Misty M. Lauby, Esq. [CSB No. 243009]
misty@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 and others similarly situated

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

KEITH GUTHRIE, individually, on a representative basis, and on behalf of all others similarly situated; Plaintiff, vs. ITS LOGISTICS, LLC, a Delaware Company, and DOES 1 through 20, inclusive; Defendants.	Case No.: 1:21-CV-00729-KES-EPG **FRCP RULE 23 CLASS ACTION** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF COMBINED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND ATTORNEYS' FEES, COSTS, EXPENSES, AND SERVICE AWARD** *[Filed concurrently with the [Proposed] Order; Declaration of Brian J. Mankin; Declaration of Misty M. Lauby; Declaration of Natalie Hernandez; and Declaration of Plaintiff Keith Guthrie]* <u>Hearing</u> Date: January 8, 2026 Time: 10:30 a.m. Courtroom: 6 Complaint filed: March 9. 2021

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Treatises

I. INTRODUCTION

Plaintiff Keith Guthrie respectfully requests that this Court grant final approval of the Class Action Settlement Agreement and Release of Claims ("Settlement Agreement" or "S.A.")[1] and enter a final order and judgment in this matter. This Motion is supported and unopposed by Defendant ITS Logistics, LLC ("Defendant" or "ITS Logistics"). Plaintiff alleges that Defendant failed to pay its piece rate drivers all minimum wages and nonproductive time, failed to reimburse business expenses, failed to provide accurate itemized wages statements and failed to timely pay its drivers each period and at termination of employment.

The settlement provides a significant benefit to the class, who will receive an average payout of $1,165 ($271,490.91 Net Settlement Amount/233 Class Members). With the highest individual payout exceeding $ 2,800. On September 29, 2025, the Court granted preliminary approval of the settlement. The Court-appointed third-party administrator has now provided notice of the settlement to the class and the response has been overwhelmingly positive. As of November 26, 2025, not a single person objected or opted-out of the settlement.[2] Accordingly, as detailed below, the settlement should be finally approved because it is fair, reasonable, adequate, and in the best interest of the class.

II. PERTINENT BACKGROUND AND SETTLEMENT TERMS

Plaintiff and the Class Members are current and former truck driver employees of ITS Logistics who resided in California and who were employed by Defendant and allegedly paid on a piece-rate basis (e.g. per day or per mile) at any time between March 1, 2019 and June 28, 2024.

---

[1] All further references to the Settlement Agreement relate to Dkt. 79-2, pages 48 to 89 (the Settlement Agreement filed at the preliminary approval stage).

[2] The Response Deadline is December 18, 2025 – after the deadline to file these moving papers. Plaintiff will a Supplemental Administrator's Declaration which will give a final report regarding opt-outs and objections.

The Settlement Agreement provides that ITS Logistics will pay the Gross Settlement Amount ("GSA") of $550,000 to fund the following:

1) ITS Logistics will pay a fair and reasonable PAGA amount of $100,000 to settle Plaintiff's PAGA claim, allocated 75% to the California Labor Workforce Development Agency ("LWDA") and 25% to all Aggrieved Employees.
2) ITS Logistics will pay Class Counsel's attorney's fees through final approval of $137,500 (25% of the Gross Settlement Amount) along with Class Counsel's costs of $26,599.09.
3) ITS Logistics will pay a Service Award to Plaintiff of $7,500 and will pay Settlement Administrator Expenses of $6,950.[3]

Within 15 days after the Effective Date (which is the date of final approval if no Class Member objects), ITS Logistics shall deposit the Settlement Amount, plus ITS Logistics' 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. ¶ 77-79).

The Settlement Agreement provides that one-third (33.333%) of the Individual Settlement Payments will be allocated as wages subject to withholding of all applicable local, state and federal taxes (with IRS W-2 reporting), and two-thirds (66.667%) will be allocated for penalties and interest from which no taxes will be withheld (both with 1099 reporting). (S.A. ¶ 52(d)).

[3] This is less than the $8,000 amount that was approved at the preliminary approval stage due to inadvertent clerical error where counsel indicated that the administrator's costs were $8,000 instead of the correct $6,950. The additional funds are added back into the Net Settlement Amount that will be distributed to the Class Members.

The settlement is an excellent result for the Class, considering that the average recovery is over $1,100. Moreover, in light of the Class Members' positive reaction to the Settlement and its overall terms, it is clear that the Settlement is fair and reasonable. The Parties therefore respectfully request that the Court grant final approval and enter the proposed judgment as requested.

III. THE NOTICE PROCESS

A. NOTICE TO THE CLASS MEMBERS

On September 29, 2025, the Court granted Plaintiff's Motion for Class Certification and Preliminary Approval of a Class Action Settlement. (ECF No. 92). 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 Packet, and process their responses. (See Declaration of Natalie Hernandez, ["Hernandez Decl."] ¶ 4).

On October 20, 2025, ILYM Group received the class data file from Counsel for Defendants, which contained the name, personnel number, social security number, last known mailing address, last known telephone number, and information necessary to calculate class members' settlement amounts. The data file was uploaded to our database and checked for duplicates and other possible discrepancies. The Class Data contained 233 individuals with 8,262 Work Weeks during the Class Period and 158 Aggrieved Employees with 7,058 Pay Periods during the PAGA period. (Hernandez Decl. ¶ 5).

As part of the preparation for mailing, all 233 names and addresses contained in the Class List were then processed against the National Change of Address ("NCOA") database, maintained by the United States Postal Service ("USPS"), for purposes of updating and confirming the mailing addresses of the Settlement Class Members before mailing of the Notice Packet. The NCOA contains requested change of addresses filed with the USPS. To the extent that an updated address was found in the NCOA database, the updated address was used for the mailing of the Notice Packet. To the extent that no updated address was found in the NCOA database, the original address provided by

Counsel for Defendants was used for the mailing of the Notice Packet. (Hernandez Decl. ¶ 6).

On November 3, 2025, the Notice Packet was mailed, via U.S First Class Mail, to all 233 individuals contained in the Class List. (Hernandez Decl. ¶ 7).

As of the date of this motion, 37 Notice Packets have been returned to ILYM's office as undeliverable. ILYM Group performed a computerized skip trace on the 37 returned Notice Packets that did not have a forwarding address, in an effort to obtain an updated address for purpose of re-mailing the Notice Packet. As a result of this skip trace, 32 updated addresses were obtained and the Notice Packets were promptly re-mailed to those Settlement Class Members, via U.S First Class Mail. (Hernandez Decl. ¶ 8).

As of the date of this motion, a total of 32 Notice Packets have been re-mailed as a result of ILYM Group's skip tracing efforts. (Hernandez Decl. ¶ 9).

As of the date of this motion, a total of 5 Notice Packets were deemed undeliverable as no updated address was found, notwithstanding the skip tracing. (Hernandez Decl. ¶ 10).

As of the date of this motion, ILYM Group has not received any requests for exclusion. The deadline to request exclusion from the Settlement is December 18, 2025. (Hernandez Decl. ¶ 11).

As of the date of this motion, ILYM Group has not received any objections to the Settlement. The deadline to file an objection to the Settlement is December 18, 2025. (Hernandez Decl. ¶ 12).

As of the date of this declaration, ILYM Group will report a total of 233 Participating Class Members, representing 100% of the 233 Settlement Class Members. (Hernandez Decl. ¶ 13).

Because the Response Deadline is December 18, 2025 (9 days after these moving papers are due), Plaintiff will file a supplemental declaration from the Settlement Administrator once the deadline has passed.

The Class Notice provided Class Members with (1) a brief explanation of the case; (2) an explanation of each Settlement 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 Hernandez Decl.)

Participating Class Members will receive a proportional share of the Net Settlement Fund through individual settlement payments. The Net Settlement Fund is the amount remaining after deduction of the Court-approved payments from the Gross Settlement Fund for Attorney Fees and Attorney Costs/Expenses, the Class Representative Enhancement Award, Settlement Administration Fees to ILYM Group, LWDA, and the Aggrieved Employees allocation, e.g.,

Gross Settlement Fund	**$ 550,000.00**
Attorney Fees	$ 137,500.00
Attorney Costs/Expenses	$ 26,559.09
Enhancement Award – Keith Guthrie	$ 7,500.00
ILYM Group Fees	$ 6,950.00
LWDA	$ 75,000.00
Aggrieved Employees	$ 25,000.00
Net Settlement Fund (estimated)	**$ 271,490.91**

The Net Settlement Fund will be distributed as set forth in the in the Settlement Agreement. (Hernandez Decl. ¶ 14).

/ / /

B. <u>Currently There Are Zero Objections Or Opt-Outs, Meaning that an Impressive 100% of the Class is Participating in the Settlement As Of the Due Date of This Motion</u>

The Ninth Circuit recognizes 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.*, 541 F.2d 672, 677 (9th Cir. 1976). In this case, there are <u>zero objection</u>s and <u>zero opt-outs</u> as of the filing of these moving papers (a supplemental declaration from the Settlement Administrator will be filed after the expiration of the December 18, 2025 Response Deadline) -- meaning that 100% of the Class Members have elected to participate in the Settlement thus far. (Hernandez Decl. ¶¶ 11-12). Thus, it is clear that the Class overwhelming viewed this as a fair and reasonable settlement.

C. <u>Notice to the LWDA</u>

On March 24, 2025, Plaintiff submitted the Renewed Motion for Preliminary Approval, declarations, the Settlement Agreement and Notice of PAGA Settlement to the LWDA in accordance with Labor Code § 2699(1)(2). (See ECF No. 749-2, p. 91). The LWDA was given timely notice of the Settlement.

D. <u>CAFA Notice</u>

On April 3, 2025, Defendant gave notice of the settlement pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"), to the Attorney General of the United States and the appropriate officials of the states where Class Members are known to reside. That will ensure that notice is given at least 90 days before the final approval hearing. The notice of the Settlement included the First Amended Complaint in this action; Plaintiff's Notice of Renewed Motion and Renewed Motion for Preliminary Approval of Class Action Settlement, the memorandum in support of the motion, and the exhibits and declarations in support thereof; the Declaration of Misty M Lauby in Support of Renewed Motion for Preliminary Approval of Class Action Settlement; the [Proposed] Order Granting Preliminary Approval of Settlement; and a list of Class

Members and their states of residence. (See ECF No. 82).

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

Approval of a class action under Rule 23(e) involves a two-step process: (1) the Court first determines whether the proposed class action settlement deserves preliminary approval; and (2) if preliminary approval is granted, then, after notice is given to the class members, the Court decides whether final approval is appropriate. *Nat'l Rural Telecomms. Coop v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004). The first step in this process is complete as the Court has granted preliminary approval of the Settlement. Now the Court performs step two in the process and determines whether the Settlement is fundamentally fair, adequate and reasonable. *Id.*; *See also Class Plaintiffs v. City of Seattle,* 955 F.2d 1268, 1276 (9th Cir. 1992).

As already detailed in the papers submitted in support of preliminary approval, the settlement class satisfied each of the requirements for certification under Federal Rule of Civil Procedure 23(a) and 23(b)(3). (See ECF No. 79-1, pp. 19-41). Nothing has occurred since the preliminary approval Order to undermine that determination Indeed, to date, following notice of the Settlement to the class, not a single individual objected to or opted-out of the Settlement. (Hernandez Decl. ¶¶ 11-12).

Accordingly, the Court should confirm its prior certification of the Settlement Class for purposes of final approval. *See Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1008 (E.D. Cal. 2019), *appeal dismissed sub nom. Carlin v. Spooner*, 808 F. App'x 571 (9th Cir. 2020) ("The Court's findings on these issues have not changed, and no objections to class certification were raised. Accordingly, there is no need for the Court to repeat the analysis on these issues here."); *Ross v. Bar None Enterprises, Inc.*, 2015 WL 1046117, at *3 (E.D. Cal. Mar. 10, 2015) (finding "certification of the class for the purpose of final approval" to be "appropriate" because "[n]o party or class member has objected to certification of the settlement class, and there is nothing before the court to suggest this prior certification was improper"); *see also Harris v. Vector Marketing,* 2012

WL 381202, at *3, *7 (N.D. Cal. Feb. 6, 2012) ("As a preliminary matter, the Court notes that it previously certified . . . a Rule 23(b)(3) class . . . [and thus] need not analyze whether the requirements for certification have been met and may focus instead on whether the proposed settlement is fair, adequate, and reasonable"); *In re Apollo Group Inc. Securities Litig.*, 2012 WL 1378677 at *4 (D. Ariz. Apr. 20, 2012) ("The Court has previously certified, pursuant to Rule 23 of the Federal Rules of Civil Procedure, and hereby reconfirms its order certifying a class").

When reviewing a motion for final approval of a class action settlement, the Court gives due regard to "what is otherwise a private consensual agreement negotiated between the parties," and must therefore limit the inquiry "to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Officers for Justice v. Civil Serv. Comm'n,* 688 F.2d 615, 625 (9th Cir. 1982). It is the settlement taken as a whole---rather than its component parts---that must be reviewed for overall fairness. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998).

Settlement of a class action requires approval of the Court, which may be granted "only after a hearing and on finding that [the settlement] is fair, reasonable, and adequate." Fed.R.Civ.P. 23(e)(2). The Ninth Circuit has set forth a number of factors to determine whether a settlement agreement meets these standards, including:

> (1) the strength of plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

Staton v. Boeing Co., 327 F.3d 938, 959 (9th Cir. 2003); *Hanlon*, 150 F.3d at 1026.

/ / /

A. STRENGTH OF PLAINTIFF'S CASE

"Here, the court should 'evaluate objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach these agreements.'" *Id*. (quoting *Adoma v. Univ. of Phoenix, Inc.*, 913 F. Supp. 2d 964, 975 (E.D. Cal. 2012)). "That in mind, the court need not reach 'any conclusions regarding the contested issues of fact and law that underlie the merits of the litigation.'" Id. (quoting *Brewer v. Salyer*, 2017 WL 2813178, *3 (E.D. Cal. June 29, 2017)).

Plaintiff based its main claims for failure to pay wages on three theories: (1) failure to pay for non-productive time such as pre/post trip inspections, fueling, paperwork, etc., under Labor Code § 226.2; (2) failure to pay including stop pay per contract of $12.50 per stop, and (3) unpaid rest period wages per contract. However, Defendant argued that this claim could not be certified due to the individualized nature of the proof regarding the amount of nonproductive time each shift, the number of stops each driver took, and the inability to establish when rest breaks were actually taken and not paid. Additionally, Defendant argued that the wage claims would be defeated on the merits under *Ayala v. U.S. Xpress Enters.,* 851 Fed. Appx. 53 (9th. Cir 2021). Moreover, Defendant argued that the stop pay policies did not apply to flat rate drivers and that at least for a portion of the class period, the stop pay and rest break pay was properly paid to mileage rate drivers. Moreover, Defendant maintained that despite any policy documents allowing for rest breaks, California rest break requirements were nullified by the FMCSA's determination that such requirements were preempted by federal law and, therefore, no unpaid wages would be owed. Plaintiff faced an uphill battle in a number of ways, including that off-the-clock claims are difficult to certify, the ability to prove commonality on wage issues where different policies applied to differing pay types during different periods of time was questionable, the breach of contract claims for rest breaks and stop pay were undermined by interviews with some drivers who did not believe that they were supposed to be separately paid for those items, and because the drivers were often subject to somewhat differing working conditions.

Plaintiff's wage statements Plaintiff alleged direct wage statement violations that Defendant failed to include all information required by Labor Code § 226(a) but Defendant raised defenses these violations, if any, did not result in any "injury" under § 226(e), the violations, if any, were not "knowing and intentional" and could not support the assessment of penalties, any "derivative" wage statement claims are without merit, and that the flat rate pay structure is equivalent to a "salary" and therefore, listing the hourly rate was not required.

Plaintiff's failure to reimburse cell phone expenses claims were cut off as of September 18, 2021, when Defendant changed its policies and began paying cell phone reimbursements, reducing total exposure. Additionally, Defendant also raised defenses to this claim including that it provided an in-truck messaging system, so personal cell phone use was not required. There are further risks due to certification challenges because of the individualized nature of whether drivers utilized their own phones for work and at what cost.

Plaintiff's failure to pay final wages claims allegedly owed to 226 former Class Members were entirely derivative of the substantive claims – each of which has significant shortcomings. Moreover, the claim fails if ITS could prove it acted with a good faith belief that its pay policies fully and properly compensated its drivers, and Defendant argued Plaintiff provided no evidence that Defendant "willfully" failed to pay the class any wage.

Plaintiff also sought PAGA penalties for each violation for which they are available and alleged that these penalties can be "stacked." *See Gonzalez v. Corecivic of Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12, 2018) ("'stacking' PAGA penalties is not inappropriate under California law"). But, it is unclear whether stacking is permissible and/or whether the court would award penalties in such a way (especially for purely derivative penalties such as 203 and 204 claims). Courts also have wide latitude to reduce the amount of civil penalties "based on the facts and circumstances of a particular case" and if "to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016) (noting in the context of approving settlement that a reduction in PAGA penalties would be "appropriate" based on the "unjust, arbitrary and oppressive, or confiscatory" factors because (i) the employer did not "deliberately evad[e] a clear obligation to provide legally required pay and benefits to employees," (ii) the employer did not "negligently fail to learn about its obligations under the wage and hour laws," and (iii) the employer's obligations were "genuinely unclear" because "there is no straight answer to the question."). Plaintiff is also cognizant of the risks facing PAGA claims in federal court, including cases holding that PAGA claims do not satisfy constitutional standing requirements. *See, e.g., Raphael v. Tesoro Ref. & Mktg. Co. LLC,* No. 2:15-CV-02862-ODW, 2015 WL 5680310 at *2 (C.D. Cal. Sept. 25, 2015) (PAGA claim lacked constitutional standing because "[a]lthough PAGA authorizes representative actions, California state law cannot alter federal procedural and jurisdictional requirements"). It would also be appropriate to evaluate the request for approval by examining only the class damages at issue, excluding penalties and interest. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 955 (9th Cir. 2000); *see also Miller v. CEVA Logistics U.S.A., Inc.*, 2015 WL 729638, at *7 (E.D. Cal. Feb. 19, 2015) (court utilized calculation of a defendant's exposure exclusive of interest and penalties to determine whether the settlement fell within the range of possible approval). Taking into consideration all defenses raised and the potential for reduction, and the realistic value of Plaintiff's claims, the $550,000 settlement is an excellent result for the Class.

B. <u>THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER LITIGATION</u>

Approval of settlement is "preferable to lengthy and expensive litigation with uncertain results." *Nat'l Rural Telecomms*, 221 F.R.D. at 529. If the Settlement were to be rejected, the parties would have to proceed with additional discovery for purposes of class certification, briefing and motion work for class certification, followed by discovery as to damages and then try the case. ITS Logistics may seek decertification arguing that the issues are individualized and not proper for class treatment, but the likely result is a trial that would not yield a significantly better result for the Class that this Settlement achieves. Therefore, the risk, expense, and likely trial weighs in favor of approval of the Settlement.

C. <u>THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGHOUT THE TRIAL</u>

This factor examines the "risk, expense, complexity, and likely duration of further litigation [and] the risk of maintaining class action status throughout the trial." *Hanlon*, 150 F.3d at 1026. There is always a risk in taking a case to trial, and it simply would not be a logical decision to press-on when there are significant and potentially fatal defenses to each of Plaintiff's claims and the Settlement provide a more than healthy recovery for the Class Members. Thus, this factor favors final approval of the Settlement.

D. <u>THE AMOUNT OFFERED IN SETTLEMENT JUSTIFIES FINAL APPROVAL</u>

As discussed above and at length in Plaintiff's Motion for Preliminary Approval ("MPA" at ECF No. 79-1) and here, this settlement pays the Class Members a Gross Settlement Amount of $550,000 (which represents 65% of the $841,073 "risk adjusted recovery" and 18% of the maximum class value of $3,090,570). The Net Settlement Amount yields an average payout of over $1,100 which factor favors final approval of the Settlement.

E. <u>THE EXTENT OF DISCOVERY COMPLETED AND THE STAGE OF THE PROCEEDINGS</u>

"The Court should favor settlement where a considerable amount of discovery has been conducted 'because it suggests that the parties arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case.'" *Carlin*, 380 F. Supp. 3d at 1012 (quoting *Adoma*, 913 F. Supp. 2d at 977).

As discussed previously, prior to reaching the Settlement after two mediations, Plaintiff's counsel served informal and formal written discovery and reviewed and received policy documents, correspondence, and damages data including detailed information relating to the drivers' workweeks at various rates of pay, shift totals at various rates of pay, which were painstakingly allocated amongst the various claims and time periods where those claims were at issue to ensure that the settlement was adequate and divided fairly between the Class Members. *(See Lauby* Decl. ¶¶ 9). Accordingly, Plaintiff arrived at a compromise based on a full understanding of the legal and factual issues surrounding the case.

Considering that this case settled after extensive informal discovery and formal discovery that was analyzed by experienced consultants, and after two mediations, it is clear that Parties performed the necessary work and made informed decisions when negotiating the Settlement. This factor favors final approval.

F. THE EXPERIENCE AND VIEWS OF COUNSEL

"The recommendation of counsel—who are most closely acquainted with the facts of the underlying litigation—is to be considered." *Carlin*, 380 F. Supp. 3d at 1013. As detailed in the attorney declaration filed herewith, class counsel is experienced in wage and hour class actions, has been appointed class counsel in numerous other wage and hour cases, and recommends that the Settlement be approved. (Mankin Decl. ¶¶ 2-6, 22; Lauby Decl. ¶ 18).

G. THE PRESENCE OF A GOVERNMENTAL PARTICIPANT

This factor does not apply here because there is no governmental participant.

H. THE REACTION OF THE CLASS MEMBERS TO THE PROPOSED SETTLEMENT

No Class Member has objected to any portion of the Settlement or opted out of the Settlement to date. (Hernandez Decl. ¶¶ 11-12, a supplemental declaration from the Settlement Administrator will be filed after the December 18, 2025 Response Deadline). This shows a uniformly positive reaction to the Settlement by the Class Members and is a factor of great significance that weighs in favor of approving the Settlement. *See Mandujano*, 54 F.2d at 837.

/ / /

V. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

Federal Rule of Civil Procedure 23(h) provides that "[i]n a certified class action, the court may award reasonable attorney's fees . . . that are authorized by law or by the parties' agreement." Where, as here, "a settlement produces a common fund for the benefit of the entire class, courts have discretion to employ either the lodestar method or the percentage-of-recovery method" to assess the reasonableness of the fee award. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). "Overall, the goal is to produce a reasonable result." *Deraujou v. Regis Corp.,* 2017 U.S. Dist. LEXIS 114300, *31 (E.D. Cal. July 21, 2017); *see also In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litig.,* 109 F.3d 602, 607 (9th Cir. 1997) "Reasonableness is the goal, and mechanical or formulaic application of either method, where it yields an unreasonable result, can be an abuse of discretion.").

Here, class counsel seeks a fee award of $137,500, which is 25% of the common settlement fund. The requested fee award is reasonable. (See

A. THE REQUESTED FEES ARE REASONABLE UNDER THE PERCENTAGE-OF-THE-FUND METHOD

"The typical range of acceptable attorney's fees under [the percentage-of-the-fund] approach in the Ninth Circuit is 20 percent to 33 and 1/3 percent of the total settlement value, with 25 percent considered a benchmark percentage." *Turk v.Gale/Triangle, Inc.,* 2017 U.S. Dist. LEXIS 154631, *9 (E.D. Cal. Sept. 20, 2017). "[T]he 25% benchmark rate, although a starting point for analysis, may be inappropriate in some cases." *Vizcaino v. Microsoft Corp.,* 290 F.3d 1043, 1048 (9th Cir. 2002). "It is well established that the benchmark percentage should be adjusted (or replaced by a lodestar calculation) when circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Id.* at *6 (internal quotation omitted).

In putative overtime class actions like this one, courts in this circuit often award fee awards above the 25% benchmark. *See, e.g., Vasquez v. Coast Valley Roofing, Inc.,* 266 F.R.D. 482, 492 (E.D. Cal. Mar. 8, 2010) (finding fee award of "approximately 33.3% of the total recovery obtained" in overtime and minimum wage class action to be "fair and reasonable"); *Nelson v. Avon Prods.,* 2017 U.S. 26451, at *15-17 (N.D. Cal. Feb. 24, 2017) (awarding fees of "one-third of the Settlement Fund" in overtime class settlement); *Lusby v. GameStop Inc.,* 2015 U.S. Dist. LEXIS 42637, at *8-14 (N.D. Cal. Mar. 31, 2015) (awarding fees of "one third of the Gross Settlement Fund" in wage and hour class settlement); *Burden v. SelectQuote Ins. Servs.,* 2013 U.S. Dist. LEXIS 109110, at *12-15 (N.D. Cal. Aug. 2, 2013) (awarding fees of "one-third of the gross settlement fund" in wage and hour class settlement); *Hibbs-Rines v. Seagate Tech., Ltd. Liab. Co.,* 2010 U.S. Dist. LEXIS 4203, at *12 (N.D. Cal. Jan. 20, 2010) (awarding fees of "one-third of the total value of the Gross Fund" in overtime class action).

Because class counsel here seeks only the benchmark amount of 25% of the settlement, and because, as set forth below, this amount is far less than the lodestar, class counsel's fee request is reasonable. (Mankin Decl. ¶¶ 8-20, 22; Lauby Decl. ¶ 10-15).

B. THE REQUESTED FEES ARE REASONABLE UNDER THE LODESTAR METHOD

The lodestar is calculated by multiplying the number of hours "reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011). The court may then adjust the resulting figure "upward or downward by an appropriate positive or negative multiplier reflecting a host of 'reasonableness' factors, including the quality of representation, the benefit obtained for the class, the complexity and novelty of the issues presented, and the risk of nonpayment." *Id.* at 942. "Where, as here, the lodestar is being used as a cross-check, courts may do a rough calculation with a less exhaustive cataloging and review of counsel's hours." *Carlin v. DairyAmerica, Inc.,* 380 F. Supp. 3d 998, 1022 (E.D. Cal. 2019) (Ishii, J.), *appeal dismissed sub nom. Carlin v. Spooner*, 808 F. App'x 571 (9th Cir. 2020).

As detailed in the billing records filed concurrently herewith, class counsel's lodestar of $250,375.00 is far greater than the requested fee award of $137,500. (*See Lauby Decl.* Exh. A (Billing Records)). However, the lodestar does not account for the fact that class counsel prosecuted this case on a contingency fee basis and assumed the risk of nonpayment. Courts in the Ninth Circuit "have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases." *Vizcaino*, 290 F.3d at 1051; *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994). Here, class counsels' lodestar results in a negative multiplier, clearly within the range of reasonableness. *See Carlin*, 380 F. Supp. 3d at 1023 (finding a multiplier of "1.40" to be "within the acceptable range").

C. THE REQUESTED COST AWARD IS REASONABLE

"An attorney who has created a common fund for the benefit of the class is entitled to reimbursement of reasonable litigation costs from that fund." *Carlin*, 380 F. Supp. 3d at 1023; see also Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable . . . costs that are authorized by law or by the parties' agreement"). "The award should be limited to typical out-of-pocket expenses that are charged to a fee-paying client and should be reasonable and necessary." *Carlin*, 380 F. Supp. 3d at 1023 (citation omitted). "These costs can include reimbursements for: (1) meals, hotels, and transportation; (2) photocopies; (3) postage, telephone, and fax; (4) filing fees; (5) messenger and overnight delivery; (6) online legal research; (7) class action notices; (8) experts, consultants, and investigators; and (9) mediation fees." Id. at 1023-24 (citation omitted).

As set forth in the cost report filed concurrently herewith, class counsel has incurred $26,599.09 in properly reimbursable litigation costs. (See Lauby Decl. ¶16, Exh. B (Cost Report).

VI. THE REQUESTED SERVICE AWARD IS FAIR AND REASONABLE

"[N]amed plaintiffs . . . are eligible for reasonable incentive payments." *Staton v. Boeing Co.,* 327 F.3d 938, 977 (9th Cir. 2003) (internal citation omitted). In the Ninth

Circuit, "[i]ncentive awards are fairly typical in class action cases." *Rodriguez v. West Publishing Corp.,* 563 F.3d 948, 958 (9th Cir. 2009). Such awards "are intended to compensate class representatives for work done on behalf of the class" and "to make up for financial or reputational risk undertaken in bringing the action." *Id.* at 958-59. To determine the reasonableness of a requested service award, courts consider all "relevant factors including the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefited from those actions, . . . the amount of time and effort the plaintiff expended in pursuing the litigation…and reasonable fears of workplace retaliation." *Staton,* 327 F.3d at 977 (internal citation omitted). "In the Ninth Circuit, courts have found that $5,000 is a presumptively reasonable service award." *Carlin*, 380 F. Supp. 3d at 1024.

Here, Plaintiff requests a service award of $7,500, which is slightly higher than the benchmark in this Circuit. However, this modestly increased service award is justified by the time and risks undertaken by Plaintiff and the benefit he secured for the class.

Plaintiff estimates that over 4.5 years, he spent at least 60 hours assisting class counsel with their investigation of the claims in this case by actively participating in the case at every juncture. Moreover, he undertook significant, long-term stress while continuing to work with the company while the case was ongoing and worried about possible retaliation and his future in the trucking industry without any promise that he would prevail but proceeded on behalf of the Class because he felt his fellow employees deserved to be treated fairly under California law. Plaintiff also was required to release and waive all potential claims against the company which is something that none of the other Class Members had to do. And, due to the procedural events in this matter, the Class Period was cut-off in June of 2024 – several months before Guthrie separated from employment with the company making him ineligible for waiting time penalties that other former Class Members received that are valued at approximately $1,122 each. If Plaintiff brought his case individually, his waiting time penalties alone were potentially worth over $7,000 ($30.39 final hourly rate x 8 hours per day x 30 days = $7,294). (*See*

Guthrie Decl. ¶ 3-7).

Accordingly, an enhancement award of $7,500, which is 1.4 percent of the total settlement value, is only slightly higher than the benchmark in this Circuit, and is reasonable and justified in this case. See *Isquierdo v. W.G. Hall, LLC*, 2017 WL 4390250, at *9 (N.D. Cal. Oct. 3, 2017) ("The Court also notes that the service award makes up only one percent of the gross settlement amount, which is a 'tiny fraction of the common fund,' justifying the amount to be awarded.").

VII. THE ADMINISTRATION EXPENSES ARE REASONABLE

Finally, Plaintiff seeks approval of costs to ILYM Group, LLC associated with administering the settlement. As detailed in the Declaration of Natalie Hernandez filed contemporaneously herewith, ILYM Group, LLC will incur $6,950 in costs to administer the settlement. (*See* Henandez Decl. ¶ 16).

VIII. CONCLUSION

Based upon all of the foregoing, Plaintiff respectfully requests that the Court grant final approval of the Settlement, and enter the proposed order and judgment.

Dated: December 9, 2025

LAUBY, MANKIN & LAUBY LLP

BY: *_____/s/ Misty M. Lauby_____*

Misty M. Lauby, Esq.

Attorneys for Plaintiff and the Class