

Samy M. Harmoush (SBN 309966)
samy@workersadvocate.law
Workers' Advocate Law Group P.C.
10866 Washington Blvd., #835
Culver City, CA 90232
Telephone: (213) 737-1070

Attorney for Plaintiff ANTHONY GARCIA,
on behalf of himself and all others similarly situated

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
Mitchell J. Murray (SBN 285691)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
james@jameshawkinsaplc.com
christina@jameshawkinsaplc.com
mitchell@jameshawkinsaplc.com

Attorneys for Plaintiff HOWARD MOORE,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

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

Plaintiff,

v.

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

Defendants.

Case No. CVRI2103935

[Consolidated with Case No.: CVRI2201916]

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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Date: June 26, 2024

Time: 8:30 a.m.

Dept.: Dept. 1

Trial Date: None set

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs and proposed class representatives ANTHONY GARCIA (“Plaintiff Garcia”) and HOWARD MOORE (“Plaintiff Moore”) (collectively, “Plaintiffs”) seek preliminary approval of a wage and hour class action and PAGA settlement achieved on behalf of a class of all current and former nonexempt employees of Defendant SYSCO RIVERSIDE, INC. (“Sysco Riverside”) who worked in California at any time between May 13, 2018, through September 22, 2023. Sysco Riverside’s records indicate that there are approximately 1,240 Class Members.

After engaging in substantial independent investigation, a full-day mediation before well-respected and highly experienced class action mediator Hon. William C. Pate (Ret.), and hard-fought negotiations, the Parties agreed to a non-reversionary gross settlement amount of \$2,167,719.00, exclusive of employer-side payroll taxes. The settlement is strongly supported by experienced counsel, who carefully considered the strength of the claims and potential defenses, as well as the expense, complexity, risks, and likely duration of continued litigation.

Subject to Court-approval, and after deductions for a payment to the Labor Workforce and Development Agency pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Administration Expenses Payment, Class Representative Service Payments, and a Class Counsel Fees Payment and Litigation Expenses Payment, the remaining amount will be distributed to Class Members who did not opt-out of the Settlement as follows:

Gross Settlement Amount	\$2,167,719.00
PAGA Penalties	\$13,125.00
Administration Expenses Payment	Up to \$15,000
Class Representative Service Payment	Up to \$7,500 each (\$15,000 total)
Class Counsel Fees Payment	Up to \$722,573
Class Counsel Litigation Expenses Payment	Up to \$20,000
Net Settlement Amount	At least \$1,375,021

Through this motion, Plaintiffs respectfully request that the Court enter an order: (1) provisionally certifying the Class under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to form the Court

1 Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval (“Class Notice”)
2 and ordering that the Class Notice be distributed to all Class Members; (4) appointing Plaintiff Garcia and
3 Plaintiff Moore as the Class Representatives; (5) appointing ILYM Group, Inc. as the Settlement
4 Administrator (“Administrator”); (6) appointing James Hawkins APLC and Workers Advocate Law
5 Group PC as Class Counsel; and (7) setting this matter for a hearing on the issues of final approval of the
6 proposed Settlement, approval of the Class Representative Service Payments, approval of a Class Counsel
7 Fees Payment and Class Counsel Litigation Expenses Payment, and Administration Expenses Payment.

8 **II. PROCEDURAL AND FACTUAL BACKGROUND**

9 **A. Plaintiffs’ Claims and Relevant Background**

10 From 2003 until June 2020 Plaintiff Garcia was employed by Sysco Riverside, Inc. in Riverside,
11 California. (Declaration of Samy Harmoush [“Harmoush Decl.”], ¶ 3.) At all times, he was classified as
12 a nonexempt employee and was paid on an hourly basis. (*Ibid.*) Plaintiff Garcia contends that over the
13 course of his employment, Defendants Sysco Corporation and Sysco Riverside (collectively,
14 “Defendants”) failed to pay overtime wages, failed to pay minimum wages, failed to provide lawful meal
15 periods, failed to authorize and permit rest periods, failed to comply with itemized wage statement
16 provisions, failed to reimburse necessary business expenses, failed to timely pay wages during
17 employment, failed to maintain accurate records, failed to provide sick leave, and failed to comply with
18 notice requirements.

19 On August 31, 2021, Plaintiff Garcia filed a PAGA Representative Action captioned *Anthony*
20 *Garcia v. Sysco Riverside, Inc.*, Case No. CVRI2103935 (the “Garcia Action”) against Defendants,
21 alleging: (1) civil penalties under Labor Code § 226.3; (2) civil penalties under Labor Code § 558; (3)
22 civil penalties under Labor Code § 1197.1; (4) civil penalties under Labor Code §§ 6300 et seq.; and (5)
23 civil penalties under Labor Code § 2699.

24 From October 2020 to June 2021, Plaintiff Moore was employed by Sysco Riverside in Riverside,
25 California. (Declaration of James R. Hawkins (“Hawkins Decl.”), ¶ 7.) At all times, he was classified as
26 a nonexempt employee and was paid on an hourly basis. (*Ibid.*) Plaintiff Moore contends that over the
27 course of his employment, Defendants failed to include non-discretionary bonuses and incentives in his
28 regular rate of pay for purposes of overtime, sick leave, and meal and rest period premiums, often required

1 him to perform off-the-clock work and through meal and rest periods, required him to be on-call without
2 pay, failed to timely pay wages during employment and upon separation, failed to pay reporting time pay,
3 failed to reimburse him for expenses he incurred in using his personal cellphone and vehicle for business
4 purposes, and failed to provide accurate, itemized wage statements. (*Id.*)

5 On May 13, 2022, Plaintiff Moore filed a putative wage-and-hour class action, captioned *Howard*
6 *Moore v. Sysco Riverside, Inc., et al.*, Case No. CVRI2201916 (the “Moore Action”), on behalf of himself
7 and a class of similarly situated persons who were employed by Defendants from May 13, 2018 to the
8 resolution of the matter, alleging that Defendants (1) failed to pay minimum wages; (2) failed to pay
9 overtime owed; (3) failed to provide lawful meal periods; (4) failed to authorize and permit rest periods;
10 (5) failed to timely pay wages during employment; (6) failed to timely pay all wages owed upon separation
11 from employment; (7) failed to reimburse necessary expenses; (8) knowingly and intentionally failed to
12 comply with itemized wage statement provisions; (9) failed to pay reporting time wages and (10) engaged
13 in unfair competition. (Hawkins Decl., ¶ 7.) Notice was provided to the LWDA pursuant to Labor Code
14 section 2698 et seq. (“PAGA”) the same day. (*Ibid.*)

15 On September 15, 2022, Plaintiff Moore, having provided notice to the LWDA pursuant to PAGA
16 and more than 65 days having elapsed with no response, filed a First Amended Complaint which added
17 claims for penalties pursuant to PAGA for the alleged Labor Code violations. (*Id.* ¶ 8.)

18 On September 26, 2022, Plaintiff Garcia and Plaintiff Moore stipulated to the consolidation of the
19 Moore Action, with the Garcia Action (collectively, the “Actions”). (*Id.* ¶ __.) The Garcia Action was
20 designated as the Lead Action. (*Id.* ¶ 9.)

21 **B. Investigation And Evaluation of The Claims**

22 Prior to filing the lawsuits, Class Counsel thoroughly investigated the facts and circumstances
23 underlying the potential claims. (Hawkins Decl., ¶¶ 10, 22.) This required, among other things, numerous
24 telephonic conferences with Plaintiffs, analysis of documents and other information provided by Plaintiffs,
25 investigation into the viability of class treatment of the potential claims, and research of the applicable
26 law. (Hawkins Decl., ¶ 10.) After conducting their initial investigation, Class Counsel determined that
27 Plaintiffs’ claims were well suited for class adjudication based on what appeared to be a common course
28 of conduct affecting a similarly situated group of employees. (*Id.* ¶¶ 18–20.)

After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including: (1) conducting extensive informal and formal discovery; (2) reviewing and analyzing thousands of timekeeping and payroll records, Defendants' employee handbook, Plaintiffs' personnel files, and relevant policies and procedures; (3) researching the applicable law and potential defenses; (4) interviewing Class Members regarding their experience and the claims asserted; and (5) analyzing and calculating Defendants' potential liability based on interpretations of California law. (Hawkins Decl., ¶¶ 10, 22.) After analyzing the relevant documents and data, Class Counsel determined that this case was likely suitable for resolution via mediation. (Hawkins Decl., ¶ 22.) Given the high degree of risk for both sides, the Parties elected to mediate Plaintiffs' claims and explore the possibility of settlement. (Hawkins Decl., ¶ 22.)

C. Mediation And Settlement Efforts

On September 22, 2023, the Parties participated in a full-day mediation with the Honorable William C. Pate (Ret.), a well-respected and highly experienced wage and hour class action mediator. (Hawkins Decl., ¶ 11.) During mediation, the Parties discussed all aspects of the case, including the relative strengths and weaknesses of Plaintiffs' claims, the risks and delays further litigation would present, the current state of the law as it related to Plaintiffs' claims, and the difficulty Plaintiffs would likely have in obtaining and maintaining class certification of each claim. (Hawkins Decl., ¶¶ 11–12.) Judge Pate's role in mediating this case was extremely helpful in managing the Parties' expectations and providing a useful and neutral analysis of the issues and risks to both Parties. (*Id.*, ¶¶ 11–12.) While the Parties were unable to reach an agreement at mediation, with the continued assistance of the mediator, on September 26, 2023, the Parties agreed to settle the claims asserted for the Gross Settlement Amount of \$2,167,719.00. (*Id.*, ¶¶ 11–13, 27.)

Class Counsel believes the Settlement is fair and reasonable, taking into consideration the strengths and weaknesses of the claims asserted, the amounts received in other wage and hour class actions, the risks inherent in complex litigation, and the defenses asserted. (Hawkins Decl. ¶¶ 45–46.) At all times, the Parties' negotiations were hard-fought and conducted at arm's-length between attorneys who are highly experienced in wage and hour litigation, and the Settlement is evidence of the Parties' substantial efforts to reach a mutually agreeable compromise. (Hawkins Decl., ¶¶ 12–13, 45.)

1 **III. THE TERMS OF THE PROPOSED SETTLEMENT**

2 Subject to Court approval, and pursuant to Code of Civil Procedure section 382 and California
3 Rules of Court, rule 3.769 et seq., the Parties have agreed to settle the claims in the Garcia Action and the
4 Moore Action upon the terms and conditions and for the consideration set forth in the Settlement
5 Agreement, a copy of which is attached as Exhibit 1 to the Declaration of James R. Hawkins and is
6 incorporated herein by reference in its entirety. The following is a summary of the principal terms of the
7 Settlement Agreement:

8 **A. Class Definition**

9 The Class is defined as all persons employed by Sysco Riverside as a non-exempt employee in
10 California during the Class Period. (Settlement Agreement, ¶ 1.5) The Class Period is defined as the period
11 from May 13, 2018 through September 22, 2023. (*Id.*, ¶ 1.12.) Sysco Riverside's records indicate that
12 there are approximately 1,240 Class Members. (Settlement Agreement, ¶ 4.1)

13 In addition, the Settlement Agreement defines Aggrieved Employee(s) as all persons employed by
14 Sysco Riverside as a non-exempt employee in California during the PAGA Period. (Settlement
15 Agreement, ¶ 1.4.) The PAGA Period is defined as the period from August 31, 2020 to September 22,
16 2023. (*Id.*, ¶ 1.31.) As set forth below, any Class Member who opts out of the Settlement will nonetheless
17 remain eligible for an Individual PAGA Payment and will be bound by the Released PAGA Claims. (*Id.*
18 at ¶ 7.5.4.)

19 **B. The Gross Settlement Amount and Allocation of Settlement Funds**

20 The non-reversionary Gross Settlement Amount is the \$2,167,719.00 that Defendants have agreed
21 to pay to settle the claims asserted in the Garcia Action and the Moore Action. (Settlement Agreement, ¶
22 3.1) In addition to payments to Class Members and Aggrieved Employees for their portion of the Net
23 Settlement Amount, the Gross Settlement Amount includes: (1) a Class Counsel Fees Payment of up to
24 \$722,573.00; (2) a Class Counsel Litigation Expenses Payment of up to \$20,000.00; (3) Administration
25 Expenses Payment of up to \$15,000.00; (4) Class Representative Service Payments to Plaintiffs of up to
26 \$7,500.00 each (\$15,000.00 total); and (5) PAGA Penalties in the amount of \$13,125.00 (\$9,843.75
27 allocated to the LWDA PAGA Payment and \$3,281.25 allocated to the Individual PAGA Payments). (*Id.*,
28 ¶¶ 3.2.1–3, 3.2.5.) In addition, Defendants will separately pay the applicable employer-side payroll taxes

1 owed on the wage portions of the Individual Class Payments. (*Id.*, ¶ 3.1.)

2 **C. Net Funds Available to Class Members**

3 After all Court-approved deductions from the Gross Settlement Amount, Class Counsel estimates
4 that at least \$1,375,021.00 (“Net Settlement Amount”) will be distributed to Class Members. The Net
5 Settlement Amount will be distributed on a pro rata basis based on the number of workweeks a Class
6 Member worked for Sysco Riverside for at least one day during the Class Period. (Settlement Agreement,
7 ¶¶ 1.45, 3.2.4.) Class Members will be provided with the Class Notice, their estimated Individual Class
8 Payment and Individual PAGA Payment, the number of Workweeks and PAGA Pay Periods (if
9 applicable), and their right to opt-out of or object to the class portion of the settlement, and their right to
10 appear at the fairness hearing. (*Id.*, ¶¶ 7.4.2, Ex. A.)

11 **D. Release**

12 Participating Class Members will release the Released Parties from (i) all claims that were alleged,
13 or reasonably could have been alleged, based on the Class Period facts stated in the Garcia Action and the
14 Moore Action and ascertained in the course of the Actions, including but not limited to failure to pay
15 wages including minimum wages and overtime, failure to pay on-call pay, failure to pay reporting time
16 pay, failure to provide meal and rest periods, failure to timely pay wages, waiting time penalties, failure
17 to provide accurate itemized wage statements, failure to reimburse necessary business expenses, unfair
18 competition based on these claims, and other associated penalties. Participating Class Members, other
19 than the Class Representatives, do not release any other claims, including claims for vested benefits,
20 wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,
21 disability, social security, workers' compensation, or claims based on facts occurring outside the Class
22 Period. (Settlement Agreement, ¶ 5.2.).

23 In addition, all non-Participating Class Members and Participating Class Members who are
24 Aggrieved Employees will release the Released Parties from all claims for PAGA Penalties that were
25 alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Garcia
26 Action and the Moore Action, the PAGA Notices, and ascertained in the course of the Actions. The release
27 shall apply to claims arising during the PAGA Period. (Settlement Agreement, ¶ 5.3.).

28 In addition to the release given by each Participating Class Member and Aggrieved Employee, and

1 in exchange for the proposed Class Representative Service Payments, Plaintiffs and their respective
2 former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and
3 assigns generally, release and discharge the Released Parties from: (a) all claims that were, or reasonably
4 could have been, alleged, based on the facts contained, in the Garcia Action and the Moore Action and (b)
5 all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Garcia
6 Action and the Moore Action, Plaintiffs' PAGA notices, or ascertained during the Actions and released
7 as a Participating Class Member. Plaintiffs' Release does not extend to any claims or actions to enforce
8 this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social
9 security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside
10 the Class Period. (Settlement Agreement, ¶ 5.1.) Plaintiffs also agreed to waive any rights under California
11 Civil Code § 1542. (Settlement Agreement, ¶ 5.1.1.)

12 **E. Class Notice and Settlement Administration**

13 Subject to Court approval, the Parties agreed to retain ILYM Group, Inc. as the Administrator,
14 who will be responsible for establishing a Qualified Settlement Fund; mailing the Class Notice to Class
15 Members; establishing and maintaining a settlement website to post information of interest to Class
16 Members; maintaining and monitoring an email address and toll-free telephone number to receive Class
17 Member calls, faxes, and emails; processing requests for exclusion, objections, and challenges to
18 workweek and pay periods; calculating Individual Class Payments and Individual PAGA Payments;
19 distributing all Court-approved payments under the Settlement; issuing a final report on the disbursement
20 of funds; and performing such other duties as the Parties may direct. (Settlement Agreement, ¶¶ 7.8-7.8.6.)
21 Additionally, the Administrator will handle all tax document preparation and reporting. (*Id.*, ¶ 7.2).

22 On a weekly basis, the Administrator will provide written reports to Class Counsel and Defense
23 Counsel that, among other things, tally the number of Class Notices mailed or re-mailed, Class Notices
24 returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received,
25 challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual
26 Class Payments and Individual PAGA Payments ("Weekly Report"). (Settlement Agreement, ¶ 7.8.3.)
27 Not later than five (5) calendar days after the expiration of the deadline for submitting Requests for
28 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing: (a) the

names and other identifying information of Class Members who have timely submitted valid Request for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid). (*Id.* ¶ 7.8.2.)

The Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. (Settlement Agreement, ¶ 7.4.2.) Class Members may challenge the number of Workweeks and PAGA Pay Periods allocated to the Class Member in the Class Notice by contacting the Administrator no later than sixty (60) calendar days after being mailed the Class Notice. (*Id.*, ¶ 7.6.) The administrator must encourage the challenging Class Member to submit supporting documentation. (*Ibid.*) In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. (*Ibid.*) The Administrator’s determination of each Class Member’s allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. (*Ibid.*) The Administrator shall promptly provide copies of all challenges to the calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel, along with the Administrator’s determination of the challenges. (*Ibid.*)

F. Notice Process

Class Members who wish to exclude themselves (opt-out of) from the Settlement must send the Administrator, by fax, email or mail, a signed written Request for Exclusion not later than sixty (60) calendar days after the Administrator mails the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed) (the “Response Deadline”). (Settlement Agreement, ¶ 7.5.1.) A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member’s election to be excluded from the Settlement and includes the Class Member’s name, address and email address or telephone number. (*Ibid.*) To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. (*Ibid.*) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member and will be entitled to all benefits and bound by all terms and conditions of the Settlement.

(*Id.* ¶ 7.5.3.) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and will not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. (*Id.* ¶ 7.5.4.) Non-Participating Class Members who are Aggrieved Employees will nonetheless be entitled to an Individual PAGA Payment and will be bound by the Released PAGA Claims. (*Ibid.*)

Participating Class Members may send written objections to the Administrator by fax, email, or mail. (Settlement Agreement, ¶ 7.7.2.) In the alternative, Participating Class Members may appear in Court (or retain an attorney to appear on their behalf) to present verbal objections at the Final Approval Hearing. (*Ibid.*) A Participating Class Member who elects to send a written objection to the Administrator must do so not later than sixty (60) calendar days after the Administrator's mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice was re-mailed). (*Ibid.*)

Within ten (10) calendar days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under the Settlement. (Settlement Agreement, ¶ 7.8.6.) At least fifteen (15) calendar days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursements of all payments required under the Settlement. Class Counsel is responsible for filing the Administrator's declaration in Court. (*Ibid.*) Any funds associated with checks that have not been cashed within 180 calendar days, will become void and the payment associated with the uncashed check will be distributed to the California Controller's Unclaimed Property Fund in the name of each Class Member or Aggrieved Employee, pursuant to Code of Civil Procedure section 384. (*Id.*, ¶ 4.4.3.)

G. Tax Treatment of Individual Payments

Under the terms of the Settlement, 20% of each Participating Class Member's Individual Class Payment will be allocated to the settlement of wage claims and will be subject to tax withholding and reported on an IRS Form W-2. (Settlement Agreement, ¶ 3.2.4.1.) The remaining 80% of each Participating Class Member's Individual Class Payment shall constitute interest and penalties, and each Participating Class Member will be issued an IRS Form 1099 for such payment. (*Ibid.*) Individual PAGA

1 Payments will be treated as penalties for tax purposes, and if applicable, the Administrator will issue each
2 recipient an IRS Form 1099. (*Ibid.*)

3 **IV. PROVISIONAL CERTIFICATION IS APPROPRIATE**

4 Courts have generally found that class action suits are appropriate “when the question is one of a
5 common or general interest . . . or when the parties are numerous, and it is impracticable to bring them all
6 before the court.” (Code Civ. Proc. § 382; see *Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469–
7 475.) In order to sustain a class action, two requirements must be met: (1) there must be an ascertainable
8 class; and (2) there must be a “well-defined community of interest in the questions of law and fact involved
9 affecting the Parties to be represented.” (*Daar v. Yellow Cab. Co.* (1967) 67 Cal.2d 695, 704.)

10 To ensure efficient use of judicial resources, California law and policy favor the fullest and most
11 flexible use of the class action device. (*Richmond, supra*, 29 Cal. 3d at pp. 469–475.) Indeed, courts have
12 acknowledged “the importance of class actions as a means to prevent a failure of justice in our judicial
13 system” particularly where the rights of numerous “small claimants” are at issue. (See *Linder v. Thrifty*
14 *Oil Co.* (2000) 23 Cal.4th 429, 434–435, 445.) Any doubt as to the appropriateness of class treatment
15 should be resolved in favor of certification. (*Richmond, supra*, 29 Cal.3d at pp. 473–475.)

16 **A. There Is a Numerous and Ascertainable Class**

17 Numerosity is met if a proposed class is so large that joinder of all members would be
18 impracticable. (See Code Civ. Proc. § 382.) Whether a class is ascertainable is determined by examining
19 the class definition, the size of the class and the reasonable means available for identifying members of
20 the class. (See *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.)
21 Class members are “ascertainable” where they may be readily identified without unreasonable expense or
22 time. (*Id.* at p. 1275 [citing *Hypolite v. Carleson* (1975) 52 Cal.App.3d 566, 578–579].)

23 Plaintiffs contend, and Defendants do not dispute, that for settlement purposes only, there is a
24 numerous and ascertainable class. Class Members are all current and former nonexempt employees of
25 Sysco Riverside, Inc. who worked in California at any time during the Class Period. (*Id.*, ¶ 1.5.)
26 Documents and information exchanged between the Parties reflect a class of approximately 1,240 Class
27 Members. (Hawkins Decl., ¶ 18.) Moreover, Class Members have already been identified by reference to
28 Defendants’ payroll and personnel records. (Hawkins Decl., ¶ 60.) Because joinder of more than 1,200

employees would be impracticable, and Class Members can readily be determined by Defendants’ personnel records, there is a numerous and ascertainable class that is suitable for provisional certification.

B. There Is a Well-Defined Community of Interest

As a general rule, a community of interest is established where (1) there are predominant common questions of law or fact; (2) the named plaintiff has “claims or defenses typical of the class”; and (3) the named plaintiff is able to adequately represent the class. (See *Dunk v. Ford Motor. Co.* (1996) 48 Cal.App.4th 1794, 1806.)

1. Common Questions of Law and Fact Exist

Whether a class action is the appropriate mechanism will depend largely upon “whether the common questions are sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits.” (*Richmond, supra*, 29 Cal.3d at pp. 477–478.) In determining whether common questions of law and fact exist, courts generally look at the allegations in the complaint, as well as the declarations of class counsel. (*Id.* at p. 478.) The primary purpose of this inquiry is to ascertain whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (See, e.g., *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612; *Lazar v. Hertz Corp.* (1983) 143 Cal.App.3d 128, 138–139; *Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 142.) Simply because class members must prove their own damages does not mean that individual questions predominate. (*Clothesrigger, Inc., supra*, 191 Cal.App.3d at p. 617.)

Common questions of law and fact exist among Class Members in this case. The Moore Action alleges causes of action for: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide lawful meal periods; (4) failure to provide lawful rest periods; (5) failure to timely pay all wages during employment; (6) failure to timely pay wages owed upon separation of employment; (7) failure to reimburse necessary expenses; (8) failure to furnish accurate itemized wage statements; (9) failure to maintain accurate employment records; (10) violation of the unfair competition law; and (11) civil penalties pursuant to PAGA. (Hawkins Decl., ¶¶ 55, 56.) Thus, at minimum, some of the common questions of law and fact that affect the Class are: (i) whether Class Members were required to perform pre and post shift activities “off-the-clock”; (ii) whether Defendants failed to pay “on-call” or “stand by” time; (iii) whether Defendants failed to reimburse Class Members for necessary business expenses

1 including cell phones and mileage; (iv) whether Defendants failed to pay reporting time; (v) whether
2 Defendants failed to provide compliant meal and rest periods including whether Class Members were
3 subject to the short-haul driver exemption; (vi) whether Defendants provided accurate itemized wage
4 statements; (vii) whether Defendants timely paid all wages at the time of termination; and (viii) whether
5 Defendants' policies and practices constitute unfair business practices for purposes of Business and
6 Professions Code section 17200 et seq.

7 Here, the required commonality element is satisfied because there are questions of law and fact
8 common to Plaintiffs and the Class, and those questions predominate over any such questions affecting
9 only Plaintiffs or individual Class Members. As such, the underlying claims are sufficiently cohesive to
10 warrant adjudication by representation. (See *Clothesrigger, Inc.*, *supra*, 191 Cal.App.3d at p. 612.)

11 **2. Plaintiffs' Claims Are Typical of Class Members' Claims**

12 The typicality requirement for purposes of class certification focuses on the typicality of the named
13 Plaintiffs' claims as they relate to the defendants' policies and practices. (See *Medrazo v. Honda of North*
14 *Hollywood* (2008) 166 Cal.App.4th 89, 99 [typicality met where plaintiff alleged that defendant subjected
15 her to the same unlawful conduct that other putative class members were subjected to].) Indeed, the mere
16 fact that a defendant may raise defenses against some members of the class does not negate the typicality
17 of the plaintiff's claims. (*Ibid.*)

18 Here, Plaintiffs' claims are typical of the claims of the Class. As detailed in the Garcia Action and
19 the Moore Action, Class Members were all subject to the same policies and practices while working for
20 Defendants, including the company's payroll and timekeeping policies, its meal and rest period policies,
21 and its failure to reimburse employees for expenses incurred in using their personal cellphones for business
22 purposes. (Hawkins Decl., ¶ 57.) As such, all sustained the same or similar damages resulting from
23 Defendants' alleged violations of California wage-and-hour laws, including unpaid regular, minimum and
24 overtime wages, noncompliant meal and rest periods, inaccurate wage statements, and unreimbursed
25 business expenses. (*Ibid.*) Because each Class Member would be required to demonstrate the same
26 elements in order to recover on their claims against Defendants, Class Members' interests are sufficiently
27 aligned with Plaintiffs' so as to meet the typicality requirement. (See *Medrazo*, *supra*, 166 Cal.App.4th at
28 p. 99.)

1 **3. Plaintiffs And Class Counsel Have and Will Continue to Adequately Represent**
2 **The Class**

3 A class representative is an adequate representative of the class so long as his or her interests are
4 not antagonistic or in conflict with the objectives that he or she purports to represent. (*Richmond, supra*,
5 29 Cal.3d at p. 470.) Additionally, Class Counsel “must be qualified, experienced and generally able to
6 conduct the proposed litigation.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.) Here, Plaintiffs
7 meet both of the requirements necessary to adequately represent the Class.

8 First, Plaintiffs’ interests are not antagonistic to the interests of the Class. As previously explained,
9 Plaintiffs allege that Class Members were all subject to the same unlawful policies and practices by
10 Defendants, and thus suffered identical harm. Consequently, Plaintiffs seek the same relief sought by
11 every other member of the Class. (See *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 625–26
12 [“[A] class representative must be part of the class and possess the same interest and suffer the same injury
13 as the class members.”].) For more than two years, Plaintiffs have vigorously prosecuted this case on
14 behalf of the other Class Members.¹ (Hawkins Decl., ¶ 58.) They spent numerous hours reviewing
15 documents, meeting, and corresponding with Class Counsel, answering questions regarding their
16 experiences while working for Sysco Riverside, Inc., and evaluating settlement options. (Hawkins Decl.,
17 ¶¶ 54, 66.)

18 In addition, Plaintiffs have retained counsel with extensive experience prosecuting complex wage
19 and hour class actions, who have worked diligently to obtain the Settlement on behalf of the Class.
20 (Hawkins Decl., ¶¶ 58, 63.) Class Counsel thoroughly investigated the claims raised in these Actions, the
21 underlying case law, the merits of Defendants’ defenses, and meticulously reviewed the information and
22 documents exchanged prior to attending mediation. (Hawkins Decl., ¶¶ 10, 22.) Thus, Class Counsel was
23 sufficiently informed prior to engaging in settlement negotiations. (*Ibid.*) Moreover, the Settlement before
24 the Court is the result of arm’s-length, non-collusive, and informed negotiations that were overseen by a
25 highly experienced mediator, Hon. William C. Pate (Ret.). (Hawkins Decl., ¶¶ 13.) Over the course of this
26 litigation, Plaintiffs and Class Counsel have adequately represented the interests of the Class and will
27

28 ¹ Plaintiffs will provide declarations detailing the work they performed in bringing and prosecuting this
case with their final approval motion.

1 continue to do so.

2 **V. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT, WHICH IS**
3 **FAIR, ADEQUATE, AND REASONABLE**

4 **A. The Proposed Settlement Meets the Standards for Preliminary Approval**

5 California Rules of Court, rule 3.769 requires court approval for class action settlements. “Before
6 final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. R.
7 Ct. 3.769(g).) Courts act within their discretion in approving settlements that are fair, not collusive, and
8 take into account “all the normal perils of litigation as well as the additional uncertainties inherent in
9 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, *cert.*
10 *den. sub nom. Iowa Beef Processors. Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

11 The purpose of the preliminary evaluation of class action settlements is to determine only whether
12 the proposed settlement is within the range of reasonableness, and, therefore, whether notice to the class
13 and the scheduling of a formal fairness hearing are warranted. (*Wershba v. Apple Computer. Inc.* (2001)
14 91 Cal.App.4th 224, 234–235; Newberg on Class Actions (4th Ed.) §11:25.) Courts have broad powers to
15 determine whether a proposed settlement is fair under the circumstances of the case. (*Wershba, supra*, 91
16 Cal.App.4th at 234–235; *Mallick v. Superior Court* (1979) 89 Cal.App.3d 434, 438.) In determining
17 whether a settlement meets the standards for preliminary approval, courts must consider several relevant
18 factors, including “the strength of the Plaintiff’s case, the risk, expense, complexity and likely duration of
19 further litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
20 the extent of discovery completed and the stage of the proceedings, [and] the experience and views of
21 counsel” (*Dunk, supra*, 48 Cal.App.4th at 1801.) “The list of factors is not exclusive, and the court
22 is free to engage in a balancing and weighing, of the factors depending on the circumstances of each case.”
23 (*Wershba, supra*, 91 Cal.App.4th at 245.) Furthermore, courts must give “proper deference to the private
24 consensual decision of the parties” because “the court’s intrusion upon what is otherwise a private
25 consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary
26 to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion
27 between the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate
28 to all concerned.” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027.)

1 At the preliminary approval stage, the Court need only determine that the settlement falls within
2 the “range of possible judicial approval,” so that notice to the class and the scheduling of the fairness
3 hearing are worthwhile. (See Newberg § 11:25.) Indeed, the Court should grant preliminary approval if
4 there are no “grounds to doubt its fairness or other obvious deficiencies . . . and [the settlement] appears
5 to fall within the range of possible approval.” (Manual For Complex Litigation (Third) § 30.41 (1995);
6 see *Dunk, supra*, 48 Cal.App.4th at p. 1802.) A “presumption of fairness exists where: (1) the settlement
7 is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel
8 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
9 objectors is small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802 [citing Newberg § 11:41].)

10 As shown below, the proposed Settlement in this case falls well within the range of possible
11 approval and there are no grounds to doubt its fairness.

12 **1. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations**
13 **Overseen By A Highly Experienced Mediator**

14 The proposed Settlement was reached as a result of arm’s-length negotiations facilitated by an
15 experienced mediator following significant investigation of the facts and law during and in preparation
16 for mediation. (Hawkins Decl., ¶¶ 10–13.) The settlement negotiations have been, at all times, adversarial
17 and non-collusive in nature. Indeed, continued good-faith but occasionally contentious negotiations were
18 required to ultimately reach an agreement following a successful full-day mediation with respected
19 mediator, Judge Pate. While Plaintiffs believe in the merits of their case, they also recognize the inherent
20 risks of litigation and understand the benefit of the Class receiving settlement funds immediately as
21 opposed to delaying payment or risking an unfavorable decision on summary adjudication, motion for
22 class certification, at trial or on appeal, all of which have the potential to eliminate any relief for Class
23 Members. (Hawkins Decl., ¶¶ 45–46.)

24 **2. The Extent of The Information Provided Through Discovery and The Stage**
25 **Of The Proceedings Support The Settlement**

26 There is a presumption that a proposed settlement is fair and reasonable when there has been
27 sufficient investigation and discovery to permit counsel and the court to act intelligently, and counsel are
28 experienced in similar litigation. (*Dunk, supra*, 48 Cal.App.4th at 1802.)

1 Here, the Parties thoroughly investigated and evaluated the factual and legal strengths and
2 weaknesses of this case before reaching the Settlement. (Hawkins Decl., ¶¶ 20–26.) As described above,
3 the Settlement was reached only after extensive investigation and research, thorough calculations and risk
4 evaluation, and a thorough evaluation of timekeeping and payroll data. (Hawkins Decl., ¶ 26.) Plaintiffs
5 retained an expert to evaluate the data and to provide calculations regarding Defendants’ potential
6 exposure. (*Id.*, ¶ 25.) Counsel for the Parties have investigated the law as applied to the facts regarding
7 the claims asserted and potential defenses thereto. (Hawkins Decl., ¶ 20.)

8 The proposed Settlement came only after the case was fully investigated by experienced counsel.
9 (Hawkins Decl., ¶¶ 22.) This litigation, therefore, had reached the stage where the parties had a clear view
10 of the strengths and weaknesses of their cases, sufficient to support the Settlement. (See *Boyd v. Bechtel*
11 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

12 3. Class Counsel Is Experienced in Similar Litigation

13 Experienced counsel, operating at arm’s-length and having weighed the strengths of the case and
14 examined all of the issues and risks of litigation, endorse the proposed settlement. The view of the
15 attorneys actively conducting the litigation is entitled to significant weight in deciding whether to approve
16 a settlement. (*Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18, *affd.* (9th Cir. 1981)
17 661 F.2d 939.) -

18 Throughout this litigation, Class Members have been represented by well-qualified counsel who
19 have years of experience in wage and hour class action litigation. (Hawkins Decl., ¶¶ 45, 63; Harmoush
20 Decl. ¶ 41) In total, Class Counsel have litigated hundreds of complex class and representative actions.
21 (*Ibid.*) In short, Class Counsel are experienced and qualified to evaluate the class claims, to evaluate the
22 benefits of settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses
23 asserted. (Hawkins Decl., ¶¶ 45.) Counsel on both sides share the view – endorsed by an experienced
24 mediator – that this is a fair and reasonable settlement in light of the complexities of the case, the state of
25 the law and uncertainties of litigation and trial, and the benefit the Settlement confers on the Class.
26 (Hawkins Decl., ¶¶ 59-63). Given the risks inherent in litigation, in class certification proceedings, and in
27 the defenses asserted, this Settlement is fair, adequate, and reasonable and in the best interests of the class.
28 (*Id.*; Hawkins Decl., ¶¶ 45–47.)

1 **4. The Settlement Is Fair and Reasonable Based on The Strengths Of Plaintiffs’**
2 **Case And the Risks and Costs Of Further Litigation**

3 Plaintiffs and their counsel have concluded it was reasonable to enter into the proposed Settlement.
4 Defendants have contested and continue to contest liability for the claims asserted in these Actions.
5 (Hawkins Decl., ¶ 60.) Although Defendants believe it is unlikely that Plaintiffs would succeed on the
6 merits of their claims, Defendants nonetheless agreed to resolve these Actions through settlement to avoid
7 the expense, distraction, and uncertainty of protracted litigation. (Ibid.).

8 There are significant legal uncertainties associated with cases such as this, as they can be factually
9 complex and require protracted litigation to resolve. (Hawkins Decl., ¶ 46.) A settlement is not judged
10 solely against what might have been recovered had Plaintiffs prevailed at trial, nor does the settlement
11 have to provide 100 percent of the damages sought to be fair and reasonable. (*Linney v. Cellular Alaska*
12 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242; *Wershba, supra*, 91 Cal.App.4th at pp. 246, 250; *Rebney*
13 *v. Wells Fargo Bank* (1990) 220 Cal.App. 3d 1117, 1139.) Instead, “[c]ompromise is inherent and
14 necessary in the settlement process . . . even if the relief afforded by the proposed settlement is
15 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
16 settlement because the public interest may indeed be served by a voluntary settlement in which each side
17 gives ground in the interest of avoiding litigation.” (*Wershba, supra*, 91 Cal.App.4th at p. 250.)

18 Based on information obtained through formal and informal discovery, Class Counsel were able
19 to assess the strengths and weaknesses of the claims and the benefits of an early settlement. (Hawkins
20 Decl., ¶¶ 12, 22.) As a result, Class Counsel believes that the Settlement before the Court represents a very
21 favorable resolution for the Class. (Hawkins Decl., ¶¶ 14, 23.)

22 **5. The Proposed Settlement Is a Reasonable Compromise of Claims**

23 a. *The Settlement Provides Relief to Class Members in Light of the Significant*
24 *Risks and Expense of Further Litigation*

25 To evaluate a settlement, the trial court must receive “basic information about the nature and
26 magnitude of the claims in question and the basis for concluding that the consideration being paid for the
27 release of those claims represents a reasonable compromise.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
28 168 Cal.App.4th 116, 133.) The record need not contain an explicit statement of the maximum theoretical

1 recovery, but rather evidence sufficient to allow “an understanding of the amount that is in controversy
2 and the realistic ranges of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los*
3 *Angeles* (2010) 186 Cal.App.4th 399, 409 [citing *Kullar, supra*, 168 Cal.App.4th at p. 120].)

4 Here, the Settlement results in a significant benefit to Class Members and the Gross Settlement
5 Amount of \$2,167,719.00 is a good result by any measure. (Hawkins Decl., ¶ 46.) In reaching this
6 Settlement, Class Counsel carefully considered the strength of the case versus the amount offered in
7 settlement; the risk, expense, complexity, and likely duration of further litigation and maintaining class
8 certification through trial; the present state of the law as it applies to wage and hour class actions; and the
9 burdens of proof necessary to establish liability against Defendants. (*Id.*, ¶¶ 45–47.)

10 Although Plaintiffs maintain all claims are meritorious and believe they would have prevailed had
11 they taken their case to trial, they also acknowledge that Defendants have legitimate defenses to liability,
12 class certification, and manageability. (Hawkins Decl., ¶ 20.) Defendants have consistently denied all
13 material allegations in the complaint, that they violated any applicable laws, that they are liable for
14 damages, penalties, interest, restitution, attorneys’ fees, or for any other remedy on account of the claims
15 asserted, and that class certification or representative treatment is appropriate as to any claim. (*Id.*, ¶¶ 46–
16 47; see also Settlement Agreement, ¶¶ 2.1, 12.1.) Such considerations pose a substantial obstacle for
17 Plaintiffs to maintain their claims, as well as establishing the full amount of Plaintiffs’ estimated damages
18 and civil penalties for such claims at trial. (Hawkins Decl., ¶ 47.)

19 Under the terms of the Settlement, each Class Member will be entitled to receive a pro rata portion
20 of the Net Settlement Amount available for distribution based upon his or her respective number of
21 workweeks worked during the Class Period. (Settlement Agreement, ¶ 3.2.4.) This means that Class
22 Members who worked a greater number of workweeks during the Class Period will receive a larger portion
23 of the Settlement. (Hawkins Decl., ¶ 58.) All Class Members are therefore treated equitably and fairly,
24 and no Class Member is granted improper preferential treatment, as distribution of the Net Settlement
25 Amount takes into consideration the length of employment for each Class Member and the respective
26 number of violations, he or she would have suffered during the Class Period. (*Ibid*)

27 b. *The Amount Offered in Settlement Given the Estimated Value of the Claims*
28 *Favors Preliminary Approval of the Settlement*

1 As set forth in the accompanying Declaration of James R. Hawkins, Class Counsel estimated
2 Defendants' maximum-possible exposure to be approximately \$20,463,755. This estimate assumed that
3 class certification would be granted, and that Plaintiffs would prevail on all claims at trial, as well as
4 recover the full amount of the estimated damages and the maximum amount of civil penalties. (*Id.*)
5 Accordingly, the estimated value of the class claims is premised on a likely inflated "everything goes
6 right" scenario. (*Id.*)

7 With more than 1,200 Class Members holding various non-exempt positions throughout the state,
8 class certification is by no means a certainty. (Hawkins Decl., ¶¶ 50–51.) As such, for purposes of
9 settlement, Class Counsel assumes a reasonable discount on the merits to account for the possibility that
10 Plaintiffs will not prevail on all claims and the potential for a reduction in any PAGA Penalties awarded.
11 (*Ibid.*) Accordingly, Class Counsel believes a more realistic valuation of the claims in this case after
12 incorporating discounts to be approximately \$5,383,559. (Hawkins Decl., ¶¶ 41-47.)

13 While the \$2,167,719.00 Gross Settlement Amount represents a significant discount on Plaintiffs'
14 estimate of Defendants' potential exposure in this matter, the reduction represents an extremely reasonable
15 compromise considering the substantial risks that Plaintiffs and Class Members faced in this litigation.
16 (Hawkins Decl., ¶¶ 50, 53.) As explained above, Defendants have legitimate defenses to class certification,
17 manageability, and the merits of the underlying claims. (*Id.*, ¶ 53.) In negotiating the Settlement before
18 the Court, Class Counsel considered the likelihood of obtaining and maintaining class certification of
19 Plaintiffs' claims through trial and obtaining 100 percent of the damages sought. (*Id.*, ¶ 20.) Moreover,
20 Plaintiffs considered the significant risk that the Court may deny class certification or reverse a favorable
21 ruling on the merits on appeal – risks that are obviated by the Settlement. (*Id.*, ¶ 46.) In addition, continued
22 litigation would likely be extremely expensive, reducing and substantially delaying any recovery by Class
23 Members. (*Ibid.*) In contrast, the proposed Settlement will guarantee that Class Members receive timely
24 relief and avoid the risk of an unfavorable judgment. (*Ibid.*)

25 Finally, as it relates to the imposition of any penalties under PAGA, there was a very real risk that
26 the Court would exercise its discretion and reduce the award because it was unjust, arbitrary, or
27 confiscatory. (*Id.*, ¶ 49) This is particularly true because throughout the Class Period and PAGA Period,
28 Defendants contends it maintained facially lawful written policies regarding many of the claims asserted.

1 (*Id.*, ¶ 51.)

2 **B. The PAGA Settlement Should Be Approved**

3 Where a settlement includes a good faith amount for PAGA penalties and “there is no indication
4 that this amount was the result of self-interest at the expense of other” class members, such amounts are
5 generally considered reasonable. (*Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3, 2009) 2009 WL 928133
6 at *1, *9.) Courts routinely approve settlements where only a small portion of the gross settlement amount
7 is allocated to PAGA penalties. (See *Nordstrom Commission Cases* (2010) 186 Cal.App.4th 576
8 [approving a settlement where no portion was allocated to PAGA penalties; *Jack v. Hartford Fire Ins. Co.*
9 (S.D. Cal. Oct. 13, 2011) 2011 WL 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v.*
10 *Fed. Express Corp.* (C.D. Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts
11 approve PAGA claim settlements in the range of zero to two percent of the total settlement].) Here, the
12 Parties negotiated a good faith settlement amount of \$13,125.00, 75% percent of which (\$9,843.75) will
13 be paid to the LWDA, with the remaining 25% (\$3,281.25) to be distributed to the Aggrieved Employees.
14 (Settlement Agreement at ¶ 3.2.5.) The \$13,125.00 allocated to PAGA Penalties equates to approximately
15 0.6% of the Gross Settlement Amount, which is within the range of percentages approved by courts in this
16 state. The settlement of the claim for penalties under PAGA is reasonable because it was negotiated in
17 good faith and was not the result of self-interest at the expense of any Class Member. (Hawkins Decl., ¶
18 22.)

19 Had a higher amount been allocated to the PAGA claim, the burden of paying civil penalties would
20 have effectively shifted to the Aggrieved Employees as it would reduce the amount that they ultimately
21 receive under the Settlement. Although this burden shifting may achieve the enforcement objective of the
22 PAGA statute, it would do so at the expense of the same employees that the statute was designed to protect.
23 Accordingly, the proposed \$13,125.00 allocation to PAGA Penalties strikes a balance between the interest
24 of all Parties, including the LWDA and the general public, by penalizing the employer and providing relief
25 to the Aggrieved Employees. As such, Plaintiffs respectfully request that the Court approve the allocation
26 of \$13,125.00 to PAGA Penalties.

27 **C. The Class Representative Service Payments Are Fair and Reasonable**

28 Courts routinely approve class representative payments to compensate named plaintiffs for the

1 services they provide and the risks they incur during the course of class litigation. The factors courts use
2 in determining the amount of an award include: (1) a comparison between the service awards and the
3 range of monetary recovery available to the class; (2) time and effort put into the litigation; (3) whether
4 the litigation will further the public policy underlying the statutory scheme; and (4) the risk of retaliation.
5 (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804–807.)

6 By being the named Class Representatives in these Actions, Plaintiffs put their names forward on
7 the public record at the risk of potential employers choosing not to hire them. (Hawkins Decl., ¶ 54;
8 Harmoush Decl. ¶ 5). Plaintiffs also ran the risk of being liable for Defendants’ attorneys’ fees and costs
9 as a result of the fee shifting provisions of the Labor Code. (See, e.g., Labor Code § 218.5.) Over the
10 course of this litigation, Plaintiffs spent a significant amount of time reviewing documents,
11 communicating with counsel, assisting with the preparation of the complaint and witness questionnaire,
12 identifying potential witnesses, and helping Class Counsel prepare for mediation. (Hawkins Decl., ¶ 54.)
13 As part of the proposed Settlement, Plaintiffs have also agreed to a full and general release of any and all
14 claims to the furthest extent permitted by law. (Settlement Agreement, ¶¶ 5.1–5.1.1.) The proposed Class
15 Representative Service Payment in the amount of \$7,500 each (\$15,000 total) to Plaintiffs is fair and
16 reasonable given the risk they took and the work they bore for the benefit of the Class. (Hawkins Decl., ¶
17 54.)

18 **D. The Requested Class Counsel Fees Payment and Class Counsel Litigation Expenses**
19 **Payment Are Fair and Reasonable**

20 The California Supreme Court has unanimously held “that when class action litigation establishes
21 a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards
22 class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing
23 an appropriate percentage of the fund created.” (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th
24 480, 503.) The Court further held that although trial courts have discretion to use a lodestar multiplier
25 cross-check or to forego a lodestar multiplier cross-check if some other means to evaluate the
26 reasonableness of a requested fee percentage exists, “the percentage method is a valuable tool that should
27 not be denied our trial court.” (*Id.* at pp. 503–506.) California courts have awarded common fund fees
28 calculated using a percentage-of-fund method that is not dependent on counsel’s lodestar amount. (Pearl,

1 *California Attorney Fee Awards* (CEB 3d Ed. 2010) § 5.19 [citing *In re Sutter Health Uninsured Pricing*
2 *Cases* (2009) 171 Cal.App.4th 495, 512]; *Bell, supra*, 115 Cal.App.4th at p. 726; *Apple Computer, Inc. v.*
3 *Superior Ct.* (2005) 126 Cal.App.4th 1253, 1270.)

4 Here, the Settlement provides that Class Counsel may seek a Class Counsel Fees Payment of up
5 to \$722,573.00 (one-third of the Gross Settlement Amount), in addition to a Class Counsel Litigation
6 Expenses Payment in an amount not to exceed \$20,000. (Settlement Agreement, ¶¶ 3.2.2.) As
7 demonstrated in the Declaration of James R. Hawkins, Class Counsel performed a significant amount of
8 work litigating these Actions, including performing extensive legal and factual research, which counsel
9 used to measure the relative strengths and weaknesses of Plaintiffs' claims to better identify an appropriate
10 range of settlement figures. (Hawkins Decl., ¶¶ 20–26.) Class Counsel committed, and continue to
11 commit, significant financial and staffing resources to this case, diverted many of their resources in order
12 to contend with Defendants' vigorous defense, and undertook these Actions on a contingency basis,
13 thereby bearing all the costs of this complex, risky, expensive, and time-consuming litigation. (Hawkins
14 Decl., ¶¶ 64–67.) The requested Class Counsel Fees Payment and Class Counsel Litigation Expenses
15 Payment are fair and reasonable and should be preliminarily approved.

16 **V. THE COURT SHOULD SCHEDULE A FINAL APPROVAL HEARING**

17 The final step in the settlement approval process is a final approval hearing, at which time the
18 Court may hear all evidence and arguments necessary to conclusively evaluate the proposed Settlement.
19 Should the Court grant Plaintiffs' motion for preliminary approval, Plaintiffs request that a hearing on the
20 issues of final approval of the Settlement, approval of the Class Representative Service Payment to
21 Plaintiffs, approval of the Class Counsel Fees Payment and the Class Counsel Litigation Expenses
22 Payment, and approval of the Administration Expenses Payment be scheduled approximately 120 calendar
23 days after preliminary approval.

24 **VI. CONCLUSION**

25 Plaintiffs respectfully request that this Court enter an Order: (1) provisionally certifying the Class
26 under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for settlement purposes;
27 (2) preliminarily approving the Settlement; (3) approving as to form the Class Notice and ordering that
28 the Class Notice be distributed to all Class Members; (4) appointing Plaintiff Garcia and Plaintiff Moore

1 as the Class Representatives; (5) appointing ILYM Group, Inc. as the Administrator; (6) appointing James
2 Hawkins APLC and Workers Advocate Law Group PC as Class Counsel; and (7) setting this matter for a
3 hearing on the issues of final approval of the proposed Settlement, approval of the Class Representative
4 Service Payments, approval of the Class Counsel Fees Payment and a Class Counsel Litigation Expenses
5 Payment, and approval of the Administration Expenses Payment.

6 Dated: May 29, 2024

Workers Advocate Law Group PC

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8
9 By: /s/ Samy M. Harmoush
10 Samy M. Harmoush
Attorney for Plaintiff Anthony Garcia

11 Dated: May 29, 2024

JAMES HAWKINS APLC

12
13 By: 
14 James R. Hawkins
15 Christina M. Lucio
16 Mitchell J. Murray
Attorneys for Plaintiff Howard Moore