaintiffs’
19 Motion for Final Approval of Class Action Settlement and the relief requested herein.

20 Respectfully submitted,

21 Dated: April 25, 2024

BLACKSTONE LAW, APC

22 By:


23 Jonathan M. Genish
24 Miriam L. Schimmel
25 Attorneys for Plaintiffs Maria Ayala
26 and Rosa Hands
27
28