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Attorneys for Plaintiff DAVID CHERNO,
individually and on behalf of all other similarly situated

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN LUIS OBISPO – CIVIL BRANCH

DAVID CHERNO, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

PEOPLEASE LLC, a South Carolina
Limited Liability Company; DRAKE
FARMS TRUCKING, INC., a Texas
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 21CV-0513

ASSIGNED FOR ALL PURPOSES TO:
Honorable Rita Federman, Dept. 2

**NOTICE OF MOTION AND MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; ATTORNEYS'
FEES, COSTS, THE INCENTIVE AWARD
AND ADMINISTRATION COSTS;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
JAMES HAWKINS.**

Date: April 25, 2024

Time: 9:00 a.m.

Dept.: 2

1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on April 25, 2024 at 9:00 a.m. or as soon thereafter as the matter
3 may be heard in Department 2 of the above captioned Court, before the Honorable Rita Federman,
4 Plaintiff David Cherno (“Plaintiff”), by and through Plaintiff’s counsels of record, will and hereby do
5 move the Court for Final Approval of the Class Action and Private Attorneys General Act Settlement,
6 awarding Class Counsel Award and Costs, The Incentive Award to Plaintiff, Settlement
7 Administrator’s Fees, and entering final approval and judgment.

8 This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor Code
9 section 2699(l). This Motion is based on this Notice of Motion and Motion, the attached Memorandum
10 of Points and Authorities, the accompanying Declarations of James R. Hawkins, Nathalie Hernandez
11 of ILYM GROUP, INC., and Plaintiff Cherno. Attached to the “Hawkins” Declaration is the Joint
12 Stipulation of Class Action Settlement (the “Settlement Agreement”), argument of counsel, all papers
13 and pleadings filed in the action, and upon any further information or evidence requested by the Court
14 at the time of hearing on this Motion.

15
16 Dated: April 3, 2024

JAMES HAWKINS APLC



JAMES R. HAWKINS
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Attorneys for Plaintiff Cherno, the Putative
Class, and the Aggrieved Employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court preliminary approved the settlement on or about November 30, 2023. (James
4 Hawkins Decl. “Hawkins”, **Exhibit A** - Preliminary Approval Order). Plaintiff Cherno (“Plaintiff”)
5 now respectfully requests that this Court grant final approval of the settlement attached to the
6 Hawkins Declaration as **Exhibit B**, which seeks to resolve claims against Defendants PEOPLEASE
7 LLC, a South Carolina Limited Liability Company and DRAKE FARMS TRUCKING, INC.
8 (collectively “Defendants”) in exchange for a non-reversionary Gross Settlement Amount of
9 (“GSA”) of Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00). To date, the
10 Class Members overwhelmingly supported the Settlement, as there are zero objections and zero
11 requests for exclusion from the Settlement thus far. The proposed Settlement is projected to pay an
12 estimated average gross payment of \$865.57 per Class Member, with the highest estimated gross
13 payment at \$3,421.10. (Administrator Decl. of Nathalie Hernandez-hereinafter “Hernandez”, ¶ 14).

14 Plaintiff also moves for final approval of attorneys’ fees in the amount of \$83,250.00 which
15 is 33.33% percent of GSA. As will be demonstrated herein, Class Counsel’s attorney fee request is
16 supported using the percentage fee method and the lodestar method. Second, Plaintiff moves for
17 final approval of payment of the litigation costs in the amount of \$14,998.66, all of which was
18 incurred in litigating this matter. Third, Plaintiff moves for final approval of The Incentive Award to
19 Plaintiff in the sum of \$15,000.00, to compensate the Class Representative for his service as a Class
20 Representative and providing a general release of their claims against Defendants – a release
21 significantly greater than the Class Members provided – and for the risks absorbed and time spent
22 litigating the case. Plaintiff played a vital role in representing Class Members in this case and
23 spearheading the lawsuit to seek monetary relief on behalf of all Class Members. Fourth, Plaintiff
24 moves for final approval of the payment of \$10,000.00 in administrative costs to ILYM GROUP,
25 INC. Fifth, Plaintiff moves for final approval of the \$25,000.00 PAGA Payment and the payment to
26 the Labor and Work Development Agency (“LWDA”) for its share of the PAGA Payment
27 (\$18,750.00, which is 75% of \$25,000.00; with the remaining \$6,250.00 payable to Aggrieved
28 Employees).

1 This case required many hours of attorney time from Class Counsel and sought relief on
2 behalf of 106 potential class members within the State of California: All current and former non-
3 exempt employees who worked for Defendants Drake Farms as truck drivers, during the time period
4 of September 10, 2017, through October 4, 2022. (Settlement Agreement ¶ I)

5 This litigation involved the review and analysis of documents, policies, and practices, as well
6 as a full day of mediation. Most importantly, the Settlement and all its terms received overwhelming
7 support from Class Members, as there were no objections and no requests for exclusion. Therefore,
8 Plaintiff respectfully requests the Court grant final approval of the Settlement, Class Counsel Award
9 and Costs, The Incentive Award, Settlement Administrator's Fees, and payment to the LWDA in the
10 amounts preliminarily approved by the Court and as fully disclosed to Class Members.

11 **II. BACKGROUND, INVESTIGATION, DISCOVERY**

12 On September 10, 2021 Plaintiff files a putative class action complaint entitled *DAVID*
13 *CHERNO v. PEOPLEASE, LLC, et al.*, San Luis Obispo County Superior Court No. 21CV-0513
14 seeking damages for Defendants' alleged failure to: (1) failure to pay wages including minimum and
15 overtime wages, (2) failure to timely pay wages upon termination pursuant to Labor Code § 203, (3)
16 failure to provide accurate itemized wage statements, (4) failure to provide a day of rest as Required
17 by Code §§ 551 and 552, (5) failure to reimburse business expenses, and (6) violation of Business &
18 Professions Code section 17200, et seq. (Hawkins Decl. ¶¶ 3-7).

19 On November 19, 2021 Plaintiff on behalf of the general public as private attorney general
20 filed a PAGA representative action entitled *DAVID CHERNO v. PEOPLEASE, LLC, et al.*, San
21 Luis Obispo County Superior Court No. 21CV-0651 seeking damages for Defendants' alleged (a)
22 failure to pay minimum wages, (b) failure to pay all wages earned and owed upon separation from
23 Defendants' employ, (c) failure to provide accurate itemized wage statements, (d) failure to provide
24 a day's rest in seven; and (e) failure to reimburse necessary business expenses. *Id.*

25 On January 6, 2023 Plaintiff filed an amended LWDA letter to include claims under Labor
26 Code Sections 201-204, 210, 226, 226.2, 226.3, 551-551, 558, 1174, 1174.5, 1194, 1194.2, 1197,
27 1197.1, 1198, 1198.5, 2802. (Settlement Agreement ¶ I).

On or about May 17, 2023, Plaintiff filed a First Amended Class Complaint wherein Plaintiff added the PAGA claims to the class complaint. (Hawkins Decl. ¶6).

The Settlement Provides Reasonable Compensation to Class Members

On August 4, 2022, the Parties engaged in private mediation with a well-respected wage and hour class action mediator, Jeffrey Krivis. Prior to mediation, Plaintiff requested, and Defendants produced extensive documentation including time and pay data records for approximately 90% of the class, policy documents applicable to the class during the Class Period, class size information, information on the number of pay periods and workweeks, and information regarding the hourly rates and workweek. In short, Defendants provided discovery sufficient to enable the Plaintiff and Class Counsel to rigorously evaluate the strengths and risks of the case and perform an analysis of the potential damages arising from the claims made in this case. (Hawkins Decl. ¶ 4-12)

As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement Amount (“GSA”) of \$250,000.00 (Hawkins Decl., Ex. B-Settlement Agreement at ¶ I; Hernandez Decl. at ¶15). Based on their own respective independent investigations and evaluations, and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution of the case, and the monetary benefits received under the Settlement despite the questionable nature of the claims, Plaintiff’s counsel is of the opinion that Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of the Class Members. (Hawkins Decl. ¶ 5-10).

Even without the presumption of fairness and reasonableness, the settlement is within the range of reasonableness as thoroughly discussed in detail in the motion for preliminary approval, and as considered by the Court in granting preliminary approval, (Hawkins Decl. ¶¶ 11-18; Ex. A- Order Granting Preliminary Approval).

Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined that a settlement amounting to \$250,000.00 was fair and reasonable, and accounts for an approximate 50% of the actual damages less penalties and courts have routinely approved settlements that provided a similar discounted range of the maximum potential recovery. (Hawkins Decl. ¶¶ 11-22). *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement

amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell] within the range of possible initial approval based on the strength of Plaintiff’s case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).¹ (*Id.*)

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS’ RESPONSE

A. Terms of the Settlement

The GSA is Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00). This amount includes, the Settlement Administrator’s Fees of \$10,000.00; the Incentive Award of up to \$15,000.00 to Plaintiff; Court-approved attorneys’ fees up to \$83,250.00, litigation costs to Class Counsel in the amount of \$14,998.66; and penalties paid pursuant to PAGA of \$25,000.00 with 75% paid to the LWDA. The Net Settlement Amount (“NSA”) is approximately \$91,750.00. (Hernandez Decl. ¶ 14).

¹ See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23-24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiff valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and costs.”).

1 **B. Released Claims**

2 Subject to approval by this Court, and in exchange for the consideration recited in the
3 Settlement Agreement, the Released Claims are limited to the wage and hour claims and facts asserted
4 in the operative complaint. (Hawkins Decl., Ex. B- Settlement Agreement ¶ V(A)).

5 **C. The Timing of the Release Is Appropriate**

6 While the effective date for the release precedes the date that payment is due to Class
7 Members, the Agreement, and all obligations therein by all parties, become effective and are
8 triggered on the date a signed order granting final approval is filed with the Court, assuming no
9 objections to the Agreement have been lodged by Class Members, this puts all parties, including
10 Class Members, in the same position that they would have been had Plaintiff prevailed at trial. At
11 final approval, and as part of the final approval order, judgment is entered consistent with the terms
12 of the Agreement. *See* Cal. Rules of Court, 3.769(h). Just as in the case of judgment after trial,
13 judgment by consent or stipulation has res judicata affects, preventing litigation of claims covered
14 by the settlement. *See Johnson v. Am. Airlines, Inc.*, 157 Cal.App.3d 427, 431 (1984); *Villacres v.*
15 *ABM Indus. Inc.*, 189 Cal.App.4th 562, 583 (2010). The Court retains jurisdiction to enforce the
16 judgment to ensure compliance. *See* Cal. Rules of Court, 3.769(h). To the extent Defendants does
17 not comply with its contractual obligations and Court judgment, Plaintiff will utilize the
18 Enforcement of Judgments Law (“EJL”), which is the comprehensive scheme governing the
19 enforcement of all civil judgments in California. *See* Cal. Civ. Proc. Code §§ 680.010-
20 724.260. These are the exact same mechanisms any Plaintiff would be subject to, and utilize, to the
21 extent a Defendants did not pay as required after trial. The proposed Agreement with release and
22 payment timing that mirrors what would apply after trial is fair, reasonable, and adequate to all
23 involved, which is the appropriate standard of review. *See North County Contr.’s Assn., Inc. v.*
24 *Touchstone Ins. Svcs.*, 27 Cal.App.4th 1085, 1089-1090 (1994); *Kullar v. Foot Locker Retail, Inc.*,
25 168 Cal.App.4th 116, 133 (2008).

26 Failing to treat all parts of the Agreement as effective raises serious enforcement questions
27 that would undermine Class Counsel’s ability to enforce Defendants’ obligation to pay. To the
28 extent a provision delaying the applicability of waivers is meant to preserve Class Members’ ability

to bring individual claims, so long as the Court grants final approval there is a judgment and all Class Member's claims would be extinguished under res judicata as a matter of law. *See Johnson*, 157 Cal.App.3d at 431; *Villacres*, 189 Cal.App.4th at 583; Cal. Rules of Court, 3.769(h). The same is true for any claims under the PAGA. Attempting to circumvent that calls into question whether the judgment is actually final. If not, Class Counsel would not be able to utilize the EIL to secure payment from a recalcitrant Defendants. Furthermore, the potential for such individual actions would raise questions of set-offs to the gross settlement amount yet to be funded. This scenario also raises a potential conflict between any Class Member who attempts to bring their own claim and those wish to wait and utilize the EIL rather than relitigate the merits. To the extent that there is any pending bankruptcy, Class Members would have an increased likelihood of getting *some* recovery where there is a judgment, and the only remaining obligation is payment by Defendants. *See In re Marciano*, 459 B.R. 27, 53 (B.A.P. 9th Cir. 2011), *aff'd*, 708 F.3d 1123 (9th Cir. 2013).

For these reasons, the timing of the waivers and payment dates under the Agreement are appropriate.

D. The Class Members Support the Settlement – Zero (0) Objections and Only one (1) Opt-Out

On November 30, 2023, the Court granted Preliminary Approval of the Settlement, conditionally certified the class for settlement purposes, appointed ILYM GROUP, INC. to act as the administrator, approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class via U.S. First Class Mail. (Hawkins Decl., Ex. A- Order Granting Preliminary Approval). On February 2, 2024, ILYM GROUP, INC. mailed the Notices to 106 Class Members. (Hernandez Decl. ¶7). As of March 28, 2024 Out of the 106 Notices, only 18 were returned by the post office. Of those 18 packets, as a result of performing a computerized skip trace, 13 updated addresses were obtained and the Notice Packets were promptly re-mailed to those Settlement Class Members, via U.S. First Class Mail. (Hernandez Decl. ¶¶ 8-10). As a result of the mailing, ILYM GROUP, INC. will report a total of 105 Participating Claimants, representing 99.06% of the 106 Settlement Class Members. (Hernandez Decl. ¶13).

Settlement checks issued to Class Members will expire one hundred and eighty (180) days

from the date they are issued by the Settlement Administrator. Any check not cashed within 180 calendar days will be void. The Settlement Administrator will provide the Parties with a report of uncashed checks. Funds attributable to unclaimed, undeliverable, or expired checks shall be paid to the designated *cy pres* recipient—Legal Aid at Work. The Parties and their counsel confirm they do not have any relationship or interest in Legal Aid at Work and that they believe the *cy pres* recipient promotes justice for all Californians pursuant to CCP section 384. (Settlement Agreement ¶ IV(G)).

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. The Settlement Satisfies the Standard for Final Approval

California Rule of Court, Rule 3.769, requires court approval for class action settlements. Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602 (“[T]he law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what is otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 245.

In deciding whether to approve a class settlement, a court evaluates whether the proposed settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. Of S.F.* (9th Cir. 1982) 688 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801. However, “a presumption of fairness exists where: (1) the settlement is reached through arms-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.” *Id.* at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider additional relevant factors, including the strength of the Plaintiff’s case compared to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802.

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the Settlement as explained in the Notice. Subject

only to the Class’s reaction to the Settlement, the Court preliminarily presumed the Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and adequate time provided to the Class to object to the Settlement, no class member submitted objections and only one class member submitted a request for exclusion from the settlement. (Hernandez Decl. ¶ 11-13). Thus, the proposed Settlement is entitled to the presumption that it is fair and in all other respects proper and should be finally approved.

V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS
A. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage of a Common Fund

Class Counsel applies for an award of attorneys’ fees in the sum of \$83,250.00 of the GSA, and litigation costs of \$14,998.66 (Hawkins Decl. ¶¶ 21-24). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method survives in California class action cases.” 1 Cal.5th 480, 506 (2016), in stating:

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.

Id. at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common to a specific fund, and an action brought by a Plaintiff or Plaintiff for the benefit of all results in the creation or preservation of that fund, such Plaintiff or Plaintiff may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorney’s fees more accurately reflects the results achieved for the putative class than the lodestar method and “establishes reasonable expectations on the part of Plaintiff’s

attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”).²

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

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

² *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee”).

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

5 The requested fee falls in the mid-range of percentage class fee awards, which generally range
6 from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking complex,
7 risky, expensive, and time-consuming litigation on a contingent basis and compensates Class Counsel
8 for their efforts, as well as the result achieved for the benefit of the Class. Numerous courts in
9 California routinely approve fee requests equal to or greater than 35% of the common fund. *See Martin*
10 *v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch*
11 *v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee
12 on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern
13 District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour
14 class action settlement).

15 In short, Class Counsel’s fee request of \$83,250.00 (33.33% of the common fund) is in line
16 with awards in similar cases in California and demonstrates that Class Counsel’s fee request is
17 consistent with market rates and is reasonable.

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

19 Class Counsel’s fee request is reasonable when calculated using the lodestar method.
20 Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably
21 spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at 48.
22 The court then may enhance this lodestar figure by a “multiplier” to account for a range of factors,
23 such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved.
24 *Id.* at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*,
25 92 Cal.App.4th 819, 834 (2001), “[t]here is no...rule limiting the factors that
26 may justify an exercise of judicial discretion to [adjust the] lodestar”].
27
28

1 The total lodestar for Class Counsel is in excess of \$100,000.00, which is in excess of the fees
2 Class Counsel is requesting. All of the work and tasks performed by Class Counsel were reasonable
3 and necessary to the prosecution of this case. (Hawkins Decl. ¶¶ 21-24).

4 **3. Class Counsel's Hourly Rates are Reasonable**

5 Class Counsel's hourly rates are between \$200 and \$950 and are in line with rates typically
6 approved in wage and hour class action litigation and which rates have been approved by Courts in
7 California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County
8 Superior Courts. (Hawkins Decl. ¶ 20; *Children's Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740,
9 746 (2002) (noting rates were reasonable where they were "within the range of reasonable rates
10 charged by and judicially awarded comparable attorneys for comparable work").

11 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
12 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095.
13 When determining a reasonable hourly rate, courts may consider factors such as skill and experience,
14 the nature of the work performed, the relevant area of expertise and the attorney's customary billing
15 rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632. Class Counsel's skill
16 and experience support their hourly rates. Their practices are limited exclusively to litigation, focusing
17 on the representation of employees in wage and hour and consumer class action matters. (Hawkins
18 Decl. ¶ 20). As prominent attorneys in the field of wage and hour class action litigation, Class Counsel
19 continually monitors the prevailing market rates charged by both defense and Plaintiff law firms and
20 set the billing rates of their attorneys and paralegals to be consistent with the prevailing market rates
21 in the private sector for attorneys and staff of comparable skill, qualifications and experience. Other
22 wage and hour attorneys working as class counsel before California courts charge comparable if not
23 higher rates. Therefore, as they are in line with those of the relevant community, Class Counsel's
24 hourly rates are reasonable.

25 **4. Class Counsel's Total Hours are Reasonable**

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

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

3 The work performed to achieve a settlement that will provide valuable consideration to the
4 Class, is summarized by Class Counsel in the declaration submitted herewith. (Hawkins Decl. ¶¶ 21-
5 24); *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) ("Because time records are not
6 required under California law ... , there is no required level of detail that counsel must achieve.")
7 (internal quotations omitted). All tasks and work performed were reasonable and necessary to the
8 prosecution of this case. The work performed was justified in light of the result achieved.

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

10 Class Counsel seeks reimbursement of the litigation costs and expenses of \$14,998.66. These
11 costs were reasonable and necessary to prosecute this case and the results achieved and are fair, and
12 reasonable. (Hawkins Decl. ¶ 23, attached to the Hawkins Declaration as **Exhibit C**).

13 **VI. THE CLASS REPRESENTATIVE'S SERVICE AWARD IS**
14 **REASONABLE**

15 Class Counsel seeks approval of a \$15,000.00 the Incentive Award to Plaintiff. The requested
16 The Incentive Award is reasonable in light of the general releases of all claims Plaintiff agreed to,
17 greater than the release given by Class Members, the benefits Plaintiff conferred upon the entire Class
18 resulting in payments to all Class Members, the time spent assisting counsel with the investigation
19 and prosecution of these claims, commitment to responding to discovery and depositions, and
20 consenting to the proposed Settlement. Furthermore, in pursuing this action on behalf of the Class,
21 Plaintiff risked a judgment for Class Counsel Award and Costs in the event this matter had been lost.
22 (Hawkins Decl. ¶¶ 25-26; See also declaration of Plaintiff Cherno filed concurrently herewith)

23 Courts routinely approve service payments, or incentive awards, to compensate named
24 Plaintiff for the services they provide and the risks they incur during class litigation. *See In re*
25 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers Ins.*
26 *Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives);
27 Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the total
28 \$15,000.00 Incentive Award to Plaintiff continues to be fair, appropriate, and justified as part of the

overall settlement.

VII. THE SETTLEMENT ADMINISTRATOR'S FEES ARE REASONABLE

The Parties agreed to hire ILYM GROUP, INC. as the administrator, and the Court approved this choice. The Administrator was responsible for formatting, printing and mailing the Notice. It was also responsible for updating addresses and re-mailing Notices returned as undeliverable, responding to Class Member inquiries, answering questions from Counsel for the Parties, and providing a declaration to document its duties and responsibilities under the settlement. Plaintiff now request that the Court approve the \$10,000.00 fee to ILYM GROUP, INC. for services rendered and to be rendered. (Hernandez Decl. ¶¶ 3-15). Following the grant of final approval, the Administrator's duties will continue in order to calculate and mail the Individual Settlement Payment checks to Class Members, perform tax reporting obligations, disburse other payments as ordered by the Court, and perform such other duties as set forth in the Settlement Agreement. The fee of \$10,000.00 for services rendered and to be rendered is fair and reasonable and should be granted.

VIII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE

The payment of \$18,750.00 (75% of \$25,000.00) to the LWDA for its share of the applicable penalties claimed under the California Labor Code's Private Attorney general Act of 2004, as amended ("PAGA"), is reasonable under the circumstances. The Parties negotiated a good faith amount to the LWDA. The sum to be paid to the LWDA was not the result of self-interest at the expense of other Class Members. The LWDA was provided notice of the Settlement concurrently with the filing of the preliminary approval motion and the instant motion. Plaintiff did not receive a response or objection to the Settlement from the LWDA. Thus, Plaintiff requests the Court finally approve the sum of \$18,750.00 for payment to the LWDA.

IX. CONCLUSION

Based on the foregoing, Class Counsel respectfully requests the Court grant final approval of the Class Action Settlement, award (1) Class Counsel's fees in the sum of \$83,250.00 and litigation costs of \$14,998.66; (2) award the Plaintiff an The Incentive Award in the sum of \$15,000.0; (3) award \$10,000.00 to ILYM GROUP, INC., for settlement administration services, and (4) approve the PAGA Payment of \$25,000.00 with a payment to the LWDA in the amount of \$18,750.00 and

1 payment to Aggrieved Employees in the amount of \$6,250.00.

2
3 Dated: April 3, 2024

JAMES HAWKINS APLC

4 

5 JAMES R. HAWKINS

6 GREGORY MAURO

7 MICHAEL CALVO

8 LAUREN FALK

9 AVA ISSARY

10 Attorneys for Plaintiff DAVID
11 CHERNO, the Putative Class, and the
12 Aggrieved Employees
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On April 3, 2024, I served on the interested parties in this action the following document(s) entitled:

**DECLARATION OF NATHALIE HERNANDEZ OF ILYM GROUP, INC., IN
SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Eddie@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(See service list attached)

Executed on April 3, 2024, at Irvine, California

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15 **Via LWDA Website Only**

16 Labor and Workforce Development Agency
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17 1515 Clay Street, Ste 801
Oakland, CA 94612
18 <http://www.dir.ca.gov/Private-Attorneys-General-Act>
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