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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

MATTHEW SAVATTIERI, on behalf of
himself and all others similarly situated;

Plaintiff,

vs.

AMI EXPEDITIONARY HEALTHCARE,
LLC, a Delaware limited liability company; AMI
EXPEDITIONARY HEALTHCARE (USA),
LLC, a Wyoming limited liability company; and
DOES 1 through 25, inclusive.

Defendants.

SHORNIKAY CALLUM, an Individual, on
behalf of herself and all others similarly situated

Plaintiffs,

vs.

AMI EXPEDITIONARY HEALTHCARE
(USA), LLC, a Wyoming Limited Liability
Company; AMI EXPEDITIONARY
HEALTHCARE, LLC, a Delaware Limited
Liability Company and DOES 1 through 100,
Inclusive

Lead Case No. 21STCV33372

[Consolidated with Case Nos. 21STCV45611
and 21STCV46752]

*Assigned to the Hon. Kenneth R. Freeman,
Department 14*

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

Date: March 19, 2024

Time: 11:00 a.m.

Dept: 14

Complaint Filed: September 10, 2021

Trial Date: Not Set

1
2 Defendants

3 ASHLEY CHARLEMAGNE, BRIANA
4 HUGUELY, MARLA LEWIS, and SHARON
5 LEWIS, on behalf of themselves and others
6 similarly situated

7 Plaintiffs,

8 vs.

9 AMI EXPEDITIONARY HEALTHCARE
10 (USA), LLC, a Wyoming limited liability
11 company; AMI EXPEDITIONARY
12 HEALTHCARE, LLC, a Delaware limited
13 liability company; AMI HEALTH, a business
14 entity of unknown form; AMI
15 EXPEDITIONARY HEALTHCARE, a business
16 entity of unknown form; and DOES 1 through
17 50, Inclusive

18 Defendants.

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26 SHORNIKAY CALLUM, individually and on behalf of all others
27 similarly situated

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5 Attorneys for Plaintiffs
ASHELY CHARLEMAGNE,
6 BRIANNA HUGUELY, MARIA LEWIS,
7 and SHARON LEWIS on behalf of themselves and others similarly situated
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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE THAT** on **March 19, 2024 at 11:00 a.m.** in Department 14 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), Plaintiffs Matthew Savattieri, Shorniakay Callum, Ashley
6 Charlemagne, Brianna Huguely, Marla Lewis, and Sharon Lewis (collectively, “Plaintiffs”) will and
7 hereby do move the Court for an Order granting final approval of the proposed class action and Labor
8 Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”)
9 settlement between Plaintiffs and Defendants AMI Expeditionary Healthcare, LLC and AMI
10 Expeditionary Healthcare (USA), LLC (together, “Defendants”).

11 Plaintiffs request that the Court enter an Order:

- 12 1. Granting final approval of the class action and PAGA settlement;
- 13 4. Approving the settlement as fair, adequate, and reasonable, based upon the terms as set
14 forth in the Court-approved Class Action and PAGA Settlement Agreement and Class Notice
15 (“Settlement Agreement” or “Settlement”), including payment by Defendants of the Gross Settlement
16 Amount of Three Million Eight Hundred Thousand Dollars and Zero Cents (\$3,800,000.00) equal to
17 the amounts to pay (1) the Participating Class Members and Aggrieved Employees pursuant to the
18 terms of the Settlement; (2) the Court-approved Class Counsel Fees Payment and Class Counsel
19 Litigation Expenses Payment; (3) the Court-approved Class Representative Service Payments; (4) the
20 Court-approved Administration Expenses Payment; and (5) the Court-approved payment to the
21 California Labor and Workforce Development Agency (“LWDA”) pursuant to PAGA;
- 22 5. Approving Class Counsel’s request for one-third (1/3) of the Gross Settlement Amount,
23 i.e., One Million Two Hundred Sixty-Six Thousand Six Hundred Sixty-Six Dollars and Sixty-Seven
24 Cents (\$1,266,666.67) in attorneys’ fees, plus reimbursement of actual costs and expenses in the
25 amount of Twenty-Eight Thousand One Hundred Eight Dollars and Seventy-Three Cents
26 (\$28,108.73);

27 ///

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6. Approving the Class Representative Service Payments to Plaintiffs in the aggregate amount of Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) in recognition of their services to the Class Members;

7. Approving the Administration Expenses Payment to ILYM Group, Inc. in the amount of Thirty Thousand Five Hundred Fifty Dollars and Zero Cents (\$30,550.00); and

8. Approving Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) to be paid to the LWDA as seventy-five percent (75%) of the One Hundred Thousand Dollars and Zero Cents (\$100,000.00) allocated to civil penalties under PAGA.

This Motion is based on the following Memorandum of Points and Authorities, the Settlement Agreement, the Declarations of Class Counsel (Jonathan M. Genish, Miriam L. Schimmel, Bruce Kokozyan, David Yeremian, and Roman Shkodnik), Class Representatives (Matthew Savattieri, Shorniakay Callum, Ashley Charlemagne, Brianna Huguely, Marla Lewis, and Sharon Lewis), and the Administrator (Christina Fowler of ILYM Group, Inc.), the pleadings and other records on file with the Court in this matter, and such evidence or oral argument as may be presented at the hearing on this Motion.

Respectfully submitted,

Dated: February 16, 2024

BLACKSTONE LAW, APC

By:

Jonathan M. Genish
Miriam L. Schimmel
Attorneys for Plaintiff Matthew Savattieri

Dated: February 15, 2024

KOKOZIAN LAW FIRM, APC

By:

Bruce Kokozyan
Attorneys for Plaintiff Shorniakay Callum

Dated: February __, 2024

DAVID YEREMIAN & ASSOCIATES, INC.

By:

Roman Shkodnik
Attorneys for Plaintiffs Ashley Charlemagne,
Brianna Huguely, Marla Lewis, and
Sharon Lewis

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Respectfully submitted,

Dated: February __, 2024

BLACKSTONE LAW, APC

By: _____
Jonathan M. Genish
Miriam L. Schimmel
Attorneys for Plaintiff Matthew Savattieri

Dated: February , 2024

KOKOZIAN LAW FIRM, APC

By: _____
Bruce Kokozyan
Attorneys for Plaintiff Shorniakay Callum

Dated: February 15, 2024

DAVID YEREMIAN & ASSOCIATES, INC.

By: Roman Shkodnik
Roman Shkodnik
Attorneys for Plaintiffs Ashley Charlemagne,
Brianna Huguely, Marla Lewis, and
Sharon Lewis

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Matthew Savattieri, Shorniakay Callum, Ashley Charlemagne, Brianna Huguely,
4 Marla Lewis, and Sharon Lewis (collectively, “Plaintiffs” or “Class Representatives”) seek final
5 approval of the class action settlement reached with Defendants AMI Expeditionary Healthcare, LLC
6 and AMI Expeditionary Healthcare (USA), LLC (together, “Defendants”). Subject to Court approval,
7 Plaintiffs and Defendants (together, the “Parties”) have settled the Released Class Claims and
8 Released PAGA Claims as defined in the Class Action and PAGA Settlement Agreement and Class
9 Notice (“Settlement” or “Settlement Agreement”) for a total amount of Three Million Eight Hundred
10 Thousand Dollars and Zero Cents (\$3,800,000.00) (“Gross Settlement Amount”). (See Declaration of
11 Jonathan M. Genish in Support of Plaintiffs’ Motion for Final Approval of Class Action and PAGA
12 Settlement [“Genish Decl.”], ¶ 20, Exhibit 1 thereto).

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

20 The Court conditionally certified, for settlement purposes only, the Class defined as: “All
21 current and former non-exempt employees of Defendants employed by Defendants in the state of
22 California working on the Los Angeles Unified School District (LAUSD) project at any time during
23 the Class Period, excluding any such employees who separately entered into a release of claims with
24 Defendants prior to final approval of the settlement” (“Class” or “Class Members”). (Genish Decl., ¶
25 18). The “Class Period” is defined as September 10, 2017 through July 2, 2022. (Ibid).

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

6 No Class Members have submitted a Request for Exclusion or objection. (Fowler Decl., ¶¶ 12
7 & 14).

8 The Administrator has calculated each Participating Class Member’s pro rata share of the Net
9 Settlement Amount (“Individual Class Payment”) based on their total number of weeks each
10 Participating Class Member worked for Defendant for at least one day during the Class Period
11 (“Workweeks”). (Settlement Agreement, ¶¶ 1.23 & 1.45). There are 3,097 Participating Class
12 Members who worked a total of 43,678 Workweeks. (Fowler Decl., ¶ 17). The highest gross
13 Individual Class Payment is approximately \$5,553.51, the average gross Individual Class Payment is
14 approximately \$718.56, and the lowest gross Individual Class Payment is approximately \$50.93. (*Id.*, ¶
15 18). These amounts are subject to employee-side tax and withholdings. (*Ibid*).

16 The Labor and Workforce Development Agency (“LWDA”) will be paid \$75,000.00, which
17 is seventy-five percent (75%) of the \$100,000.00 total amount allocated to settle the claims brought
18 pursuant to Labor Code § 2698 *et seq.*, the Private Attorneys General Act of 2004 (“PAGA”), and the
19 remaining twenty-five percent (25%), or \$25,00.00, will be distributed to all current and former non-
20 exempt employees of Defendants employed by Defendants in the state of California at any time during
21 the PAGA Period, excluding any such employees who separately entered into a release of claims with
22 Defendants prior to final approval of the settlement (“Aggrieved Employees”) on a pro rata basis based
23 on the total number of Workweeks each Aggrieved Employee worked for Defendants for at least one
24 day during the PAGA Period. (Settlement Agreement, ¶¶ 1.4 & 3.2.5.1). The “PAGA Period” is
25 defined as September 8, 2020 through July 2, 2022. (*Id.*, ¶ 1.31). There are 3,097 Aggrieved
26 Employees who worked a total of 43,590 Workweeks during the PAGA Period. (Fowler Decl., ¶ 18).
27 The highest pro rata share of 25% of the PAGA Penalties (“Individual PAGA Payment”) is
28 approximately \$28.10, the average Individual PAGA Payment is approximately \$8.07, and the lowest

1 Individual PAGA Payment is approximately \$0.57. (Ibid).

2 Because the Settlement achieves outstanding results for the Participating Class Members, the
3 Aggrieved Employees, and the State of California, Plaintiffs respectfully request, on behalf of the
4 Class and without opposition from Defendants, that the Court approve the Settlement as fair, adequate,
5 and reasonable, and enter judgment in accordance with the Settlement’s terms.

6 **II. SUMMARY OF LITIGATION**

7 **A. The Parties**

8 Defendants are a novel healthcare support organization which provides fixed and mobile
9 medical services to more than 140 clinical and hospital facilities worldwide, involving more than
10 10,000 medical personnel. Defendants commenced work on the Los Angeles Unified School District
11 (LAUSD) project to provide the COVID-19 testing required for students and faculty/staff to return to
12 school for the Spring semester in 2021.

13 Plaintiff Matthew Savattieri (“Plaintiff Savattieri”) was employed by Defendants from
14 approximately May 2021 to November 2021 as an hourly-paid, non-exempt Cluster Lead within the
15 Los Angeles Unified School District. (Declaration of Plaintiff Matthew Savattieri in Support of
16 Plaintiffs’ Motion for Final Approval of Class Action and PAGA Settlement [“Savattieri Decl.”], ¶
17 2). As a Cluster Lead, Plaintiff Savattieri was responsible for supervising a “cluster” of Defendants’
18 employees consisting of logisticians, administrators, and collectors. (Ibid). Plaintiff Savattieri’s day-
19 to-day tasks included, but were not limited to, obtaining supplies and materials, transporting
20 employees to and from Defendants’ sponsored hotels and worksites, setting up testing sites,
21 performing COVID-19 tests, overseeing testing procedures, maintaining Defendants’ company
22 vehicles, and communicating with Defendants’ management regarding site operations. (Ibid).

23 Plaintiff Shorniakay Callum (“Plaintiff Callum”) was employed by Defendants from
24 approximately August 2021 to November 2021 as an hourly-paid, non-exempt employee.
25 (Declaration of Shorniakay Callum in Support of Plaintiffs’ Motion for Final Approval of Class Action
26 Settlement [“Callum Decl.”], ¶ 2). Amongst Plaintiff Callum’s duties, she was responsible for
27 registering and checking in students for COVID-19 testing.

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1 Plaintiff Ashley Charlemagne (“Plaintiff Charlemagne”) was employed by Defendants from
2 approximately February 2021 to November 23, 2022 as an hourly-paid, non-exempt Logistics
3 Manager. (Declaration of Ashley Charlemagne in Support of Plaintiffs’ Motion for Final Approval
4 of Class Action and PAGA Settlement [“Charlemagne Decl.”], ¶ 2). Plaintiff Charlemagne’s day-to-
5 day tasks included, but were not limited to, coordinating the pick-up of vehicles, ensuring all vehicles
6 were serviced on time, filing reports for insurance purposes, and communicating with individuals
7 regarding any accidents that occurred involving Defendants’ vehicles. (Ibid).

8 Plaintiff Brianna Huguely (“Plaintiff Huguely”) was employed by Defendants from
9 approximately April 2021 to November 5, 2021 as an hourly-paid, non-exempt certified nursing
10 assistant (“CNA”). (Declaration of Brianna Huguely in Support of Plaintiffs’ Motion for Final
11 Approval of Class Action and PAGA Settlement [“Huguely Decl.”], ¶ 2). As a CNA, Plaintiff
12 Huguely was responsible for performing COVID-19 tests at various schools. (Ibid).

13 Plaintiff Sharon Lewis (“Plaintiff S. Lewis”) was employed by Defendants from
14 approximately April 2021 to March 2022 as an hourly-paid, non-exempt administrator. (Declaration
15 of Sharon Lewis in Support of Plaintiffs’ Motion for Final Approval of Class Action and PAGA
16 Settlement [“S. Lewis Declaration”], ¶ 2). As an administrator, Plaintiff S. Lewis was responsible for
17 registering and checking in students for COVID-19 testing. (Ibid).

18 Plaintiff Marla Lewis (“Plaintiff M. Lewis”) was employed by Defendants from approximately
19 April 2021 to February 28, 2022 as an hourly-paid, non-exempt CNA. (Declaration of Marla Lewis
20 in Support of Plaintiffs’ Motion for Final Approval of Class Action and PAGA Settlement [“M. Lewis
21 Decl.”], ¶ 2). As a CNA, Plaintiff M. Lewis was responsible for performing COVID-19 tests at
22 various schools and mailing swabs for testing. (Ibid).

23 **B. PAGA Notices, Actions, and Allegations**

24 On September 8, 2021, Plaintiff Savattieri provided notice to the LWDA and to Defendants of
25 his intent to seek civil penalties pursuant to PAGA. (Genish Decl., ¶ 9). Thereafter, on September 9,
26 2021 and April 29, 2022, Plaintiff Savattieri provided two amended PAGA notices to the LWDA and
27 Defendants. (Ibid). On September 10, 2021, Plaintiff Savattieri filed a Class Action Complaint for
28 Damages and Enforcement Under the Private Attorneys General Act, California Labor Code §§ 2698.

1 Et Seq. in the action entitled *Matthew Savattieri v. AMI Expeditionary Healthcare, LLC*, Los Angeles
2 County Superior Court Case No. 21STCV33372 (“*Savattieri Action*”). (Ibid). On October 27, 2021,
3 Defendants removed the *Savattieri Action* to the Central District of California pursuant to the Class
4 Action Fairness Act of 2005. (Ibid). On November 17, 2021, after meeting and conferring, counsel
5 for Plaintiff Savattieri and Defendants stipulated to remand the *Savattieri Action* to the Los Angeles
6 Superior Court. (Ibid).

7 On December 14, 2021, Plaintiff Callum filed a Class Action Complaint in the action entitled
8 *Shorniakay Callum v. AMI Expeditionary Healthcare (USA), LLC, et al.*, Los Angeles County
9 Superior Court Case No. 21STCV45611 (“*Callum Action*”). (*Id.*, ¶ 10). On February 15, 2022,
10 Plaintiff Callum provided notice to the LWDA and to Defendants of her intent to seek penalties
11 pursuant to PAGA. (Ibid).

12 On December 22, 2021, Plaintiffs Ashley Charlemagne, Brianna Huguely, Marla Lewis, and
13 Sharon Lewis provided notice to the LWDA and to Defendants of their intent to seek penalties
14 pursuant to PAGA. (Genish Decl., ¶ 11). On that same day, Plaintiffs Ashley Charlemagne, Brianna
15 Huguely, Marla Lewis, and Sharon Lewis filed a Class Action Complaint in the action entitled *Ashley*
16 *Charlemagne, et al. v. AMI Expeditionary Healthcare (USA), LLC, et al.* (“*Charlemagne Action*”).
17 (Ibid). On March 11, 2022, Plaintiffs Ashley Charlemagne, Brianna Huguely, Marla Lewis, and
18 Sharon Lewis filed a First Amended Class Action Complaint in the *Charlemagne Action*, which added
19 a cause of action under PAGA. (Ibid).

20 On June 14, 2022, the Court entered an Order, which consolidated the *Savattieri Action*,
21 *Callum Action*, and *Charlemagne Action* (collectively, the “*Actions*”) and deemed the *Savattieri*
22 *Action* the lead case. (*Id.*, ¶ 12).

23 The *Actions* collectively allege the claims of Plaintiffs against Defendants for: (1) failure to
24 pay minimum wages (Cal. Labor Code §§ 1194, 1197, and 1197.1); (2) failure to pay overtime wages
25 (Cal. Labor Code §§ 510 and 1198); (3) failure to provide meal periods or compensation in lieu thereof
26 (Cal. Labor Code §§ 226.7 and 512); (4) failure to provide rest periods or compensation in lieu thereof
27 (Cal. Labor Code § 226.7); (5) failure to timely pay wages during employment (Cal. Labor Code §
28 204); (6) failure to timely pay wages upon termination (Cal. Labor Code §§ 201, 202, and 203); (7)

1 failure to keep accurate payroll records (Cal. Labor Code §§ 1174 and 1174.5); (8) failure to issue
2 accurate wage statements (Cal. Labor Code § 226(a)); (9) failure to reimburse necessary business
3 expenses (Cal. Labor Code §§ 2800 and 2802); (10) unfair business practices (Bus. & Prof. Code §§
4 17200, et seq.); and (11) PAGA (Cal. Labor Code §§ 2699, et seq.). (*Id.*, ¶ 13).

5 **C. Settlement Discussions**

6 On May 3, 2022, the Parties participated in an all-day mediation presided over by Paul
7 Grossman, Esq., a neutral and respected mediator with extensive experience in complex wage and
8 hour matters. (*Id.*, ¶ 14). After a full day of mediation, and with the help of the mediator, the Parties
9 were able to reach an agreement to resolve this dispute on a class and representative basis, and shortly
10 thereafter executed a memorandum of understanding memorializing the key settlement terms. (*Ibid.*).
11 Following mediation, the Parties worked diligently to negotiate and memorialize the terms in a long
12 form settlement agreement. (*Ibid.*).

13 After additional discussions and revisions to the settlement agreement, the Parties executed the
14 Settlement Agreement as of December 28, 2022. (*Id.*, ¶ 15, Exhibit 1 thereto).

15 **D. Preliminary Approval**

16 On February 17, 2023, Plaintiffs filed a Motion for Preliminary Approval of Class Action and
17 PAGA Settlement (“Motion for Preliminary Approval”) and supporting documents seeking approval
18 of the Settlement reached by the Parties. (*Id.*, ¶ 16). On March 10, 2023, Plaintiffs filed a Notice of
19 Errata to correct erroneous language in the Motion for Preliminary Approval. (*Ibid.*). On March 13,
20 2023, the Court issued a Preliminary Approval Checklist (“March 13, 2023 Preliminary Approval
21 Checklist”), which raised multiple points of inquiry to the Motion for Preliminary Approval. (*Ibid.*).
22 On July 31, 2023, Plaintiffs’ counsel filed declarations to address the Court’s points of inquiry in the
23 March 13, 2023 Preliminary Approval Checklist. (*Ibid.*). On August 31, 2023, the Court posted a
24 tentative ruling in CaseAnywhere (“August 31, 2023 Tentative Ruling”), which directed Plaintiffs’
25 counsel to disclose their fee split in the Court Approved Notice of Class Action Settlement and Hearing
26 Date for Final Court Approval (“Class Notice”). (*Ibid.*). Subsequently, after the Parties submitted on
27 the August 31, 2023 Tentative Ruling, the Court entered a Minute Order, which adopted the August
28 31, 2023 Tentative Ruling. (*Ibid.*). On September 1, 2023, counsel for Plaintiff Savattieri filed a

1 declaration, which attached a revised Class Notice that included the fee split amongst Plaintiffs'
2 counsel. (Ibid).

3 On September 20, 2023, the Court entered the Order Granting Preliminary Approval of Class
4 Action and PAGA Settlement ("Preliminary Approval Order"), which granted Plaintiffs' unopposed
5 Motion for Preliminary Approval and provisionally certified the Class, finding that the Settlement
6 appeared to be within the range of reasonableness of settlements that could ultimately be given final
7 approval. (*Id.*, ¶ 17, Exh. 2 thereto). The Court approved the distribution of the revised Class Notice
8 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 If for any reason the Settlement is not approved, the certification will have no force or effect and will
11 immediately be revoked. The Parties further agree that certification for purposes of approving the
12 Settlement Agreement is in no way an admission that class certification is proper under the more
13 stringent standard applied for litigation and that evidence of this limited stipulation for settlement
14 purposes only will not be admissible for any purpose in this or any other proceeding.

15 E. Summary of Settlement Terms

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

20 1. The Gross Settlement Amount is Three Million Eight Hundred Thousand Dollars and
21 Zero Cents (\$3,800,000.00), to be paid by Defendants in full satisfaction of all Released Class Claims
22 and Released PAGA Claims, which includes Individual Class Payments to Participating Class
23 Members, Individual PAGA Payments to Aggrieved Employees, Class Representative Service
24 Payments to Plaintiffs, LWDA PAGA Payment to the LWDA, Class Counsel Fees Payment and Class
25 Counsel Litigation Expenses Payment to Class Counsel, Administration Expenses Payment to the
26 Administrator, and employer-side payroll taxes. (Settlement Agreement, ¶ 1.22). The Gross
27 Settlement Amount is non-reversionary; no portion of the Gross Settlement Amount will return to
28 Defendants. (*Id.*, ¶ 3.1).

1 2. The Settlement does not require Participating Class Members to submit claims as a
2 prerequisite to receiving their Individual Class Payment nor does it require Aggrieved Employees to
3 submit claims are a prerequisite to receiving their Individual PAGA Payment. (Settlement Agreement,
4 ¶ 3.1; Genish Decl., ¶ 18).

5 3. The “Net Settlement Amount” is the Gross Settlement Amount less the payments for
6 the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative
7 Service Payments, Administration Expenses Payments, PAGA Penalties, and employer-side payroll
8 taxes. (Settlement Agreement, ¶ 1.28). After the Court-approved amounts are deducted from the
9 Gross Settlement Amount, the Participating Class Members will share in the Net Settlement Amount
10 of approximately Two Million Two Hundred Forty-Seven Thousand Two Hundred Sixty-Eight
11 Dollars and Forty-Six Cents (\$2,247,268.46), which will be distributed and paid to Participating Class
12 Members on a pro rata basis based on their number of Workweeks worked during the Class Period.
13 (Genish Decl., ¶¶ 20 & 21).

14 4. Aggrieved Members will each be issued a pro rata share of the 25% portion of the
15 PAGA Penalties (i.e., \$25,000.00) designated for distribution to Aggrieved Employees, based on their
16 number of Workweeks worked during the PAGA Period. (Genish Decl., ¶ 22).

17 5. The “Released Parties” are defined as AMI Expeditionary Healthcare, LLC, AMI
18 Expeditionary Healthcare (USA), LLC, AMI Health, and AMI Expeditionary Healthcare as named by
19 the named Plaintiffs in the operative complaints, and their past, present and/or future, direct and/or
20 indirect, officers, directors, members, managers, employees, agents, representatives, attorneys,
21 insurers, partners, investors, shareholders, administrators, parent companies, subsidiaries, affiliates,
22 divisions, predecessors, successors, assigns, and joint venturers. (Settlement Agreement, ¶ 1.41).

23 6. Effective on the date when Defendants fully funds the entire Gross Settlement Amount,
24 and in addition to the claims released under Paragraph 5.2 of the Settlement Agreement, Plaintiffs and
25 their respective former and present spouses, representatives, agents, attorneys, heirs, administrators,
26 successors, and assigns generally, shall release and discharge Released Parties from all claims related
27 to their employment with Defendants, including all claims that were, or reasonably could have been,
28 alleged based on the facts contained in the Operative Complaints, and be bound by a Civil Code
Section 1542 release and waiver of all claims known and unknown, without exception, except as may

1 be prohibited by law. (*Id.*, ¶ 5.1). This specifically excludes claims for unemployment insurance,
2 disability, social security, and workers' compensation (except for claims pursuant to Labor Code
3 Sections 132a and 4553) ("Plaintiffs' Release"). (*Ibid.*). Plaintiffs' Release does not extend to any
4 claims or actions to enforce the Settlement Agreement, or to any claims for vested benefits,
5 unemployment benefits, disability benefits, social security benefits, workers' compensation benefits
6 that arose at any time, or based on occurrences outside the Class Period. (*Ibid.*). Plaintiffs acknowledge
7 that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs
8 now know or believe to be true but agree, nonetheless, that Plaintiffs' Release shall be and remain
9 effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of
10 them. (*Ibid.*).

11 a. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish
12 the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

13 A general release does not extend to claims that the creditor or releasing party does not
14 know or suspect to exist in his or her favor at the time of executing the release and that,
15 if known by him or her, would have materially affected his or her settlement with the
16 debtor or released party. (*Id.*, ¶ 5.1.1.).

17 7. Effective on the date when Defendants fully funds the entire Gross Settlement Amount,
18 Participating Class Members will fully and finally release and discharge Defendants from all claims,
19 rights, demands, liabilities and causes of action that are alleged, or reasonably could have been alleged
20 based on the facts and claims asserted in the operative complaints in the *Savattieri*, *Callum*, and
21 *Charlemagne* Actions including, but not limited to, the following claims: (i) failure to pay all regular
22 wages, minimum wages and overtime wages due; (ii) failure to provide meal periods or compensation
23 in lieu thereof; (iii) failure to provide rest periods or compensation in lieu thereof; (iv) failure to
24 reimburse necessary business expenses; (v) failure to provide complete, accurate wage statements; (vi)
25 failure to pay wages timely at time of termination or resignation; (vii) failure to provide timely pay
26 wages during employment; (viii) failure to maintain required payroll records; (ix) unfair business
27 practices that could have been premised on the claims, causes of action or legal theories of relief
28 described above or any of the claims, causes of action or legal theories of relief pleaded in the operative

1 complaints, and (x) all claims under the California Labor Code Private Attorneys General Act of 2004
2 or for civil penalties that could have been premised on the claims, causes of action or legal theories
3 described above or any of the claims, causes of action or legal theories of relief pleaded in the operative
4 complaints, including but not limited to, Labor Code sections 203, 210, 226(a), 226.3, 226.7, 1197.1,
5 510, 512, 558, 2802, and 2699 (collectively, the “Released Claims”). (*Id.*, ¶ 5.2). This release shall
6 apply to claims arising during the Class Period. (*Ibid.*).

7 8. Effective on the date when Defendants fully funds the entire Gross Settlement Amount,
8 all Non-Participating Class Members who are Aggrieved Employees are deemed to release, on behalf
9 of themselves and their respective former and present representatives, agents, attorneys, heirs,
10 administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that
11 were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the
12 Operative Complaints, the PAGA Notices and ascertained in the course of the Actions. (*Id.*, ¶ 5.3).

13 III. CLASS NOTICE AND RESULTS OF THE NOTICE PROCEDURE

14 Pursuant to the Preliminary Approval Order, on October 11, 2023, ILYM mailed Class Notices,
15 in English and Spanish, containing the Court-approved notice of the terms of the Settlement –
16 including the terms relating to the Class Counsel Fees Payment and Class Counsel Litigation Expenses
17 Payment – to 3,094 Class Members. (Fowler Decl., ¶ 7, Exhibit A thereto). On November 16, 2023,
18 ILYM received additional data from Defendants’ counsel for three (3) individuals that were left off of
19 the original Class Data, which brought the total number of Class Members to 3,097. (*Id.*, ¶ 8). ILYM
20 promptly mailed Class Notices to these additional Class Members on November 17, 2023. (*Ibid.*).
21 Class Members were given sixty (60) calendar days after the Class Notice was mailed to submit any
22 Requests for Exclusion, objections, or disputes to Workweeks. (*Id.*, ¶¶ 12, 13, & 14). As of the date
23 this Motion was filed, no Participating Class Members have objected to the Settlement, and not one
24 Class Member has opted out of the Settlement. (*Id.*, ¶¶ 12 & 14). ILYM received two (2) disputes to
25 Workweeks. (*Id.*, ¶ 13). Information regarding the disputes was sent to Defendants’ counsel for
26 review and it was determined that the disputes should be accepted. (*Ibid.*). The highest gross
27 Individual Class Payment is approximately \$5,553.51, the average gross Individual Class Payment is
28 approximately \$718.56, and the lowest gross Individual Class Payment is approximately \$50.95. (*Id.*,

¶ 18). These amounts are subject to employee-side tax and withholdings. (Ibid). The highest Individual PAGA Settlement Payment is approximately \$28.10, the average Individual PAGA Settlement Payment is approximately \$8.07, and the lowest Individual PAGA Settlement Payment is approximately \$0.57. (*Id.*, ¶ 18).

IV. COMPLIANCE WITH PROCEDURAL REQUIREMENTS OF PAGA

On December 29, 2022, Class Counsel submitted a copy of the Settlement Agreement to the LWDA through its online submission portal in compliance with California Labor Code § 2699(1)(2). (Genish Decl., ¶ 26). The LWDA has not objected or otherwise responded to the submission. (Ibid).

V. EVALUATION OF SETTLEMENT FOR FINAL APPROVAL

A. The Legal Standard for Final Approval

Before granting final approval of a class action settlement, the Court must review the settlement for fairness. (Cal. Rules of Court, rule 3.769(g); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801). A court must take into account relevant factors, including, for example, the 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, the experience and views of counsel, and the reaction of the class members to the proposed settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-45; *Dunk*, 48 Cal.App.4th at 1801 ["The list of factors is not exhaustive and should be tailored to each case"]; *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625). Considering such factors, a presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Wershba*, 91 Cal.App.4th at 245; *Dunk*, 48 Cal.App.4th at 1802). "The settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits. [The trial court is not] to reach any ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements." (*Officers for Justice*, *supra*, 688 F.2d at 625).

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

2 California courts recognize that “a presumption of fairness exists where . . . [a] settlement is
3 reached through arm’s-length bargaining.” (*Wershba*, 91 Cal.App.4th at 245; *see also Clark v. Am.*
4 *Residential Servs. LLC*, 175 Cal.App.4th 785, 799 (2009)). Here, the Parties’ settlement negotiations
5 were at all times made at arm’s-length and were adversarial. (Genish Decl., ¶ 28). After a full day of
6 mediation, and with the help of the mediator, the Parties were able to reach an agreement to resolve
7 this dispute on a class and representative basis, and shortly thereafter executed a memorandum of
8 understanding memorializing the key settlement terms. (*Id.*, ¶ 14). Following mediation, the Parties
9 worked diligently to negotiate and memorialize the terms in a long form settlement agreement. (*Ibid.*).
10 At all times, Plaintiffs were willing and prepared to litigate this matter through class certification and
11 trial if the Parties had been unable to reach a favorable resolution. (*Id.*, ¶ 28).

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

13 Courts typically assess the status of discovery in determining whether a class action settlement
14 agreement is fair, reasonable, and adequate. (*Dunk*, 48 Cal.App.4th at 1801). Prior to mediation,
15 Plaintiffs obtained, through informal discovery, Plaintiffs’ personnel records, wage statements, hard
16 copy time records, meal and rest trackers, company policies, expense reimbursement information and
17 related information, and all time and payroll data for the putative class from the time period of
18 December 13, 2020 through March 30, 2022. (Genish Decl., ¶ 27). The Class is defined as “all current
19 and former non-exempt employees of Defendants employed by Defendants in the state of California
20 *working on the Los Angeles Unified School District (LAUSD) project at any time during the Class*
21 *Period*, excluding any such employees who separately entered into a release of claims with Defendants
22 prior to final approval of the settlement.” (Emphasis added). (*Ibid.*). The Class Members did not
23 commence work for the LAUSD project until December 13, 2020 because the project was the result
24 of the COVID-19 pandemic. (*Ibid.*). Therefore, although the Class Period starts on September 10,
25 2017, there were no Class Members on the project and no corresponding data until December 13,
26 2020. (*Ibid.*). Based thereon, Plaintiffs reviewed all Class Members’ time and payroll data, except
27 anyone who began working after the data was gathered for mediation through the end of the LAUSD
28 project, which was for the time period from March 31, 2022 through July 2, 2022 (only 4 months of

1 data). (Ibid). Defendants subsequently provided to Plaintiffs’ counsel updated headcount and pay
2 period information for the entire Class through the end of the Class Period (i.e., July 2, 2022) to enable
3 the Parties to complete negotiations. (Ibid). Plaintiffs’ investigation was sufficient to satisfy the
4 criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794,
5 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“Dunk/Kullar”).

6 After a thorough investigation and analysis of these documents and data, the Parties attended
7 a formal mediation on May 3, 2022, with Paul Grossman, Esq., a neutral and respected mediator with
8 extensive experience in complex wage and hour matters. (Genish Decl., ¶ 14). At the mediation, the
9 Parties engaged in intensive settlement discussions during which they debated their respective
10 positions and exchanged views regarding the strengths and weaknesses of the alleged claims. (*Id.*, ¶
11 28). Additionally, settlement negotiations were conducted by highly capable and experienced counsel.
12 (Ibid). Class Counsel are respected members of the California State Bar with strong records of
13 vigorous and effective advocacy and are experienced in handling complex wage and hour class action
14 litigation. (Genish Decl., ¶¶ 3-8; Declaration of Miriam L. Schimmel [“Schimmel Decl.”], ¶¶ 4-12;
15 Declaration of Bruce Kokozian in Support of Plaintiffs’ Motion for Final Approval of Class Action
16 and PAGA Settlement [“Kokozian Decl.”], ¶¶ 2-11; Declaration of David Yeremian in Support of
17 Plaintiffs’ Motion for Final Approval of Class Action and PAGA Settlement [“Yeremian Decl.”], ¶¶
18 4-9). Accordingly, Class Counsel had sufficient information and experience to act intelligently in
19 negotiating the Settlement.

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

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1 Here, the reasonableness of the Settlement is underscored by the fact that Defendants have
2 legal and factual grounds for defending the Actions. Based upon Class Counsel's experience litigating
3 similar complex matters, Plaintiffs reasonably expected a vigorous and lengthy defense to both class
4 certification and the merits of the Actions absent a settlement.

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

6 Prior to mediation, Class Counsel analyzed time and payroll records provided by Defendants
7 and other relevant documents and discovery. (Genish Decl., ¶ 29). Based on the discovery provided,
8 Class Counsel estimated with respect to the class claims, with all claims adjudicated in favor of the
9 Class, that Defendants faced a maximum potential liability of \$49,176,075.79. (Ibid). This estimate
10 is based off an estimated maximum liability for the primary claims at issue as follows: \$19,459,856.68
11 for meal period violations, \$4,857,906.37 for rest period violations, \$6,375,596.74 for unpaid
12 reimbursable business expenses, \$457,556.00 for waiting time penalties, and \$15,411,060.00 in wage
13 statement penalties. (Ibid). Plaintiffs further estimated that Defendants faced an additional exposure
14 of \$2,614,100.00 in potential PAGA penalties. (Ibid). These maximum potential damages were
15 calculated using information provided by Defendants regarding total aggregate workweeks and
16 average rates of pay for the Class. (Ibid).

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

18 While Plaintiffs believe that Defendants faced significant exposure, substantial barriers to a
19 recovery existed. Defendants contended that Plaintiffs' claims are not suitable for class certification
20 because individual issues would predominate should this case go to trial. (*Id.*, ¶ 32); *See Brinker*
21 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Duran v. U.S. Bank Nat. Assn.*, 59 Cal.4th
22 1, 35-36 (2014); *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551(2011). While Plaintiffs and
23 Class Counsel disagree with Defendants' predictions, they also recognize that there is significant risk
24 that the Court may deny class certification. (Genish Decl., ¶¶ 33-40); *See also, Findings of the Study*
25 *of California Class Action Litigation*, 2000-2006, available at
26 <http://www.courts.ca.gov/documents/class-action-lit-study.pdf> (finding that only 21.4% of all class
actions were certified either as part of a settlement or as part of a contested certification motion).

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1 For example, a large portion of Defendants' overall liability lies in Plaintiffs' meal period
2 claims. (Genish Decl., ¶ 33). These claims have been increasingly difficult to certify in recent years
3 and Defendants contended their practices were lawful. (Ibid); *See Brinker*, 53 Cal. 4th at 1034-35.
4 Plaintiffs' theory of liability for meal period violations was based on allegations that Defendants
5 implemented a facially deficient policy which failed to ensure that Plaintiffs and the Class received all
6 timely and duty-free meal periods to which they were entitled. (Genish Decl., ¶ 33); *See Bradley v.*
7 *Networkers Int'l, LLC*, 211 Cal.App.4th 1129 (2012) (holding that "the lack of a meal/rest break policy
8 and uniform failure to authorize such breaks are matters of common proof."). In contrast, Defendants
9 argued that their practices at all times during the Class Period were lawful. Defendants argued that
10 the rate of purported meal period violations reflected in the data would require individualized inquiry
11 and that such inquiry would prohibit a class from being certified. Class Counsel disagreed with this
12 assessment but had to consider the risk that the Court would find validity in an individualized proof
13 defense to certification of Plaintiffs' meal period claim. (Genish Decl., ¶ 33).

14 Similarly, Plaintiffs will likely face difficulties proving the alleged rest period violations.
15 Plaintiffs' rest period allegations were based on a facially deficient policy that failed to provide
16 employees with timely, full, and uninterrupted rest periods. (*Id.*, ¶ 34). As with the meal period
17 allegations, Defendants contended that they provided rest breaks and relieved Class Members of all
18 duties as required under California law. (Ibid). Additionally, this claim was even more uncertain
19 given the difficulties associated with proving the alleged rest period violations, as Defendants were
20 not required to record these breaks. (Ibid). Given the lack of records demonstrating rest period
21 violations, there were legitimate concerns Plaintiffs would not be able to certify these claims or prove
22 substantial damages with requisite certainty. (Ibid).

23 Plaintiffs also faced challenges certifying and proving liability for their minimum wage and
24 overtime claims. (*Id.*, ¶ 35). These claims were largely based on unrecorded, off-the-clock work
25 performed by the Class Members both before and after their shifts and during purported meal
26 periods. (Ibid). As such, the individualized nature of why this work was performed and the
27 individualized nature of damages presented substantial concerns regarding the manageability of the
28 case and the risk the Court could find these issues prevented certification. (Ibid).

1 Class Counsel recognized that, even if Plaintiffs prevailed at class certification, proving the
2 amount of wages due to each Class Member would be an expensive, time-consuming, and extremely
3 uncertain proposition. (*Id.*, ¶ 36). In order to prove liability and damages, Class Counsel will need to
4 request and analyze thousands of pages of documents, obtain the Class Members' contact information,
5 contact them, and obtain declarations. (*Ibid*). Obtaining the cooperation of current employees would
6 also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a current employer.
7 (*Ibid*). Moreover, even if Plaintiffs prevailed at class certification and trial, possible appeals would
8 substantially delay any recovery by the Class. (*Ibid*).

9 Both sides have had the opportunity to interview witnesses and review documents and
10 information relating to Plaintiffs' and the Class Members' employment with Defendants, and
11 Defendants' operations and employment policies, practices, and procedures. (*Id.*, ¶ 37). The Parties
12 also reviewed and analyzed hundreds of pages of documents and data, including but not limited to the
13 time and pay data of the Class Members, to determine the potential value and strength of the claims.
14 (*Ibid*). The available information enabled Class Counsel to estimate the potential claims of the Class
15 and prepare damages/valuation models. (*Ibid*). Accordingly, the Parties have conducted adequate
16 investigation and discovery to be sufficiently informed of the nature and extent of the Class Members'
17 claims, and to enable both sides to fully evaluate the Settlement for its fairness, adequacy, and
18 reasonableness. (*Ibid*). The Parties have agreed that the matter is well-suited for settlement given the
19 legal issues relating to Plaintiffs' principal claims, as well as the costs and risks to both sides that
20 would attend further litigation. (*Ibid*). The Settlement takes into account the strengths and weaknesses
21 of each side's position and the uncertainty of how the Actions might have concluded at trial and/or
22 after exhaustion of all appeals. (*Ibid*).

23 Therefore, in consideration of the risks regarding certification of the class claims, Class
24 Counsel discounted Defendants' estimated liability by approximately 50%. (*Id.*, ¶ 38). The merits-
25 based risk factors also reduced Defendants' estimated liability by an additional 40%. (*Ibid*). This
26 resulted an adjusted estimated liability of \$4,917,607.58. (*Ibid*).

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1 Class Counsel also separately contemplated the risks of proceeding with the PAGA claim and
2 potential liability Defendants could face from this claim. (*Id.*, ¶ 39). First, Class Counsel recognized
3 that the PAGA claims would be subject to the same defenses and risks as Plaintiffs’ underlying wage
4 claims. (*Ibid*); see, *Elliot v. Spherion Pac. Work, LLC*, 572 F.Supp.2d 1169, 1181-82 (C.D. Cal. 2008)
5 (“Plaintiff’s claim under [PAGA] is wholly dependent upon her other claims. Because Plaintiff’s other
6 claims fail as a matter of law, so does her PAGA claim”). Moreover, although California case law
7 clearly states that PAGA actions need not satisfy class action requirements, Class Counsel remained
8 mindful of the fact that some courts have nevertheless held that PAGA claims must meet a threshold
9 “manageability” requirement. See, e.g., *Wesson v. Staples the Office Superstore, LLC*, 68 Cal.App.5th
10 746 (2021). Class Counsel also anticipated that, even if successful on the merits at trial, the imposition
11 of cumulative civil penalties based on the alleged wage and hour violations could be considered unjust,
12 arbitrary and oppressive, or confiscatory, and that Defendants could argue that they made a good faith
13 attempt to comply with their legal obligations warranting a reduction in penalties. (Genish Decl., ¶
14 40).¹ Class Counsel also anticipated Defendants would argue that they made a good faith attempt to
15 comply with their legal obligations, and that the violations per pay period were low, warranting an
16 additional reduction in civil penalties. (*Ibid*). Finally, Class Counsel was also mindful of the fact that
17 PAGA is fundamentally not intended to be compensatory in nature but is instead intended to facilitate
18 the implementation of California’s labor laws by financing state activities and educating and deterring
19 non-compliance. (*Ibid*).

20 Therefore, the Parties agreed during settlement negotiations to allocate \$100,000.00 of the
21 settlement toward the PAGA claim, which represents approximately 2.6% of the Gross Settlement
22 Amount. (*Id.*, ¶ 39). This percentage of the settlement is well within the range of wage and hour
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 settlements regularly approved in both state and federal court for cases that include both a class and
2 PAGA action. (Ibid). Typically, such hybrid cases allocate only 1% of the gross settlement value to
3 resolve PAGA claims, and, indeed, settlement allocations of as little as 0.22% of the gross settlement
4 amount have been approved as reasonable by courts. (Ibid); *See, e.g., Bararsani v. Coldwell Banker*
5 *Residential Brokerage Company*, Los Angeles Superior Court Case No. BC495767 (2016) (\$10,000
6 allotted as PAGA penalties or 0.22% of \$4,500,000 settlement amount); *Davis v. Brown Shoe Co.*,
7 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA Payment of \$5,000 in a \$1.5 million class
8 settlement); *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015) (PAGA Payment
9 of \$5,000 in a \$500,000 class settlement); *Martinov. Ecolab Inc.*, No. 3: 14CV04358 (N.D. Cal. 201
10 7) (\$100,000 allotted as PAGA penalties or 0.48% of \$21,000,000 settlement amount); *Zamora v.*
11 *Ryder Integrated Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal. 2014) (\$7,500 payment to
12 LWDA for PAGA on a \$1.5 million class settlement). Moreover, the overall relief obtained by the
13 PAGA portion of the settlement is significant, not only from a monetary perspective, but also because
14 it fulfills the public policy objectives of PAGA—to promote enforcement of California’s labor laws,
15 provide funds to the state, and deter future non-compliance by the employer.

16 In light of the Parties’ respective legal positions and the risks of continued litigation, the Gross
17 Settlement Amount for resolution of the Class and PAGA claims, is fair, adequate, and reasonable.
18 (*Id.*, ¶ 41).

19 **VI. THE REQUESTED CLASS COUNSEL FEES PAYMENT AND CLASS**
20 **COUNSEL LITIGATION EXPENSES PAYMENT ARE REASONABLE AND**
21 **SHOULD BE APPROVED**

22 Class Counsel seeks one-third (1/3) of the Gross Settlement Amount (i.e., \$1,266,666.67) for
23 fees for the time spent litigating this matter and reimbursement of actual costs and expenses totaling
24 \$28,108.73 incurred in the prosecution of the Actions. (Genish Decl., ¶ 42; Kokozian Decl., ¶ 18;
25 Yeremian Decl., ¶ 13). The requested fees and costs are fair compensation for undertaking complex,
26 risky, expensive, and time-consuming litigation on a contingent fee basis, especially in light of the
27 substantial benefits achieved by Class Counsel for the Class Members. (Genish Decl., ¶ 42). Class
28 Counsel’s requested fee award is addressed as follows but is more fully discussed in Plaintiffs’ Motion
for Approval of Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class

Representative Service Payments, and Administration Expenses Payment (“Motion for Attorneys’ Fees and Costs”) filed concurrently herewith. (Ibid).

A. Plaintiffs’ Fee Request of One-Third (1/3) of the Gross Settlement Amount is Proper Under the Common Fund Doctrine

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

Whatever doubts may have been created by *Serrano III*, supra, 20 Cal.3d 25, [], or the Court of Appeal cases that followed, we clarify today that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of the fund, does not in itself constitute an abuse of 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 method - including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation [] convince us the percentage method is a valuable tool that should not be denied our trial courts.

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

Under the “common fund” doctrine, “a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” (*Boeing*, 444 U.S. at 478). The Supreme Court explained: “The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigants’ expense. Jurisdiction over the fund involved in the litigation allows a court to prevent this inequity by assessing attorney’s fees against the entire fund,

1 thus spreading fees proportionately among those benefitted by the suit.” (Ibid). Thus, the common
2 fund doctrine ensures that each member of the class contributes proportionately to the payment of the
3 attorneys’ fees recovered from monetary payments that the prevailing party recovered in the lawsuit.
4 “Put another way, in common fund cases, a variant of the usual rule applies, and the winning party
5 pays his or her own attorneys’ fees; in fee-shifting cases, the usual rule is rejected and the losing party
6 covers the bill.” (*Stanton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 967, citing *Wininger v. SI Mgmt.*
7 *L.P.* (9th Cir. 2002) 301 F.3d 1115).

8 The Supreme Court noted that several courts have expressed frustration with the alternative
9 “lodestar” approach for deciding fee awards, which usually involves wading through voluminous and
10 often indecipherable time records. (*Laffitte*, 1 Cal.5th at 503; see *Lealao v. Beneficial California, Inc.*
11 (2000) 82 Cal.App.4th 19, 31 n.5 citing *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F. Supp. 1373,
12 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the interests of class
13 counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing
14 an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources.
15 (*In re Activision Sec. Litig.*, 723 F. Supp. at 1378-79). The Ninth Circuit now routinely uses the
16 percentage of the common fund approach to determine the award of attorney’s fees. (*Lealao*, 82
17 Cal.App.4th at 30-31; see e.g., *In re Pac. Enters. Sec. Litig.* (9th Cir. 1995) 47 F.3d 373, 378-79
18 (approving attorney’s fee of 33%)).

19 A fee of one-third (1/3) of the Gross Settlement Amount (i.e., \$1,266,666.67) is easily within
20 the range of reasonableness. Historically, courts have awarded percentage fees in the range of 20% to
21 50%, depending on the circumstances of the case. (See *In re Activision Sec. Litig.*, 723 F. Supp. at
22 1378). According to Professor Newberg: “No general rule can be articulated on what is a reasonable
23 percentage of a common fund...Usually 50 per cent of the fund is the upper limit on a reasonable fee
24 award from a common fund, in order to assure that fees do not consume a disproportionate part of the
25 recovery obtained for the class, though somewhat larger percentages are not unprecedented.”
26 (Newberg on Class Actions (4th Ed.), §14.6). Class Counsel’s requested fee, as more fully discussed
27 in Plaintiffs’ Motion for Attorney’s Fees and Costs, is reasonable and falls well within the historical
28 range of attorney’s fee awards under the common fund theory. Based on Class Counsel’s showing of

1 reasonableness, the Court should approve the requested fees pursuant to the common fund approach.

2 **B. Plaintiffs' Fee Request is Reasonable Under the Lodestar Method**

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

10 **C. Plaintiffs' Cost Request is Reasonable**

11 Class Counsel seeks reimbursement of a total amount of \$28,108.73 in costs and expenses in
12 this matter, which includes reasonable future costs for filing the Motions. (Genish Decl., ¶ 42, Exhibit
13 3 thereto; Kokozyan Decl., ¶ 18, Exhibit 1 thereto; Yeremian Decl., ¶ 13, Exhibit 1 thereto). All costs
14 and expenses were reasonably incurred in prosecution of this matter.

15 **VII. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENTS TO**
16 **PLAINTIFFS ARE REASONABLE**

17 The named Plaintiffs should be awarded Class Representative Service Payments in the
18 aggregate amount of \$35,000.00 for their services as the Class Representatives and the risks in
19 connection with that role. (Genish Decl., ¶ 46). Enhancement awards in wage and hour cases typically
20 range from \$5,000.00 to \$20,000.00, although some awards are higher. (*Ibid*). Often, multiple class
21 representatives receive awards in the above range. (*See e.g., Munoz v. BCI Coca-Cola Bottling Co. of*
22 *Los Angeles* (2010) 186 Cal.App.4th 399, 412 [approving an enhancement request of \$10,000.00 per
23 named plaintiff in a 188 member class]; *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998);
24 *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) ["We also think there is
25 something to be said for rewarding those drivers who protect and help to bring rights to a group of
26 employees who have been the victims of discrimination."]). Here, the requested Class Representative
27 Service Payments are modest, reasonable, and should be approved.

28 ///

1 As set forth in detail in Plaintiffs' Declarations filed herewith, Plaintiffs have performed
2 significant services on behalf of the Class during the litigation. (*See*, generally, Savattieri Decl.,
3 Callum Decl., Charlemagne Decl., Huguely Decl., S. Lewis Decl., and M. Lewis Decl.). Class
4 Counsel cannot understate the importance of the role of an employee who is willing to search out an
5 attorney and step forward to assume the risk of litigation and retaliation in order to represent a class
6 and put the interests of the class before his or her interests. Plaintiffs have understood that this is a
7 class action where they are serving as the Class Representatives and must protect the Class Members'
8 interests. (Savattieri Decl., ¶¶ 11-13; Callum Decl., ¶ 7; Charlemagne Decl., ¶¶ 9-11; Huguely Decl.,
9 ¶¶ 9-11; S. Lewis Decl., ¶¶ 9-11; and M. Lewis Decl., ¶¶ 9-11). Plaintiffs were the catalyst to the
10 benefit reached for the Class Members, and have actively protected the Class Members' interests
11 during the pendency of this matter and will continue to do so even if the case was required to go to
12 trial. (Savattieri Decl., ¶ 9; Callum Decl., ¶ 7; Charlemagne Decl., ¶ 7; Huguely Decl., ¶ 7; S. Lewis
13 Decl., ¶ 7; and M. Lewis Decl., ¶ 7). Plaintiffs spent numerous hours participating in this matter by
14 searching for an attorney, communicating with their attorneys on numerous occasions via email, text,
15 and phone, searching for and producing relevant documents related to their employment, responding
16 to their attorneys' telephone inquiries, assisting their attorneys with preparation for mediation,
17 spending time on telephone conferences with counsel to better inform them of the issues regarding
18 Class Members' work environment and requirements, providing necessary information for settlement
19 discussions, reviewing the settlement documents, and approving the Settlement on behalf of all Class
20 Members. (Savattieri Decl., ¶¶ 7-10; Callum Decl., ¶¶ 3-7; Charlemagne Decl., ¶¶ 4-8; Huguely Decl.,
21 ¶¶ 4-8; S. Lewis Decl., ¶¶ 4-8; and M. Lewis Decl., ¶¶ 4-8).

22 Plaintiffs also undertook the significant risks associated with acting as class representatives,
23 including without limiting to the risk for retaliation by future employers who may not approve that
24 they sued their former employer. (Savattieri Decl., ¶¶ 10 & 15; Callum Decl., ¶ 8; Charlemagne Decl.,
25 ¶¶ 8 & 13; Huguely Decl., ¶¶ 8 & 13; S. Lewis Decl., ¶¶ 8 & 13; and M. Lewis Decl., ¶¶ 8 & 13).

26 In contrast, without having to take on any of the risk incurred by Plaintiffs or time spent by
27 Plaintiffs in litigating this matter, Participating Class Members will automatically receive a payment
28 for their claims. It appears that the Participating Class Members recognize these enhancements were

1 justified because since the time the Class received notice of the requested Class Representative Service
2 Payments, no one has objected to the requests. Thus, the Class Representative Service Payments to
3 Plaintiffs are warranted to compensate them for their time and effort, the fear and stress associated
4 with assuming the responsibility of serving as the Class Representatives, and the concrete risks they
5 assumed as the Class Representatives.

6 **VIII. THE REQUESTED ADMINISTRATION EXPENSES PAYMENT IS**
7 **REASONABLE**

8 In Plaintiffs' Motion for Preliminary Approval, Plaintiffs requested, and the Court approved,
9 an Administration Expenses Payment not to exceed \$40,000.00. (Genish Decl., ¶ 47). ILYM is the
10 approved Administrator. (Ibid). It is an experienced class administrator and has adequately performed
11 the administration tasks required by the Preliminary Approval Order. ILYM's *actual* costs to
12 administer the Settlement are only \$30,550.00. (Fowler Decl., ¶ 19, Exhibit B thereto). Based thereon,
13 the requested costs should be approved.

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

15 Pursuant to California Labor Code Section 2699(1), the Superior Court shall review and
16 approve the settlement of penalties sought under that California Labor Code Section. (Cal. Lab. Code
17 § 2699(1)). For all of the reasons stated above, the Settlement is fair, reasonable, and adequate, and
18 should be approved. As part of the Settlement, Defendants have agreed to pay \$100,000.00 to settle
19 the claims of the Aggrieved Employees brought pursuant to PAGA, of which the payment of
20 \$75,000.00 (75% of the PAGA Penalties) will be paid to the LDWA for education and enforcement
21 purposes. (Genish Decl., ¶ 48).

22 It is extremely common in approved wage and hour class action cases that settle that only a
23 small portion of the total settlement is paid to PAGA penalties "in order to maximize payments to
24 class members." (*Magadia v. Wal-Mart Assocs.* (N.D. Cal. May 31, 2019, No. 17-CV-00062-LHK)
25 2019 U.S. Dist. LEXIS 91732, *90-91, citing as examples *Ceja-Corona v. CVS Pharm., Inc.* (E.D.
26 Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118, 2015 WL 222500, at *2-3 [preliminarily approving
27 \$10,000 in PAGA penalties out of a total settlement amount of \$900,000]; *Thio v. Genji, LLC* (N.D.
28 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

1 U.S. Dist. LEXIS 169057, 2012 WL 5941801, at *14 [granting final approval of \$10,000 in PAGA
2 penalties out of a total settlement amount of \$2,500,000]; *Garcia v. Gordon Trucking, Inc.* (E.D. Cal.
3 Oct. 31, 2012) 2012 U.S. Dist. LEXIS 160052, 2012 WL 5364575, at *3 [granting final approval of
4 \$10,000 in PAGA penalties out of a total settlement amount of \$3,700,000]; *Chu v. Wells Fargo Invs.,*
5 *LLC* (N.D. Cal. Feb. 16, 2011) 2011 U.S. Dist. LEXIS 15821, 2011 WL 672645, at *1 [granting final
6 approval of \$10,000 in PAGA penalties out of a total settlement amount of \$6,900,000]]. Like here,
7 in these approved settlements, the Parties generally maximized statutory penalties and minimized
8 PAGA penalties to focus on claims to the Class Members, the persons who actually suffered the Labor
9 Code violations. (Genish Decl., ¶ 49).

10 **X. THE CLASS RECEIVED THE BEST PRACTICABLE NOTICE**

11 California law vests the Court with broad discretion in fashioning an appropriate notice
12 program. (*See* California Civil Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-
13 74). To protect the rights of absent class members, the parties must provide class members with the
14 best notice practicable of a potential class action settlement. (*Phillips Petroleum Co. v. Shutts* (1985)
15 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-76 [individual notice
16 must be sent to all class members who can be identified through reasonable efforts]; *Mullane v. Central*
17 *Hanover Bank & Garretson Company* (1950) 339 U.S. 306, 314 [best practicable notice is that which
18 is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of
19 the action and afford them an opportunity to present their objections"])). The content and method of
20 the notice should be designed to apprise the class members of the terms of the proposed settlement
21 and of the class members' rights regarding the settlement. (*See Mullane, supra*, 339 U.S. at 314;
22 *Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323
23 F. Supp. 364, 378).

24 The Class Notice approved by the Court met these requirements: it identified the Parties and
25 described the Actions, the Class, the settlement amount, the proposed method for distribution of the
26 Gross Settlement Amount, the amount proposed to be paid as Class Representative Service Payments
27 to the named Plaintiffs, the amount of the Administration Expenses Payment to the Administrator, and
28 the requested amount for the Class Counsel Fees Payment and Class Counsel Litigation Expenses

1 Payment. (Genish Decl., ¶ 50; *see also* Fowler Decl., Exhibit A thereto). The Class Notice described
2 the proposed Settlement with enough specificity to allow each Class Member to make an informed
3 choice whether to accept and participate in it. (Ibid). It also explained how and when Class Members
4 may object to or opt out of the Settlement. (Ibid). Finally, the Class Notice provided the date for the
5 hearing on final approval of the Settlement and informed Class Members how to obtain additional
6 information about the Settlement. (Ibid).

7 **XI. CONCLUSION**

8 For all of the foregoing reasons, Plaintiffs respectfully requests that this Court grant Plaintiffs'
9 Motion for Final Approval of Class Action and PAGA Settlement and the relief requested herein.

10 Respectfully submitted,

11 Dated: February 16, 2024

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12 By: 
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15 Dated: February 15, 2024

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17 Bruce Kokozyan
18 Attorneys for Plaintiff Shorniakay Callum

19 Dated: February __, 2024

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20 By: _____
21 Roman Shkodnik
22 Attorneys for Plaintiffs Ashley Charlemagne,
23 Brianna Huguely, Marla Lewis, and
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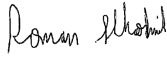
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