Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DAVID RUSSELL, individually, on a representative basis, and on behalf of all others similarly situated; Plaintiff, vs. DIGNITY HEALTH, a California Corporation; and DOES 1 through 20, inclusive; Defendants.	Case No.: CIVDS2021522 *[Assigned to Hon. Joseph B. Widman, Dept S36, for all purposes]* **PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** *Filed Concurrently with Declarations in Support Thereof and [Proposed] Final Order and Judgment* Hearing Date: November 9, 2026 Time: 9:00 a.m. Dept.: S36

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 9, 2026, at 9:00 a.m., or as soon thereafter as this matter may be heard by the Honorable Joseph B. Widman in Department S36 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, Plaintiff David Russell, individually and on behalf of all others similarly situated, will move this Court for an Order granting final approval of the class action settlement between Plaintiff and Defendant Dignity Health, which was preliminarily approved by the Court. This

Motion seeks final approval and entry of judgment of a $475,000 settlement on behalf of the Class Members, and is unopposed by Defendant.

Specifically, Plaintiff will and hereby does move the Court to grant final approval of the Class Action and PAGA Settlement Agreement (the "Settlement Agreement"), and enter the proposed order and final judgment filed concurrently herewith:

1. Finally certifying the Class, as defined in the Settlement Agreement and the Court's Order Granting Preliminary Approval of the Settlement;

2. Finally appointing Plaintiff as Class Representative for purposes of settlement;

3. Finally appointing Brian Mankin and Peter Carlson as Class Counsel for purposes of settlement;

4. Finding that the Class Notice was properly provided to the Class in accordance with the Court's Order granting Preliminary Approval;

5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;

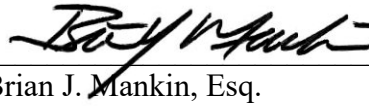
6. Binding participating Class Members to the terms of the Settlement Agreement, including the Release specified therein; and

7. Retaining jurisdiction to enforce the Settlement Agreement.

This Motion will be based upon this notice; the attached memorandum of points and authorities; the Declarations of the Settlement Administrator (Nathalie Beltran of ILYM Group), Class Counsel (Brian Mankin and Peter Carlson) and Plaintiff filed concurrently herewith; the records and files in this action; and any other further evidence or argument that the Court may receive at or before the hearing.

Dated: October 16, 2026

LAUBY, MANKIN & LAUBY LLP

BY: 

Brian J. Mankin, Esq.
Attorneys for Plaintiff and the Class

TABLE OF CONTENTS

I. SUMMARY OF ARGUMENT AND ESSENTIAL POINTS 1
II. PERTINENT BACKGROUND AND SETTLEMENT TERMS 2
III. THE NOTICE PROCESS 3
A. Notice to the Class Members 3
B. There were No Objections or Opt-Outs, Resulting In An Impressive 100% of the Class Currently Participating in the Settlement 4
IV. EVALUATION OF THE SETTLEMENT 4
A. The Settlement Was Reached Through Informed Arms-Length Negotiation 5
B. Plaintiff's Investigation Was Sufficient 6
C. Class Counsel Are Experienced in Similar Litigation and Endorse the Settlement 6
D. Reasonable Estimate of the Nature and Amount of Recovery 6
V. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE 7
A. The Attorneys' Fees Award is Warranted 8
B. The Requested Attorney Fee Award is Justified and Should be Approved 10
1. *The High Quality of Work and Excellent Result Obtained Support the Award* 10
2. *Class Counsel Displayed Considerable Skill and Experience* 12
3. *The Complexity of the Issues Supports the Fee Award* 12
4. *The Risks Inherent in the Litigation Support the Requested Fee* 13
C. The Requested Hours and Rates are Fair and Reasonable 14
VI. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE 16
A. The Requested Costs Are Reasonable and Merit Approval 16
B. The Requested Service Award is Reasonable and Merits Approval 16
VII. OTHERS MATTERS RE: FINAL APPROVAL 18
A. Settlement Administration Costs 18
B. Notice of Final Judgment to the Class 18
C. Uncashed Checks 18
D. Final Report 18
E. Submission to the LWDA 19
VIII. CONCLUSION 19

TABLE OF AUTHORITIES

Cases

7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135 6

Adoma v. The University of Phoenix, Inc., 913 F.Supp.2d 964 (E.D. Cal. Dec. 20, 2012) 12

Armenta v. Osmose, Inc., 135 Cal.App.4th 314, 324 (2005) 11

Bell v. Am. Title Ins. Co. (1991) 226 Cal.App.3d 1589 5

Bell v. Farmers Insurance Exchange (2004) 115 Cal.App.4th 715 16

Bond v. Ferguson Enterprises, Inc. (E.D. Cal. 2011) 2011 WL 2648879 17

Brown v. CVS Pharmacy, Inc. 2017 U.S. Dist. LEXIS 182309, at *21 (C.D. Cal. Apr. 24, 2017) 15

Chavez v. City of Los Angeles, 47 Cal.4th 970, 989 (2010) 11

Ferguson v. Lieff, Cabraser, Heimann & Bernstein (2003) 30 Cal.4th 1037 4

Fernandez v. Victoria Secret Stores, LLC, 2008 WL 8150856 (C.D. Cal. July 21, 2008) 12

Franklin v. Kaypro Corp. (9th Cir. 1989) 884 F.2d 1222 5

Glass v. UBS Fin. Servs. (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476 17

Harris v. Marhoefer (9th Cir. 1994) 24 F.3d 16 16

Hensley v. Eckerhart, 461 U.S. 424 (1983) 11

Horsford v. Board of Trustees of California State University, 132 Cal.App.4th 359 (2005). 13, 14

In re American Bank Note Holographics, Inc. (SDNY 2001) 127 F.Supp.2d 418 4

In re Heritage Bond Litig., 2005 WL 1594403 (C.D. Cal. June 10, 2005) 12

Ketchum v. Moses, 24 Cal.4th 1122 (2001) 13

Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 7

Mandujano v. Basic Vegetable Prods., Inc., (9th Cir. 1976) 541 F.2d 672 4

Muniz v. United Parcel Serv., 738 F.3d 214 (9th Cir. 2013) 11

O'Neal v. City of Seattle, 66 F.3d 1064 (9th Cir. 1995) 11

PLCM Group, Inc. v. Drexler, 22 Cal.4th 1084, 1085 (2000) 15

Press v. Lucky Stores, Inc., 34 Cal.3d 311 (1983) 9

Rider v. County of San Diego (1992) 11 Cal.App.4th 1410 16

Rodriguez v. West Publishing (9th Cir. 2009) 563 F.3d 948 17

Ross v. US Bank National Association (N.D. Cal. 2010) 2010 WL 3833922 17
Stambaugh v. Super. Ct. (1976) 62 Cal.App.3d 231..... 4
Troester v. Starbucks Corp., 5 Cal. 5th 829 (2018)..... 11
Vasquez v. Coast Valley Roofing, Inc. (E.D. Cal. 2010) 266 F.R.D. 4150..... 17
Wershba v. Apple Computers, Inc. (2001) 91 Cal.App.4th 246 7
West v. Circle K Stores, Inc. (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558..... 17
Yamada v. Nobel Biocare Holding AG, 2016 WL 1579705 (9th Cir. 2016)..... 11

MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT AND ESSENTIAL POINTS

Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff David Russell respectfully requests that this Court grant final approval of the Class Action and PAGA Settlement Agreement (the "Settlement Agreement" or "S.A.") and enter the proposed order and final judgment in this matter. This Motion is supported and unopposed by Defendant Dignity Health ("Defendant").

This action involved years of hard-fought litigation on an issue that challenged the legality of Defendant's statewide practice of paying vested vacation owed to departing employees at their hourly *base rate* of pay – rather than their *regular rate* of pay.

In the aftermath of the Ninth Circuit's decision in *Mills v. Target Corp.* (9th Cir. 2023) 2023 U.S. App. LEXIS 5273 (which decided the identical issue and held that employers must pay vested vacation wages at the employee's final *regular rate* of pay, and further held that Target was not liable for waiting time penalties), the Parties elected to pursue arm's length negotiations that ultimately resulted in a settlement and likely accomplished everything that Plaintiff could have achieved at trial in this case. In short, Defendant agreed to pay the Class Members a fair amount for their Unpaid Vested Vacation Wages owed, plus Defendant agreed to pay (a) a fair amount for PAGA Penalties, (b) Class Counsel's actual attorneys' fees/lodestar and costs, (c) a Service Award to Plaintiff, and (d) Administration Costs. Thus, Defendant deserves credit for agreeing to pay everything that might have been awarded at trial while saving this Court and a jury the time and burden of trial.

Accordingly, there are several essential reasons why this settlement should be approved, and judgment entered accordingly, as follows:

- After extensive work, including a substantial exchange of information via discovery prior to mediation, the Parties reached a $475,000 settlement with the assistance of an experienced class action mediator on behalf of the Class Members;
- The Class Members were deemed to participate in the Settlement, and were not required to submit a Claim Form to receive funds;

- There is no reversion to Defendant;
- There were no objections or opt-outs to the Settlement, meaning that 100% of the Class Members elected to participate in the settlement.

Thus, in accordance with the analysis and law set forth herein as well the preliminary approval motion, the Settlement should be approved and judgment entered based on the determination that the Settlement is fair, reasonable, adequate, and in the best interests of the Class. (Declaration of Class Counsel, Brian J. Mankin, ¶¶ 12, 32 ("Mankin Decl.")).

II. PERTINENT BACKGROUND AND SETTLEMENT TERMS

Plaintiff and the Class Members are former employees of Defendant who received final unused vacation time at their base rate of pay – a practice that Plaintiff contends runs counter to the Ninth Circuit holding in *Mills v. Target,* which ruled that, under Labor Code § 227.3, final vested vacation wages must be paid at the employee's "*final rate*" of pay (a rate that includes shift differentials). The difference between final vested vacation wages including shift differentials and what Defendant paid is called "Unpaid Vested Vacation Wages."

The Settlement Agreement at Sections 3.1 – 3.2.5 provide that Defendant will pay the Gross Settlement Amount ("GSA") of $475,000 to fund the following:

1) Defendant will pay every Class Member an equal share of Unpaid Vested Vacation Wages owed in the estimated amount of $54.31 each, which is a good result since the claims are limited to a single claim: the fractional underpayment of vested vacation in instances where Class Members received shift differential or non-discretionary bonus pay in their last week worked (and that was not incorporated into the calculation and payment for vested vacation upon termination).[1]

2) Defendant will pay a fair and reasonable PAGA amount of $30,000 to settle Plaintiff's PAGA claim, allocated 75% to the California Labor Workforce

[1] Since the Ninth Circuit disallowed waiting time penalties in *Mills v. Target* on virtually the same fact pattern (as this was an issue of first impression at the time of the decision), Defendant argued that the Class Members were not entitled to recover waiting time penalties in this case, and the most they could recover is the different between the base rate and regular rate that was paid at termination for Unpaid Vested Vacation Wages.

Development Agency ("LWDA") and 25% to all Aggrieved Employees in an equal share.

3) Defendant will pay Class Counsel's *actual* attorney's fees (*i.e.*, lodestar) through final approval not to exceed $200,000 (Class Counsel's actual lodestar is more than $300,000, but it agreed to reduce their attorneys' fees to no more than $200,000 as part of the settlement) along with Class Counsel's actual litigation costs of $19,605.66.

4) Defendant will pay a Service Award to Plaintiff of $10,000 and will pay Settlement Administrator Costs of $15,950.

The Settlement Agreement provides that 20% of each Individual Class Payment will be considered taxable wages (with IRS W-2 reporting), and the remaining 80% will be allocated to interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. (S.A. § 3.2.4.1).

Within 15 days after the Effective Date (which is 70 days following the entry of the Final Order, assuming an appeal is not filed), Defendant shall deposit the Gross Settlement Amount, plus Defendant's share of payroll taxes and withholdings. The Settlement Administrator will issue the court-approved payments within 10 days of receipt. Participating Class Members and Aggrieved Employees will have 180 days to cash a settlement check. If a person fails to timely cash a check, then the Settlement Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member or Aggrieved Employees. (S.A. § 4.2 – 4.3).

III. THE NOTICE PROCESS

A. Notice to the Class Members

Pursuant to the Court's Order and the Settlement Agreement, the Parties directed the Settlement Administrator to review and update the Class Members' addresses, mail the Court-approved Notice, and process their responses.

After the Court granted preliminary approval and prior to the mailing, the Settlement Administrator performed a National Change of Address search on all Class Members to

determine if any had moved. (Beltran Decl. ¶ 6). On August 28, 2026, the Class Notice was sent via first-class mail to 3,672 Class Members. (Beltran Decl. ¶ 7).

In accordance with California Rules of Court, rules 3.766 (d) and 3.769 (f), the Notice provided Class Members with (1) a brief explanation of the case; (2) an explanation of each Class Member's right to opt out of the settlement class; (3) an explanation of the process (and relevant deadlines) through which a Class Member could opt out of the settlement class; (4) notice about the binding nature of the Judgment for Class Members who do not opt out; (5) an explanation of each Class Member's right to appear through counsel; (6) an explanation of each Class Member's right to appear at the fairness hearing and express views on the settlement, i.e., object or otherwise respond; and (7) an explanation of each Class Member's right to participate in the Settlement and receive payment accordingly. (See **Exhibit A** to the Beltran Decl.)

B. There were No Objections or Opt-Outs, Resulting In An Impressive 100% of the Class Currently Participating in the Settlement

California law makes clear that the percentage of objectors and opt-outs is an important factor in the Court's consideration of a proposed class action settlement. (See *Dunk v. Ford Motor Co. (1186) 48 Cal.App.4th 1794* at 1802.) Indeed, the Ninth Circuit and other federal courts recognize that in the final fairness analysis, the number or percentage of class members who object to the settlement is a significant factor. (See *Mandujano v. Basic Vegetable Prods., Inc*., (9th Cir. 1976) 541 F.2d 672, 677; *In re American Bank Note Holographics, Inc*. (SDNY 2001) 127 F.Supp.2d 418, 425 ["[i]t is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.")

Here, there were no objections or opt-outs to the Settlement, demonstrating that the Class Members strongly favor the settlement. (Beltran Decl. ¶¶ 8-10).

IV. EVALUATION OF THE SETTLEMENT

It is axiomatic that California law strongly favors and encourages settlements. (See *Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236.) This presumption in favor of settlement applies with particular force in the context of class actions. (See *Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037 ["[p]ublic policy favoring settlement is

especially weighty for class actions"]; *Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608 [affirming the trial court's approval of a class settlement and implicitly endorsing its citation of federal precedent for the notion that there is a "strong public policy in favor of settlement of class actions"]; see also *Franklin v. Kaypro Corp.* (9th Cir. 11869) 884 F.2d 1222, 1229, quoting *Van Bronkhorst v. Safeco Corp*. (9th Cir. 1976) 529 F.2d 943, 950 ["it hardly seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits"].)

When entertaining a request for final approval of a class action settlement, a court's fundamental consideration is whether the settlement is fair, adequate and reasonable. (See *Dunk*, *supra*, 48 Cal.App.4th at 1801, fn. 7 [noting that state courts look to federal authority concerning the approval of class settlements]; California Rules of Court, rule 3.769(g).)

Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; (4) the percentage of objectors and opt outs is small, and (5) the range of reasonableness of the settlement fund to a possible recovery in light of all attendant risks of litigation." (*Dunk*, *supra*, 48 Cal.App.4th at 1802.) All five of these factors are discussed in detail below.

A. <u>The Settlement Was Reached Through Informed Arms-Length Negotiation</u>

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. Thus, there is a presumption here that the negotiations were conducted in good faith. (See, 3 Alba Conte & Newberg, supra, at § 11.51.) The proposed settlement here was the product of arm's-length negotiation before a highly experienced and reputable class action mediator to reach a settlement, which was finally consummated in the months after mediation.

Here, Plaintiff and Class Counsel have diligently investigated the claims raised in this litigation and, after taking into account the disputed factual and legal issues involved in this action, the risks attending further prosecution, and the benefits to be received pursuant to the compromise and settlement of the action as set forth in the Settlement, concluded that the

settlement terms are fair, reasonable, and in the best interest of the Class.

As the Settlement Agreement itself reveals, there is no preferential treatment for any segment of the class, as the Settlement is designed to compensate all Class Members fairly and adequately. And pursuant to California Rules of Court Rule 3.769(b), the parties have disclosed the agreed upon and proposed attorney fee award, which is well within the range of reasonableness for matters of this nature.

B. Plaintiff's Investigation Was Sufficient

As set forth at the time of preliminary approval, Class Counsel's investigation into the facts and merits of the wage and hour claims alleged included substantial discovery, analyzing substantial amounts of information, correspondence, documents, policies and procedures, pay data and timekeeping records, and evidence relating to the class size and the commonality of the claims. During this process, Plaintiff and Class Counsel conducted investigations into the potential claims of the similarly situated employees, as well as researching and investigating Defendant's defenses. Finally, Class Counsel synthesized and analyzed information provided by Defendant as to the total Class Members, the number of current and former employees, the number of employees who worked during various time periods, and prepared comprehensive damages calculations regarding the claims at issue.

C. Class Counsel Are Experienced in Similar Litigation and Endorse the Settlement

Class Counsel are experienced in this type of litigation, and they have represented (and hereby do represent) that this Settlement is fair and reasonable. (Mankin Decl. ¶¶ 2-6, 12, 32); see *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 [Final approval of settlement affirmed where counsel were all experienced litigators with class-action experience and had recommended settlement based on the negotiated terms].)

D. Reasonable Estimate of the Nature and Amount of Recovery

Plaintiff's Motion for Preliminary Approval contained a comprehensive *Kullar* analysis (which sufficiently provided the Court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the

release of those claims represents a reasonable compromise." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133). Of course, a settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. (*Wershba v. Apple Computers, Inc*. (2001) 91 Cal.App.4th 246, 250.) ("Compromise is inherent and necessary in the settlement process … even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.")

Considering the uncertainties of protracted litigation, this negotiated settlement reflects the best practicable recovery for the Class. While the total settlement amount is, of course, a compromise figure, the potential risks and opportunities of both parties were effectively weighed and considered by the parties, resulting in a fair and equitable settlement. Based upon detailed data obtained through discovery and information exchanges, and factoring in claim certification probabilities and liability probabilities, Class Counsel formulated detailed damages models to evaluate the claims in preparation for mediation to reach a realistic and reasonable resolution.

V. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE

While many class action cases seek a percentage of the common fund, that would not be appropriate here due to the value of the alleged unpaid fractional amounts of vested vacation wages in comparison to the substantial time involved to litigate two cases of first impression (this case and the *Mills v. Target* case) against very large corporations. The request for actual attorneys' fees, capped at $200,000, is lower than Class Counsel's actual lodestar incurred litigating this case for 5.5 years, including substantial discovery disputes and motion practice on nuanced issues, such as LMRA preemption and other topics. Similarly, in *Mills v. Target*, Class Counsel recovered the value of the vested vacation wages for the Class Members and, on top of that, the District Court awarded Class Counsel its lodestar as part of the approval process, rather than a percentage of the recovery.

Indeed, in a typical common fund settlement, the Parties negotiate based on the estimated value of the class claims, and if a settlement is reached, several deductions are made from the class settlement, including fees, costs, admin costs, service awards, PAGA Penalties, etc. In this case, Class Counsel negotiated to achieve a Net Settlement Amount higher than the estimated underpaid vested vacation wages, to ensure a more-than-fair recovery for the class, and further negotiated to have a set amount of attorneys' fees recoverable from the Settlement. This results in a Settlement that is likely better than the best-case result that could have been achieved for the Class at trial (and of course, it saves all parties and the court an enormous amount of time, expense and inconvenience).

Although the value of the individual payments to each Class Member is not substantial because it merely reflects the fractional underpayment (i.e., the shift differential or bonus pay that was not included in the vacation payout), the payment of these amounts is essential because California zealously protects wages, even small amounts, since the California Labor Code is "indeed concerned with 'small things.'" *Troester v. Starbucks Corp.*, 5 Cal. 5th 829, 844 (2018); *see also Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 324 (2005) (California has a "strong public policy in favor of full payment of wages for all hours worked").

Class Counsel could have elected to proceed to trial to recover full value for the Class Members, and then file its post-trial motion for attorneys' fees and costs. However, the Parties agreed that it made far more sense to conserve the Parties and Court's valuable resources to negotiate a settlement that will fund the Class Members for their underpaid vested vacation wages, and fund Class Counsel for their actual attorneys' fees worked on this case (up to $200,000, which is less than the actual lodestar). This request is supported by California law and the Parties Agreement.

A. The Attorneys' Fees Award is Warranted

Class Counsel seek an attorney fee award of $200,000.00 based on their reduced lodestar and in accordance with California law and the Parties' Settlement Agreement.

1. ***Attorneys' Fees and Costs are Properly Awarded Pursuant to Law***

Class Counsel seek an attorney fee award of $200,000 under several California statutes (*see* Cal. Lab. Code §§ 218.5 and 2699, and Cal. Code Civ. Proc. § 1021.5). Cal. Code Civ. Proc. § 1021.5 provides that, where "an award of attorney is proper … if (1) plaintiffs' action has resulted in the enforcement of an important right affecting the public interest, (2) a significant benefit … has been conferred on … a large class of persons and (3) the necessity and financial burden of private enforcement are such as to make the award appropriate." *Press v. Lucky Stores, Inc.*, 34 Cal.3d 311, 317-318 (1983). Section 218.5 of the California Labor Code provides that, "[i]n any action brought for the nonpayment of wages ... the Court shall award reasonable attorneys' fees and costs to the prevailing party." Plaintiff is also entitled to fees and costs under PAGA (Labor Code § 2699(g)), which provides "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid").

The facts herein clearly justify an award of actual attorneys' fees because Class Counsel successfully prevailed on a theory of unpaid wages that was concurrently pending before the Ninth Circuit (as this case was stayed pending the result of that decision), meaning that trial here (as in *Mills v. Target*) would have focused on damages, including a motion for fees and costs.

2. ***Attorneys' Fees are Properly Awarded Pursuant to the Agreement***

Following the Ninth Circuit decision in *Mills v. Target*, the Parties began discussing a resolution to avoid class certification and trial. During this process, Class Counsel calculated its fees to be well in excess of $200,000 through the conclusion of the case. The Settlement Agreement thereafter authorized Class Counsel to seek payment of its *actual* attorneys' fees (lodestar) not to exceed the reduced amount of $200,000 and actual costs. (S.A. § 3.2.2).

The Class was also advised of the fee and cost request in the Class Notice that was approved by the Court.

Accordingly, the attorneys fees request is proper under California law. It was fully disclosed in the Settlement Agreement and Class Notice, and should be awarded in light of the successful result that will fund the Class Members in this case and hopefully benefit Defendant's

employees for years to come.

B. The Requested Attorney Fee Award is Justified and Should be Approved

The requested fee award is appropriate for the several reasons, including the following: (1) Class Counsel obtained a valuable recovery for the Class and all employees throughout California after diligently and aggressively litigating the claims, (2) Class Counsel displayed considerable skill (commensurate with their extensive class action wage-and-hour experience) in reaching a favorable settlement given the complex and nuanced issues in the litigation, (3) Class Counsel faced substantial risk in this matter because of the myriad defenses raised, (4) the risk and financial burden borne by Class Counsel in litigating this contingency-fee action, and (5) the fact that Class Counsel is seeking its actual attorneys' fees without requesting any multiplier, and this request is based on reasonable rates that are directly in line with the prevailing community for similar work and identical to the rates awarded to Class Counsel in similar cases.

1. *The High Quality of Work and Excellent Result Obtained Support the Award*

In addition to the fact that a Class benefit was created with a $475,000 non-reversionary common fund settlement, the fairness of the requested fee award is supported by the high quality of work performed by Class Counsel and the positive result obtained for the Class. And there can be no question – Plaintiff and Class Counsel obtained an excellent result for the Class after prevailing on an issue of first impression before the Ninth Circuit that directly impacted this case, resulting not only in a payment for Defendant's employees, but this is a result that will benefit tens of thousands of workers across California by ensuring that final vacation pay is paid at their final rate of pay, rather than a lower employer established rate of pay.

While a typical common fund settlement will result in fees being paid from the Class share, here Plaintiff used the attorneys fees and costs to increase the Gross Settlement Amount, thereby effectively having Defendant fund the underpayment to pay the Class, and separately fund the fee and cost request, Administrator's Costs, Service Award and PAGA Penalties.

While the value of the individual payments to each Class Member is not substantial (because it merely includes the additional shift differential pay that was not included in the

vacation payout), the payment of these amounts is essential because California zealously protects wages, even small amounts, since the California Labor Code is "indeed concerned with 'small things.'" *Troester v. Starbucks Corp.*, 5 Cal. 5th 829, 844 (2018); *see also Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 324 (2005) (California has a "strong public policy in favor of full payment of wages for all hours worked").

And despite that Plaintiff's derivative Labor Code § 203 claim did not succeed at the Ninth Circuit, causing Defendant to argue that it therefore cannot succeed here either, that cannot justify a reduction in attorneys' fees given that Plaintiff succeeded on his primary claim under section 227.3). *See Chavez v. City of Los Angeles*, 47 Cal.4th 970, 989 (2010) ("fees are not reduced when a plaintiff prevails on only one of several factually related and closely intertwined claims"). As held by the Ninth Circuit: "before hours may be deducted specifically for unsuccessful claims, the claims must be suitable for entirely separate lawsuits." *Muniz v. United Parcel Serv*., 738 F.3d 214, 224 (9th Cir. 2013) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434-35 (1983)). To reduce fees, the fee opponent must show that the "plaintiff has failed to prevail on a claim that is distinct in all respects from his successful claims." *Yamada v. Nobel Biocare Holding AG*, 2016 WL 1579705, at *7 (9th Cir. 2016) (quoting *Hensley*, 461 U.S. at 440). And work on claims where no "classwide relief" was obtained is compensable when those claims are related to the successful claim (such as here). *See O'Neal v. City of Seattle*, 66 F.3d 1064, 1069 (9th Cir. 1995) (authorizing fees for failed class claims).

Class Counsel could have elected to proceed to class certification and trial in an effort to recover full value for the Class Members, and then file its post-trial motion for attorneys' fees and costs. However, the Parties agreed that it made far more sense to conserve the Parties and Court's valuable resources to negotiate a settlement that will substantially fund the Class Members for their Unpaid Vested Vacation Wages (and for many Class Members will overfund their amounts owed), and simultaneously fund Class Counsel for their reduced, but actual attorneys' fees worked on this case in an amount not to exceed $200,00.

Based on the foregoing, Class Counsel respectfully submits that it obtained a substantial and beneficial result for the Class and workers as a whole in California in both concurrently

litigated cases.

2. *Class Counsel Displayed Considerable Skill and Experience*

From the very start of this case, Class Counsel positioned this case for success. Knowing that it was likely in for a battle that challenged Defendant's statewide practice of paying vacation wages. The Parties teed up various legal issues before this Court ranging from LMRA Preemption to demurrers and discovery disputes. While this case was ongoing, Class Counsel prevailed on its primary claim of unpaid vacation wages before the Ninth Circuit, whereby Class Counsel established liability on the core issue of vacation pay while only losing on a derivative penalty claim.

In lieu of a trial to determine damages, the Parties reached a settlement that is essentially equivalent to a trial decision. The Class will receive payment of its unpaid vacation wages, and Defendant will separately pay everything else, including attorneys' fees and costs.

In summary, Class Counsel displayed considerable skill throughout this case, and this factor weighs heavily in favor of awarding the requested fees. *See Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856 at *12 (C.D. Cal. July 21, 2008) ("All class counsel are qualified, experienced, and skilled attorneys, who prosecuted this action effectively. As a consequence, this factor weighs in favor of a generous fee award").

3. *The Complexity of the Issues Supports the Fee Award*

Prosecuting a nuanced issue of first impression is never an easy task, and here Plaintiff did so against one of the largest hospitals in California that was represented by one of the largest employer defense firms in California. Indeed, the issue in regards to "final rate" was complex. *See Adoma v. The University of Phoenix, Inc.*, 913 F.Supp.2d 964, 983 (E.D. Cal. Dec. 20, 2012) ("It is important that…attorneys be rewarded for pursuing novel claims…and for litigating these claims with tenacity, rather than cherry-picking simple cases or settling difficult cases for small amounts"); *In re Heritage Bond Litig.*, 2005 WL 1594403, at *20 (C.D. Cal. June 10, 2005) ("Courts have recognized that the novelty, difficulty and complexity of the issues involved are significant factors in determining a fee award").

Class Counsel did not cherry-pick an easy case. Far from it. These facts justify an award of the requested attorneys' fees.

4. *The Risks Inherent in the Litigation Support the Requested Fee*

An additional factor in favor of the granting of the requested fee award is the fact that this case was both legally and financially risky for Class Counsel. *See Vizcaino*, 290 F.3d at 1048-49 (9th Cir. 2002). This risk of losing after performing substantial work against two massive corporations (Defendant and Target) cannot be understated here. Defendant retained highly competent counsel to defend it, which amplified the risk that Defendant could prevail on the merits. And while defense counsel received compensation for the hours they expended (probably valued far higher than Class Counsel's lodestar), Class Counsel did not have such a luxury. If Defendant won on the merits, Class Counsel would have recovered nothing.

"The risk that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of fees." *In re Omnivision*, 559 F.Supp.2d at 1046-47.

Had Plaintiff succeeded further on its Target at the Ninth Circuit and prevailed on waiting time penalties, it would likely be a scenario in which Class Counsel would be seeking a lodestar multiplier in this case due to the added value of Labor Code § 203 penalties. But here, Class Counsel agreed to merely to be paid the customary hourly rate multiplied by hours worked (*i.e.*, no multiplier), and then capped the total amount to $200,000. As one case put it: "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is only paid for the second of these functions. If he is paid no more…counsel will be reluctant to accept fee award cases." *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001).

Similarly, the court in *Horsford v. Board of Trustees of California State University*, 132 Cal.App.4th 359 (2005) analyzed this issue and held that, when determining the market-level compensation to award to contingent fee attorneys, the analysis must take into account the large risk inherent in such situations:

> The market value of the services provided by plaintiffs' counsel in a case of this magnitude must take into consideration that any compensation has been deferred for up to four years from the time an hourly fee attorney would begin collecting fees from his or her client; that the demands of the present case substantially precluded other work during that extended period, which makes the ultimate risk of not obtaining fees all the greater (since the attorneys must use savings or incur debt to keep their offices afloat and their families fed during the years-long litigation); and that a failure to fully compensate for the enormous risk in bringing even a wholly meritorious case w6uld effectively immunize large or politically powerful defendants from being held to answer for constitutional deprivations, resulting in harm to the public." *Id.* at 399-400.

While these cases discuss the importance of awarding more than lodestar in some cases (*i.e.*, a multiplier), Class Counsel has agreed that receiving a reduced, capped fee. And notably, Class Counsel is actually seeking far less than its actual lodestar facilitate the settlement.

The requested fees here are appropriate due to the serious risk of non-payment that Class Counsel assumed by litigating this case on a purely contingent basis and advancing all costs.

C. The Requested Hours and Rates are Fair and Reasonable

As shown below, Class Counsel's requested hours expended, and rates are reasonable, directly in line with rates in the prevailing community for similar work, and are identical to the rates awarded to Class Counsel in similar cases in both California and federal courts.

At mediation, Class Counsel calculated their projected lodestar at far more than $200,000 through the end of the case, but ultimately agreed to cap the requested attorneys fees at $200,000. The actual lodestar is summarized in the chart below:

Attorney/Timekeeper	Years of Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	**24**	**$950**	**103**	**$97,850**
Peter Carlson (Senior Assoc. – LML)	**12**	**$750**	**275.4**	**$206,550**
TOTALS				**$304,400**

(*See* Mankin Decl. ¶ 25; Carlson Decl. ¶ 9-10).

The request fee award should be approved because Class Counsel's fees are based on hourly rates comparable to those of other attorneys with equal or similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at *www.laffeymatrix.com* indicates that the benchmark rates are: $777/hour for an 8–10-year attorney, $878/hour for a 11–19-year attorney, and $1,057/hour for a 20+ year attorney).

Moreover, the Wolters Kluwer 2023 Real Rate Report ("Real Rate Report") provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data, comprising millions of billing entries from a hundred thousand individual timekeepers who worked at thousands of law firms. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. For the southern California area: (a) the rate for partners in Los Angeles is between $840 and $1,159 per hour for the middle and upper quartiles, and (b) the rates for associates with seven or more years of experience, the median rate is $674 per hour, and the upper quartile rate is $888 per hour. And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms, which makes it "a much better reflection of true market rates than self-reported rates in all practice areas." *Brown v. CVS Pharmacy, Inc*. 2017 U.S. Dist. LEXIS 182309, at *21 (C.D. Cal. Apr. 24, 2017); *PLCM Group, Inc. v. Drexler,* 22 Cal.4th 1084, 1085 (2000) (holding that rates should be premised upon precisely this form of independent, "objective" rate data that reflects "fair market" rates actually billed to clients "in the community for similar work").

Class Counsel are also highly experienced in Class/PAGA litigation, including having been named by the LA Times as one "Southern California Leading Lawyers" in the May 2023 issue of Consumer Attorneys of Southern California (a recognition given to 17 employment/labor law attorneys in 2023), having been selected as "Super Lawyer" in employment litigation over the last 7 or 8 consecutive years, having achieved large settlements, having prevailed at trial in PAGA-only actions and Class Action jury trials. (Mankin Decl. ¶¶ 2-

6; Carlson Decl. ¶ 7). Indeed, Class Counsel's rates are typical of the rates charged by defense counsel with similar experience doing similar employment law work in this region.

Thus, Class Counsel's rates reasonable and typical, and the attorneys' fees requested confirm that the fee request is fair and reasonable.

VI. THE REQUESTED COSTS AND SERVICE AWARDS ARE REASONABLE

A. The Requested Costs Are Reasonable and Merit Approval

Plaintiff's Counsel requests reimbursement of their actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the employees. *See Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19. Plaintiff's Counsel are permitted to recover their litigation costs and expenses under the common fund doctrine. *See Serrano III*, 20 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys' fees by . . . [Plaintiffs'] attorneys"). Furthermore, Plaintiff's Counsel are entitled to recover "those out-of-pocket expenses that would normally be charged to a fee-paying client." *Harris*, 24 F.3d at 19.

The Settlement Agreement authorized litigation costs of up to $25,000. (S.A. ¶ 3.2.2). Class Counsel's actual costs through the final approval hearing are estimated to be $19,605.66. (Mankin Decl. ¶ 26). These costs include mediation fees, filing fees, and other costs that include Attorney Service charges, expert discovery fees, CourtCall charges, and process service fees. (*Id*.) These costs are reasonable and uncontested, and should be approved, with the savings placed in the Net Settlement Amount and paid to Participating Class Members.

B. The Requested Service Award is Reasonable and Merits Approval

A named plaintiff is an essential ingredient of any class action and an incentive award is appropriate to induce individuals to step forward and assume the burdens and obligations of representing the Class. Courts regularly approve service payments to compensate named plaintiffs for their service to the class and the risks they incurred during the course of the litigation. (*See, e.g. Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726

(upholding "service payments" to named Plaintiff for their efforts in bringing class action); *Rodriguez v. West Publishing* (9th Cir. 2009) 563 F.3d 948, 959 (stating that incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.").

Under the Settlement, Defendant agreed to pay a Service Award in the amount of $10,000 to Plaintiff for his contribution as the Class Representative. Plaintiff undertook significant risks bringing this case, including the risk of being blackballed in the industry and the risk that he could have been liable for Defendant's costs if he lost. This factor is a significant one for a wage earner, and the potential risk is very real. (*See Whiteway v. FedEx Kinkos Office & Print Svcs., Inc.* (N.D. Cal. Dec. 17, 2007) No. C 05-2320 SBA, 2007 WL 4531783, at *3 ("the few courts to consider this 'class representatives' dilemma' have not found it inequitable to assess costs upon the lead or named plaintiff in a class action").)

Plaintiff also committed a significant number of hours to assist with the litigation/settlement processes of this case. Finally, he entered into a general release of all claims against Defendant, whereas the Class Members only released the claims alleged. The requested Service Payment is reasonable, particularly in light of the substantial benefits Plaintiff generated for the Class Members, the risks he undertook, and in exchange for executing a general release against Defendant. See, *e.g.*, *Bond v. Ferguson Enterprises, Inc*. (E.D. Cal. 2011) 2011 WL 2648879 (approving $11,250 service awards in class action); *Ross v. US Bank National Association* (N.D. Cal. 2010) 2010 WL 3833922, at *2 (approving $20,000 enhancement award in California wage-and-hour class settlement); *Vasquez v. Coast Valley Roofing, Inc*. (E.D. Cal. 2010) 266 F.R.D. 415, 493 (approving service awards of $15,000 from a $300,000 settlement fund in a wage/hour class action); *West v. Circle K Stores, Inc*. (E.D. Cal. 2006) 2006 U.S. Dist. LEXIS 76558, at *28 (finding service awards "of $ 15,000 each to be reasonable."); *Glass v. UBS Fin. Servs*. (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 8476, at *52 (finding "requested payment of $25,000 to each of the named Plaintiff is appropriate" in wage and hour settlement).

The Notice sent to each Class Member detailed the proposed service award. No Class Member has objected to the proposed payment to Plaintiff to date. Thus, Plaintiff requests that the Court approve the award because it is both reasonable and appropriate.

VII. OTHERS MATTERS RE: FINAL APPROVAL

A. Settlement Administration Costs

The parties agreed that the Administrator, ILYM Group, would be compensated for services performed. The Administrator's flat fee is $15,950.00. (Beltran Decl. ¶ 15).

B. Notice of Final Judgment to the Class

The Proposed Final Approval Order directs the Settlement Administrator to give notice of entry of judgment by including a postcard to the Class Members at the same time the checks are mailed.

C. Uncashed Checks

The Settlement Agreement provides that unclaimed funds will be submitted to the California State Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (S.A. ¶ 4.3.3).

D. Final Report

Assuming the Final Order is entered on the day of the hearing, Defendant must fund the Settlement within 85 days, after which time the Administrator has 10 days thereafter process the funds and issue checks to the Class Members, who will then have 180 days to cash their checks. Accordingly, the Parties project that the check cashing deadline will occur on approximately August 11, 2027. The Final Order next proposes having the Administrator submit a disbursement declaration approximately 75 days after the check cashing deadline which will give the Administrator time to issue the uncashed check fund to the SCO shortly after the check cashing deadline (unless the Court wants to follow the timelines set forth in CCP section 384). Lastly, the Final Order proposes holding a disbursement hearing thereafter at the Court's convenience.

E. Submission to the LWDA

As set forth in the Mankin Declaration at ¶ 28, the Settlement Agreement and this motion are concurrently being submitted to the LWDA in accordance with Labor Code § 2699(l)(2). The LWDA has not commented on the Settlement to date.

VIII. CONCLUSION

Plaintiff respectfully submits that the Settlement is fair, adequate, and reasonable, and merits final approval.

Dated: October 16, 2026

LAUBY, MANKIN & LAUBY LLP

BY: _____

Brian J. Mankin, Esq.
Attorneys for Plaintiff and the Class

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, California 92504.

On October 16, 2026, I caused to be served the foregoing document(s) described as follows:

PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

[ ] **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

[ ] **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

[X] **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

[ ] **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California.

[ ] **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

[X] **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 16, 2026, Riverside, California.

[ ] **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

SERVICE LIST

Richard J. Simmons, Esq.
rsimmons@sheppardmullin.com
Jason W. Kearnaghan, Esq.
jkearnaghan@sheppardmullin.com
Hilary Habib, Esq.
hhabib@sheppardmullin.com
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
350 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071
213-620-1780
213-620-1398-fax
Attorneys for Defendant DIGNITY HEALTH