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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ALEJANDRO VALDEZ, individually and on
behalf of others similarly situated, and as an
aggrieved employee and Private Attorney
General,

Plaintiff,

vs.

C.H.I AUTOMART, INC., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 21STCV40168

Honorable Lawrence P. Riff
Department 7

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

Date: December 14, 2023
Time: 10:00 a.m.
Dept: 7

Complaint Filed: November 1, 2021
FAC Filed: January 20, 2022
Trial Date: None Set

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

2 **PLEASE TAKE NOTICE THAT** on **December 14, 2023 at 10:00 a.m.** in Department 7 of
3 the above-captioned Court located at 312 N. Spring Street, Los Angeles, California 90012, pursuant
4 to California Code of Civil Procedure section 382, Rule 3.769 of the California Rules of Court, and
5 California Labor Code section 2699(l), Plaintiff Alejandro Valdez (“Plaintiff”) will and hereby does
6 move the Court for an Order granting final approval of the proposed class action and Labor Code
7 Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”)
8 settlement between Plaintiff and Defendant C.H.I. Automart, Inc. (“Defendant”).

9 Plaintiff requests that the Court enter an Order:

- 10 1. Granting final approval of the class action and PAGA settlement;
- 11 2. Certifying the above-captioned case as a class action for settlement purposes only;
- 12 3. Designating Plaintiff as the Class Representative and Blackstone Law, APC as Class
13 Counsel for purposes of settlement only;
- 14 4. Approving the Settlement as fair, adequate, and reasonable, based upon the terms as
15 set forth in the Court-approved Joint Stipulation of Class Action and PAGA Settlement and Release
16 (“Settlement Agreement” or “Settlement”), including payment by Defendant of the Gross Settlement
17 Amount of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) equal to the amounts to
18 pay (1) the Participating Class Members and Aggrieved Employees pursuant to the terms of the
19 Settlement; (2) the Court-approved Class Counsel Fees Payment and Class Counsel Litigation
20 Expenses Payment; (3) the Court-approved Class Representative Service Payment; (4) the Court-
21 approved Administration Expenses Payment; and (5) the Court-approved payment to the California
22 Labor and Workforce Development Agency (“LWDA”) pursuant to PAGA;
- 23 5. Approving Class Counsel’s request for one-third (1/3) of the Gross Settlement Amount,
24 i.e., One Hundred Thirty-Three Thousand Thirty-Three Dollars and Thirty-Three Cents (\$133,333.33)
25 in attorneys’ fees, plus reimbursement of actual costs and expenses in the amount of Seventeen
26 Thousand Thirty-Two Dollars and Seventy-Five Cents (\$17,032.75);
- 27 6. Approving the Class Representative Service Payment to Plaintiff in the amount of Five
28 Thousand Dollars and Zero Cents (\$5,000.00) in recognition of his services to the Class Members;

7. Approving the Administration Expenses Payment to ILYM Group, Inc. in the amount of Six Thousand Five Hundred and Zero Cents (\$6,500.00); and

8. Approving Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to be paid to the LWDA as seventy-five percent (75%) of the Ten Thousand Dollars and Zero Cents (\$10,000.00) allocated to civil penalties under PAGA.

This Motion is unopposed by Defendant and will be based on the Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Class Counsel Jonathan M. Genish and Miriam L. Schimmel, the Declaration of Cassandra Polites on behalf of the Settlement Administrator, ILYM Group, Inc., the Declaration of Plaintiff Alejandro Valdez, such evidence or oral argument as may be presented at the hearing, and on the complete records and file herein.

Respectfully submitted,

Dated: November 21, 2023

BLACKSTONE LAW, APC

By:

Jonathan M. Genish
Miriam L. Schimmel
Attorneys for Plaintiff Alejandro Valdez

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 By this unopposed Motion, Plaintiff Alejandro Valdez (“Plaintiff” or “Class Representative”)
4 and the Class seek final approval of the class action settlement reached with Defendant C.H.I.
5 Automart, Inc. (“Defendant”). Subject to Court approval, Plaintiff and Defendant (together, the
6 “Parties”) have settled the Released Class Claims and Released PAGA Claims as defined in the Joint
7 Stipulation of Class Action and PAGA Settlement and Release (“Settlement” or “Settlement
8 Agreement”) for a total amount of Four Hundred Thousand Dollars and Zero Cents (\$400,000.00)
9 (“Gross Settlement Amount”). (See Declaration of Jonathan M. Genish in Support of Plaintiff’s
10 Motion for Final Approval of Class Action and PAGA Settlement [“Genish Decl.”], ¶ 17, Exhibit 1
11 thereto).

12 As discussed herein, the proposed Settlement satisfies all the criteria for final settlement
13 approval under California law because it is fair, adequate, and reasonable. (Ibid, Exhibit 1; See also,
14 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company*
15 (1996) 48 Cal.App.4th 1794, 180 1). The response of the Class to the Settlement confirms that final
16 settlement approval is appropriate. *There have been no objections to and no requests to opt-out from*
17 *the 126 total Class Members.* (Declaration of Cassandra Polites of ILYM Group, Inc., Regarding
18 Notice and Settlement Administration [“Polites Decl.”], ¶¶ 10 & 11).

19 The Court conditionally certified, for settlement purposes only, the Class defined as: “all
20 current and former non-exempt or hourly paid employees of Defendant that have worked for
21 Defendant in the State of California during the Class Period” (Genish Decl., ¶ 15). The “Class Period”
22 is defined as November 1, 2017 to December 8, 2022. (Ibid).

23 The Settlement is a “direct distribution,” meaning there is no claims process and all Class
24 Members who did not submit a valid and timely Request for Exclusion from the Settlement
25 (“Participating Class Members”) will automatically be mailed a settlement check by ILYM Group,
26 Inc. (“Administrator”) when the Settlement is granted final approval. (Settlement Agreement, ¶¶ 1.2,
27 1.35, & 3.1).

28 ///

1 No Class Members have submitted a Request for Exclusion or objection. (Polites Decl., ¶¶ 10
2 & 11).

3 The Administrator has calculated each Participating Class Member's pro rata share of the Net
4 Settlement Amount ("Individual Class Payment") based on their total number of weeks each
5 Participating Class Member worked for Defendant for at least one day during the Class Period
6 ("Workweeks"). (Settlement Agreement, ¶¶ 1.23 & 1.45). There are 126 Participating Class Members
7 who worked 16,141 Workweeks. (Polites Decl., ¶¶ 5 & 14). The highest gross Individual Class
8 Payment is approximately \$3,773.73, the average gross Individual Class Payment is approximately
9 \$1,810.59, and the lowest gross Individual Class Payment is approximately \$14.13. (*Id.*, ¶ 15). These
10 amounts are subject to employee-side tax and withholdings. (*Ibid.*).

11 The Labor and Workforce Development Agency ("LWDA") will be paid \$7,500.00, which is
12 seventy-five percent (75%) of the \$10,000.00 total amount allocated to settle the claims brought
13 pursuant to Labor Code § 2698 *et seq.*, the Private Attorneys General Act of 2004 ("PAGA"), and the
14 remaining twenty-five percent (25%), or \$2,500.00, will be distributed to all current and former non-
15 exempt or hourly paid employees of Defendant that have worked for Defendant in the State of
16 California during the PAGA Period ("Aggrieved Employees") on a pro rata basis based on the total
17 number of pay periods each Aggrieved Employee worked for Defendant for at least one day during
18 the PAGA Period ("PAGA Pay Periods"). (Settlement Agreement, ¶¶ 1.4 & 1.30). The "PAGA
19 Period" is defined as September 29, 2020 to December 8, 2022. (*Id.*, ¶ 1.31). There are 119 Aggrieved
20 Employees who worked 3,593 PAGA Pay Periods. (Polites Decl., ¶ 16). The highest pro rata share
21 of 25% of the PAGA Penalties ("Individual PAGA Payment") is approximately \$40.36, the average
22 Individual PAGA Payment is approximately \$21.01, and the lowest Individual PAGA Payment is
23 approximately \$0.70.

24 Because the Settlement achieves outstanding results for the Participating Class Members, the
25 Aggrieved Employees, and the State of California, Plaintiff respectfully requests, on behalf of the
26 Class and without opposition from Defendant, that the Court approve the Settlement as fair, adequate,
27 and reasonable, and enter judgment in accordance with the Settlement's terms.

28 ///

1 **II. SUMMARY OF LITIGATION**

2 **A. The Parties**

3 Defendant is a California corporation previously operating under the name Robertson’s
4 Palmdale Honda and is an automobile dealership in Palmdale, California. Defendant ceased all
5 operations on or about December 8, 2022.

6 Plaintiff was employed by Defendant as an hourly-paid, non-exempt Salesperson from
7 February 2020 to April 2021. (Declaration of Plaintiff Alejandro Valdez in Support of Plaintiff’s
8 Motion for Final Approval of Class Action and PAGA Settlement [“Valdez Decl.”], ¶ 2). During
9 Plaintiff’s employment, his duties included selling new and used vehicles, providing customer
10 services, taking customers on test drives, making follow-up calls to customers who visited the
11 dealership, and other duties in connection with the sale of vehicles for Defendant. (Ibid).

12 **B. PAGA Notice, Operative Complaint, and Allegations**

13 On September 29, 2021, Plaintiff provided notice to the LWDA and Defendant of his intent to
14 seek civil penalties pursuant to PAGA (“PAGA Notice”). (Genish Decl., ¶ 9). Thereafter, on
15 November 1, 2021, Plaintiff provided an amended PAGA Notice to the LWDA and Defendant. (Ibid).

16 On November 1, 2021, Plaintiff filed a Class Action Complaint entitled *Alejandro Valdez v.*
17 *C.H.I. Automart, Inc.*, Los Angeles County Superior Court Case No. 21STCV40168 (“Action”),
18 thereby commencing a putative class action against Defendant. (*Id.*, ¶ 10). On January 20, 2022,
19 Plaintiff filed a First Amended Class Action and Representative Action Complaint (“Operative
20 Complaint”) in the Action alleging the following causes of action: (1) Violation of Cal. Labor Code
21 §§ 510 and 1198 (Unpaid Overtime); (2) Violation of Cal. Labor Code §§ 226.7 and 512(a) (Unpaid
22 Meal Period Premiums); (3) Violation of Cal. Labor Code § 226.7 (Unpaid Rest Period Premiums);
23 (4) Violation of Cal. Labor Code §§ 1194, 1197 and 1197.1 (Unpaid Minimum Wages); (5) Violation
24 of Cal. Labor Code §§ 201, 202 and 203 (Final Wages Not Timely Paid); (6) Violation of Cal. Labor
25 Code §§ 204 and 210 (Wages Not Timely Paid During Employment); (7) Violation of Cal. Labor Code
26 § 226(a) (Failure to Provide Accurate Wage Statements); (8) Violation of Cal. Labor Code §§ 2800
27 and 2802 (Failure to Reimburse Necessary Business Expenses); (9) Violation of Cal. Business &
28 Professions Code § 17200, et seq.; and (10) Violation of Cal. Labor Code § 2699, Private Attorneys

1 General Act). (Ibid).

2 **C. Investigation, Analysis, and Settlement Discussions**

3 Very shortly after this matter was filed, the Parties met and conferred with respect to the
4 potential resolution of the Action and agreed to private mediation. (*Id.*, ¶ 11). Initially, mediation was
5 set for July 22, 2022, but the Parties decided not to proceed with mediation at that time, in part due to
6 Defendant’s position that the majority of employees at issue had signed arbitration agreements that
7 contained class and PAGA waivers, and in part due to the United States Supreme Court’s decision in
8 the *Viking River* case. (Ibid). The Parties continued to discuss and debate the merits of the case and
9 ultimately decided to reschedule mediation. (Ibid). Defendant informally produced information,
10 documents, and a sampling of employees’ time and payroll records with respect to the alleged putative
11 class and PAGA members sufficient to satisfy the criteria for court approval set forth in the *Dunk v.*
12 *Foot Locker Retail, Inc.* and *Kullar v. Foot Locker Retail, Inc.* cases. (Ibid).

13 After a thorough investigation and analysis of these documents and data, the Parties attended
14 a formal mediation on January 12, 2023, with Marc J. Feder, Esq., a neutral and respected mediator
15 with extensive experience in complex wage and hour matters. (*Id.*, ¶ 12). At the mediation, the Parties
16 engaged in intensive settlement discussions during which they debated their respective positions and
17 exchanged views regarding the strengths and weaknesses of the alleged claims. (Ibid). The Parties’
18 settlement negotiations were at all times made at arm’s-length and were adversarial. (Ibid). After a
19 full day of mediation, and with the help of the mediator, the Parties were able to reach an agreement
20 to resolve this dispute on a class and representative basis. (Ibid). Thereafter, the Parties spent several
21 weeks negotiating a memorandum of understanding (“MOU”) memorializing the key settlement
22 terms. (Ibid). After further negotiation, an agreed-upon MOU was executed by the Parties as of
23 February 12, 2023. (Ibid). The Parties then spent many hours drafting and revising the terms into a
24 long form settlement agreement. (Ibid).

25 After additional discussions and revisions to the settlement agreement, the Parties executed the
26 Settlement Agreement as of April 26, 2023. (*Id.*, ¶ 13, Exhibit 1 thereto).

27 ///

28 ///

1 **D. Preliminary Approval**

2 On August 21, 2023, the Court entered the Order Granting Preliminary Approval of Class
3 Action and PAGA Settlement (“Preliminary Approval Order”), which granted Plaintiff’s unopposed
4 motion for preliminary approval of the Settlement and provisionally certified the Class, finding that
5 the Settlement appeared to be within the range of reasonableness of settlements that could ultimately
6 be given final approval. (*Id.*, ¶ 14, Exhibit 2 thereto). The Court approved the distribution of the
7 Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class
8 Notice”) and set the Final Fairness and Approval Hearing. (*Ibid*).

9 The Parties agree that the Class described herein may be certified for settlement purposes only
10 and that any motion for preliminary approval seeking, *inter alia*, certification of the Class is for
11 purposes of the settlement only. If for any reason the Settlement is not approved, the certification will
12 have no force or effect and will immediately be revoked. The Parties further agree that certification
13 for purposes of approving the Settlement Agreement is in no way an admission that class certification
14 is proper under the more stringent standard applied for litigation and that evidence of this limited
15 stipulation for settlement purposes only will not be admissible for any purpose in this or any other
16 proceeding.

17 **E. Summary of Settlement Terms**

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

22 1. The Gross Settlement Amount is Four Hundred Thousand Dollars and Zero Cents
23 (\$400,000.00), to be paid by Defendant in full satisfaction of all Released Class Claims and Released
24 PAGA Claims, which includes Individual Class Payments to Participating Class Members, Individual
25 PAGA Payments to Aggrieved Employees, Class Representative Service Payment to Plaintiff, LWDA
26 PAGA Payment to the LWDA, Class Counsel Fees Payment and Class Counsel Litigation Expenses
27 Payment to Class Counsel, and the Administration Expenses Payment to the Administrator.
28 (Settlement Agreement, ¶ 1.22). The Gross Settlement Amount does **not** include any employer-side

1 taxes and withholdings, which will be calculated by the Administrator and separately paid for by
2 Defendant. (*Id.*, ¶ 3.1). The Gross Settlement Amount is non-reversionary; no portion of the Gross
3 Settlement Amount will return to Defendant. (*Ibid.*).

4 2. The Settlement does not require Participating Class Members to submit claims as a
5 prerequisite to receiving their Individual Class Payment nor does it require Aggrieved Employees to
6 submit claims as a prerequisite to receiving their Individual PAGA Payment. (Settlement Agreement,
7 ¶ 3.1; Genish Decl., ¶ 15).

8 3. The “Net Settlement Amount” is the amount remaining after payments for the Class
9 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service
10 Payment, Administration Expenses Payment, and the PAGA Penalties are distributed. (Settlement
11 Agreement, ¶ 1.28). After the Court-approved amounts are deducted from the Gross Settlement
12 Amount, the Participating Class Members will share in the Net Settlement Amount of approximately
13 Two Hundred Twenty-Eight Thousand One Hundred Thirty-Three Dollars and Ninety-Two Cents
14 (\$228,133.92), which will be distributed and paid to Participating Class Members on a pro rata basis
15 based on their number of Workweeks worked during the Class Period. (Genish Decl., ¶¶ 17 & 18).

16 4. Aggrieved Members will each be issued a pro rata share of the 25% portion of the
17 PAGA Penalties (i.e., \$2,500.00) designated for distribution to Aggrieved Employees, based on their
18 number of PAGA Pay Periods worked during the PAGA Period. (Genish Decl., ¶ 19).

19 5. The “Released Parties” are defined as Defendant and each of its former and present
20 directors, officers, shareholders, owners, exempt employees, agents, trustees, representatives,
21 attorneys, insurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors,
22 assigns. (Settlement Agreement, ¶ 1.41).

23 6. Effective on the date when Defendant fully funds the entire Gross Settlement Amount
24 and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
25 Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs,
26 administrators, successors, and assigns generally, release and discharge Released Parties from all
27 claims, transactions, or occurrences that occurred during the Class Period, including, but not limited
28 to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in
the Operative Complaint, including, but not limited to (1) Failure to Pay Overtime (Cal. Lab. Code §§

1 510 and 1198); (2) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7 and 512(a)); (3) Failure
2 to Provide Rest Periods (Cal. Lab. Code § 226.7); (4) Failure to Pay Minimum Wages (Cal. Lab. Code
3 §§ 1194, 1197 and 1197.1); (5) Failure to Pay Wages Timely Upon Termination (Cal. Lab. Code §§
4 201, 202 and 203); (6) Failure to Pay Timely Wages During Employment (Cal. Lab. Code §§ 204 and
5 210); (7) Failure to Provide Accurate Wage Statements (Cal. Lab. Code § 226(a) and IWC Wage
6 Order); (8) Failure to Reimburse Business Expenses (Cal. Lab. Code §§ 2800 and 2802); (9) Unfair
7 Competition in Violation of Business & Professions Code Section 17200; and (10) all claims under
8 California’s Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2699 et seq.) and (b) all PAGA
9 claims that were, or reasonably could have been, alleged based on facts contained in the Operative
10 Complaint, Plaintiff’s PAGA Notice, or ascertained during the Action and released under Paragraph
11 6.2 of the Settlement Agreement (“Plaintiff’s Release”). (*Id.*, ¶ 6.1). Plaintiff’s Release does not
12 extend to any claims or actions to enforce the Settlement Agreement, or to any claims for vested
13 benefits, unemployment benefits, disability benefits, social security benefits, workers’ compensation
14 benefits that arose at any time, or based on occurrences outside the Class Period. (*Ibid.*). Plaintiff
15 acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law
16 that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff’s Release shall
17 be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff’s
18 discovery of them. (*Ibid.*).

19 a. For purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes
20 the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

21 A general release does not extend to claims that the creditor or releasing party does not
22 know or suspect to exist in his or her favor at the time of executing the release, and that if
23 known by him or her would have materially affected his or her settlement with the debtor
24 or Released Party. (*Id.*, ¶ 6.1.1).

25 7. Effective on the date when Defendant fully funds the entire Gross Settlement Amount
26 and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
27 Participating Class Members, on behalf of themselves and their respective former and present
28 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released

1 Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class
2 Period facts stated in the Operative Complaint and ascertained in the course of the Action [including,
3 but not limited to (1) Failure to Pay Overtime (Cal. Lab. Code §§ 510 and 1198); (2) Failure to Provide
4 Meal Periods (Cal. Lab. Code §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods (Cal. Lab.
5 Code § 226.7); (4) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197 and 1197.1); (5)
6 Failure to Pay Wages Timely Upon Termination (Cal. Lab. Code §§ 201, 202 and 203); (6) Failure to
7 Pay Timely Wages During Employment (Cal. Lab. Code §§ 204 and 210); (7) Failure to Provide
8 Accurate Wage Statements (Cal. Lab. Code § 226(a) and IWC Wage Order); (8) Failure to Reimburse
9 Business Expenses (Cal. Lab. Code §§ 2800 and 2802); (9) Unfair Competition in Violation of
10 Business & Professions Code Section 17200; and (10) all claims under California's Private Attorneys
11 General Act of 2004 (Cal. Lab. Code §§ 2699 et seq.). (*Id.*, ¶ 6.2). Except as set forth in Paragraph
12 6.3 of the Settlement Agreement, Participating Class Members do not release any other claims,
13 including claims for vested benefits, wrongful termination, violation of the Fair Employment and
14 Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims
15 based on facts occurring outside the Class Period. (*Ibid.*).

16 8. Effective on the date when Defendant fully funds the entire Gross Settlement Amount
17 and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
18 Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of
19 themselves and their respective former and present representatives, agents, attorneys, heirs,
20 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that
21 were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the
22 Operative Complaint, and the PAGA Notice and ascertained in the course of the Action including, but
23 not limited to (1) Failure to Pay Overtime (Cal. Lab. Code §§ 510 and 1198); (2) Failure to Provide
24 Meal Periods (Cal. Lab. Code §§ 226.7 and 512(a)); (3) Failure to Provide Rest Periods (Cal. Lab.
25 Code § 226.7); (4) Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197 and 1197.1); (5)
26 Failure to Pay Wages Timely Upon Termination (Cal. Lab. Code §§ 201, 202 and 203); (6) Failure to
27 Pay Timely Wages During Employment (Cal. Lab. Code §§ 204 and 210); (7) Failure to Provide
28 Accurate Wage Statements (Cal. Lab. Code § 226(a) and IWC Wage Order); (8) Failure to Reimburse

1 Business Expenses (Cal. Lab. Code §§ 2800 and 2802); (9) Unfair Competition in Violation of
2 Business & Professions Code Section 17200; and (10) all claims under California’s Private Attorneys
3 General Act of 2004 (Cal. Lab. Code §§ 2699 et seq.). (*Id.*, ¶ 6.3).

4 **III. CLASS NOTICE AND RESULTS OF THE NOTICE PROCEDURE**

5 Pursuant to the Preliminary Approval Order, on September 11, 2023, ILYM Group, Inc. mailed
6 Class Notices containing the Court-approved notice of the terms of the Settlement – including the
7 terms relating to the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment –
8 to 126 Class Members. (Polites Decl., ¶ 7, Exhibit A thereto). Class Members were given sixty (60)
9 calendar days after the Class Notice was mailed to submit any Requests for Exclusion, objections, or
10 disputes to Workweeks and/or PAGA Pay Periods. (*Id.*, ¶¶ 10, 11, & 12). As of the date this Motion
11 was filed, no Participating Class Members have objected to the Settlement, and not one Class Member
12 has opted out of the Settlement and/or disputed their number of Workweeks and/or PAGA Pay Periods.
13 (*Id.*, ¶¶ 10, 11, & 12). The highest gross Individual Class Payment is approximately \$3,773.73, the
14 average gross Individual Class Payment is approximately \$1,810.59, and the lowest gross Individual
15 Class Payment is approximately \$14.13. (*Id.*, ¶ 15). These amounts are subject to employee-side tax
16 and withholdings. (*Ibid.*). The highest Individual PAGA Settlement Payment is approximately \$40.36,
17 the average Individual PAGA Settlement Payment is approximately \$21.01, and the lowest Individual
18 PAGA Settlement Payment is approximately \$0.70. (*Id.*, ¶ 17).

19 **IV. COMPLIANCE WITH PROCEDURAL REQUIREMENTS OF PAGA**

20 On June 6, 2023, Class Counsel submitted a copy of the Settlement Agreement to the LWDA
21 through its online submission portal in compliance with Labor Code § 2699(1)(2). (Genish Decl., ¶ 24,
22 Exhibit 3 thereto). The LWDA has not objected or otherwise responded to the submission. (*Ibid.*).

23 **V. EVALUATION OF SETTLEMENT FOR FINAL APPROVAL**

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

25 Before granting final approval of a class action settlement, the Court must review the
26 settlement for fairness. (Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48
27 Cal.App.4th 1794, 1801). A court must take into account relevant factors, including, for example, the
28 strength of the plaintiff’s case, the risk, expense, complexity and likely duration of further litigation,
the amount offered in settlement, the extent of discovery completed and the stage of the proceedings,

1 the experience and views of counsel, and the reaction of the class members to the proposed settlement.
2 (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45; *Dunk*, 48 Cal.App.4th at 1801
3 [“The list of factors is not exhaustive and should be tailored to each case”]; *Officers for Justice v. Civil*
4 *Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625). Considering such factors, a presumption of fairness
5 exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and
6 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced
7 in similar litigation; and (4) the percentage of objectors is small. (*Wershba*, 91 Cal.App.4th at 245;
8 *Dunk*, 48 Cal.App.4th at 1802). “The settlement or fairness hearing is not to be turned into a trial or
9 rehearsal for trial on the merits. [The trial court is not] to reach any ultimate conclusions on the
10 contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty
11 of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
12 settlements.” (*Officers for Justice, supra*, 688 F.2d at 625).

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

14 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
15 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
16 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
17 were at all times made at arm’s-length and were adversarial. (Genish Decl., ¶ 12). After a full day of
18 mediation, and with the help of the mediator, the Parties were able to reach an agreement to resolve
19 this dispute on a class and representative basis. (*Ibid*). Thereafter, the Parties spent several weeks
20 negotiating the MOU memorializing the key settlement terms. (*Ibid*). After further negotiation, an
21 agreed-upon MOU was executed by the Parties as of February 12, 2023. (*Ibid*). The Parties then spent
22 many hours drafting and revising the terms into a long form settlement agreement. (*Ibid*). At all times,
23 Plaintiff was willing and prepared to litigate this matter through class certification and trial if the
24 Parties had been unable to reach a favorable resolution. (*Id.*, ¶ 26).

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

26 Courts typically assess the status of discovery in determining whether a class action settlement
27 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). In preparation for
28 mediation, Plaintiff initially provided Defendant with a detailed list of documents and data needed for

1 mediation of the Action. (Genish Decl., ¶ 25). Defendant provided key data points including the start
2 date of its operations in California, the total number of employees during the relevant time period,
3 total number of workweeks, and number of meal and rest period premiums paid. (Ibid). Defendant
4 also provided relevant excerpts from its Employee Handbooks. (Ibid). In sum, through informal
5 discovery, Plaintiff obtained time and payroll records for Plaintiff and a sample of the putative class,
6 and key data points including the class size and composition, the number of workweeks worked, the
7 number of locations, average rate of pay, and the number of terminated employees – all of which
8 enabled Plaintiff to assess the nature and extent of Defendant’s potential liability and damages. (Ibid).

9 After a thorough investigation and analysis of these documents and data, the Parties attended
10 a formal mediation on January 12, 2023, with Marc J. Feder, Esq., a neutral and respected mediator
11 with extensive experience in complex wage and hour matters. (*Id.*, ¶ 12). At the mediation, the Parties
12 engaged in intensive settlement discussions during which they debated their respective positions and
13 exchanged views regarding the strengths and weaknesses of the alleged claims. (Ibid). Additionally,
14 settlement negotiations were conducted by highly capable and experienced counsel. Class Counsel
15 are respected members of the California State Bar with strong records of vigorous and effective
16 advocacy and are experienced in handling complex wage and hour class action litigation. (Genish
17 Decl., ¶¶ 3-8; Declaration of Miriam L. Schimmel [“Schimmel Decl.”], ¶¶ 4-12). Accordingly, Class
18 Counsel had sufficient information and experience to act intelligently in negotiating the Settlement.

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

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Here, the reasonableness of the Settlement is underscored by the fact that Defendant has legal and factual grounds for defending the Action. Based upon Class Counsel's experience litigating similar complex matters, Plaintiff reasonably expected a vigorous and lengthy defense to both class certification and the merits of the Action absent a settlement.

1. Class Counsel's Analysis of the Maximum Realistic Liability and Damages

Prior to mediation, Class Counsel analyzed a sampling of time and payroll records provided by Defendant and other relevant documents and discovery. (Genish Decl., ¶ 27). Based on the discovery provided, Class Counsel estimated with respect to the class claims, with all claims adjudicated in favor of the Class, that Defendant faced a maximum potential liability of \$3,675,931. (Ibid). This estimate is based off an estimated maximum potential liability for each of the alleged claims as follows: \$1,024,857 for meal period violations, \$1,905,442 for rest period violations, \$127,634 for unpaid wages (off the clock), \$89,392 for unpaid overtime wages (improper regular rate of pay), \$189,356 for waiting time penalties for 47 terminated employees, and \$339,250 in wage statement penalties. (Ibid). Plaintiff further estimated that Defendant faced an additional exposure of \$358,600 in potential *unstacked* PAGA penalties. (Ibid).

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

While Plaintiff believes that Defendant faced significant exposure, substantial barriers to a recovery existed. Defendant denied and continues to deny any liability and wrongdoing of any kind associated with the claims alleged in the Action, and further denies that class certification is appropriate for any purpose other than the Settlement. (*Id.*, ¶ 30). Defendant believes that it would ultimately prevail in the Action, proffering defenses to both certification and to the merits of Plaintiff's claims, and that it would have successfully moved to compel arbitration of Plaintiff's individual claims and dismissal of the class claims. (Ibid). Defendant contended that Plaintiff's claims are not suitable for class certification because individual issues would predominate should this case go to trial. (Ibid). While Plaintiff and Class Counsel disagree with Defendant's predictions, they also recognize that there is a significant risk that the Court may deny class certification. (Ibid). See *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551(2011). See also, *Findings of the Study of California Class Action Litigation*, 2000-2006, available at

1 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
2 actions were certified either as part of a settlement or as part of a contested certification motion).

3 For Example, a large portion of Defendant's overall potential liability lies in Plaintiff's meal
4 period claims. (Genish Decl., ¶ 31). These claims have been increasingly difficult to certify in recent
5 years and Defendant contended its practices were lawful. *See Brinker*, 53 Cal. 4th at 1034-35. (Ibid).
6 Plaintiff's theory of liability for meal period violations was based on allegations that Defendant had
7 failed to implement lawful practices that allowed Class Members to take meal breaks in the manner
8 required under California law. (Ibid). *See Bradley v. Networkers Int'l, LLC*, 211 Cal.App.4th 1129
9 (2012) (holding that "the lack of a meal/rest break policy and uniform failure to authorize such breaks
10 are matters of common proof."). Specifically, Plaintiff asserts that Defendant did not provide him and
11 others with the opportunity to take timely, uninterrupted 30-minute meal periods when they worked
12 shifts of five hours or more, or take a second lawful meal break on shifts that exceeded 10 hours. (*Id.*,
13 ¶ 31). Further, Plaintiff alleged that Defendant instructed him and others to clock out for their meal
14 periods but to continue working through them. (Ibid). And even when meal periods were taken,
15 Plaintiff and others were frequently interrupted and asked to return to work to assist a customer. (Ibid).
16 Plaintiff further alleged that Defendant did not have a policy or practice to pay meal period premiums
17 for all noncompliant meal periods. (Ibid). In contrast, Defendant argued that its written meal break
18 policy and its practices at all times during the Class Period were lawful. (Ibid). Defendant argued that
19 the rate of purported meal period violations reflected in the data would require individualized inquiry
20 and that such inquiry would prohibit a class from being certified. (Ibid). Class Counsel disagreed
21 with this assessment but had to consider the risk that the Court would find validity in an individualized
22 proof defense to certification of Plaintiff's meal period claim. (Ibid).

23 Plaintiff's rest period allegations were based on a similar lack of lawful practice and failure to
24 provide employees with timely, full, and uninterrupted rest periods due to the excessive demands
25 during employees' shifts. (*Id.*, ¶ 32). Plaintiff further alleged that Defendant's written rest break
26 policy violated California law by requiring employees to remain on the premises during rest breaks.
27 (Ibid). Plaintiff also contended that Defendant lacked any policy or practice to compensate employees
28 who were not permitted to take lawful rest periods. (Ibid). As with the meal period allegations,
Defendant contended that it did provide rest breaks and relieve Class Members of all duties as required

1 under California law. (Ibid). This claim, however, was even more uncertain given the difficulties
2 associated with proving the alleged rest period violations, as Defendant was not required to record
3 these breaks. (Ibid). Given the lack of records demonstrating rest period violations, there were
4 legitimate concerns Plaintiff would not be able to certify these claims or prove substantial damages
5 with requisite certainty. (Ibid).

6 Plaintiff also faced challenges certifying and proving liability for his minimum wage and
7 overtime claims. (*Id.*, ¶ 33). These claims were largely based on unrecorded, off-the-clock work
8 performed by the Class Members both before and after their shifts, as well as during meal breaks.
9 (Ibid). As such, the individualized nature of the damages presented substantial concerns regarding the
10 manageability of the case and the risk the Court could find these issues prevented certification. (Ibid).

11 Class Counsel also recognized that, even if Plaintiff prevailed at class certification, proving the
12 amount of wages due to Class Members would be an expensive, time-consuming, and uncertain
13 proposition. (*Id.*, ¶ 34). In order to prove liability and damages, Class Counsel would need to obtain
14 and analyze thousands more pages of documents, as well as obtain the Class Members' contact
15 information and contact each of them and obtain their declarations at great expense. (Ibid). Moreover,
16 even if Plaintiff prevailed against Defendant's arbitration agreements and succeeded on class
17 certification and trial, likely appeals would substantially delay any recovery to the Class. (Ibid).

18 Both sides have had the opportunity to review documents and information relating to Plaintiff's
19 and the Class Members' employment with Defendant, and Defendant's operations and employment
20 policies, practices, and procedures. (*Id.*, ¶ 35). The Parties also reviewed and analyzed a sampling of
21 the time and pay records of the Class Members to determine the potential value and strength of the
22 claims. (Ibid). The available information enabled Class Counsel to estimate the potential claims of
23 the Class and prepare damages/valuation models. (Ibid). Accordingly, the Parties have conducted
24 adequate investigation and discovery to be sufficiently informed of the nature and extent of the Class
25 Members' claims, and to enable both sides to fully evaluate the Settlement for its fairness, adequacy,
26 and reasonableness. (Ibid). The Parties have agreed that the matter is well-suited for settlement given
27 the legal issues relating to Plaintiff's principal claims, as well as the costs and risks to both sides that
28 would attend further litigation. (Ibid). The Settlement takes into account the strengths and weaknesses

1 of each side's position and the uncertainty of how the case might have concluded at trial, and/or after
2 exhaustion of all appeals. (Ibid).

3 Therefore, taking into account the risk that Defendant's arbitration agreements would be
4 enforced, and the subsequent risk of not obtaining class certification, Class Counsel discounted
5 Defendant's estimated liability by 75% (reducing the damages to \$918,982.75). (*Id.*, ¶ 36). The
6 merits-based risk factors also reduced Defendant's estimated liability by an additional 50%. (Ibid).
7 This resulted in an adjusted estimated liability of \$459,491.38. (Ibid).

8 Class Counsel also separately contemplated the risks of proceeding with the PAGA action and
9 potential liability Defendant could face from this claim. (*Id.*, ¶ 37). First, Class Counsel recognized
10 that the PAGA claims would be subject to the same defenses and risks as Plaintiff's underlying wage
11 claims. (*Ibid*); see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008)
12 ("Plaintiff's claim under [PAGA] is wholly dependent upon her other claims. Because Plaintiff's other
13 claims fail as a matter of law, so does her PAGA claim"). Moreover, although California case law
14 clearly states that PAGA actions need not satisfy class action requirements, Class Counsel remained
15 mindful of the fact that some courts have nevertheless held that PAGA claims must meet a threshold
16 "manageability" requirement. See, e.g., *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th
17 746 (2021). Class Counsel anticipated that, even if successful on the merits at trial, the imposition of
18 cumulative civil penalties based on the alleged wage and hour violations could be considered unjust,
19 arbitrary and oppressive, or confiscatory. (Genish Decl., ¶ 37).¹ Class Counsel also anticipated
20 Defendant would argue that it made a good faith attempt to comply with its legal obligations, and that
21 the violations per pay period were low, warranting an additional reduction in civil penalties. (Ibid).
22 Finally, Class Counsel was also mindful of the fact that PAGA is fundamentally not intended to be

23
24 ¹ See, e.g., *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1131 (2012) (imposition of both
25 statutory and civil penalties for same conduct is impermissible double recovery) (disapproved on other grounds); *Aguirre*
26 *v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) ("duplicative effect" of penalties is a factor in favor of
27 "reducing ...the PAGA penalty"); *Smith v. Lux Retail North America, Inc.*, 2013 WL 2932243, at *3 (N.D. Cal. June 13,
28 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL 363108, at *4 (E.D. Cal.
Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017 WL 4620746 (LA Super. Ct. July 6, 2017)
(declining to stack penalties arising out of the same conduct); *Fleming v. Covidien, Inc.*, 2011 WL 756304718, at *4 (C.D.
Cal. Aug. 12, 2011) (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016)
(indicating that a substantial reduction is warranted where good faith dispute exists in legal obligations); *Carrington v.*
Starbucks Corp., 30 Cal.App.5th 504, 529 (2018) (approving reduction in penalties from \$50 per pay period to \$5 per pay
period based on good faith attempts to comply with obligations and minimal violations).

1 compensatory in nature but is instead intended to facilitate the implementation of California's labor
2 laws by financing state activities and educating and deterring non-compliance. (Ibid).

3 Therefore, the Parties agreed during settlement negotiations to allocate \$10,000.00 of the
4 settlement toward the PAGA claim, which represents approximately 2.5% of the Gross Settlement
5 Payment. (*Id.*, ¶ 38). This percentage of the settlement is well within the range of wage and hour
6 settlements regularly approved in both state and federal court for cases that include both a class and
7 PAGA action. (Ibid). Typically, such hybrid cases allocate only 1% of the gross settlement value to
8 resolve PAGA claims, and, indeed, settlement allocations of as little as 0.22% of the gross settlement
9 amount have been approved as reasonable by courts. *See, e.g., Bararsani v. Coldwell Banker*
10 *Residential Brokerage Company*, Los Angeles Superior Court Case No. BC495767 (2016) (\$10,000
11 allotted as PAGA penalties or 0.22% of \$4,500,000 settlement amount); *Davis v. Brown Shoe Co.*,
12 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$1.5 million class
13 settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015) (PAGA Payment
14 of \$5,000 in a \$500,000 class settlement); *Martinov. Ecolab Inc.*, No. 3: 14CV04358 (N.D. Cal. 201
15 7) (\$100,000 allotted as PAGA penalties or 0.48% of \$21,000,000 settlement amount); *Zamora v.*
16 *Ryder Integrated Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500 payment to
17 LWDA for PAGA on a \$1.5 million class settlement). (Genish Decl., ¶ 38). Moreover, the overall
18 relief obtained by the PAGA portion of the settlement is significant, not only from a monetary
19 perspective, but also because it fulfills the public policy objectives of PAGA—to promote enforcement
20 of California's labor laws, provide funds to the state, and deter future non-compliance by the employer.
21 (Ibid).

22 In light of the Parties' respective legal positions and the risks of continued litigation, the Gross
23 Settlement Amount for resolution of the Class and PAGA claims, is fair, adequate, and reasonable.
24 (*Id.*, ¶ 39).

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1 **VI. THE REQUESTED CLASS COUNSEL FEES PAYMENT AND CLASS**
2 **COUNSEL LITIGATION EXPENSES PAYMENT ARE REASONABLE AND**
3 **SHOULD BE APPROVED**

4 Class Counsel seeks one-third (1/3) of the Gross Settlement Amount (i.e., \$133,333.33) for
5 fees for the time spent litigating this matter and reimbursement of actual costs and expenses totaling
6 \$17,032.75 incurred in the prosecution of the Action. (Genish Decl., ¶ 40). The requested fees and
7 costs are fair compensation for undertaking complex, risky, expensive, and time-consuming litigation
8 on a contingent fee basis, especially in light of the substantial benefits achieved by Class Counsel for
9 the Class Members. (Ibid). Class Counsel's requested fee award is addressed as follows but is more
10 fully discussed in Plaintiff's Motion for Approval of Class Counsel Fees Payment, Class Counsel
11 Litigation Expenses Payment, Class Representative Service Payment, and Administration Expenses
12 Payment ("Motion for Attorneys' Fees and Costs") filed concurrently herewith. (*Id.*, ¶ 40).

13 **A. Plaintiff's Fee Request of One-Third (1/3) of the Gross Settlement Amount is Proper**
14 **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 one-third (1/3) of the Gross Settlement Amount (i.e., \$133,333.33) is easily within the
2 range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to
3 50%, depending on the circumstances of the case. (*See In re Activision Sec. Litig.*, 723 F. Supp. at
4 1378). According to Professor Newberg: “No general rule can be articulated on what is a reasonable
5 percentage of a common fund...Usually 50 per cent of the fund is the upper limit on a reasonable fee
6 award from a common fund, in order to assure that fees do not consume a disproportionate part of the
7 recovery obtained for the class, though somewhat larger percentages are not unprecedented.”
8 (Newberg on Class Actions (4th Ed.), §14.6). Class Counsel’s requested fee, as more fully discussed
9 in Plaintiff’s Motion for Attorney’s Fees and Costs, is reasonable and falls well within the historical
10 range of attorney’s fee awards under the common fund theory. Based on Class Counsel’s showing of
11 reasonableness, the Court should approve the requested fees pursuant to the common fund approach.

12 **B. Plaintiff’s Fee Request is Reasonable Under the Lodestar Method**

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

20 **C. Plaintiff’s Cost Request is Reasonable**

21 Class Counsel seeks reimbursement of a total amount of \$17,032.75 in costs and expenses in
22 this matter, which includes reasonable future costs for filing the Motions. (Genish Decl., ¶ 40, Exhibit
23 4 thereto). All costs and expenses were reasonably incurred in prosecution of this matter.

24 **VII. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENT TO** 25 **PLAINTIFF IS REASONABLE**

26 The named Plaintiff should be awarded a Class Representative Service Payment in the amount
27 of \$5,000.00. (*Id.*, ¶43). Enhancement awards in wage and hour cases typically range from \$5,000.00
28 to \$20,000.00, although some awards are higher. (*Ibid.*). Often, multiple class representatives receive
awards in the above range. (*See e.g., Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)

1 186 Cal.App.4th 399, 412 [approving an enhancement request of \$10,000.00 per named plaintiff in a
2 188 member class]; *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998); *Thornton v. East Texas*
3 *Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) [“We also think there is something to be said for
4 rewarding those drivers who protect and help to bring rights to a group of employees who have been
5 the victims of discrimination.”]). Here, the requested Class Representative Service Payment is modest,
6 reasonable, and should be approved.

7 As set forth in detail in Plaintiff’s Declaration filed herewith, Plaintiff has performed
8 significant services on behalf of the Class during the litigation. (*See*, generally, Valdez Decl.). Class
9 Counsel cannot understate the importance of the role of an employee who is willing to search out an
10 attorney and step forward to assume the risk of litigation and retaliation in order to represent a class
11 and put the interests of the class before his or her interests. Plaintiff has understood that this is a class
12 action where he is serving as the Class Representative and must protect the Class Members’ interests.
13 (*Id.*, ¶ 10). Plaintiff was the catalyst to the benefit reached for the Class Members, and he has actively
14 protected the Class Members’ interests during the pendency of this matter and will continue to do so
15 even if the case was required to go to trial. (*Id.*, ¶ 6). Plaintiff spent approximately 30 to 35 hours
16 participating in this matter by searching for an attorney, communicating with his attorneys on
17 numerous occasions via email, text, and phone, searching for and producing relevant documents
18 related to his employment, responding to his attorneys’ telephone inquiries, assisting his attorneys
19 with preparation for mediation, attending mediation, spending time on telephone conferences with
20 counsel to better inform them of the issues regarding Class Members’ work environment and
21 requirements, providing necessary information for settlement discussions, reviewing the settlement
22 documents, and approving the Settlement on behalf of all Class Members. (*Id.*, ¶¶ 3-8).

23 Plaintiff also undertook the significant risks associated with acting as a class representative.
24 He understood and accepted that he was putting himself at risk to pay costs of litigation if the case
25 was unsuccessful. (*Id.*, ¶ 7). Plaintiff also understood that that he was at risk of loss of income due to
26 missing work to fulfill any responsibilities required to participate in litigation. (*Ibid.*). Plaintiff also
27 put himself at risk for retaliation by future employers who may not approve that he sued his former
28 employer. (*Id.*, ¶ 12).

1 In contrast, without having to take on any of the risk incurred by Plaintiff or time spent by
2 Plaintiff in litigating this matter, Participating Class Members will automatically receive a payment
3 for their claims. It appears that the Participating Class Members recognize this enhancement was
4 justified because since the time the Class received notice of the requested Class Representative Service
5 Payment, no one has objected to the request. Thus, the Class Representative Service Payment to
6 Plaintiff is warranted to compensate him for his time and effort, the fear and stress associated with
7 assuming the responsibility of serving as the Class Representative, and the concrete risks he assumed
8 as the Class Representative.

9 **VIII. THE REQUESTED ADMINISTRATION EXPENSES PAYMENT IS**
10 **REASONABLE**

11 In Plaintiff's motion for preliminary approval, Plaintiff requested, and the Court approved, an
12 Administration Expenses Payment not to exceed \$8,000.00. (Genish Decl., ¶ 44). ILYM Group, Inc.
13 is the approved Administrator. (Ibid). It is an experienced class administrator and has adequately
14 performed the administration tasks required by the Preliminary Approval Order. ILYM Group, Inc.'s
15 *actual* costs to administer the Settlement are only \$6,500.00. (Polites Decl., ¶ 18, Exhibit B thereto).
16 Based thereon, the requested costs should be approved.

17 **IX. THE PROPOSED LWDA ALLOCATION IS REASONABLE**

18 Pursuant to California Labor Code Section 2699(1), the Superior Court shall review and
19 approve the settlement of penalties sought under that California Labor Code Section. (Cal. Lab. Code
20 § 2699(1)). For all of the reasons stated above, the Settlement is fair, reasonable, and adequate, and
21 should be approved. As part of the Settlement, Defendant has agreed to pay \$10,000.00 to settle the
22 claims of the Aggrieved Employees brought pursuant to PAGA, of which the payment of \$7,500.00
23 (75% of the PAGA Penalties) will be paid to the LDWA for education and enforcement purposes.
24 (Genish Decl., ¶ 45).

25 It is extremely common in approved wage and hour class action cases that settle that only a
26 small portion of the total settlement is paid to PAGA penalties "in order to maximize payments to
27 class members." (*Magadia v. Wal-Mart Assocs.* (N.D. Cal. May 31, 2019, No. 17-CV-00062-LHK)
28 2019 U.S. Dist. LEXIS 91732, *90-91, citing as examples *Ceja-Corona v. CVS Pharm., Inc.* (E.D.
Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 [preliminarily approving

\$10,000 in PAGA penalties out of a total settlement amount of \$900,000]; *Thio v. Genji, LLC* (N.D. Cal. 2014) 14 F. Supp. 3d 1324, 1330 [preliminarily approving \$10,000 in PAGA penalties out of a total settlement amount of \$1,250,000]; *Franco v. Ruiz Food Prods.* (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 [granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of \$2,500,000]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal. Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 [granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of \$3,700,000]; *Chu v. Wells Fargo Invs., LLC* (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 [granting final approval of \$10,000 in PAGA penalties out of a total settlement amount of \$6,900,000]). Like here, in these approved settlements, the Parties generally maximized statutory penalties and minimized PAGA penalties to focus on claims to the Class Members, the persons who actually suffered the Labor Code violations. (Genish Decl., ¶ 46).

X. THE CLASS RECEIVED THE BEST PRACTICABLE NOTICE

California law vests the Court with broad discretion in fashioning an appropriate notice program. (See California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74). To protect the rights of absent class members, the parties must provide class members with the best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 [individual notice must be sent to all class members who can be identified through reasonable efforts]; *Mullane v. Central 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 the action and afford them an opportunity to present their objections"]). The content and method of the notice should be designed to apprise the class members of the terms of the proposed settlement and of the class members' rights regarding the settlement. (See *Mullane, supra*, 339 U.S. at 314; *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323 F. Supp. 364, 378).

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1 The Class Notice approved by the Court met these requirements: it identified the Parties and
2 described the lawsuit, the Class, the settlement amount, the proposed method for distribution of the
3 Gross Settlement Amount, the amount proposed to be paid as Class Representative Service Payment
4 to the named Plaintiff, the amount of the Administration Expenses Payment to the Administrator, and
5 the requested amount for the Class Counsel Fees Payment and Class Counsel Litigation Expenses
6 Payment. (Genish Decl., ¶ 47; *see also* Polites Decl., Exhibit A thereto). The Class Notice described
7 the proposed Settlement with enough specificity to allow each Class Member to make an informed
8 choice whether to accept and participate in it. (Ibid). It also explained how and when Class Members
9 may object to or opt out of the Settlement. (Ibid). Finally, the Class Notice provided the date for the
10 hearing on final approval of the Settlement and informed Class Members how to obtain additional
11 information about the Settlement. (Ibid).

12 The California Supreme Court has held that notice is appropriate if it has a “reasonable chance
13 of reaching a substantial percentage of the class members...” (*Cartt, supra*, 50 Cal.App.3d at 974).
14 The Class Notice was mailed to individual Class Members at their last known address, and in the end,
15 approximately 99% of the Class Notices were successfully mailed to Class Members. (Genish Decl.,
16 ¶ 47). As the Class Notice actually reached the vast majority of Class Members and apprised them of
17 all pertinent information regarding the Settlement, under California law, the Class Notice given to
18 Class Members was more than adequate.

19 **XI. CONCLUSION**

20 For all of the foregoing reasons, Plaintiff respectfully requests that this Court grant Plaintiff’s
21 Motion for Final Approval of Class Action and PAGA Settlement and the relief requested herein.

22 Respectfully submitted,

23 Dated: November 21, 2023

BLACKSTONE LAW, APC

24
25 By:



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