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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

CARLETON EDWARDS, MICHAEL
ADAMS, and PETER HALL, individually and
on behalf of all other similarly situated
employees,

Plaintiffs,

vs.

SUBURBAN PROPANE, L.P., a Delaware
Limited Partnership; and DOES 1 to 100,
inclusive,

Defendants.

Case No. **34-2022-00314949-CU-OE-GDS**

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

Date: January 12, 2024

Time: 9:00 a.m.

[hearing set by Order dated August 7, 2023]

Dept.: 27

Judge: Hon. Jill Talley

Filed: February 2, 2022

Trial Date: None Set

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Attorneys for Plaintiffs

1 **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**
2 **NOTICE IS HEREBY GIVEN** that on January 12, 2024 at 9:00 a.m. or as soon thereafter as the
3 matter may be heard in Department 27 of the above captioned Court, before the Honorable Jill Talley,
4 Plaintiffs Carleton Edwards, Michael Adams, and Peter Hall (“Plaintiffs”), by and through Plaintiffs’
5 counsels of record, will and hereby do move the Court for Final Approval of the Class Action and
6 PAGA Settlement, for approval of attorneys’ fees, costs, and Enhancement Payments to the Plaintiffs,
7 and the entry of final approval and judgment.

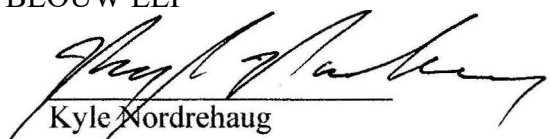
8 This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor Code
9 section 2699(1). This Motion is based on this Notice of Motion and Motion, the attached Memorandum
10 of Points and Authorities, the Declaration of Justin P. Rodriguez, the Declaration of Kyle Nordrehaug,
11 the Declaration of James Treglio, the Declaration of Nicole Bench of ILYM Group, Inc., the
12 declarations of the Plaintiffs, the Joint Stipulation Regarding Class Action and PAGA Settlement and
13 Release (hereinafter the “Settlement Agreement”), argument of counsel, all papers and pleadings filed
14 in the action, and upon any further information or evidence requested by the Court at the time of
15 hearing on this Motion.

16 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this
17 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the
18 department may be downloaded off the court’s website. If the party does not have online access, they
19 may call the dedicated phone number for the department as referenced in the local telephone directory
20 between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the
21 tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before
22 the hearing, no hearing will be held.

23
24 Dated: December 15, 2023

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

25 By:

26 
Kyle Nordrehaug

27 Attorney for Plaintiffs and Class Counsel
28

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court preliminary approved the settlement by Order dated August 7, 2023. Plaintiffs
4 Carleton Edwards, Michael Adams, and Peter Hall (“Plaintiffs”), now respectfully request that this
5 Court grant final approval of the settlement attached to the Declaration of Kyle Nordrehaug (“Decl.
6 Nordrehaug”) as **Exhibit 1**, which seeks to resolve claims against Defendant Suburban Propane, L.P.,
7 (“Defendant”) (collectively with Plaintiffs, the “Parties”) in exchange for a non-reversionary Gross
8 Settlement Amount of Nine Hundred Forty-Five Thousand Dollars and Zero Cents (\$945,000.00),
9 which has increased to \$979,854.70 as a result of the escalator provision. The Class Members
10 overwhelmingly supported the Settlement, as there is a 99.85% participation rate, with zero objections.
11 For the Wage Subclass, the proposed Settlement is projected to pay an estimated average gross
12 payment \$954.66 per Class Member, with the highest estimated gross payment at \$3,132.70, and for
13 the Reimbursement Subclass, the proposed Settlement is projected to pay an estimated average gross
14 payment \$140.89 per Class Member, with the highest estimated gross payment at \$274.49.
15 (Administrator Decl. of Nicole Bench-hereinafter “Bench Decl.”, at ¶ 19).

16 Plaintiffs also move for final approval of attorneys’ fees in the amount of \$326,618.23 which
17 is one-third (1/3) of the Gross Settlement Amount.¹ As will be demonstrated herein, Class Counsel’s
18 attorney fee request is supported using the percentage fee method and the lodestar method. Second,
19 Plaintiffs move for final approval of payment of the litigation costs in the amount of \$20,772.63. Third,
20 Plaintiffs move for final approval of the Enhancement Payments to Plaintiffs in the sum of \$10,000
21 each, to compensate the Class Representatives for their service on behalf of the Class and providing a
22 general release of their claims against Defendant – a release significantly greater than the Class
23 Members provided – and for the risks absorbed and time spent litigating the case. Plaintiffs played a
24 vital role in representing Class Members in this case and spearheading the lawsuit to seek monetary
25 relief on behalf of all Class Members. Fourth, Plaintiffs move for final approval of the payment of

26
27 ¹ Attorneys’ fees are split among class counsel with \$98,333.34 to Blumenthal Nordrehaug Bhowmik
28 De Blouw LLP (“BNBD”), \$108,333.33 to Shimoda & Rodriguez Law, PC (“Shimoda”), and
\$108,333.33 to Potter Handy (“PH”).

\$14,900 for Settlement Administration Costs to ILYM Group. Fifth, Plaintiffs move for final approval of the \$20,000 PAGA Payment, to be allocated \$15,000 to the Labor and Work Development Agency (“LWDA”) for its share of the PAGA Payment and the remaining \$5,000 distributed to the Aggrieved Employees.

This case required many hours of attorney time from Class Counsel and obtained significant relief on behalf of 662 Class Members.²

This litigation involved the review and analysis of documents, policies, and practices, as well as a full day of mediation. Most importantly, the Settlement and all its terms received overwhelming support from Class Members, as there were no objections and only three requests for exclusion. Therefore, Plaintiffs respectfully request the Court grant final approval of the Settlement, Attorneys’ Fees and Costs, Enhancement Payments, Settlement Administrator Costs, and the PAGA Payment in the amounts preliminarily approved by the Court and as fully disclosed to Class Members.

II. BACKGROUND, INVESTIGATION, DISCOVERY

The Agreement represents a global compromise of all claims across four (4) different cases. The cases include the present action, *Edwards, et al. v. Suburban Propane, L.P.*, Sacramento County Superior Court, Case No. 34-2022-00314949 (“*Edwards Action*”), *Hall v. Suburban Propane, L.P., et al.*, Los Angeles County Superior Court, Case No. 22STCV00670 (“*Hall Class Action*”), *Hall v.*

² “Class Members” means “all individuals within the Reimbursement Subclass and the Wage Subclass during the Class Period.” (Settlement Agreement at ¶1.5) The “Class Periods” mean the “Reimbursement Subclass Period and the Wage Subclass Period.” (Settlement Agreement at ¶1.6) The “Reimbursement Subclass” means “all employees who are class members in the *Fernandez Action* and worked for Defendants Suburban Propane, L.P, and Suburban Sales & Service, Inc. in California during the Reimbursement Subclass Period.” (Settlement Agreement at ¶1.31) The “Reimbursement Subclass Period” means “January 7, 2018, to March 24, 2021.” (Settlement Agreement at ¶1.32) The “Wage Subclass” means “all employees who are class members in the *Fernandez Action* and who worked for Defendants Suburban Propane, L.P, and Suburban Sales & Service, Inc in California between March 25, 2021 and February 12, 2023, and all other non-exempt employees (i.e. employees who were not part of the release of claims in the *Fernandez Action*) who worked for Defendants Suburban Propane, L.P, and Suburban Sales & Service, Inc in California during the time period of Wage Subclass Period.” (Settlement Agreement at ¶1.38) The “Wage Subclass Period” means “March 25, 2021, to February 12, 2023, for employees who are class members in the *Fernandez Action*, and January 7, 2018, through February 12, 2023, for all other individuals within the Wage Subclass.” (Settlement Agreement at ¶1.39)

1 *Suburban Propane, L.P., et al.*, Los Angeles County Superior Court, Case No. 22AVCV00103 (“*Hall*
2 *PAGA* Action”), and *Adams v. Suburban Propane, L.P., et al.*, Sacramento County Superior Court,
3 Case No. 34-2022-00316279 (“*Adams* Action”). The dates each of the lawsuits were filed are as
4 follows: (1) *Hall* Class Action – January 7, 2022; (2) *Edwards* Action – February 2, 2022; (3) *Hall*
5 *PAGA* Action – February 16, 2022; and (4) *Adams* Action – March 3, 2022. Plaintiffs exhausted
6 administrative remedies under the PAGA by providing notice of the claims and violations to the
7 LWDA. Cal. Lab. Code § 2699.3(a), (c). As part of a global settlement, the Parties agreed to
8 consolidate all claims into one operative pleading in this case to streamline the approval process and
9 avoid potential confusion by Class Members that might arise from multiple, separate approval
10 processes in multiple jurisdictions. Accordingly, Plaintiffs filed a second Amended Complaint in this
11 case on March 10, 2023. *See id.* There is no date set for a motion for certification or trial in this
12 matter. (Nordrehaug Decl. ¶¶ 6-7.)

13 Class Counsel conducted a thorough investigation into the factual and legal issues implicated
14 by Plaintiffs’ claims and were able to objectively assess the settlement’s reasonableness. The
15 information for mediation obtained by Plaintiffs includes a representative sampling of employee data,
16 such as timecards, paystubs, payroll data, and relevant policies for the entirety of the statute of
17 limitations applicable to the asserted claims provided by Defendant. As such, Class Counsel received
18 the data and information for the Class, which was sufficient for Plaintiffs’ expert to prepare the
19 valuations of the claims for the Class. The document and data exchanges allowed Class Counsel to
20 fully assess the nature and magnitude of the claims being settled, as well as the impediments to
21 recovery, and ultimately enabled Plaintiffs’ Counsel so as to make an independent assessment of the
22 reasonableness of the settlement’s terms. (Nordrehaug Decl. ¶ 8).

23 The Parties attended an arms-length mediation session with Louis Marlin, Esq., a respected
24 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
25 preparation for the mediation, Defendant provided Class Counsel with necessary information for the
26 members of the Class, including time data, payroll data and data concerning the composition of the
27 Class. Plaintiffs analyzed the data and prepared and submitted a mediation brief and damage valuation
28

1 to the Mediator. After this all-day mediation, the Parties were able to arrive at a settlement with the
2 assistance of the mediator. (Nordrehaug Decl. ¶ 9).

3 The Class Representatives have vigorously prosecuted this case, and Defendant has vigorously
4 contested it. (Nordrehaug Decl. ¶ 9). The Parties engaged in sufficient investigation and informal
5 discovery to assess the relative merits of the claims of the Class and of Defendant's defenses to them.
6 *Id.* Defendant has denied all of Plaintiffs' allegations in their entirety and any liability or wrongdoing
7 of any kind. *Id.*

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

9 As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement
10 Amount of \$945,000 (Nordrehaug Decl., Ex. 1-Settlement Agreement at ¶ 5.1), which has increased
11 to \$979,854.70 as a result of the escalator provision. Based on their own respective independent
12 investigations and evaluations, and after taking into account the sharply disputed factual and legal
13 issues involved in this matter, the risks attending further prosecution of the case, and the monetary
14 benefits received under the Settlement, Class Counsel is of the opinion that Settlement for the
15 consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate
16 and is in the best interests of the Class Members. (Nordrehaug Decl. ¶ 10; *See* Declaration of Justin
17 Rodriguez, ¶3; Declaration of James Treglio, ¶ 7.)

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

21 As explained at preliminary approval, accounting for the risks of continued litigation and
22 impediments to discovery, Plaintiffs determined that Gross Settlement Amount was fair and
23 reasonable, and accounts for an approximate 5.8% of total possible recovery and between 14.3% and
24 37.2% of the more realistic range of recovery, and courts have routinely approved settlements that
25 provided a similar discounted range of the maximum potential recovery. (Nordrehaug Decl. ¶¶ 12-13).
26 The net recovery represents approximately 3.3% of the maximum value of the claims in this matter
27 and between 8.1% and 21.1% of the more realistic range of recovery. The average gross payment is
28 approximately \$954.66 for the Wage Subclass and \$140.89 for the Reimbursement Subclass. *See id.*

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE

A. Terms of the Settlement

The Gross Settlement Amount was Nine Hundred Forty Five Thousand Dollars (\$945,000) (Settlement Agreement at ¶¶ 1.17, 5.1), which has increased to \$979,854.70 as a result of the escalator clause. (Bench Decl., at ¶18). Under the Settlement, the Gross Settlement Amount consists of the following elements: (1) Payments to the Class Members for their share of the Net Settlement Amount; (2) Payments to the Aggrieved Employees of their share of the PAGA Payment; (3) Attorneys' Fees and Costs; (4) Settlement Administration Costs; (5) payment of the Enhancement Payments to Plaintiffs; and (6) the payment to the LWDA of its share of the PAGA Payment. (Settlement Agreement at ¶¶ 1.17, 5.1).

The Gross Settlement Amount does not include Defendant's employer side taxes. (Settlement Agreement at ¶¶ 1.17, 5.1, 5.11) The Gross Settlement Amount shall be all-in with no reversion to Defendant. (Settlement Agreement at ¶ 1.17.)

B. Released Claims

In exchange for the Gross Settlement Amount, Plaintiffs and Participating Class Members will agree to release the Released Claims during the Settlement Period: "Released Class Claims" shall mean "any and all claims that are alleged in the operative Complaint, and any additional wage and hour claims that could have been brought based on the facts alleged in the operative Complaint, through the Wage Subclass Period. This release excludes the release of reimbursement claims and other claims not permitted by law including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, and California class claims outside of the Class Period. For Class Members within the Reimbursement Subclass, "Released Class Claims" means any and all reimbursement claims that are alleged in the operative Complaint, and any additional reimbursement claims that could have been brought based on the facts alleged in the operative Complaint through the Reimbursement Subclass Period. This release excludes the release of any wage and hour claims that are not reimbursement claims and other claims not permitted by law including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,

disability, social security, workers' compensation, and California class claims outside of the Class Period." (Settlement Agreement at ¶ 1.33.) Additionally, "Released PAGA Claims" shall mean "any and all claims for civil penalties that were brought under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.*, contained in the operative Complaint and any additional wage and hour PAGA claims that could have been brought based on the facts alleged in the operative Complaint during the PAGA Claim Period. Aggrieved Employees cannot opt out of this waiver of claims. The Released PAGA Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, and PAGA claims outside of the PAGA Claim Period." (Settlement Agreement at ¶ 1.34.)

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

By order dated August 7, 2023, the Court granted Preliminary Approval of the Settlement, conditionally certified the class for settlement purposes, appointed ILYM Group, Inc. to act as the administrator, approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class via U.S. First Class Mail. On September 26, 2023, ILYM mailed the Notices to 665 Class Members. (Bench Decl. ¶ 10). The Notice to each Class Member included the value of the additional funds being paid as a result of the escalator provision as well as the proposed allocations for attorney's fees and costs, Enhancement Payments to the Class Representatives, and Settlement Administrator Costs. ILYM received no objections from the Class and only three requests for exclusion. (Bench Decl. ¶¶ 14-15). As a result of the mailing, there is a 99.55% participation rate, and 662 Participating Class Members will be mailed a settlement check. (Bench Decl. ¶ 17).

A Participating Class Member must cash his or her Individual Settlement Payment check within 180 days after it is mailed. Any settlement checks not cashed within 180 days will be voided and any funds from such uncashed checks shall be donated equally, *i.e.* 50/50, to Capital Pro Bono, Inc., and the Center for Workers' Rights under the doctrine of *cy pres*. (Settlement Agreement at ¶¶ 5.7, 7.9.)

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

1 **A. The Settlement Satisfies the Standard for Final Approval**

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

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

19 At the time of preliminary approval, the Court was provided with sufficient information to
20 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
21 until after the Class had an opportunity to respond to the Settlement as explained in the Notice. Subject
22 only to the Class’s reaction to the Settlement, the Court preliminarily presumed the Settlement was
23 fair, adequate, and reasonable. Following dissemination of the Notice, and adequate time provided to
24 the Class to object to the Settlement, no class member submitted objections and only one (1) opt out
25 of the settlement, **resulting in a 99.55% participation rate from the Class.** (Bench Decl. ¶ 17); *In re*
26 *Heritage Bond Litig.*, 2005 WL 1594403, at *10 (C.D. Cal. 2005) (“It is established that the absence
27 of a large number of objectors to a proposed class action settlement raises a strong presumption that
28 the terms of a proposed class settlement action are favorable to the class members”). 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 \$326,618.23 of the Gross Settlement Amount, and litigation costs of \$20,772.63. (Nordrehaug Decl. ¶¶ 22-27; Rodriguez Decl., ¶¶ 12-14; Treglio Decl. ¶¶ 8-14.) Attorneys' fees shall be divided among Class Counsel as follows: \$112,206.07 to Shimoda; \$112,206.07 to Potter Handy; and \$102,206.09 to Blumenthal. 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 plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs 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 plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In*

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

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

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

23 Assessing an appropriate fee based on a percentage of the fund involves considering “all of
24 the circumstances of the case.” Appellate cases addressing fees arise almost exclusively where awards

25 _____
26 ³ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such
27 as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold further
28 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”).

were challenged by Defendant or objectors – the only parties with standing to appeal. *Wershba*, 91 Cal.App.4th at 236.

The requested fee falls in the mid-range of percentage class fee awards, which generally range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous courts in California routinely approve fee requests equal to or greater than one-third of the common fund. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement). In fact, the Sacramento County Superior Court has awarded fees of 35% of the common fund in wage and hour class actions. *See McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269; *Uribe v. EcoGuard Pest Management, Inc.*, Case No. 34-2021-00300650; *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634; *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156. Again, there have been no objections to the settlement or any of the proposed allocations therein, including for attorney’s fees and costs, which is further evidence the requested fee is reasonable. *See In re Heritage Bond Litig.*, 2005 WL 1594403, *21 (“The absence of objections or disapproval by class members to Class Counsel’s fee request further supports finding the fee request reasonable”).

Additionally, Plaintiffs’ counsel have prosecuted a joint prosecution agreement and agreed to split the requested fees. (Nordrehaug Decl. ¶ 22). In short, Class Counsels’ fee request of \$326,618.23 (one-third (1/3) of the common fund) is in line with awards in similar cases in California and demonstrates that Class Counsels’ fee request is consistent with market rates and is reasonable.

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

Class Counsels’ fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on

1 the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal.3d at 48. The court
2 then may enhance this lodestar figure by a “multiplier” to account for a range of factors, such as the
3 novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.* at 49;
4 *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92
5 Cal.App.4th 819, 834 (2001), “[t]here is no...rule limiting the factors that may justify an exercise of
6 judicial discretion to [adjust the] lodestar”].

7 As of the date of filing, the Class Counsel Fees Payment is currently equivalent to the current
8 lodestar of \$358,340 representing a negative multiplier of 0.9 and is therefore reasonable under
9 *Laffitte*. (Nordrehaug Decl. ¶ 24 (lodestar of \$118,615); Rodriguez Decl., ¶¶ 12-13 (lodestar of
10 \$146,702.50); Treglio Decl. ¶ 11 (lodestar of \$93,022.50).) All of the work and tasks performed by
11 Class Counsel were reasonable and necessary to the prosecution of this case.

12 3. Class Counsel’s Hourly Rates are Reasonable

13 Class Counsels’ hourly rates are between \$425 and \$995 and are in line with rates typically
14 approved in wage and hour class action litigation and which rates have been approved by Courts in
15 California. (Nordrehaug Decl. ¶ 25; Rodriguez Decl., ¶ 13; Treglio Decl. ¶ 13.); *Children’s Hosp. and*
16 *Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were reasonable where they were
17 “within the range of reasonable rates charged by and judicially awarded comparable attorneys for
18 comparable work”).

19 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
20 experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095.
21 When determining a reasonable hourly rate, courts may consider factors such as skill and experience,
22 the nature of the work performed, the relevant area of expertise and the attorney’s customary billing
23 rates. *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632. Class Counsels’ skill
24 and experience support their hourly rates. Their practices are limited exclusively to litigation, focusing
25 on the representation of employees in wage and hour matters. (Nordrehaug Decl. ¶¶ 23-25; Rodriguez
26 Decl., ¶¶ 4-10; Treglio Decl. ¶ 14.). As prominent attorneys in the field of wage and hour class action
27 litigation, Class Counsel continually monitors the prevailing market rates charged by both defense and
28 plaintiff law firms and set the billing rates of their attorneys and paralegals to be consistent with the

prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates. Therefore, as they are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

4. Class Counsel's Total Hours are Reasonable

In determining a lodestar fee, reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing clients, investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

The work performed to achieve a settlement that will provide valuable consideration to the Class, is summarized by Class Counsel in the declaration submitted herewith. (Nordrehaug Decl. ¶¶ 24 and Exhibits #3 and #4 (lodestar of \$118,615); Rodriguez Decl., ¶¶ 12-13 (lodestar of \$146,702.50); Treglio Decl. ¶ 11 (lodestar of \$93,022.50).) *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) ("Because time records are not required under California law ... , there is no required level of detail that counsel must achieve.") (internal quotations omitted). All tasks and work performed were reasonable and necessary to the prosecution of this case. The work performed was justified in light of the result achieved.

5. Costs of Litigation are Reasonable

Class Counsel seeks reimbursement of the litigation costs and expenses of \$20,772.63. The requested award is the amount of the actual costs incurred. These costs were reasonable and necessary to prosecute this case and the results achieved and are fair, and reasonable. (Nordrehaug Decl. ¶ 27, Exhibits #3 and 4 (costs of \$6,761.66); Rodriguez Decl., ¶ 14, Ex. B (costs of \$6,225.26); Treglio Decl. ¶¶ 15-16 (costs of \$7,785.71).)

VI. THE ENHANCEMENT PAYMENTS ARE REASONABLE

Class Counsel seeks approval of a \$10,000 Enhancement Payments to each of the named Plaintiffs/Class Representatives. The requested enhancement awards are reasonable in light of the general releases of all claims Plaintiffs agreed to, greater than the release given by Class Members,

1 the benefits Plaintiffs conferred upon the entire Class resulting in payments to all Class Members, the
2 time spent assisting counsel with the investigation and prosecution of these claims, commitment to
3 responding to discovery and depositions, and consenting to the proposed Settlement. (Declaration of
4 Carleton Edwards, ¶¶ 3-9; Declaration of Michael Adams; Declaration of Peter Hall.) These
5 Declaration of the Plaintiffs are attached as Exhibits #6, 7 and 8 to the Nordrehaug Decl. Furthermore,
6 in pursuing this action on behalf of the Class, Plaintiffs risked a judgment for attorneys' fees and costs
7 in the event this matter had been lost. (Nordrehaug Decl. ¶ 28.)

8 Courts routinely approve service payments, or incentive awards, to compensate named
9 plaintiffs for the services they provide and the risks they incur during class litigation. *See In re*
10 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers Ins.*
11 *Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives);
12 Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the total
13 \$30,000.00 Service Award with \$10,000.00 to each named Plaintiff continues to be fair, appropriate,
14 and justified as part of the overall settlement.

15 **VII. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**

16 The Parties agreed to hire ILYM Group, Inc. as the administrator, and the Court approved this
17 choice. The Administrator was responsible for formatting, printing and mailing the Notice. It was also
18 responsible for updating addresses and re-mailing Notices returned as undeliverable, responding to
19 Class Member inquiries, answering questions from Counsel for the Parties, and providing a declaration
20 to document its duties and responsibilities under the settlement. Plaintiffs now request that the Court
21 approve the \$14,900 fee to ILYM Group, Inc. for services rendered and to be rendered. (Bench Decl.
22 ¶ 21). Following the grant of final approval, the Administrator's duties will continue in order to
23 calculate and mail Settlement Share checks to Class Members, perform tax reporting obligations,
24 disburse other payments as ordered by the Court, and perform such other duties as set forth in the
25 Settlement Agreement. The fee of \$14,900 for services rendered and to be rendered is fair and
26 reasonable and should be granted.

27 **VIII. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE**

28 The PAGA Payment of \$20,000.00 to resolve the applicable penalties claimed under the

1 California Labor Code's Private Attorney general Act of 2004, as amended ("PAGA"), is reasonable
2 under the circumstances. The Parties negotiated a good faith amount to be allocated to the LWDA and
3 the Aggrieved Employees. The sum to be paid was not the result of self-interest at the expense of other
4 Class Members. The LWDA was provided notice of the Settlement concurrently with the filing of the
5 preliminary approval motion and the instant motion. Plaintiffs did not receive a response or objection
6 to the Settlement from the LWDA. Thus, Plaintiffs request the Court finally approve the sum of
7 \$20,000 for the PAGA Payment.

8 **IX. CONCLUSION**

9 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval of
10 the Class Action Settlement, award (1) Class Counsels' fees in the sum of \$326,618.23 and litigation
11 costs of \$20,772.63; (2) award the named Plaintiffs of Enhancement Payments in the sum of \$10,000
12 each; (3) award \$14,900 to ILYM Group, Inc., for settlement administration services, and (4) approve
13 the PAGA Penalties of \$20,000 with a payment to the LWDA in the amount of \$15,000.00 and
14 payment to PAGA Members in the amount of \$5,000.00.

15
16 Dated: December 15, 2023

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DE BLOUW LLP

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18 By:


Kyle Nordrehaug

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20 Attorney for Plaintiffs and Class Counsel
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