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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

ROSANIEVES MORAN, SHALECIA WILLIAMS,  
and MARY CANTERBURY individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

SHARP HEALTHCARE, a California Corporation;  
and DOES 1-50, inclusive,

Defendants.

Case No. **37-2019-00050203-CU-OE-CTL**  
[Consolidated with  
Case No. 37-2021-00041988-CU-OE-CTL  
Case No. 37-2021-00051867-CU-OE-CTL]

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

Date: September 15, 2023

Time: 10:30 a.m.

*[Hearing set by Order dated April 11, 2023]*

Dept: 68

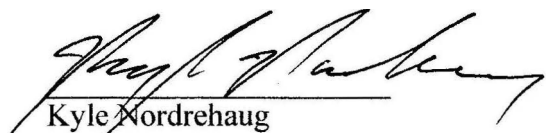
Judge: Hon. Richard S. Whitney

1           **TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:**  
2       **NOTICE IS HEREBY GIVEN** that on September 15, 2023 at 10:30 a.m. or as soon thereafter as  
3       the matter may be heard in Department 68 of the above captioned Court, before the Honorable  
4       Richard S. Whitney, Plaintiffs Rosanieves Moran, Shalecia Williams, and Mary Canterbury  
5       (“Plaintiffs”), by and through Plaintiffs’ counsels of record, will and hereby do move the Court for  
6       Final Approval of the Class Action and Private Attorneys General Act Settlement, awarding  
7       attorneys’ fees, costs, and Class Representative Service Awards to the Plaintiffs, and entering final  
8       approval and judgment.

9           This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor Code  
10       section 2699(1). This Motion is based on this Notice of Motion and Motion, the attached  
11       Memorandum of Points and Authorities, the accompanying Declarations of James R. Hawkins, Kyle  
12       Nordrehaug, Nathalie Hernandez of ILYM Group, Inc., the declaration of Plaintiff Moran, the Joint  
13       Stipulation of Class Action and Private Attorney General Act (“PAGA”) Settlement and Release  
14       (hereinafter “Settlement Agreement”), argument of counsel, all papers and pleadings filed in the  
15       action, and upon any further information or evidence requested by the Court at the time of hearing  
16       on this Motion.

17  
18       Dated: August 21, 2023

BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP

19  
20       By:   
21           Kyle Nordrehaug

22           Attorney for Plaintiffs and Class Counsel  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This Court preliminary approved the settlement by Order dated April 11, 2023. Plaintiffs  
4 Rosanieves Moran, Shaliecia Williams and Mary Canterbury (“Plaintiffs”), now respectfully  
5 request that this Court grant final approval of the settlement attached to the Declaration of Kyle  
6 Nordrehaug (“Decl. Nordrehaug”) as **Exhibit 1**, which seeks to resolve claims against Defendant  
7 Sharp Healthcare (“Defendant”) (collectively with Plaintiffs, the “Parties”) in exchange for a non-  
8 reversionary Maximum Settlement Amount of Four Million Two Hundred Sixty-Five Thousand  
9 Dollars and Zero Cents (\$4,265,000.00). The Class Members overwhelmingly supported the  
10 Settlement, as there is a 99.88% participation rate, with zero objections. The proposed Settlement  
11 is projected to pay an estimated average gross payment \$194.27 per Class Member, with the  
12 highest estimated gross payment at \$735.49. (Administrator Decl. of Nathalie Hernandez-  
13 hereinafter “Hernandez”, ¶ 14).

14 Plaintiffs also move for final approval of attorneys’ fees in the amount of \$1,411,667  
15 which is 33.1% of the Maximum Settlement Amount. As will be demonstrated herein, Class  
16 Counsel’s attorney fee request is supported using the percentage fee method and the lodestar  
17 method. Second, Plaintiffs move for final approval of payment of the litigation costs in the amount  
18 of \$19,359.32, all of which was incurred in litigating this matter. Third, Plaintiffs move for final  
19 approval of the Class Representatives Service Awards to Plaintiffs in the sum of \$10,000 each, to  
20 compensate the Class Representatives for their service as Class Representatives and providing a  
21 general release of their claims against Defendant – a release significantly greater than the Class  
22 Members provided – and for the risks absorbed and time spent litigating the case. Plaintiffs played  
23 a vital role in representing Class Members in this case and spearheading the lawsuit to seek  
24 monetary relief on behalf of all Class Members. Fourth, Plaintiffs move for final approval of the  
25 payment of \$65,000 for Settlement Administration Costs to ILYM Group. Fifth, Plaintiffs move  
26 for final approval of the \$215,000 PAGA Payment and the payment to the Labor and Work  
27 Development Agency (“LWDA”) for its share of the PAGA Payment (\$161,250), with the  
28 remaining \$53,750 distributed to the PAGA Employees.

1 This case required many hours of attorney time from Class Counsel and sought relief on  
2 behalf of 12,721 potential class members within the State of California: All current and former non-  
3 exempt employees of Defendant, excluding bargaining unit nurses, during the Class Period of September  
4 23, 2015 through March 12, 2023. (Settlement at ¶¶ I(D) and I(E).).

5 This litigation involved the review and analysis of documents, policies, and practices, as  
6 well as a full day of mediation. Most importantly, the Settlement and all its terms received  
7 overwhelming support from Class Members, as there were no objections and only fifteen (15)  
8 requests for exclusion. Therefore, Plaintiffs respectfully request the Court grant final approval of  
9 the Settlement, Class Counsel Fees and Expenses, Class Representative Service Awards,  
10 Settlement Administrator Costs, and The PAGA Payment in the amounts preliminarily approved  
11 by the Court and as fully disclosed to Class Members.

## 12 **II. BACKGROUND, INVESTIGATION, DISCOVERY**

13 On September 23, 2019, Plaintiff Rosanieves Moran filed a Class Action Complaint  
14 entitled *Moran v. Sharp Healthcare* on behalf of Defendant's non-exempt employees in  
15 California. Class Counsel also sent a letter on Behalf of Plaintiff Moran to the LWDA prior to that  
16 time to exhaust her remedies under PAGA. (Nordrehaug Decl. ¶ 6.) On October 1, 2023,  
17 Plaintiffs Williams and Canterbury filed a class action complaint entitled *Williams, et al. v. Sharp*  
18 *Healthcare*. On December 10, 2021, Plaintiffs Williams and Canterbury filed a separate Complaint  
19 alleging a single claim against Defendant for violation of the Private Attorney General Act, Cal.  
20 Labor Code §§ 2698, et seq. ("PAGA") based upon the above alleged violations. As part of the  
21 Settlement, on June 14, 2022, Plaintiffs filed a Third Amended Consolidated Complaint in the  
22 Moran Action ("Operative Complaint") to consolidate the three actions. In the Third Amended  
23 Consolidated Complaint the Plaintiffs assert claims for: (1) unfair competition in violation of Cal.  
24 Bus & Prof. Code §§ 17200, et seq.; (2) failure to pay minimum wages in violation of California  
25 Labor Code §§ 1194, 1197 & 1197.1; (3) failure to pay overtime wages in violation of Cal. Labor  
26 Code § 510; (4) failure to provide required meal periods in violation of Cal. Labor Code §§ 226.7  
27 and 512; (5) failure to provide required rest periods in violation of Cal. Labor Code §§ 226.7 and  
28 512; (6) failure to provide accurate itemized wage statements in violation of California Labor

Code § 226; (7) failure to reimburse employees for required expenses in violation of California Labor Code § 2802; (8) failure to provide wages at termination in violation of Cal. Lab. Code § 201, 202, and 203; and (9) civil penalties under PAGA. (Nordrehaug Decl. ¶ 7.)

Class Counsel conducted a thorough investigation into the factual and legal issues implicated by Plaintiffs' claims and were able to objectively assess the settlement's reasonableness. The information for mediation obtained by Plaintiffs included: (1) time punch data showing employees' meal periods and their time worked; (2) Payroll data for employees; (3) Defendant's employee wage and hour policies; (4) the employment files for the Plaintiffs; and, (5) samples of wage statements provided by Defendant. As such, Class Counsel received the data and information for the Class, which was sufficient for Plaintiffs' expert to prepare the valuations of the claims for the Class. The document and data exchanges allowed Class Counsel to fully assess the nature and magnitude of the claims being settled, as well as the impediments to recovery, and ultimately enabled Plaintiff's Counsel so as to make an independent assessment of the reasonableness of the settlement's terms. (Nordrehaug Decl. ¶ 8).

The Parties attended an arms-length mediation session with Lisa Klerman, a respected and experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation for the mediation, Defendant provided Class Counsel with necessary information for the members of the Class, including time data, payroll data and data concerning the composition of the Class. Plaintiffs analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted a mediation brief and damage valuation to the Mediator. After this all-day mediation, the Parties continued arms' length negotiations through the Mediator which resulted in a mediators proposal which the Parties ultimately accepted. (Nordrehaug Decl. ¶ 9).

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

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

1 As a result of the mediation, the parties agreed to settle this matter for a Maximum Settlement  
2 Amount of \$4,265,000 (Nordrehaug Decl., Ex. 1-Settlement Agreement at ¶ I(N)). Based on their  
3 own respective independent investigations and evaluations, and after taking into account the sharply  
4 disputed factual and legal issues involved in this matter, the risks attending further prosecution of  
5 the case, and the monetary benefits received under the Settlement, Class Counsel is of the opinion  
6 that Settlement for the consideration and on the terms set forth in the Settlement Agreement is fair,  
7 reasonable and adequate and is in the best interests of the Class Members. (Nordrehaug Decl. ¶ 10;  
8 See Declaration of James Hawkins, ¶6).

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

12 As explained at preliminary approval, accounting for the risks of continued litigation and  
13 impediments to discovery, Plaintiffs determined that a settlement amounting to \$4,265,000 was fair and  
14 reasonable, and accounts for an approximate 7% of total possible recovery and courts have routinely  
15 approved settlements that provided a similar discounted range of the maximum potential recovery.  
16 (Nordrehaug Decl. ¶¶ 11-21). See, e.g., *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D.  
17 Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated  
18 damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with  
19 a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.*,  
20 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising,*  
21 *LLP*, 2014 WL 3610945, at \*5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of  
22 maximum recovery “[fell] within the range of possible initial approval based on the strength of plaintiff’s  
23 case and the risk and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d  
24 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).<sup>1</sup> (Id.)

25  
26 <sup>1</sup> See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at  
27 \*23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where  
28 gross settlement fund, prior to deducting attorneys’ fees and services awards, was valued at 7.5%  
or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S.

### III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE

#### A. Terms of the Settlement

The Maximum Settlement Amount is Four Million Two Hundred Sixty-Five Thousand Dollars (\$4,265,000). (Settlement at ¶ I(N)) Under the Settlement, the Maximum Settlement Amount consists of the following elements: (1) Payments to the Class Members for their share of the Net Settlement Amount (defined below); (2) Payments to the PAGA Employees of their share of the PAGA Employee Fund; (3) Class Counsel Fees and Expenses; (4) Settlement Administration Costs; (5) payment of the Class Representatives Service Awards to Plaintiffs; (6) the payment to the LWDA of its share of Net Settlement Amount; and (7) all employment taxes for employee side wages. (Settlement at ¶ I(N).)

The Maximum Settlement Amount does not include Defendant's employer side taxes. (Settlement at ¶ I(N).) The Maximum Settlement Amount shall be all-in with no reversion to Defendant. (*Id.*).

#### B. Released Claims

In exchange for the Gross Settlement Amount, Plaintiffs and Participating Class Members will agree to release the Released Claims during the Settlement Period: "Released Class Claims" shall mean "all claims for violations of the following Labor Code sections, as well as civil penalties under PAGA, that were actually alleged or that could have been alleged in the Action by, on behalf of the Class Member and the State of California, themselves and the PAGA Employees for the entire Class Period and the entire

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Dist. LEXIS 140759, at \*21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing "8.1% of the full verdict value" with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at \*4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at \*5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys' fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at \*2 (N.D. Cal. July 29, 2010) (granting final approving where "[t]he proposed settlement amount is [ . . . ] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney's fees and costs.").

PAGA Period, as well as any and all wage and hour claims and that were asserted or could have been asserted based on the factual or legal allegations contained in Plaintiffs' PAGA Letters and Plaintiffs Operative Complaint in the consolidated actions, arising at any time during the Class Period or PAGA Period, including: (a) failure to pay wages including overtime and minimum wage for all hours worked; (b) failure to provide meal periods; (c) failure to provide rest periods; (d) failure to timely pay wages at termination; (e) failure to provide accurate wage statements; (f) failure to indemnify for necessary business expenses; (g) unfair business practices (Business and Professions Code section 17200 et seq.); (h) penalties under PAGA for alleged violations of Labor Code sections 201-203, 204, 210, 221, 226, 226.3, 226.7, 246, 351, 510, 512, 558, 1194, 1197, 1197.1, 1198, 1198.5, 2699 et. seq., 2802, 2804; (i) claims for violation of the provisions of Wage Order 5 regarding alleged unpaid wages (both minimum wage and overtime), failure to provide meal periods, failure to authorize and permit rest breaks, failure to provide seating; (j) claims for the attorney's fees and costs incurred in the prosecution of this Action on behalf of the Class Members and PAGA Employees; (k) any other claims, remedies, penalties, or interest that could have been plead based on the facts alleged in the Complaints filed in the Action; and (l) all claims that Plaintiffs, the Class Members and/or the PAGA Employees may have against the Released Parties relating to: (i) the payment, taxation, and allocation of attorney's fees and costs to Plaintiffs' Counsel pursuant to this Settlement Agreement; and (ii) the payment, taxation, and allocation of Plaintiffs' Payment pursuant to this Settlement Agreement. The release of the Released Claims shall be effective as to the entire PAGA Period and entire Class Period; and expressly excludes all other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, and California class claims outside of the Class Period, and PAGA claims outside of the PAGA period.” (Settlement at ¶ I(1).)

**C. The Class Members Support the Settlement – Zero (0) Objections and Only Fifteen (15) Opt-Outs**

By order dated April 11, 2023, the Court granted Preliminary Approval of the Settlement, conditionally certified the class for settlement purposes, appointed ILYM Group, Inc. to act as the administrator, approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class via U.S. First Class Mail. On May 5, 2023, ILYM mailed the Notices to 12,721 Class

Members. (Hernandez Decl. ¶7). Out of the 12,721 Notices, only 125 were deemed undeliverable after attempts to ascertain the addresses. (Hernandez Decl. ¶¶ 8-10). ILYM received only fifteen (15) requests for exclusion. (Hernandez Decl. ¶ 11). As a result of the mailing, there is a 99.88 participation rate and 12,706 Participating Class Members will be mailed a settlement check. (*Id.* ¶ 13).

A Participating Class Member must cash his or her Individual Settlement Payment check within 120 days after it is mailed. (Settlement at ¶ III(G)(3).) Any settlement checks not cashed within 120 days will be voided and any funds from such uncashed checks shall be handled pursuant to the provisions of Code of Civil Procedure section 384. (*Id.*)

#### **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

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

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

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

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the Settlement as explained in the Notice. Subject only to the Class’s reaction to the Settlement, the Court preliminarily presumed the Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and adequate time provided to the Class to object to the Settlement, no class member submitted objections and only fifteen (15) opt outs of the settlement, **resulting in a 99.88% participation rate from the Class.** (Hernandez Decl. ¶ 13). Thus, the proposed Settlement is entitled to the presumption that it is fair and in all other respects proper and should be finally approved.

## **V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS**

### **A. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage of a Common Fund**

Class Counsel applies for an award of attorneys’ fees in the sum of \$1,411,667 of the Gross Settlement Amount, and litigation costs of \$19,359.32. (Nordrehaug Decl. ¶¶ 22-27; Hawkins Decl., ¶¶ 3-5). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at 254 (recognizing the “percentage of recovery” method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that “[t]he percentage of fund method survives in California class action cases.” 1 Cal.5th 480, 506 (2016), in stating:

The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

*Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the

trial court acts within its equitable power to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorney’s fees more accurately reflects the results achieved for the putative class than the lodestar method and “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”).<sup>2</sup>

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

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

a defined and clearly traceable benefit to the Class, the Court can base an award of attorneys' fees using a 'common fund' approach to compensate Class Counsel.

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

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

The requested fee falls in the mid-range of percentage class fee awards, which generally range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous courts in California routinely approve fee requests equal to or greater than one-third of the common fund. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, \*22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action settlement). In fact, the Sacramento County Superior Court has awarded fees of 35% of the common fund in wage and hour class actions. (Berzin Decl., ¶ 13, Ex. B); *McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269; *Uribe v. EcoGuard Pest Management, Inc.*, Case No. 34-2021-00300650; *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634; *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156.

Additionally, Plaintiffs' counsel have prosecuted a joint prosecution agreement and agreed to split the requested fees on a 60/40 basis. (Nordrehaug Decl. ¶ 22). In short, Class Counsels' fee request of \$1,411,667 (33.1% of the common fund) is in line with awards in similar cases in California and demonstrates that Class Counsels' fee request is consistent with market rates and is reasonable.

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

2                   Class Counsels' fee request is reasonable when calculated using the lodestar method.

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

10                  As of the date of filing, the Class Counsel Fees Payment is currently equivalent to the current  
11                  lodestar of \$518,788.75 with a reasonable multiplier of 2.72 and is therefore reasonable under  
12                  *Laffitte*. All of the work and tasks performed by Class Counsel were reasonable and necessary to  
13                  the prosecution of this case. (Nordrehaug Decl. ¶ 24; Hawkins Decl. ¶¶ 3-4).

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

15                  Class Counsels' hourly rates are between \$250 and \$995 and are in line with rates typically  
16                  approved in wage and hour class action litigation and which rates have been approved by Courts in  
17                  California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County  
18                  Superior Courts. (Nordrehaug Decl. ¶ 25; Hawkins Decl. ¶ 2; *Children's Hosp. and Med. Ctr. v.*  
19                  *Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were reasonable where they were "within the  
20                  range of reasonable rates charged by and judicially awarded comparable attorneys for comparable  
21                  work").

22                  A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and  
23                  experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095.  
24                  When determining a reasonable hourly rate, courts may consider factors such as skill and  
25                  experience, the nature of the work performed, the relevant area of expertise and the attorney's  
26                  customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.  
27                  Class Counsels' skill and experience support their hourly rates. Their practices are limited  
28                  exclusively to litigation, focusing on the representation of employees in wage and hour and

consumer class action matters. (Nordrehaug Decl. ¶¶ 23-25; Hawkins Decl., ¶ 2). As prominent attorneys in the field of wage and hour class action litigation, Class Counsel continually monitors the prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of their attorneys and paralegals to be consistent with the prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates. Therefore, as they are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

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

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

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

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

Class Counsel seeks reimbursement of the litigation costs and expenses of \$19,359.32. The requested award is the amount of the actual costs incurred. These costs were reasonable and necessary to prosecute this case and the results achieved and are fair, and reasonable. (Nordrehaug Decl. ¶ 27, Ex.3 and 5); (Hawkins Decl. ¶ 5, Ex. 1).

1           **VI. THE CLASS REPRESENTATIVE SERVICE AWARDS ARE REASONABLE**

2           Class Counsel seeks approval of a \$10,000 Class Representative Service Awards to each of  
3 the named Plaintiffs/Class Representatives. The requested enhancement awards are reasonable in  
4 light of the general releases of all claims Plaintiffs agreed to, greater than the release given by Class  
5 Members, the benefits Plaintiffs conferred upon the entire Class resulting in payments to all Class  
6 Members, the time spent assisting counsel with the investigation and prosecution of these claims,  
7 commitment to responding to discovery and depositions, and consenting to the proposed Settlement.  
8 Furthermore, in pursuing this action on behalf of the Class, Plaintiffs risked a judgment for  
9 attorneys' fees and costs in the event this matter had been lost. (Nordrehaug Decl. ¶ 28.)

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

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

18          The Parties agreed to hire ILYM Group, Inc. as the administrator, and the Court approved  
19 this choice. The Administrator was responsible for formatting, printing and mailing the Notice. It  
20 was also responsible for updating addresses and re-mailing Notices returned as undeliverable,  
21 responding to Class Member inquiries, answering questions from Counsel for the Parties, and  
22 providing a declaration to document its duties and responsibilities under the settlement. Plaintiff  
23 now request that the Court approve the \$65,000 fee to ILYM Group, Inc. for services rendered and  
24 to be rendered. (Hernandez Decl. ¶¶ 3-15). Following the grant of final approval, the Administrator's  
25 duties will continue in order to calculate and mail Settlement Share checks to Class Members,  
26 perform tax reporting obligations, disburse other payments as ordered by the Court, and perform  
27 such other duties as set forth in the Settlement Agreement. The fee of \$65,000 for services rendered  
28 and to be rendered is fair and reasonable and should be granted.

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

2           The PAGA Payment of \$215,000.00 to resolve the applicable penalties claimed under the  
3 California Labor Code's Private Attorney general Act of 2004, as amended ("PAGA"), is reasonable  
4 under the circumstances. The Parties negotiated a good faith amount to be allocated t the LWDA  
5 and the PAGA Employees. The sum to be paid was not the result of self-interest at the expense of  
6 other Class Members. The LWDA was provided notice of the Settlement concurrently with the filing  
7 of the preliminary approval motion and the instant motion. Plaintiffs did not receive a response or  
8 objection to the Settlement from the LWDA. Thus, Plaintiffs request the Court finally approve the  
9 sum of \$215,000 for the PAGA Payment.

10           **IX. CONCLUSION**

11           Based on the foregoing, Class Counsel respectfully requests the Court grant final approval  
12 of the Class Action Settlement, award (1) Class Counsels' fees in the sum of \$1,411,667.00 and  
13 litigation costs of \$19,359.32; (2) award the named Plaintiffs of Class Representative Service  
14 Awards in the sum of \$10,000 each; (3) award \$65,000 to ILYM Group, Inc., for settlement  
15 administration services, and (4) approve the PAGA Penalties of \$215,000 with a payment to the  
16 LWDA in the amount of \$161,250.00 and payment to PAGA Members in the amount of \$53,750.00.

17  
18 Dated: August 21, 2023

BLUMENTHAL NORDREHAUG BHOWMIK  
DE BLOUW LLP

19  
20 By:

  
Kyle Nordrehaug

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22 Attorney for Plaintiffs and Class Counsel  
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