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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

ANTHONY GARCIA, and HOWARD
MOORE, on behalf of himself, and all
persons similarly situated;

Plaintiffs,

v.

SYSCO RIVERSIDE, INC., a Delaware
Corporation; SYSCO CORPORATION, a
Delaware Corporation; and DOES 1 through
50 inclusive,

Defendants.

Lead Case No. CVRI2103935
[Consolidated with Case No.: CVRI2201916]

Assigned for All Purposes to
Hon. Harold W. Hopp, Dept. 1

CLASS AND REPRESENTATIVE ACTION
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT AND
AWARD OF FEES, COSTS, AND SERVICE
PAYMENTS

Date: December 13, 2024
Time: 8:30 a.m.
Trial Date: None set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Anthony Garcia and Howard Moore (collectively, “Plaintiffs” or “Class
4 Representatives”) now seek the Court’s final approval of the Class Action and PAGA Settlement
5 Agreement (“Settlement” or “Settlement Agreement”). The Settlement Agreement provides for a
6 \$2,167,719.00 **non-reversionary** fund to be created for the benefit of the Class, from which Class
7 Counsel’s attorneys’ fees and litigation expenses, class representative service payments to the named
8 Plaintiffs, payment to the California Labor and Workforce Development Agency (“LWDA”), and costs
9 of settlement administration are to be paid. The entire Net Settlement Amount after these deductions will
10 be paid to all Class Members who did not opt-out of the Settlement and the Aggrieved Employees.

11 The history of this litigation was previously detailed in Plaintiffs’ Motion for Preliminary Approval
12 of Class Action and PAGA Settlement. The Court preliminary approved the Settlement on August 23,
13 2024, directing distribution of the class notice and scheduling the hearing for final approval of the
14 Settlement (the “Preliminary Approval Order”).

15 As directed by the Court, the Settlement Administrator selected by the Parties—ILYM Group,
16 Inc.—distributed the Class Notice to 1,212 Class Members. (Declaration of Nathalie Hernandez on behalf
17 of ILMY Group, Inc. (“Admin. Decl.”) ¶ 7.)¹ To date, **there have been only four (4) Requests for**
18 **Exclusions and no objections to the Settlement.** (*Id.* ¶¶ 11, 12.) As such, there is presently a 100%
19 participation rate. Thus, in light of the lack of objections and the minimal opt-outs, an inference can be
20 made that the Class supports the Court’s Preliminary Approval Order finding that the Settlement
21 Agreement is fair and reasonable.

22 In addition to the results of the notice process, for the same reasons as set forth earlier in Plaintiffs’
23 Motion for Preliminary Approval of Class Action and PAGA Settlement, the following represents the
24 basic points supporting final approval of the Settlement:

- 25 ■ The Settlement provides a total settlement sum of \$2,167,719.00, which is **non-**
26

27 ¹ The deadline for Class Members to request exclusion or object to the Settlement is November 22, 2024.
28 Accordingly, Plaintiffs will submit a supplemental declaration at the conclusion of the response deadline
updating the number of opt-outs and objections.

1 **reversionary**;

2 ▪ The Settlement is fair given that Participating Class Members will receive (*after deductions*
3 *for fees, costs, etc.*) a substantial amount of money—an average individual class payment of \$1,146.20 an
4 highest individual class payment of \$3,897.84 (*See* Admin. Decl. ¶ 14);

5 ▪ Class Members did not need to submit claim forms to participate in the settlement, but are
6 being paid automatically;

7 ▪ Plaintiffs conducted significant investigation in this case, including formal and informal
8 discovery and exchanges of information by Plaintiffs and Defendants of class data;

9 ▪ An experienced settlement administrator, ILYM Group, Inc., was retained to administer
10 the settlement, with administration expenses of approximately \$14,950.00 (*See* Admin. Decl. ¶ 15); and

11 ▪ The State of California’s LWDA will also be the beneficiary of this settlement, as it will
12 receive \$9,843.75—which constitutes 75% of the total allocation of PAGA Penalties (\$13,125.00)—
13 pursuant to PAGA, should this settlement be granted final approval.

14 Accordingly, the Court should grant final approval consistent with the Preliminary Approval
15 Order.

16 **II. CLASS MEMBERS WERE PROVIDED PROPER NOTICE OF THE SETTLEMENT**

17 The notice procedures required by the Preliminary Approval Order have been followed and satisfy
18 all due process rights of Class Members. Specifically, the Preliminary Approval Order contemplated that
19 the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class
20 Notice”), as approved in the Preliminary Approval Order, be sent to all Class Members by U.S. first class
21 mail, as specified in the Settlement Agreement. As agreed by the Parties, ILYM Group, Inc. would serve
22 as the Settlement Administrator for this case.

23 As clearly stated in the Declaration of Nathalie Hernandez on behalf of ILYM Group, Inc., notice
24 was provided to Class Members, as required by the Preliminary Approval Order. On September 9, 2024,
25 the Settlement Administrator received a Class Member mailing list from Defense Counsel that included
26 1,212 Class Members. (Admin. Decl. ¶ 5.) Prior to mailing the Class Notice, the Settlement Administrator
27 conducted a National Change of Address (“NCOA”) search to correct and/or update the class list in case
28 of any address changes. (*Id.* ¶ 6.) On September 23, 2024, the Settlement Administrator mailed the Class

1 Notice to all Class Members on the mailing list via U.S. first class mail. (*Id.* ¶ 7; Ex. A.) As of the date of
2 this filing, only sixteen (16) Class Notices remain undeliverable. (*Id.* ¶ 10.)

3 Further, the Class Notice provided Class Members with Class Counsel’s and the Settlement
4 Administrator’s contact information, where they could further seek information regarding the settlement,
5 ask questions, and update their address.

6 The provision of sending the notice to class members as described above meets the requirements
7 for the “best notice practicable” in this case as necessary to protect the due process rights of class members.
8 (*See, Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12 (provision of “best notice practicable”
9 with description of the litigation and explanation of opt-out rights satisfies due process); *Eisen v. Carlisle*
10 *& Jacquelin* (1974) 417 U.S. 156, 174-75 (individual notice must be sent to class members who can be
11 identified through reasonable means); *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S.
12 306, 314 (best practicable notice is that which is “reasonably calculated, under all the circumstances, to
13 apprise interested parties of the pendency of the action and afford them an opportunity to present their
14 objections”).)

15 Here, all Class Members were provided with a mailing that explained the settlement and allowed
16 Class Members to seek information, ask questions, and exclude themselves and/or object to the settlement,
17 if so desired. As such, proper notice has been given to the Class. Thus, the Court may determine the
18 fairness and adequacy of the Settlement and enter its Order granting final approval, secure in the
19 knowledge that all absent Class Members have been given the opportunity to participate fully in—or seek
20 exclusion if they so desire—the approval process and the settlement.

21 **III. THE SETTLEMENT TERMS ARE FAIR, ADEQUATE, AND REASONABLE, AND THE**
22 **SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL**

23 **A. Strength of Plaintiffs’ Case and Likelihood of Certifying the Class**

24 The Court already addressed the requirements for certifying a class for settlement purposes in its
25 Order granting preliminary approval. Plaintiffs briefly address the requirements again here.

26 **1. The Class is Ascertainable**

27 Whether a class is “ascertainable” within the meaning of Code of Civil Procedure § 382 “is
28 determined by examining (1) class definition, (2) the size of the class, and (3) the means available for

1 identifying the class members.” (*Reyes v. San Diego County Board of Supervisors* (1987) 196 Cal. App.
2 3d 1263, 1271.)

3 Here, the Class is comprised of all current and former nonexempt employees of Sysco Riverside,
4 Inc. who worked in California at any time during the Class Period. The “Aggrieved Employees” are
5 comprised of all current and former non-exempt employees of Sysco Riverside, Inc. in California during
6 the PAGA Period. There are 1,212 individuals that comprise the Class. (Admin. Decl. ¶ 5.) This is more
7 than the minimum required to certify a class.

8 Within the context of manageability, the issue is whether there exists sufficient means for
9 identifying class members at the remedial stage. (*Reyes*, 196 Cal. App. 3d at pp. 1274-75.) Class Members
10 have already been identified by Defendants and notice was provided to all of the above Class Members.

11 **2. There is a Community of Interest**

12 The “community of interest” requirement embodies three separate factors: (1) predominant
13 common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3)
14 class representatives who can adequately represent the class. (*Richmond v. Dart Industries, Inc.* (1987) 29
15 Cal. 3d 469, 470; *Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal. App. 4th 1225, 1234.)

16 **a. There are Predominant Common Questions of Law and Fact**

17 “The ultimate question in every case of this type [class actions] is whether...the issues which may
18 be jointly tried, when compared with those requiring separate adjudication, are so numerous and
19 substantial that the maintenance of a class action would be advantageous to the judicial process and to the
20 litigants.” (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal. 4th 1096, 1104-05.)

21 Here, Plaintiffs allege the following claims against Defendants: (1) failure to pay minimum wages;
22 (2) failure to pay overtime owed; (3) failure to provide lawful meal periods; (4) failure to provide lawful
23 rest periods; (5) failure to timely pay wages during employment; (6) failure to timely pay wages owed
24 upon separation from employment; (7) failure to reimburse necessary expenses; (8) knowing and
25 intentional failure to comply with itemized wage statements provisions; (9) failure to pay reporting time
26 wages; (10) violation of the unfair competition law; and (11) civil penalties pursuant to PAGA. As such,
27 the common questions of law or fact which apply to the entire class include, without limitation: (i) whether
28 Class Members were required to perform pre and post shift activities “off-the-clock”; (ii) whether

1 Defendants failed to pay “on-call” or “stand by” time; (iii) whether Defendants failed to reimburse Class
2 Members for necessary business expenses including cell phones and mileage; (iv) whether Defendants
3 failed to pay reporting time; (v) whether Defendants failed to provide compliant meal and rest periods
4 including whether Class Members were subject to the short-haul driver exemption; (vi) whether
5 Defendants provided accurate itemized wage statements; (vii) whether Defendants timely paid all wages
6 at the time of termination; and (viii) whether Defendants’ policies and practices constitute unfair business
7 practices for purposes of Business and Professions Code section 17200 et seq. Here, these questions of
8 law and fact which are common to Plaintiffs and the Class predominate over any such questions affecting
9 only Plaintiffs or individual Class Members. Thus, the required commonality element is satisfied, and the
10 underlying claims are sufficiently cohesive to warrant adjudication by representation. (See *Clothesrigger,*
11 *Inc., supra*, 191 Cal.App.3d at p. 612.)

12 **b. Plaintiffs’ Claims are Typical of the Class Claims**

13 The purported class representative’s claim must be “typical” but not necessarily identical to the
14 claims of other class members; it is sufficient that the representative is similarly situated so that he or she
15 will have the motive to litigate on behalf of the class. (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 45.)
16 Courts look to whether class members have similar injuries, “whether the action is based on conduct which
17 is not unique to the named Plaintiff,” and whether other class members were injured by the same conduct.
18 (*Hanon v. Dataproducts Corp.* (9th Cir. 1992) 976 F.2d 497, 508.) The purpose of the typicality
19 requirement “is to assure that the interest of the named representative aligns with the interests of the class.”
20 (*Id.* at p. 508.)

21 All Class Members, including Plaintiffs, were all subject to the same policies and practices while
22 working for Sysco Riverside, Inc., including the company’s payroll and timekeeping policies, its meal and
23 rest period policies, and its failure to reimburse employees for expenses incurred in using their personal
24 cellphones for business purposes. As such, Plaintiffs sustained the same or similar the damages to those
25 sustained by the Class, all which resulted from Defendants’ alleged violations of California wage-and-
26 hour laws, including unpaid regular, minimum and overtime wages, noncompliant meal and rest periods,
27 inaccurate wage statements, and unreimbursed business expenses. Because each Class Member would be
28 required to demonstrate the same elements in order to recover on their claims against Defendants, Class

Members' interests are sufficiently aligned with Plaintiffs so as to meet the typicality requirement. (See *Medraza, supra*, 166 Cal.App.4th at p. 99.)

c. Plaintiffs Adequately Represented the Class

The class representative, through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal. App. 3d 834, 846.)

Here, Plaintiffs do not have any interests adverse to the Class, nor have any such issues been raised or presented. Plaintiffs have taken all necessary steps to represent the interests of the Class, including meeting and conferring with their counsel, providing information and documents to their counsel, and reviewing pleadings and the Settlement Agreement in this case. (See generally, Garcia Decl.; Moore Decl.) For such reasons, Plaintiffs have adequately represented the Class Members and will continue to do so.

B. Risks, Expenses, and Complexity of Further Litigation

Although Plaintiffs believe that a class can be certified; Plaintiffs also believe in the fairness of this settlement, because it accounts for the uncertainty and risks to Plaintiffs involved in not prevailing on one or more of the causes of action or theories alleged in the Operative Complaint, the possibility of non-certification, and potential for appeals.

Defendants have consistently denied all material allegations in the Operative Complaint and that they violated any applicable laws. Defendants allege that the Class could not have been certified, given their position that their policies are compliant with the Labor Code, and that any liability would need to be determined on a case-by-case basis. Based on the foregoing, there were risks that Plaintiffs would not have obtained the total amount of wages and penalties alleged, and a substantial amount of complex issues that would have necessitated significant expenditure of time and expenses. Therefore, the risks, expenses, and complexity of further litigation warrant granting of this Motion.

C. The Terms of the Settlement, Negotiation of Settlement, and Reception of the Settlement by Class Members All Strongly Support the Conclusion that the Settlement is Fair, Adequate, and Reasonable

Without reiterating the Parties' showing that the Settlement Agreement and the negotiation process that led up to it was fair and adequate, as set forth in detail in the Motion for Preliminary Approval of Class Action and PAGA Settlement and the subsequent briefings, the Parties highlight the following facts.

1 The Settlement Agreement was the product of negotiations between highly able and experienced attorneys
2 on both sides who possessed the relevant data and extensive legal research which they had carefully
3 analyzed. (Declaration of James Hawkins (“Hawkins Decl.”) ¶ 3.) The Parties engaged in arm’s length
4 negotiations at mediation with Hon. William C. Pate (Ret.), a retired Superior Court judge and well-
5 experienced mediator. (Hawkins Decl. ¶ 3.)

6 The results after the mailing of the Class Notice support confirmation of the Court’s preliminary
7 approval of the settlement with final approval of the settlement, as evidenced by the fact that **only four**
8 **(4) Class Members opted out of the settlement and zero (0) objections were submitted.** The Court
9 may appropriately infer that the class action settlement is fair, adequate, and reasonable, given that not a
10 single Class Member has submitted an objection. (*See Class Plaintiffs v. City of Seattle* (9th Cir. 1992)
11 955 F.2d 1268, 1291.)

12 **D. Under Well-Established Legal Principles, the Court Should Grant Final Approval of**
13 **the Settlement**

14 **1. Standard of Review**

15 On a motion for final approval of a class action settlement under California Code of Civil
16 Procedure Section 382 and California Rule of Court 3.769, a court’s inquiry is whether the settlement is
17 “fair, adequate and reasonable.” (*Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615,
18 625, *cert. denied subnom., Byrd v. Civil Serv. Comm’n* (1983) 459 U.S. 1217.) A settlement is fair,
19 adequate, and reasonable, and therefore merits final approval, when “the interests of the class are better
20 served by the settlement than by further litigation.” (*See Manual for Complex Litigation, Fourth* (Fed.
21 Jud. Ctr., 4th ed. 2004) § 21.6 at 309 (“MCL”).) The law favors settlement, particularly in class actions
22 and other complex cases, where substantial resources can be conserved by avoiding the time, cost, and
23 rigors of formal litigation. (*See Alba Conte & Herbert B. Newberg* (4th ed. 2002) 4 *Newberg on Class*
24 *Actions* § 11.41 ; *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Van Bronkhorst*
25 *v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.)

26 Although the Court possesses “broad discretion” in determining that a proposed class action
27 settlement is fair, the Court’s role must be limited to the extent necessary to reach a reasoned judgment
28 that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating

parties, and that the settlement, taken as a whole, is fair, reasonable, and adequate to all concerned. (*See Officers for Justice*, 688 F.2d at p. 625.) Accordingly, the Court should give due regard to what is otherwise a “private consensual agreement” between the parties. (*Id.*; *see also Church v. Consolidated Freightways, Inc.* (N.D. Cal. 1993) 1993 WL 149840; *In re Wash. Pub. Power Supply Sys. Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, *aff’d sub nom.*; *City of Seattle*, 955 F.2d 1268; MCL § 21.6 at 309 (“The judicial role in reviewing a proposed settlement is critical, but limited to approving the proposed settlement, disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).)

A court’s approval of a class action settlement will only be reversed for a clear abuse of discretion. (*See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801; *Officers for Justice*, 688 F.2d at p. 626 (“reverse only upon a strong showing that the district court’s decision was a clear abuse of discretion”); *City of Seattle*, 955 F.2d at p. 1276; *Ackerman v. Kassar* (9th Cir. 1993) 1993 WL 326453; *Linney v. Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1238.)

As the court cautioned in *7-Eleven Owners for Fair Franchising v. Southland Corp.*:

It cannot be overemphasized that neither the trial court in approving the settlement nor this Court in reviewing that approval have the right or duty to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute. It is well settled that in the judicial consideration of proposed settlements, ‘the [trial] judge does not try out or attempt to decide the merits of the controversy,’ [citation] and the appellate court ‘need not and should not reach any dispositive conclusions on the admittedly unsettled legal issue.

(*7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1146.)

2. The Settlement is Presumed to Be Fair

The Court should begin its analysis with the presumption that the settlement is fair and should be approved:

[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.

(*Dunk*, 48 Cal. App. 4th at p. 1802; *accord, Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18; *In re Wash. Pub Power Supply*, 720 F. Supp. at p. 1387.)

This settlement warrants approval and carries a presumption of fairness. As previously noted in

1 the application for Preliminary Approval, this current settlement was negotiated at arm's length after a
2 full day of mediation and subsequent discussions with neutral Hon. William C. Pate (Ret.). (Hawkins
3 Decl. ¶ 3.) Additionally, Class Counsel obtained significant class data prior to the mediation which
4 allowed Class Counsel to perform a detailed analysis of the potential damages. (Hawkins Decl. ¶ 3.)
5 Further, Class Counsel is highly experienced in this type of litigation. As shown in the supporting
6 declarations, Class Counsel has significant experience in class actions and employment wage and hour
7 matters. (Harmoush Decl. ¶ 3; Hawkins Decl. ¶¶ 7–10.)

8 **3. Two-Way Costs and Other Risks Inherent in Continued Litigation Favor Final** 9 **Approval**

10 To assess the fairness, adequacy, and reasonableness of a class action settlement, the Court also
11 should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in
12 continued litigation. (*See also In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768, 806 (“present value
13 of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not
14 prevailing, should be compared with the amount of the proposed settlement”) (internal citations omitted);
15 *Girsh v. Jepson* (3d Cir. 1975) 521 F.2d 153, 157; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp.
16 610, 616-17.)

17 If Plaintiffs pursued this case without settlement and failed to prevail, Plaintiffs would have been
18 potentially responsible for Defendants' fees and costs. As such, individual current or former employees
19 of Defendants bringing individual claims on the same causes of action would each face the uncertainty of
20 prevailing and the possibility of paying fees and costs to Defendants. Accordingly, such claims likely
21 would not be brought by many of these employees—thus, this lawsuit achieves a true benefit for the class
22 that they might not otherwise get or seek as individuals. Here, given that a fair and reasonable settlement
23 has been reached, neither Plaintiffs nor any of the Class Members will be required to pay for Defendants'
24 litigation fees and costs.

25 The risks of this case were weighed by Class Counsel and should be considered a significant factor
26 by the Court in its determination of final approval. Class Counsel obtained a significant settlement for the
27 Class that resulted in a fair recovery which at the same time provides for finality and no risk of fees and
28 costs by Class Members or the Class Representatives.

1 The Settlement Agreement also affords the Class prompt, fair relief while avoiding significant
2 legal and factual battles that otherwise may have prevented the Class from obtaining any recovery at all.
3 While Class Counsel believe the Class Members' claims are meritorious and can be successfully litigated,
4 they are experienced and fully understand the inherent risks and uncertainty involved with such matters
5 as the resolution of class certification, the outcome of a potential trial, and the outcome of any appeals that
6 would inevitably follow should the Class prevail at trial. Class Counsel has also assessed the same risks
7 in connection with the current settlement. Because the settlement provides immediate and substantial
8 relief, without the attendant risks and delay of continued litigation—not to mention the threat of litigation
9 fees and costs—Class Counsel believe that the settlement warrants the Court's final approval.

10 **4. The Complexity, Expense, and Likely Duration of Continued Litigation**
11 **Against Defendants Favor Final Approval**

12 Another factor considered by courts in approving a settlement is the complexity, expense, and
13 likely duration of the litigation. (*See Officers for Justice*, 688 F.2d at p. 625; *Girsh*, 521 F.2d at p. 157.)
14 In applying this factor, the Court must weigh the benefits of the settlement against the expense and delay
15 involved in achieving an equivalent or more favorable result at trial. (*Young v. Katz* (5th Cir. 1971) 447
16 F.2d 431, 433-34.)

17 As noted above, continued litigation could have led to appeals on several issues. On the other hand,
18 the settlement that was reached provides to all Class Members – regardless of their means – fair relief in
19 a prompt and efficient manner. Were the Court to deny final approval, the Class Members would be left
20 without a remedy as a practical matter and courts across the State would have to address the issues
21 presented here in a piecemeal, costly, and time-consuming manner, potentially even resulting in
22 inconsistent judgments. The settlement in this case is therefore consistent with the “overriding public
23 interest in settling and quieting litigation” that is “particularly true in class action suits.” (*See Van*
24 *Bronkhorst*, 529 F.2d at p. 950 (footnote omitted); *see also 4 Newberg* at § 11.41.) Here, this case could
25 have involved years of litigation.

26 **5. The Opinion of Experienced Counsel Favors Final Approval**

27 The endorsement of qualified and well-informed counsel of a settlement as fair, reasonable, and
28 adequate is entitled to significant weight by the Court in its final approval determination. (*See Officers for*

1 *Justice*, 688 F.2d at p. 625; *Ellis*, 87 F.R.D. at p. 18; *Boyd*, 485 F. Supp. at p. 617; *Linney*, 151 F.3d at p.
2 1242.) Here, both Class Counsel and Defense Counsel have has significant experience litigating complex
3 wage and hour cases of this sort. Class counsel supports the settlement as fair, reasonable, and adequate,
4 and in the best interest of the Class Members as a whole. (Hawkins Decl. ¶¶ 2-6.) Similarly, counsel for
5 Defendants is in favor of this settlement as it provides much-needed finality and mitigates the risks to all
6 parties in pursuing further litigation in this matter.

7 **IV. THE PROPOSED PROCEDURE FOR UNCASHED SETTLEMENT CHECKS SHOULD**
8 **BE APPROVED**

9 As referenced in the Motion for Preliminary Approval, to the extent any uncashed settlement funds
10 remain after 180 days of the mailing of the individual settlement checks, the Parties have agreed that all
11 such uncashed settlement funds shall be transmitted to the California State Controller’s Unclaimed
12 Property Fund in the name of the Participating Class Member and/or Aggrieved Employee to whom the
13 funds relate, such that no “unpaid residue” will remain. (*See* Code of Civ. Proc. § 384(b).)

14 **V. THE REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENTS SHOULD BE**
15 **APPROVED**

16 Plaintiffs request that the service payment amounts be awarded. As set forth in their declarations,
17 Plaintiffs met with Class Counsel, had numerous discussions with Class Counsel and provided substantive
18 information regarding Defendants’ policies and practices at issue in this case. (Garcia Decl. ¶¶ 4-5; Moore
19 Decl. ¶¶ 3-5.) Accordingly, Plaintiffs provided invaluable information, evidence, and documents that
20 directly contributed in this settlement.

21 In addition to the invaluable services that they provided, Plaintiffs also took significant risks, both
22 professionally and monetarily, in acting as Class Representatives, seeking benefits on behalf of the Class.
23 (Garcia Decl. ¶ 6; Moore Decl. ¶ 6.) Because the claims alleged by the Class Representatives involved the
24 payment of fees and costs to the prevailing party, Plaintiffs could have possibly faced paying the fees and
25 costs of Defendants, had they not prevailed in this action. (*Id.*) Despite this, however, Plaintiffs agreed to
26 pursue this case on behalf of the Class.

27 Also, given that future employers are much less likely to hire individuals who have filed
28 employment-related lawsuits, particularly cases of this nature, the Class Representatives also faced

1 significant risk in not being able to find suitable employment and/or face retaliation from prospective
2 employers, all as a result of filing of this case against Defendants. Plaintiffs took these risks upon
3 themselves to the benefit of the Class. (Garcia Decl. ¶ 3, 6; Moore Decl. ¶ 3, 6.) Class Members did not
4 have to file individual lawsuits and bear the risks of payment of fees/costs if they did not prevail, nor did
5 they have to face the potential for retaliation and risks to future employment had they filed a lawsuit,
6 which is a public record, and therefore accessible by any prospective employers. These are significant
7 benefits that weigh in favor of granting the requested enhancement.

8 Courts have routinely granted approval of settlements containing such enhancements. (See *Van*
9 *Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299-300 (incentive award of
10 \$50,000); *In re Dun & Bradstreet Credit Servs. Customer Litig.* (S.D. Ohio 1990) 130 F.R.D. 366, 374
11 (two incentive awards of \$ 55,000, and three incentive awards of \$35,000); *Brotherton v. Cleveland* (S.D.
12 Ohio 2001) 141 F. Supp. 2d 907, 913-14 (granting a \$50,000 incentive award); *Enter. Energy Corp. v.*
13 *Columbia Gas Transmission Corp.* (S.D. Ohio 1991) 137 F.R.D. 240, 251-52 (\$50,000 awarded to each
14 class representative); *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 27, 2007) No. C-06-4068, 2007 U.S. Dist.
15 LEXIS 8476, at *51-52 (awarding \$25,000 incentive award in FLSA overtime wages class action); *Cook*
16 *v. Niedert* (7th Cir. 1998) 142 F.3d 1004, 1016 (affirming \$25,000 incentive award to class representative
17 in ERISA case).) Here, the requested service payments of \$7,500 to each Plaintiff (total of \$15,000) are
18 significantly less than these other court-approved amount. Further, these service payments would amount
19 to less than 1% of the Gross Settlement Amount, and as such, there can be no cause for concern that these
20 awards are sought against the interest of the class. Thus, the Court should approve the Class Representative
21 Service Payment as part of its final approval of the Settlement.

22 **VI. THE REQUESTED ATTORNEYS' FEES SHOULD BE APPROVED**

23 California state and federal courts have recognized that an appropriate method for determining
24 award of attorneys' fees is based on a percentage of the total value of benefits to class members by the
25 settlement. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Serrano v. Priest* (1977)
26 20 Cal. 3d 25, 34 [*Serrano III*]; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes*
27 *Air West, Inc.* (9th Cir. 1997) 557 F.2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust
28 enrichment to the class and to "spread litigation costs proportionally among all the beneficiaries so that

1 the active beneficiary does not bear the entire burden alone.” (*Vincent v. Hughes Air West, Inc.*, *supra*,
2 557 F.2d at p. 769.)

3 The California Supreme Court issued its ruling regarding the award of attorney’s fees in wage and
4 hour class action settlements in *Laffitte v. Robert Half Int’l* (2016) 1 Cal. 5th 480. Under California law,
5 the award of attorneys’ fees in common fund wage and hour class action settlements is proper under the
6 percentage method. (*See Laffitte v. Robert Half Int’l* (2016) 1 Cal. 5th 480, 503 (“We join the
7 overwhelming majority of federal and state courts in holding that when class action litigation establishes
8 a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards
9 class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing
10 an appropriate percentage of the fund created”).) Under the percentage of the fund method, the Court’s
11 objective remains to “mimic the market” in fixing a reasonable fee. (*See Gaskill v. Gordon* (7th Cir. 1998)
12 160 F.3d 361, 363 (J. Posner) (“When a fee is set by a court rather than by contract, the object is to set it
13 at a level that will approximate what the market will set.... The judge, in other words, is trying to mimic
14 the market in legal services.”).)

15 Here, the fee award representing one-third of the fund clearly falls within that range and is
16 consistent with other rulings of other courts and comprehensive surveys of class action settlements and
17 fee awards. (*See Martin v. AmeriPride Servs.* (S.D. Cal. 2011) 2011 U.S. Dist. LEXIS 61796, 23
18 (recognizing that “courts may award attorney’s fees in the 30-40% range in wage and hour class actions
19 that result in recovery of a common fund under \$10 million”); *see also* Eisenberg & Miller, *Attorney Fees*
20 *in Class Action Settlements: An Empirical Study: 1993-2008* (2010) 7 J. of Empirical Leg. Stud. 248, 262,
21 fn. 16 (independent studies of class action litigation nationwide conclude that fees in the range sought here
22 are consistent with market rates).)

23 Further, “the response of the class members to attorneys’ fee notice, though not decisive, is relevant
24 to the...reasonable determination” regarding fees. (*Swedish Hospital v. Shalala* (D.C. Cir. 1993) 1 F.3d
25 1261, 1272.) A positive response rate tends to suggest that the court’s “approximation of the market” for
26 fees is well supported. (*Id.* at p. 1269.) In this case, the Class Notice specifically notified Class Members
27 that Class Counsel would be seeking up to \$722,573.00 in attorneys’ fees. To date, no Class Member has
28 objected to the settlement. This strong favorable response also supports the requested fees.

1 In addition, it is recognized that one of the primary factors justifying an enhanced attorney's fees
2 reward is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell Corp.*:

3 No one expects a lawyer whose compensation is contingent upon his
4 success to charge, when successful, as little as he would charge a client who
5 had agreed to pay for his services, regardless of success. Nor, particularly
6 in complicated cases producing large recoveries, is it just to make a fee
depend solely on the reasonable amount of time expended.

7 (*City of Detroit v. Grinnell Corp* (2d Cir. 1974) 495 F.2d 448, 470.) Under this settlement agreement in
8 this case, a gross settlement amount of \$2,167,719.00 has been designated as the entire amount to be paid
9 out, without any reversions to Defendants. For Class Counsel, the fees here were wholly contingent in
10 nature and the case presented far more risk than the usual contingent fee case. Among the risks was the
11 cost inherent in class action litigation, as well as a potentially drawn-out battle with corporate Defendants.

12 As a secondary support for the percentage of the fund method, when fees are allocated by
13 percentage method, courts have discretion to "cross-check" the fees awarded through the lodestar method.
14 However, the *Laffitte* Court "emphasize[d] [that] the lodestar calculation, when used in this manner, does
15 not override the trial court's primary determination of the fee as a percentage of the common fund and
16 thus does not impose an absolute maximum or minimum on the potential fee award." *Laffitte*, 1 Cal. 5th
17 at 505 (emphasis added); *In re Rite Aid Corp. Secs. Litig.* (3d Cir. 2005) 396 F.3d 294, 306-307 ("[The
18 lodestar cross-check does not trump the primary reliance on the percentage of common fund method").

19 The Supreme Court in *Laffitte* stated: "If the multiplier calculated by means of a lodestar cross-
20 check is extraordinarily high or low, the trial court should consider whether the percentage used should
21 be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily
22 required to make such an adjustment." *Id.* Thus, a lodestar cross-check is aimed at astronomical
23 multipliers. Indeed, cross-checks are not required; in many cases, performing a cross-check "undermines"
24 one of the primary reasons for using the percentage method: aligning counsel's incentives with the benefits
25 delivered to the class and discouraging protracted litigation. *Id.* at 506 (finding trial courts "retain the
26 discretion to forgo a lodestar cross-check"); *Report of the Third Circuit Task Force, Court Awarded*
27 *Attorney Fees* (1985) 108 F.R.D. 237, 258; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th
28 19, 29-30 (citing the recommendations of the Third Circuit Task Force with approval and observing that

1 “[t]he criticisms of the lodestar approach set forth in this Report are now echoed by many authorities, who
2 have been most vocal about the manner in which it exacerbates the problem of ‘cheap settlements’ and
3 burdens already overworked trial judge”).

4 Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or even
5 higher.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 255; *see also, e.g., Sutter Health*
6 *Uninsured Pricing Cases* (2009) 171 Cal. App. 4th 495, 512 (applying a 2.52 multiplier on a cross-check
7 in an antitrust class action); *Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 60 (applying a 2.5
8 multiplier on a lodestar cross-check); *City of Oakland v. Oakland Raiders* (1988) 203 Cal. App. 3d 78
9 (affirming a 2.34 multiplier without remand). The intermediate court in *Laffitte*, after finding that “2 to 4”
10 is a reasonable range for multipliers on a cross-check, affirmed a 2.13 multiplier. *Laffitte v. Robert Half*
11 *International, Inc.* (2014) 231 Cal. App. 4th 860, 881-82. The intermediate court opinion was affirmed in
12 full by the California Supreme Court in its new decision guiding lower courts on assessing fees.

13 With respect to Class Counsel’s lodestar, to date, approximately 567 hours have been expended
14 by Class Counsel in this matter. (Harmoush Decl. ¶ 1; Hawkins Decl. ¶¶ 20–29.) Moreover, Class Counsel
15 expects to incur approximately 20 additional hours of attorney time in managing this settlement, including
16 responding to Class Members and implementing the settlement with the Settlement Administrator.
17 (Harmoush Decl. ¶ 9; Hawkins Decl. ¶ 29.) As detailed in their declarations, Class Counsel request hourly
18 rates of \$425-\$1050, which is commensurate with each counsel’s experience and mimics the market.
19 (Harmoush Decl. ¶ 9; Hawkins Decl. ¶¶ 29–30.) The courts are quite liberal in the evidence required to
20 prove an attorney’s hours. Detailed time records are not required. An attorney’s testimony alone may
21 suffice: “Testimony of an attorney as to the number of hours worked on a particular case is sufficient
22 evidence to support an award of attorney fees, even in the absence of detailed time records.” *Martino v.*
23 *Denevi* (1986) 182 Cal. App. 3d 553, 559.

24 Reasonable hours include, in addition to time spent during litigation, the time spent before the
25 action is filed, including time spent interviewing the clients, investigating the facts and the law, and
26 preparing the initial pleadings. *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. Further,
27 the fee award should include fees incurred to establish and defend the attorneys’ fee claim. *Serrano v.*
28 *Unruh* (1982) 32 Cal. 3d 621, 639 [*Serrano IV*]. Thus, Class Counsel requests that the court find that these

1 hours were reasonable in this litigation.

2 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience
3 in the relevant community. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal. 4th 1084, 1095. The court may
4 consider other factors when determining a reasonable hourly rate, *e.g.*, the attorney's skill and experience,
5 the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates.
6 *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632-33.

7 Class Counsel's skill and experience justify the requested rate. As shown in the supporting
8 declarations, Class Counsel have significant experience in the area of employment and wage and hour
9 class actions. Specifically, Class Counsel's practice focuses on representing employees in employment
10 matters, particularly wage and hour cases. (Harmoush Decl. ¶ 3; Hawkins Decl. ¶¶ 7-10, 25-26.) As
11 such, based on the hours and applicable rate, including anticipated time, the total lodestar to be expended
12 by Class Counsel through finalizing this settlement will be approximately \$\$352,542.75. (Harmoush Decl.
13 ¶ 9; Hawkins Decl. ¶¶ 29, 30.)

14 Once the court establishes the lodestar amount, it may enhance the fee award by a multiplier in
15 order to make an appropriate fee award. *Serrano III*, 20 Cal. 3d at 48. The pertinent factors include the
16 difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award,
17 the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney
18 would have received on the fair market. *Id.*; *Lealao*, 82 Cal. App. 4th at 49. However, this list is not
19 exhaustive and the court can consider other factors it deems important in setting the multiplier. *Ketchum*
20 *v. Moses* (2001) 24 Cal. 4th 1122, 1139.

21 *Lealao* contains several factors justifying an enhancement based on the percentage-of-the-benefit,
22 namely, no objections by class members, commendable conduct by counsel, and significant recoveries by
23 class members, all of which were previously detailed above. *Lealao*, 82 Cal. App. 4th at 51-53. As in
24 *Lealao*, Class Members were notified of the settlement and attorney's fees with no objections. The extreme
25 effort undertaken by counsel, as shown by their hours and the significantly high number of claims being
26 paid out, shows commendable conduct.

27 It is also critical to note that prompt settlement cannot be used to diminish the fee or the
28 enhancement based on a percentage-of-the-fund. *Lealao*, 82 Cal. App. 4th at 52 (the promptness of

1 settlement “cannot be used to justify the refusal to apply a multiplier”). According to *Lealao*, courts placed
2 “an extraordinarily high value” on settlement, and counsel should be rewarded, not punished, for achieving
3 this goal in a timely fashion. *Id.*

4 The multiplier should be enhanced by the contingent nature of counsel’s fee recovery. The risks
5 in taking on a class action case are enormous, not the least of which is time and effort. As explained
6 previously, Defendants maintained that there were significant obstacles to succeeding in this lawsuit.
7 Thus, the risk involved in this case was quite significant for Plaintiffs and their counsel, and in the face of
8 such risks, the current settlement was achieved by Class Counsel.

9 Here based upon Class Counsel’s lodestar of \$352,542.75 and the requested fees of \$722,573.00,
10 Plaintiffs’ request for a multiplier of 2.04 is reasonable and fair, particularly based on the factors described
11 above. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224 (noting that courts using the lodestar
12 method to calculate attorney fees awards in class actions typically apply multipliers in the range of 2 to
13 4); *Boyd v. Bank of Am. Corp.* (C.D. Cal. Nov. 18, 2014) 2014 U.S. Dist. LEXIS 162880 (awarding 33%
14 of the common fund, based on a multiplier of 2.58, in a wage and hour class action settlement); *Vandervort*
15 *v. Balboa Capital Corp.* (C.D. Cal. 2014) 8 F. Supp. 3d 1200, 1210 (awarding 33% of the common fund,
16 based on a multiplier of 2.52).

17 As such, the requested fee award is fair and reasonable, and should be awarded in its entirety. Class
18 Counsel risked not only a great deal of time, but also a great deal of expense to ensure the successful
19 litigation of this action on behalf of all Class Members. For such reasons, Class Counsel’s request for
20 attorneys’ fees in the amount of \$722,573.00 is fair, reasonable, and adequate.

21 **VII. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF**
22 **COSTS**

23 The request for reimbursement of costs, in the amount of \$16316.73, is fair and reasonable,
24 especially in light of the fact that the Parties agreed that Class Counsel may seek up to \$20,000 as
25 reimbursement for litigation costs under the Settlement Agreement. As set forth in Class Counsel’s
26 declarations, the costs were all directly incurred in the prosecution of this action, including but not limited
27 to, filing fees, service of process costs, and mediation fees. (Harmoush Decl. ¶ 9, Ex. 1; Hawkins Decl. ¶
28 33, Ex. 3) As such, the requested costs should be approved as fair and reasonable.

1 **VIII. THE ADMINISTRATION EXPENSES PAYMENT SHOULD BE APPROVED**

2 Pursuant to the terms of the Settlement Agreement, the fees and costs of the Settlement
3 Administrator, ILYM Group, Inc., are to be paid out of the class settlement funds. As shown in the
4 Declaration of Nathalie Hernandez the settlement administration fees expended in this matter amount to
5 a total of \$14,950.00, which is the amount that was agreed upon by the Parties. (Admin. Decl. ¶ 15, Ex.
6 B.) For such reasons, it is requested that the Administration Expenses Payment be approved.

7 **IX. CONCLUSION**

8 For all the foregoing reasons, and on the basis of the authorities cited herein, Plaintiffs respectfully
9 submit that the standards for final approval have been met and the terms of the Settlement Agreement are
10 fair, adequate, and reasonable.

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12 Dated: November 19, 2024

JAMES HAWKINS APLC

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14 By:



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