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

FRANCISCO GARCIA, an individual, on behalf of
himself, and on behalf of all persons similarly
situated,

Plaintiff,

vs.

SPECIALTY MINERALS INC., a corporation;
DOES 1 through 50, inclusive,

Defendants.

Case No. **CIVSB2127695**

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

Date: October 18, 2023

Time: 10:00 a.m.

[Hearing set by Order dated June 7, 2023]

Dept: 26

Judge: Hon. Jessica Morgan

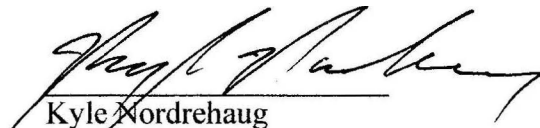
1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on October 18, 2023 at 10:00 a.m. or as soon thereafter as
3 the matter may be heard in Department 26 of the above captioned Court, before the Honorable
4 Jessica Morgan, Plaintiff Francisco Garcia (“Plaintiff”) will and hereby does move the Court for
5 an Order granting final Approval of the Class Action and PAGA Settlement Agreement
6 (“Agreement”), awarding attorneys’ fees, costs, and the Class Representative Service Payment to
7 the Plaintiff, and entering final approval and judgment.

8 This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor
9 Code section 2699(1). This Motion is based on this Notice of Motion and Motion, the attached
10 Memorandum of Points and Authorities, the accompanying Declaration of Kyle Nordrehaug, the
11 Declaration of Nathalie Hernandez of ILYM Group, Inc., and the Declaration of Plaintiff Garcia,
12 the Agreement, argument of counsel, all papers and pleadings filed in the action, and upon any
13 further information or evidence requested by the Court at the time of hearing on this Motion.

14
15 Dated: September 20, 2023

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

16
17 By:


Kyle Nordrehaug

18
19 Attorney for Plaintiff and Class Counsel

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22	2016 U.S. Dist. LEXIS 140759 (N.D. Cal. Oct. 11, 2016)	6
23	<i>Wershba v. Apple Computer, Inc.</i>	
24	(2001) 91 Cal. App. 4 th 224, 245.....	9, 10, 11

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court preliminary approved the settlement by Order dated June 7, 2023. Plaintiff
4 Francisco Garcia (“Plaintiff”) now respectfully requests that this Court grant final approval of the
5 settlement attached to the Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”) as **Exhibit 1**,
6 which seeks to resolve claims against Defendant Specialty Minerals Inc. (“Defendant”)
7 (collectively with Plaintiff, the “Parties”) in exchange for a non-reversionary Gross Settlement
8 Amount of One Million Fifty Thousand Dollars (\$1,050,000). The Class Members
9 overwhelmingly supported the Settlement, as there is a 100% participation rate, with zero
10 objections. The proposed Settlement is projected to pay an estimated average gross payment of
11 \$5,752.29 per Class Member, with the highest estimated gross payment at \$12,215.37.
12 (Administrator Decl. of Nathalie Hernandez-hereinafter “Hernandez”, ¶ 14).

13 Plaintiff also moves for final approval of attorneys’ fees in the amount of \$350,000 which
14 is One-Third of the Gross Settlement Amount. As will be demonstrated herein, Class Counsel’s
15 attorney fee request is supported using the percentage fee method and the lodestar method.
16 Second, Plaintiff moves for final approval of payment of the litigation costs in the amount of
17 \$23,978.24, all of which was incurred in litigating this matter. Third, Plaintiff moves for final
18 approval of the Class Representatives Service Payment to Plaintiff in the sum of \$10,000 to
19 compensate the Class Representative for his service as Class Representative and providing a
20 general release of his claims against Defendant – a release significantly greater than the Class
21 Members provided – and for the risks absorbed and time spent litigating the case. Plaintiff played
22 a vital role in representing Class Members in this case and spearheading the lawsuit to seek
23 monetary relief on behalf of all Class Members. Fourth, Plaintiff moves for final approval of the
24 payment of \$8,000 for Administration Expenses Payment to ILYM Group. Fifth, Plaintiff moves
25 for final approval of the \$25,000 PAGA Penalties and the payment to the Labor and Work
26 Development Agency (“LWDA”) for its share of the PAGA Penalties (\$18,750), with the
27 remaining \$6,250 distributed to the Aggrieved Employees.

28 This case required many hours of attorney time from Class Counsel and sought relief on

1 behalf of 109 potential class members within the State of California: All individuals who are or
2 previously were employed by Defendant in California who were classified as non-exempt
3 employees during the Class Period of September 29, 2017 through May 29, 2023. Are included in the
4 Class and are referred to herein as Class Members. (Preliminary Approval Order at ¶ 6.)

5 This litigation involved the review and analysis of documents, policies, and practices, as
6 well as a full day of mediation. Most importantly, the Settlement and all its terms received
7 overwhelming support from Class Members, as there were no objections and no requests for
8 exclusion. Therefore, Plaintiff respectfully requests the Court grant final approval of the
9 Settlement, Class Counsel Fees and Expenses, Class Representative Service Payment,
10 Administration Expenses Payment, and the PAGA Penalties in the amounts preliminarily
11 approved by the Court and as fully disclosed to Class Members.

12 **II. BACKGROUND, INVESTIGATION, DISCOVERY**

13 On July 15, 2021, Plaintiff filed with the LWDA and served on Defendant a notice under
14 Labor Code section 2699.3 identifying the alleged Labor Code violations and expressing Plaintiff's
15 intention to bring and legal action to recover civil penalties on behalf of Aggrieved Employees for
16 various Labor Code violations. (Nordrehaug Decl. ¶ 6.).

17 On September 29, 2021, Plaintiff filed a class action Complaint against Defendant in the
18 Superior Court of the State of California, County of San Bernardino. This class action Complaint
19 asserted class claims against Defendant for: (1) unfair competition in violation of Cal. Bus & Prof.
20 Code §§ 17200, et seq.; (2) failure to pay minimum wages in violation of California Labor Code §§
21 1194, 1197 & 1197.1; (3) failure to pay overtime wages in violation of California Labor Code §§
22 510, 1194 & 1198; (4) failure to provide required meal periods in violation of California Labor
23 Code §§ 226.7 and 512; (5) failure to provide required rest periods in violation of Cal. Labor Code
24 §§ 226.7 and 512; (6) failure to provide accurate itemized wage statements in violation of
25 California Labor Code § 226; (7) failure to reimburse employees for required expenses in violation
26 of California Labor Code § 2802; and (8) failure to provide wages when due in violation of
27 California Labor Code §§ 201, 202 and 203. On August 17, 2022, Plaintiff filed a First Amended
28 Complaint adding a cause of action against Defendant for violation of PAGA based upon the above

1 alleged violations. The First Amended Complaint is the operative complaint in the Action (the
2 “Operative Complaint”). (Nordrehaug Decl. ¶ 7.)

3 Class Counsel conducted a thorough investigation into the factual and legal issues
4 implicated by Plaintiff’s claims and were able to objectively assess the settlement’s
5 reasonableness. The information for mediation obtained by Plaintiff included: (1) data concerning
6 the Class; (2) payroll data for the Class and time punch data covering 88% of the shifts for the
7 Class; (3) Defendant’s wage and hour policies and job descriptions; (4) the employment file for
8 the Plaintiff; and, (5) samples of wage statements provided by Defendant. As such, Class Counsel
9 received the data and information for the Class, which was sufficient for Plaintiff’s expert to
10 prepare the valuations of the claims for the Class. The document and data exchanges allowed
11 Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the
12 impediments to recovery, and ultimately enabled Plaintiff’s Counsel to make an independent
13 assessment of the reasonableness of the settlement’s terms. (Nordrehaug Decl. ¶ 8).

14 The Parties attended an arms-length mediation session with Warren Jackson, a respected
15 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
16 preparation for the mediation, Defendant provided Class Counsel with necessary information for
17 the members of the Class, including payroll data and data concerning the composition of the Class.
18 Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting, and prepared
19 and submitted a mediation brief and damage valuation to the Mediator. Following this all-day
20 mediation, the Parties agreed to this Settlement. (Nordrehaug Decl. ¶ 9).

21 The Class Representative has vigorously prosecuted this case, and Defendant has vigorously
22 contested it. (Nordrehaug Decl. ¶ 9). The Parties engaged in sufficient investigation and informal
23 discovery to assess the relative merits of the claims of the Class and of Defendant’s defenses to
24 them. *Id.* Defendant has denied all of Plaintiff’s allegations in their entirety and any liability or
25 wrongdoing of any kind. *Id.*

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

27 As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement
28 Amount of \$1,050,000 (Nordrehaug Decl., Ex. 1- Agreement at ¶ 1.23.). Based on their own

1 respective independent investigations and evaluations, and after taking into account the sharply
2 disputed factual and legal issues involved in this matter, the risks attending further prosecution of
3 the case, and the monetary benefits received under the Settlement, Class Counsel is of the opinion
4 that Settlement for the consideration and on the terms set forth in the Agreement is fair, reasonable
5 and adequate and is in the best interests of the Class Members. (Nordrehaug Decl. ¶ 10).

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

9 As explained at preliminary approval, accounting for the risks of continued litigation and
10 impediments to discovery, Plaintiff determined that a settlement amounting to \$1,050,000 was fair and
11 reasonable, and accounts for approximately slightly more than 38% of total possible recovery, and courts
12 have routinely approved settlements that provided a lower discounted range of the maximum potential
13 recovery. (Nordrehaug Decl. ¶¶ 11-21). *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231,
14 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total
15 estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979)
16 (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons*
17 *Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage*
18 *Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which
19 amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the
20 strength of plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*,
21 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).¹

22
23 ¹ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at
24 *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where
25 gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5%
26 or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S.
27 Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class
28 action settlement representing “8.1% of the full verdict value” with net settlement amount
representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*,
No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final
approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum
recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal.

(continued . . .)

1 (Id.)

2 **III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE**

3 **A. Terms of the Settlement**

4 The Gross Settlement Amount is One Million Fifty Thousand Dollars (\$1,050,000).
5 (Agreement at ¶ 1.23.) Under the Settlement, the Gross Settlement Amount consists of the
6 following elements: (1) payment of the Individual Class Payments to the Participating Class
7 Members; (2) Class Counsel Fees Payment; (3) Class Counsel Litigation Expenses Payment; (4)
8 Administration Expenses Payment; (5) the Class Representative Service Payment to Plaintiff; and
9 (6) the PAGA Penalties payment. (Agreement at ¶ 1.23.) The Gross Settlement Amount does
10 not include Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement
11 Amount shall be all-in with no reversion to Defendant. (*Id.*).

12 **B. Released Claims**

13 In exchange for payment of the Gross Settlement Amount, Plaintiff and Participating Class
14 Members will agree to release the Released Claims during the Class Period: "Released Class Claims" shall
15 mean "all known and unknown claims that were alleged, or reasonably could have been alleged, based on
16 facts stated in the Operative Complaint, including claims for unpaid wages and overtime, untimely final
17 paychecks, record-keeping violations, itemized wage statements, meal and rest period wages and
18 premiums, business expenses incurred, and restitution and penalties under the Private Attorneys General
19 Act, which occurred during the Class Period, including claims arising under federal, state, or local law,
20 including the California Labor Code. Except as expressly set forth in this Agreement, Participating Class
21 Members do not release any other claims, including claims for vested benefits, wrongful termination,
22 violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security,

23 _____
(continued ...)

24 Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the
25 maximum potential recovery from the class claims and estimated amount distributable to class
26 after accounting for attorneys' fees and other deductions represented approximately 6.1% of
27 maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL
28 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where "[t]he proposed
settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—
even before any reduction thereof for attorney's fees and costs.").

workers' compensation, or claims based on facts occurring outside the Class Period.” (Agreement at ¶¶ 1.39 and 6.2.) “Released PAGA Claims” means “all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker’s compensation, and PAGA claims outside of the PAGA Period.” (Agreement at ¶ 1.40.)

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

By order dated June 7, 2023, the Court granted Preliminary Approval of the Settlement, conditionally certified the class for settlement purposes, appointed ILYM Group, Inc. to act as the administrator, approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class via U.S. First Class Mail. On July 11, 2023, ILYM mailed the Notices to 109 Class Members. (Hernandez Decl. ¶7). Out of the 109 Notices, only 2 were deemed undeliverable after attempts to ascertain the addresses. (Hernandez Decl. ¶¶ 8-10). ILYM received zero (0) requests for exclusion. (Hernandez Decl. ¶ 11). As a result of the mailing, there is a 100% participation rate, and 109 Participating Class Members will be mailed a settlement check. (*Id.* ¶ 13).

A Participating Class Member must cash his or her Individual Class Payment check within 180 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will be voided and any funds represented by such checks paid to the California Controller’s Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.)

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Settlement Satisfies the Standard for Final Approval

California Rule of Court, Rule 3.769, requires court approval for class action settlements. Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602

1 (“[T]he law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what is
2 otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer, Inc.*
3 (2001) 91 Cal. App. 4th 224, 245.

4 In deciding whether to approve a class settlement, a court evaluates whether the proposed
5 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
6 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. Of S.F.* (9th Cir.
7 1982) 688 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination.
8 *Dunk*, 48 Cal. App. 4th at 1801. However, “a presumption of fairness exists where: (1) the
9 settlement is reached through arms-length bargaining; (2) investigation and discovery are
10 sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
11 litigation; and (4) the percentage of objectors is small.” *Id.* at 1802; *accord Wershba*, 91 Cal. App.
12 4th at 245. In addition, a court should consider additional relevant factors, including the strength of
13 the plaintiffs’ case compared to the settlement amount; the risk, expenses, complexity, and likely
14 duration of further litigation; and the fair treatment of class members in relation to each other.
15 *Dunk*, 48 Cal. App. 4th at 1802.

16 At the time of preliminary approval, the Court was provided with sufficient information to
17 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
18 until after the Class had an opportunity to respond to the Settlement as explained in the Notice.
19 Subject only to the Class’s reaction to the Settlement, the Court preliminarily presumed the
20 Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and
21 adequate time provided to the Class to object to the Settlement, no class member submitted
22 objections and no class member submitted opt outs of the settlement, ***resulting in a 100%***
23 ***participation rate from the Class.*** (Hernandez Decl. ¶ 13). Thus, the proposed Settlement is
24 entitled to the presumption that it is fair and in all other respects proper and should be finally
25 approved.

26 27 **V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS**

28 **A. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage**

1 **of a Common Fund**

2 Class Counsel applies for an award of attorneys’ fees in the sum of \$350,000, representing
3 one-third of the Gross Settlement Amount, and litigation costs of \$23,978.24. (Nordrehaug Decl.
4 ¶¶ 22-27). When a settlement results in a common fund for the benefit of a class, class counsel
5 may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at
6 254 (recognizing the “percentage of recovery” method). The California Supreme Court confirmed
7 in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method survives in California
8 class action cases.” 1 Cal.5th 480, 506 (2016), in stating:

9 The recognized advantages of the percentage method—including relative ease of
10 calculation, alignment of incentives between counsel and the class, a better
11 approximation of market conditions in a contingency case, and the encouragement
12 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.

13 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
14 (“when a number of persons are entitled in common to a specific fund, and an action brought by a
15 plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such
16 plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32
17 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all
18 parties, the trial court acts within its equitable power to prevent the other parties’ unjust
19 enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the
20 percentage of the fund method for calculating attorney’s fees more accurately reflects the results
21 achieved for the putative class than the lodestar method and “establishes reasonable expectations
22 on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement,
23 which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300
24 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund cases
25 because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success
26 and penalizes it for failure.’”).²

27 _____
28 ² *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools
(continued . . .)

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

18 **1. The Requested Attorneys’ Fee is Within the Range of Fees Approved in**
19 **Comparable Common Fund Cases**

20 Assessing an appropriate fee based on a percentage of the fund involves considering “all of
21 the circumstances of the case.” Appellate cases addressing fees arise almost exclusively where
22 awards were challenged by Defendant or objectors – the only parties with standing to appeal.
23 *Wershba*, 91 Cal.App.4th at 236.

24
25 _____
(continued ...)

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

1 The requested fee falls in the mid-range of percentage class fee awards, which generally
2 range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking
3 complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates
4 Class Counsel for their efforts, as well as the result achieved for the benefit of the Class.
5 Numerous courts in California routinely approve fee requests equal to or greater than one-third of
6 the common fund. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D.
7 Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No.
8 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action
9 settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM
10 (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement). In fact, the
11 Sacramento County Superior Court has awarded fees of 35% of the common fund in wage and
12 hour class actions.); *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269; *Uribe v.*
13 *EcoGuard Pest Management, Inc.*, Case No. 34-2021-00300650; *Arroyo v. Epic Home Solar*,
14 Case No. 34-2021-00310634; *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156.

15 In short, Class Counsels' fee request of \$350,000 (one-third of the common fund) is in line
16 with awards in similar cases in California and demonstrates that Class Counsels' fee request is
17 consistent with market rates and is reasonable.

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

19 Class Counsel's fee request is reasonable when cross-checked using the lodestar/multiplier
20 method. Under the lodestar/multiplier method, a base fee amount is calculated from a compilation
21 of time reasonably spent on the case and the reasonable hourly compensation of the attorney.
22 *Serrano*, 20 Cal. 3d at 48. Then, there can then be enhancement of this lodestar figure by a
23 "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, its
24 contingent nature of the fee, and the degree of success achieved. *Id.* at 49; *see also Ketchum v.*
25 *Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834
26 (2001), ["[t]here is no...rule limiting the factors that may justify an exercise of judicial discretion
27 to [adjust the] lodestar"].

As of the date of filing, the Class Counsel Fees Payment is currently equivalent to the current lodestar of \$190,816.53 with a reasonable multiplier of 1.8 and is therefore reasonable under *Laffitte*. All of the work and tasks performed by Class Counsel were reasonable and necessary to the prosecution of this case. (Nordrehaug Decl. ¶ 24).

3. Class Counsel's Hourly Rates are Reasonable

Class Counsels' hourly rates are between \$250 and \$995 and are in line with rates typically approved in wage and hour class action litigation and which rates have been approved by Courts in California. (Nordrehaug Decl. ¶ 25; *Children's Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were reasonable where they were "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work").

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632. Class Counsels' skill and experience support their hourly rates. Their practices are limited exclusively to litigation, focusing on the representation of employees in wage and hour and consumer class action matters. (Nordrehaug Decl. ¶¶ 23-25). As prominent attorneys in the field of wage and hour class action litigation, Class Counsel continually monitors the prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of their attorneys and paralegals to be consistent with the prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates. Therefore, as they are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

4. Class Counsel's Total Hours are Reasonable

In determining a lodestar fee, reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing clients, investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight*

1 *Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to
2 establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

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

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

11 Class Counsel seeks reimbursement of the litigation costs and expenses of \$23,978.24.
12 The requested award is the amount of the actual costs incurred. These costs were reasonable and
13 necessary to prosecute this case and the results achieved and are fair, and reasonable. (Nordrehaug
14 Decl. ¶ 27, Exhibits #3 and #5).

16 **VI. THE CLASS REPRESENTATIVE SERVICE AWARD IS REASONABLE**

17 The Plaintiff seeks approval of a \$10,000 Class Representative Service Payment to the
18 named Plaintiff. The requested service award is reasonable in light of the general releases of all
19 claims Plaintiff agreed to, greater than the release given by Class Members, the benefits Plaintiff
20 conferred upon the entire Class resulting in payments to all Class Members, the time spent
21 assisting counsel with the investigation and prosecution of these claims, commitment to
22 responding to discovery and depositions, and consenting to the proposed Settlement. Furthermore,
23 in pursuing this action on behalf of the Class, Plaintiff risked an adverse judgment for costs (and
24 even fees) in the event this matter had been lost. (Nordrehaug Decl. ¶ 28.)

25 Courts routinely approve service payments, or incentive awards, to compensate named
26 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
27 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers*
28 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class

representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, \$10,000.00 to Plaintiff continues to be fair, appropriate, and justified as part of the overall settlement.

VII. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

The Parties agreed to hire ILYM Group, Inc. as the administrator, and the Court approved this choice. The Administrator was responsible for formatting, printing and mailing the Notice. It was also responsible for updating addresses and re-mailing Notices returned as undeliverable, responding to Class Member inquiries, answering questions from Counsel for the Parties, and providing a declaration to document its duties and responsibilities under the settlement. Plaintiff now requests that the Court approve the \$6,650 fee to ILYM Group, Inc. for services rendered and to be rendered. (Hernandez Decl. ¶¶ 3-15). Following the grant of final approval, the Administrator's duties will continue in order to calculate and mail Settlement Share checks to Class Members, perform tax reporting obligations, disburse other payments as ordered by the Court, and perform such other duties as set forth in the Agreement. The fee of \$6,650 for services rendered and to be rendered is fair and reasonable and should be granted.

VIII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE

The PAGA Penalties of \$25,000.00 to resolve the applicable penalties claimed under the California Labor Code's Private Attorney general Act of 2004, as amended ("PAGA"), is reasonable under the circumstances. The Parties negotiated a good faith amount to be allocated to the LWDA and the Aggrieved Employees. The sum to be paid was not the result of self-interest at the expense of other Class Members. The LWDA was provided notice of the Settlement concurrently with the filing of the preliminary approval motion and the instant motion. Plaintiff did not receive a response or objection to the Settlement from the LWDA. Thus, Plaintiff requests the Court finally approve the sum of \$25,000 for the PAGA Penalties.

IX. CONCLUSION

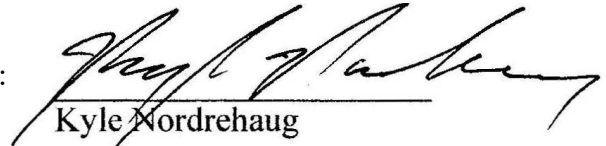
Based on the foregoing, Class Counsel respectfully requests the Court grant final approval of the Class Action Settlement, award (1) Class Counsel's attorneys' fees in the sum of \$350,000 and litigation costs of \$23,978.24; (2) award the named Plaintiff the Class Representative Service

1 Payment in the sum of \$10,000; (3) award \$6,650 to ILYM Group, Inc., for settlement
2 administration services, and (4) approve the PAGA Penalties of \$25,000 with a payment to the
3 LWDA in the amount of \$18,750 and payment to Aggrieved Employees in the amount of \$6,250.

4
5 Dated: September 20, 2023

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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7 By:


8 Kyle Nordrehaug

9 Attorney for Plaintiff and Class Counsel
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