Matthew Righetti (SBN 121012)
matt@righettilaw.com
John Glugoski (SBN 191551)
jglugoski@righettilaw.com
RIGHETTI GLUGOSKI, PC
2001 Union Street, Suite 400
San Francisco, California 94123
Telephone: (415) 983-0900

Reuben D. Nathan (SBN 208436)
rnathan@nathanlawpractice.com
NATHAN & ASSOCIATES, APC
2901 W. Coast Highway, Suite 200
Newport Beach, CA 92663
Tel. No.: (949) 270-2798
Fax No.: (949) 209-0303

Attorneys for Plaintiffs,
IGNACIO MACIEL, RUTH TORRES, and all others similarly situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IGNACIO MACIEL, RUTH TORRES on behalf of themselves and all other similarly situated employees,

Plaintiffs,

v.

M.A.C. COSMETICS INC.; and DOES 1–50, inclusive,

Defendants.

Case No.: 3:23-cv-03718-AMO

Assigned to Hon. Magistrate Judge Araceli Martinez-Olguin

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ATTORNEYS' FEES AND COSTS, CLASS REPRESENTATIVE ENHANCEMENTS, AND CLAIMS ADMINSITRATOR'S EXPENSES

Hearing Date: January 15, 2026
Time: 2:00 p.m.
Courtroom: 10

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT on January 15, 2026, at 2:00 p.m. in Courtroom 10 of the above-captioned court located at 450 Golden Gate Avenue, San Francisco, CA 94102, Plaintiffs Ignacio Maciel and Ruth Torres will, and hereby do, move for an order granting approval of the following:

1. Class representative service payments in the amount of $40,000 ($20,000 to Ignacio Maciel and $20,000 to Ruth Torres);
2. Settlement administration expenses in the amount of $29,000.00 to ILYM Group, Inc.; and
3. Award of attorneys' fees in the amount of $4,200.000.00 and litigation costs in the amount of $ 40,394.93.

This motion will be based upon this Notice, the accompanying Memorandum of Points and Authorities, the Declarations of Matthew Righetti, John Glugoski, Reuben D. Nathan, ILYM Group, Inc., Ignacio Maciel, and Ruth Torres, as well as the pleadings and papers on file herein and upon any other matters that may be presented to the Court at the hearing.

Respectfully submitted,

DATED: November 17, 2025

RIGHETTI GLUGOSKI
NATHAN & ASSOCIATES, APC

/s/ John Glugoski
John Glugoski
Attorneys for Plaintiffs,
IGNACIO MACIEL and RUTH TORRES

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Ignacio Maciel and Ruth Torres ("Plaintiffs") hereby move this Court for an award of: (1) Class representative service payments in the total amount of $40,000 ($20,000 to Ignacio Maciel and $20,000 to Ruth Torres); (2) settlement administration expenses in the amount of $29,000 to ILYM Group, Inc.; (3) attorneys' fees in the amount of $4,200.000.00; and (4) litigation costs in the amount of $40,394.93.

The proposed settlement provides a Gross Settlement Amount of $12,000,000. The Net Settlement Amount (portion of the Gross Settlement Amount remaining after deduction of the approved Class Representative Enhancement Payments, Settlement Administration Costs, the LWDA's portion of the PAGA Settlement Amount, and Class Counsel's Award) will be distributed to class members on a non-reversionary basis.[1] The settlement was reached after over three years of litigation in both state and federal court. The litigation work consisted of pre-filing investigation, obtaining contact information for putative class members and witnesses, interviewing class members, obtaining personnel/wage records for class members, multiple rounds of pleadings, extensive written discovery, exchanges of relevant data and documents between the parties, review and analysis of voluminous documents, analysis of massive spreadsheets containing hundreds of thousands of lines of time and payroll data of the class members, multiple rounds of mediation, and lengthy post-mediation discussions and negotiations. (See Dkt 63-1). These activities were followed by this Court closely – after which this Court granted preliminary approval of the settlement terms.

The settlement is an excellent result for the Class following adversarial litigation by experienced counsel (on both sides) who are well-versed in state and federal class action jurisprudence and the underlying California substantive law. The evolving nature of California's wage and hour laws coupled with Defendant's vigorous assertions of procedural and substantive defenses presented a significant risk to the Class and Class Counsel. Class Counsel negotiated a settlement which will provide Class Members

[1] The final class member tally (i.e., class members who received notice pursuant to the Court's preliminary approval order) is 3,436 class members – less than the 5,282 originally estimated by Defendant. There have been three (3) requests for exclusion bringing the number of Class Members who will participate in this settlement to 3,433.

with significant cash payments: the proposed settlement amount of $12,000,000.00 is expected to provide the settlement Class Members with an average individual payment of approximately $2,120.89 which is $742.44 more than $1,378.45 estimate per Class Member at Preliminary Approval.[2] Plaintiffs played a crucial role in making this relief possible by hiring experienced counsel, filing and diligently pursuing this lawsuit.

For these reasons – and as further explained below -- Plaintiffs request that this motion be granted.

II. WORK PERFORMED BY CLASS COUNSEL

At Prelimianry Approval, Plaintiffs counsel set forth in detail the relevant legal history of this class action originally filed on April 27, 2022, in the San Francisco Superior Court (Case No. CGS-22-599387) (the "Maciel action"). (Dkt 63-1, Righetti Decl. ISO Preliminary Approval ¶¶ 2-6).

In addition to the procedural history of the case, Plaintiffs' counsel also provided the Court with a detailed record of the extensive work performed by Class Counsel in this case, including discovery and investigation conducted. (See Dkt 63-1 pp.4-10). The volume of discovery conducted enabled Plaintiffs, working alongside their expert, to both fairly estimate Defendant's exposure and the probability of prevailing on each claim at class certification and trial. Plaintiffs were thus able to enter settlement negotiations with the information necessary to evaluate both the merits and damage/penalty exposure issues. Dkt. 63-1, Righetti Decl. ISO Preliminary Approval ¶¶ 14-21. The Parties participated in a full-day formal mediation with Jeff Ross. Mr. Ross is an experienced and well-respected labor/employment class litigator/mediator. See, https://jeffrossmediation.com/about/. Although the matter did not resolve at mediation the Parties continued litigation while continuing to engage in many additional informal settlement discussions both with the assistance of Mr. Ross and directly between counsel for the Parties. Dkt. 63-1, Righetti Decl. ISO Preliminary Approval ¶ 12.

Ultimately, the parties reached a settlement that is fair, reasonable, and in the best interests of the class.

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[2] At the time of Prelimianry Approval, Plaintiffs estimated the number of workweeks to be in the range of 269,334; however, the actual total workweeks are 202,101, resulting in a 50% increase of the average recovery Class Members will receive.

III. THE TERMS OF THE SETTLEMENT PROVIDE FOR AN AWARD OF ATTORNEY FEES AND COST AND FOR SERVICE PAYMENT TO THE CLASS REPRESENTATIVES

A. Requested Attorneys' Fees and Costs and Proposed Service Payment to the Class Representative

The Settlement Agreement allows Class Counsel to apply for an award of attorneys' fees of up to 35% of the Total Settlement Amount ($4,200,000) and litigation costs not to exceed $150,000. Dkt. 63-1, Sett. Agmt. ¶ 3.

Here, Plaintiffs seek attorneys' fees in the amount of $4,200.000.00 and litigation costs in the amount of $40,394.93, which is approximately 25% of the amount allocated under the terms of the settlement.

Plaintiffs also request $20,000 each to as named Plaintiffs service award as compensation for Plaintiffs time and service to the class. *Id*. ¶ 9. Plaintiffs file this Motion for Attorneys' Fees and Costs, Class Representative Enhancements, and Claims Administrator's Expenses to be heard at the same time as the Motion for Final Approval. If the Court awards less than the requested amounts, the difference will be added to the amount to be distributed to the Class Participants. *Id*. Sett. Agmt. ¶ 45(b).

IV. THE REQUESTED ATTORNEYS' FEE IS REASONABLE AND APPROPRIATE

A. The Common Fund Approach Should Be Used

It has long been recognized that "a private plaintiff, or his attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim is entitled to recover from the fund the costs of his litigation, including attorneys' fees." *Vincent v. Hughes Air West, Inc*., 557 F.2d 759, 769 (9th Cir. 1977); *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989) (holding that it is well settled that the lawyer who creates a common fund is allowed an extra reward, beyond that which he has arranged with his client, so that he might share the wealth of those upon whom he has conferred a benefit); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (holding that "a lawyer who recovers a common fund for the benefit of person other than his client is entitled to a reasonable attorneys' fee from the fund as a whole"). The purpose of the "common fund" doctrine is to avoid unjust enrichment, requiring "those who benefit from the creation of the fund [to] share the wealth with the lawyers whose skill and effort helped create it." *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994).

Indeed, it is an accepted practice in employment class action settlements to award attorney's fees to Class Counsel based on a total settlement value agreed upon by the parties. *See e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967-972 (9th Cir. 2003)[3]. In fact, the Ninth Circuit "has made the percentage-of-the-benefit approach the preferred method for determining fees" in cases like this one. *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). This is because the lodestar approach encourages inefficiency and wasteful attorney hours. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050, fn. 5 (9th Cir. 2002) (holding that "it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee").

Other courts have declared a similar preference for the percentage method because deficiencies of the lodestar method "has stimulated greater judicial willingness to evaluate a fee award as a percentage of the recovery." *In re Thirteen Appeals Arising Out of San Juan Dupont Plaza Hotels Fire Litig.*, 56 F.3d 295, 305-306 (1st Cir. 1995); *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994); *Rawlings v. Prudential-Bache Props., Inc.*, 9 F.3d 513, 517 (6th Cir. 1993); *Matter of Continental Illinois Secs. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1266-68 & n. 3, 1271 (D.C. Cir.1993) (finding that the lodestar approach "encourages significant elements of inefficiency" by giving attorneys an "incentive to spend as many hours as possible" and "a strong incentive against early

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[3] California case law also recognizes the percentage of recovery method for awarding attorneys' fees in class action cases where a common fund is established. In *Serrano v. Priest*, 20 Cal.3d 25 (1977), the California Supreme Court held that:

> [W]here 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 attorneys' fees out of the fund.

.*Id*. at 34; *see also Bell v. Farmers Insurance Exchange*, 115 Cal.App.4th 715, 726 (2004) (awarding 25% fee from $90 million dollar common fund); *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 254 (2001) (recognizing that one method for calculating attorneys' fees in class actions is the percentage of recovery); *Sanders v. City of Los Angeles*, 3 Cal.3d 252, 261 (1970) (affirming the award of attorneys' fees based on percentage of recovery).

settlement"; the percentage of the fund approach "more accurately reflects the economics of litigation practice" … accordingly "we join the Third Circuit Task Force and the Eleventh Circuit, among others, in concluding that a percentage-of-the-fund method is the appropriate mechanism for determining the attorney fees"); s*ee Glass v. UBS Financial Services, Inc*., 2007 WL 221862, *16 (N.D. Cal. 2007) (awarding 25% of the $45,000,000 common fund and finding that "[c]lass counsel's prompt action in negotiating a settlement … should be fully rewarded" and that no lodestar cross check conducted or needed); *In re M.D.C. Holdings Secs. Litig.*, 1990 WL 454747, *8 (S.D. Cal.1990) (finding that "the results reached here were accomplished in a remarkably short period of time" and that "concluding litigation quickly and with a fair result is beneficial to the general public in that it frees the resources of the courts to deal with other matters"); *In re Quantum Health Res., Inc.*, 962 F.Supp. 1254, 1257 (C.D. Cal.1997) (finding that the lodestar method needlessly increases judicial workload, creates disincentive for early settlement, and causes unpredictable results).

Furthermore, courts have long recognized that a percentage of recovery for attorneys' fees is properly awarded based on the total value of the settlement. *Boeing*, 444 U.S. at 478, 480- 481 (upholding attorneys' fees of approximately $2,000,000 approved on settlement value of $7,000,000 where only 47% of the eligible claimants made claims); *Williams v. MGM-Pathe Communications Co*., 129 F.3d 1026, 1027 (9th Cir. 1997) (holding that attorneys' fee award should be based on 33.3% as agreed by the parties based on total recovery value of $4.5 million and that the "court abused its discretion by basing the fee on the class members' claims against the fund rather than on the percentage of the entire fund or on the lodestar").

B. Ninth Circuit Precedent and California Law Support Awards of Up To 50% % in Wage and Hour Class Actions

Courts historically award fees in the range of 20% to 50% of the common fund. *In re Warner Communications Sec. Lit*, 618 F. Supp. at 749-50 (S.D.N.Y. 1985); *Newberg on Class Actions*, (3d Ed.), § 14.03, at 14-13 (noting fees of up to 50% of the common fund). *See*, *e.g.*, Silver, *A Restitutionary Theory of Attorneys' Fees in Class Actions*, 76 Cornell L. Rev. 656, 702-703 (1991) (the goal "is to pay attorneys on terms they would probably accept in an ex ante bargain, before the outcome of litigation is known".); *In re Heritage Bond Litig*, (C.D. Cal Jun. 10, 2005) 2005 WL 1594403, at *18, n.12 (noting that more than

200 federal cases have awarded fees higher than 30%); *Williams v. Costco Wholesale Corp.*, 2010 WL 2721452 at * 6 (S.D. Cal. July 7, 2010) (collecting cases with 33.33%-40% in fees); *Singer v. Becton Dickinson & Co.*, No. 08-CV-821-IEG (BLM), 2010 WL 2196104, at *8 (S.D. Cal. June 1, 2010) (fee award 33.33%, citing similar awards from 30.3% to 40%); *Williams v. Costco Wholesale Corp.*, 2010 U.S. Dist. LEXIS 67731, *17 (S.D. Cal. July 7, 2010) (typical fee range is between 20-50%, citing *Birch v. Office Depot, Inc.*, 2007 U.S. Dist. LEXIS 102747 (S.D. Cal. Sept. 28, 2007) (awarded 40%) and *Rippee v. Boston Mkt. Corp.*, 2006 U.S. Dist. LEXIS 101136, *11 (S.D. Cal. Oct. 10, 2006) (same)).

The *Wren v. RGIS Inventory Specialists*, 2011 U.S. Dist. LEXIS 38667, *84 (N.D. Cal. 2011), decision illustrates the reasonableness of Plaintiffs' Counsel's request. After four years of litigation, the parties settled a wage and hour class action for $27 million. Id. at *5. The court awarded class counsel $11.38 million, or 42% of the common fund. Id. at *16. The *Wren* court analyzed the same factors as discussed here, i.e., the risks undertaken, the results achieved, the complexity of the issues, and the skill displayed. These same factors weigh even more strongly in favor of the request by Plaintiffs' Counsel. Instead of a four-year litigation ending in a compromised settlement, Plaintiffs litigated this action for over five years, through trial, and have no promise of the concluding in the near future, as Trader Joe's filed a notice of appeal of the judgment. See also *Wells v. Allstate Ins. Co.*, 557 F. Supp. 2d 1, 6-9 (D.D.C. 2008) (analyzing same factors, awarded fees of over 45%).

Courts in this Circuit consider a number of factors when evaluating fees, including (1) whether class counsel achieved exceptional results for the class; (2) whether the case was risky for class counsel; (3) whether counsel's performance generated benefits beyond the cash settlement fund; (4) the market rate for the particular field of law; (5) the burdens experienced by class counsel while litigating the case (e.g., cost, duration, foregoing other work); (6) and whether the case was handled on a contingency basis. *In re Online DVD- Rental Antitrust Litig.*, 779 F.3d 934, 954-955 (9th Cir. 2015). The Court may also consider awards made in similar cases and a lodestar cross-check. *Vizcaino, supra*, 290 F.3d at 1050. The most critical factor is the degree of success obtained. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983).

As discussed below, applying these factors here confirms that the requested fee is reasonable and justified in light of the result obtained for the class and is in line with other awards in numerous courts in the Ninth Circuit and in cases with settlement amounts that are similar to the settlement achieved in this case.

C. The Result Achieved for the Class Supports the Requested Award

Courts have consistently recognized that the result achieved is an important factor to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1048 (9th Cir. 2002) (noting that "[e]xceptional results are a relevant circumstance").

The proposed settlement provides a gross non-reversionary settlement amount of $12,000,000 to approximately 3,433 Class Members who worked a total of approximately 202,101 workweeks. The settlement provides the settlement class with an estimated average individual payment of approximately $2,120.89 per Class Member. At the time of the filing of the Motion for Preliminary Approval, the average net class member award was expected to be approximately $1,378.45. Dkt 63 p. 16. The Court noted "The average recovery per class member here is higher than most of the comparators provided, and this settlement represents the highest percentage of potential estimated exposure of all comparators." (Dkt. 77 p. 8) Plaintiffs had estimated the workweeks to be in the range of 269,334. As it turns out the workweeks are 25% lower (i.e., 202, 101). This raises the average net recovery for class members from $1,378.45 to $2,120.89. This equates with a 50% increase in the average recovery (i.e., an additional $742.44 per Class Member). The Court noted on page 8 [Dkt.77] in the Order granting preliminary approval dated July 24, 2025, that the settlement amount, which was based on 5,282 employees appeared to be "significant" to class members based on comparative cases presented to the Court. This 50% increase (on average) in recovery to class members emphasizes the exceptional results achieved in this litigation.

Further, 2.5% of the Total Settlement Amount ($300,000) was allocated to the PAGA claim. Dkt. 63-1, Sett. Agmt. ¶ 27. As required by statute, 75% ($225,000) will be paid to the LWDA. The remaining 25% ($75,000) will be distributed to approximately 3436 PAGA Employees. Thus, the PAGA payments are estimated to be approximately $21.82 per PAGA Employee on average.

This represents an excellent recovery for the Class Members, particularly considering the risks of further litigation. As noted above, there is no guarantee that Plaintiffs could certify the meal and rest break claims or prevail on the merits. Proof of non-compliance would involve a comparison of employee time records against data showing when they logged into and out of the computer system to determine how much unpaid time may have occurred during the process of clocking in and out. There is a likelihood that the amounts of time would be relatively small. Allegations that employees were required or pressured to work off the clock to complete their work would, based on the evidence adduced during discovery, be difficult to prove on a class wide basis. With regard to the rest breaks, the written policies appeared to be compliant, which would make certification significantly more challenging.

Moreover, litigating the case through certification, summary judgment, and trial would have been expensive and time-consuming, with the risk that Plaintiffs could lose at each step of the way and recover nothing, barring a successful appeal. For these reasons, the settlement value is fair, reasonable, and adequate.

These payments are higher than what courts frequently see in other wage-and-hour class action settlements. (Dkt 75 and Dkt 75-1) *See also, e.g.*, *Franco v. E-3 Systems*, 2021 WL 2333851 at *2 (N.D. Cal. June 8, 2021) (average payment of approximately $735.61 per employee); *Ernetoh v. FedEx Freight, Inc.*, 2020 WL 6216763 at *4 (N.D. Cal. Oct. 22, 2020) (average payment of approximately $683.76 per employee); *Rivas v. BG Retail, LLC*, 2020 WL 264401 (N.D. Cal. Jan. 15, 2020) (average payment of approximately $170.59 per employee). Thus, the excellent recovery for the Class justifies the requested fee of 30% of the common fund. Plaintiffs provided this Court with a detailed breakdown of cases (Hubbard v. RCM Technologies, Ward v. United Airlines, Ford v. CEC Entertainment, and Berry v. Urban Outfitters, Lusk v. Five Guys, and Sephora Wage and Hour Cases, and) with settlements and values for similar cases within the district or against Defendant. Supplemental Submission in Support of Motion for Preliminary Approval. Dkt. 75 and 75-1.

D. The Risks and Complexity of the Case Support the Requested Award

Numerous cases have recognized that the risks of litigation are important factors in determining a fee award. *See e.g. In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1299-1300; *Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d. Cir. 1974); *Lindy Bros. Builders, Inc. v. Am. Radiator & Standard Sanitary Corp.*, 540 F.2d 102, 117 (3d Cir. 1976). As endorsed by the Ninth Circuit, the risk of litigation is an important, if not the foremost, factor in adjusting the attorneys' benchmark percentage upward. *See Vizcaino*, 290 F.3d at 1048 (finding that"[r]isk is a relevant circumstance").

When the claims at issue are heavily contested, there is an inherent risk in continuing litigation. In *Thieriot v. Celtic Ins. Co.*, 2011 WL 1522385 at *5 (N.D. Cal. Apr. 21, 2011), the district court approved a settlement agreement in which the defendant specifically denied liability, noting that such denial of liability posed a risk to continued litigation. *See also Mora v. Harley-Davidson Credit Corp.*, 2014 WL 29743 at *4 (E.D. Cal. Jan. 3, 2014) (granting final approval to settlement agreement where defendant denied any liability). Further, the court acknowledged that "even with a strong case, litigation entails expense." *See Greko v. Diesel U.S.A., Inc.*, 2013 WL 1789602 at *4 (N.D. Cal. Apr. 26, 2013).

In the instant case, Defendant strongly denied liability and alleged a phalanx of affirmative defenses on both procedural and substantive grounds. In addition, Plaintiffs had to surmount numerous roadblocks before achieving the desired result for the Class. For instance, Plaintiffs first would have to prevail on their motion for class certification, which was going to be heavily contested by Defendant. If the certification battle was lost, then the Class would get nothing, barring a successful appeal in the Ninth Circuit which would take years and comes with the risk that the trial court ruling will not be overturned. Even assuming Plaintiffs succeeded at certification, Plaintiffs would likely face successive decertification motions and, in any event, a summary judgment motion. Assuming Plaintiffs were able to defeat such motions, Plaintiffs would have to try the case to verdict as a class action, which is, like all trials, fraught with uncertainties, particularly involving the use of statistical sampling, not to mention the expense of identifying and transporting fact and expert witnesses to testify at trial. Declaration of J. Glugoski ¶ 11.

The possibility that Plaintiffs could have achieved a better result if the case was tried to verdict should be viewed with the above risks in mind. *See Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989) ("The fact that a plaintiff might have received more if the case had been fully litigated is no reason not to approve the settlement.").

E. The Skill Required and Quality of Work Performed by Class Counsel

The skill level and quality of work by Class Counsel are also relevant in determining what is a reasonable compensation. *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (holding that the specialized skill of class counsel in wage and hour law was an asset to the Class Members and the quality of work performed cuts in favor of approving the 33% fee request). Class Counsel have extensive experience in wage and hour class action litigation as well as other complex litigation. See Dkt 56, Nathan Decl. ¶¶ 24-27, Dkt. 44-1, ¶¶. 1-7, Declaration of Matthew Righetti, and the Declaration of John Glugoski filed in support of this Motion for Final Approval and Motion for Attorneys' Fees, etc. ("Glugoski Decl.") ¶¶ 2-7. Given the complexity of the issues presented in this action, only skilled counsel who applied themselves diligently could have obtained such a favorable recovery. It is important to reward skilled counsel for pursuing difficult cases because "the stated goal in percentage fee-award cases [is] of 'ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation.'" *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000).

The quality of opposing counsel is also important in evaluating the quality of the work done by Class Counsel. *See, e.g., In re Equity Funding Corp. of Am. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal. 1977). Here, Plaintiffs were vigorously opposed by two teams of highly competent and experienced lawyers: first, the class action litigation arm of Morgan, Lewis & Bockius LLP and later the employment and class action litigation team at Littler Mendelson. Both firms are leading national law firms with tremendous resources that frequently represent defendants in complex wage and hour class action cases. That Class Counsel achieved this settlement for the Class in the face of such formidable legal opposition further evidences the quality of their work.

In sum, Class Counsel were required to perform with a high level of skill, efficiency, and professionalism to assemble a case that was strong enough to encourage Defendant to settle and compensate Class Members. Class Counsel evaluated the merits and risks presented, negotiated a favorable payment to the Class, and settled the action on solid terms for the Class. Class Counsel's efforts, efficiency and dedication should be rewarded.

F. The Length of the Case Supports the Requested Award

To date, this case has been in litigation for over three years since the filing of the complaint. For Class Counsel, this case has been pending much longer because of the pre-filing investigation, pre-filing analysis, interviewing witnesses and other related activities. While three years of litigation may not seem incredibly lengthy compared to other class action cases, the important point is that this is not a case that settled shortly after the filing without any work having been completed. Indeed, those three years were full of litigation activities that required review and analysis of fact-intensive claims. Under such circumstances, the length of this case also supports the requested fee award.

G. The Contingent Nature of the Recovery and the Financial Burden Carried by Class Counsel Support the Requested Award

The Ninth Circuit recognizes that the determination of a fair fee must include consideration of the contingent nature of the fee and the difficulties which were overcome in obtaining the settlement: "[i]t is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases." *In re Washington Pub. Power Supply Sys. Sec. Litig*., 19 F.3d at 1299 (9th Cir. 1994) (citing Richard A. Posner, Economic Analysis of Law, § 21.9, at 534- 35 (3d ed.1986)).

The prosecution of this class action case involved a significant financial risk because Class Counsel took this case on a pure contingency basis (meaning no guarantee of ever being paid, if the case is lost), at the same time advancing all litigation costs out of their own pockets, while incurring ongoing costs of paying overhead and salaries to their attorneys and staff employees who are working on this case. Glugoski Decl. ¶¶ 13-15; Nathan Decl. ¶¶ 44. Thus, if the case was lost, then Class Counsel would face multiple and simultaneous financial setbacks of having earned nothing on the case, on top of the opportunity cost of having wasted their time and financial resources on a losing endeavor, not to mention incurred costs such as overhead expenses associated with the work done on this case. When this case was taken on a contingent fee basis over three years ago, the ultimate result was far from certain. The contingency nature of prosecuting a class action is not easy to stomach precisely because of these types of risks. Further, Class Counsel were precluded from other employment in order to adequately litigate this matter because there is a finite amount of resources available to work on active cases. Glugoski Decl. ¶¶ 14; Nathan Decl. ¶¶ 58. In fact, many courts recognize such risks to be so significant such that they deserve a premium when it comes to awarding fees on contingency work. CAL. R. PROF. CONDUCT 4–200(B)(9) ***385 (recognizing the contingent nature of attorney representation as an appropriate component in considering whether a fee is reasonable); ABA Model Code Prof. Resp., DR 2– 106(B)(8) (same); ABA Model R. Prof. Conduct 1.5(a)(8); *Rader v. Thrasher*, 57 Cal.2d 244, 253 (1962) ("[a] contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable").

H. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Award

As a "cross-check" on the reasonableness of a requested fee award, courts often compare counsel's lodestar with the fee request made under the percentage-of-the-fund method. *See, e.g.*, *Vizcaino*, 290 F.3d at 1050 (upholding 28% fee award that constituted a 3.65 multiplier). "[T]he lodestar calculation can be helpful in suggesting a higher percentage when litigation has been protracted . . . [and] may provide a useful perspective on the reasonableness of a given percentage award." *Id.* at 1050. In class actions, it is common for lodestar amounts to be adjusted upward by a multiplier to reflect a variety of factors, including the complexity of the case and the risks assumed by counsel. For example, the court in *Vizcaino* approved a fee representing a multiple of 3.65 times counsel's lodestar. *Id*. at 1051-52 (listing twenty-three shareholder settlements and the multipliers for each, in which the average multiplier is 3.28 and finding that a range of 1 to 4 are reasonable, citing *In re Prudential Ins. Co. Sales Practices Litig*., 148 F.3d 283, 341 (3d Cir.1998) ("[M]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied." (quoting 3 NEWBERG § 14.03 at 14–5)).

In this case, Class Counsel's combined lodestar is $ $3,553,895 [4] Righetti Decl. ¶ 18, Glugoski Decl. ¶¶ 27; Nathan Decl. ¶¶ 29. Class Counsel's fee request equates to its lodestar plus a 1.183 multiplier. This demonstrates that the fee requested by Class Counsel is fair and reasonable.

It is well established that that courts do not typically require a review of actual billing records before ruling on motion for attorneys' fees, however, Class Counsel is providing this Court with detailed billing records. *See Winterrowd v. American General Annuity Ins. Co.*, 556 F.3d 815, 827 (9th Cir. 2009) ("In California, an attorney need not submit contemporaneous time records in order to recover attorneys' fees."). Exhibit 2, Righetti Decl. and Nathan Decl. ¶¶ 38

I. Multiplier Award is Justified for the Exceptional Results Achieved

The exceptional results justify application of a multiplier. Federal courts have consistently recognized that the lodestar method is the presumptive standard for calculating reasonable attorney's fees, but enhancements or multipliers may be justified in rare and exceptional circumstances. The United States Supreme Court in *Perdue v. Kenny A.* (2010) 559 U.S. 542, 552-554, clarified that while the lodestar is presumed reasonable, a multiplier may be awarded only where the fee applicant demonstrates

[4] 5 Righetti Glugoski, P.C. ($1,866,020); and Nathan & Associates ($1,687,875).

that the lodestar does not adequately account for factors such as superior attorney performance, extraordinary results, or exceptional circumstances. The Court emphasized that such enhancements must be supported by specific evidence and are not to be awarded routinely or based on subjective impressions alone. Federal appellate courts have further elaborated on these principles. In *Blum v. Stenson* (1984) 465 U.S. 886, 897-899, the Supreme Court held that enhancements may be appropriate only in cases where the lodestar fails to reflect the true market value of the attorney's services or where there is an extraordinary outlay of expenses or delay in payment. The Ninth Circuit in *Levine v. City of Alameda* (2006) 525 F.3d 903, 907-908, affirmed that lodestar enhancements may be warranted for exceptional results, but only if the applicant provides specific evidence that the enhancement is necessary to attract competent counsel. Similarly, the Ninth Circuit in *Fischel v. Equitable Life Assurance Soc'y* (2002) 307 F.3d 997, 1007, upheld the use of a multiplier above the lodestar in a common fund case, but only where the circumstances were truly exceptional, and the enhancement was justified by specific evidence. Other circuits have also addressed the issue. The Seventh Circuit in *Dutchak v. Central States, S.E. & S.W. Areas Pension* (1991) 932 F.2d 591, 596-597, upheld a lodestar multiplier to compensate for the contingent nature of the case, but only because the settlement agreement specifically adopted as guideposts lower court decisions that had approved contingency multipliers. Here, Plaintiffs have produced exceptional results which was confirmed in this Court's Order [Doc. 77] on preliminary approval, which is set forth on pg. 8. Not only were the results on behalf of the class exceptional in this case, but MAC has changed its business practices to correct the regular rate issue and uniform requirements. This is a large settlement which generally attracts objectors for a variety of reasons. The settlement is exceptional from a value standpoint, but through the administration process has now been acknowledged as such by the class members, because no class member filed an objection.

Similarly, the California Supreme Court in *Ketchum* held that multipliers are often necessary to fairly compensate counsel for the risk of contingency, explaining that without them, the market value of legal services rendered on contingency is not met. *Ketchum v. Moses* ("*Ketchum*") (2001) 24 Cal.4th 1122, 1133. With the risks of nonpayment and the many uncertainties involved in litigating a case of this type, the 1.183 multiplier is more than reasonable. Nathan Decl. ¶¶ 29, 49-58.

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V. CLASS COUNSEL'S LITIGATION COSTS ARE REASONABLE AND WERE NECESSARY TO ACHIEVE THE BENEFIT OBTAINED

Courts have found that counsel for the Class are entitled to reimbursement for certain types of out-of-pocket expenses that an attorney would normally expect the client to pay. *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (holding that plaintiff "may recover as part of the award of attorney's fees those out-of-pocket expenses that `would normally be charged to a fee paying client.'"); *see also In re Immune Response Secs. Litig.*, 497 F. Supp. 2d 1166, 1177 (S.D. Cal. 2007) (holding numerous different types of litigation expenses - such as postage, telephone, notice expenses, filing fees, photocopies, messenger services, legal research and travel expenses - were reasonable and necessary). To prosecute this action and achieve the settlement, Class Counsel incurred reasonable and necessary costs and expenses at a total of $40,394.93 (Nathan & Associates: $13,236.02 and Righetti Glugoski: $27,158.91). Nathan Decl. ¶¶ 29, 34; Righetti Decl. ¶ 21, Glugoski Decl. ¶ 29. This is less than the $150,000 reserved for litigation expenses. Because the expenses were incurred with no guarantee of recovery, Class Counsel had a strong incentive to keep them as low as reasonably possible and in fact did so. Moreover, the fact that no settlement Class Members (thus far) objected to the reimbursement of Class Counsel's litigation costs, coupled with Defendant's non-opposition to this request, further supports the reasonableness of this requested amount.

VI. THE REQUESTED SERVICE PAYMENTS ARE REASONABLE

"Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." *Garcia v. Gordon Trucking, Inc.*, 2012 WL 5364575, at *11 (E.D. Cal. Oct. 31, 2012) (quoting *Ingram v. The Coca–Cola Co.*, 200 F.R.D. 685, 694 (N.D.Ga.2001)); *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (approving $50,000 class representative enhancement award); *Glass v. UBS Financial Services, Inc.*, 2007 WL 221862, at *17 (N.D.Cal. Jan.26, 2007) (approving $25,000 enhancement to each named plaintiff).

The requested $20,000 service payment to each of the Plaintiffs is justified for several reasons. First and foremost, as the court in *Parker v. Jekyll & Hyde Entm't Holdings, L.L.C.*, 2010 WL 532960, at *1 (S.D.N.Y. Feb. 9, 2010), explained: "[A]s employees suing their current or former employer, the plaintiffs face the risk of retaliation. The current employees risk termination or some other adverse employment action, while former employees put in jeopardy their ability to depend on the employer for references in connection with future employment. The enhancement awards provide an incentive to seek enforcement of the law despite these dangers." Other courts are in accord. *See Asare v. Change Group N.Y., Inc.*, 2013 WL 6144764, at *15 (S.D.N.Y. Nov. 15, 2013) (plaintiffs "faced the risk that new employers would learn that they were class representatives in a lawsuit against their former employer and take adverse action against them. Moreover, each time they change jobs, they will risk retaliation in the hiring process."); *DeWitt v. Darlington County*, 2013 WL 6408371, at *14 (D.S.C. Dec. 6, 2013) ("Service or incentive payments are especially appropriate in employment litigation, where the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers."); *Tiro v. Public House Invs., LLC*, 2013 WL 4830949, at *11 (S.D.N.Y. Sept. 10, 2013) (significant risks of retaliation and "blacklist[ing]"); *Craig v. Rite Aid Corp.*, 2013 WL 84928, at *13 (M.D. Pa. Jan. 7, 2013)("[P]laintiffs in FLSA or state wage and hour claims are often retaliated against in the industry as a result of their obvious participation in such litigation.") (citing *Shahriar v. Smith & Wollensky Rest. Group, Inc.*, 659 F.3d 234, 244 (2d Cir. 2011)). With this threat in mind, the Plaintiffs undertook this action for the benefit all of the aggrieved employees.

Given the work they performed, and the risks they undertook, the award requests, which collectively comprise just 5.5 times the attorney's lodestar. See, e.g., *Roberts v. Texaco*, 979 F. Supp. 185, 203-204 (S.D.N.Y. 1997) (approving incentive payments of up to $85,000 for named plaintiffs in employment case settling prior to class certification, recognizing "the plaintiff is frequently a present or past employee whose present position or employment credentials or recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his or her name and efforts to the prosecution of litigation at some personal peril"); *Ingram*, 200 F.R.D. at 694 ($300,000 class representative payment); *Velez v. Novartis Pharm. Corp.*, 2010 WL 4877852, at *26 (S.D.N.Y. Nov. 30, 2010) (service awards between $175,000 and $425,000 to 26 named plaintiffs); *Been v. O.K. Indus., Inc.*, 2011 WL 448766, at *12-13 (E.D. Okla. Aug. 16, 2011) ($100,000 service awards to class representatives); *McReynolds v. Merrill Lynch*, No. 1:05-cv-6583 (N.D. Ill. Dec. 6, 2013) ($250,000 incentive awards for each of the 17 class representatives and $75,000 to each plaintiff on the steering committed); *In re Titanium Dioxide Antitrust Litig.*, 2013 WL 6577029, at *1 (D. Md. Dec. 13, 2013) ($125,000 service award); *In re High-Tech Employee Antitrust Litigation*, 2015 WL 5158730, *17 (incentive awards to five named plaintiffs ranging from $80,000 to $120,000); *Seaman v. Duke University, et al.*, 2019 WL 4674758, *7 (M.D. N.C. Sept. 25, 2019) (awarding $125,000 to class representative).

Furthermore, Plaintiffs will be giving Defendant a broad general release, in contrast to the narrow release given by the Class Members, which is limited to their wage and hour claims only. This release will preclude Plaintiffs from pursuing any all employment-related claims, and such a broad release warrants consideration. Settlement Agmt. ¶69, Declaration of Ignacio Maciel ("Maciel Decl.") ¶21 and Declaration of Ruth Torres ("Torres Decl.) ¶19.

One of the most important justifications for the enhancement is due to the excellent results involved in this case. The Class Members are receiving an estimated average payment of approximately $2,120.89 per class member.

As a direct result of Plaintiffs' initiative, time, and efforts, all of the Class Members now stand to benefit from the Settlement. Class Counsel therefore fully support the requested service payment of $20,000 to each Plaintiff as being fair, reasonable, and appropriate.

A. The Named Plaintiffs Have Been Required To Enter Into General Releases, Waiving Viable Claims

Service payments are recognized as serving an important function in promoting class action settlements, particularly where the named plaintiffs participated in the litigation. In *League of Martin v. City of Milwaukee*, 588 F.Supp. 1004 (E.D. Wis. 1984), the court held that the proposed settlement properly granted the named plaintiff individual relief. It is "not uncommon for class members… to receive special treatment in settlement," especially when they have been instrumental in prosecuting the lawsuit. Id. at 1024. Courts routinely approve awards to class representatives who expend special efforts that redound to the benefit of absent class members. *White v. National Football League*, 822 F.Supp 1389, 1406 (D. Minn 1993); *See, e.g., Thorton v. East Texas Motor Freight*, 497 F.2d 416,420 (6th Cir. 1974)(approving greater awards for those who took a more active role in seeking class relief); *Huguley v. General Motors Corp.*, 128 F.R.D. 81,85 (E.D.Mich. 1989)(in a case where incentive awards not objected to, the court noted that "named plaintiffs and witnesses are entitled to more consideration than class members generally because of the onerous burden of litigation they have borne."). In *Lo Re v. Chase Manhattan Corp.*, 1979 U.S. Dist. LEXIS 12210 at *16-17 (S.D.N.Y. May 23, 1979), the court approved payment of $229,000 out of a $1,579,000 settlement fund for the named plaintiffs, which represented the full value of their individual claims. One of the factors considered by the court in determining that such payments were fair was the fact that none of the absent class members had objected to these payments; another was the fact that plaintiffs' efforts conferred a benefit on a substantial number of people. Id. at *17.

In this instance, the efforts of the named plaintiff in pursuing this litigation has conferred a substantial economic benefit on a large number of current and former employees of defendant. Without the efforts of the named plaintiffs, these absent class members would have received no economic benefit whatsoever. The Notice provided to the class members advised them that plaintiffs would seek additional compensation for each named plaintiff up to twenty thousand dollars ($20,000) each, and none of the absent class members have objected to the proposed service awards to the named plaintiffs in this action.

In addition, and more importantly, to obtain service awards, the Plaintiffs have been required to enter into a general release of all claims that Plaintiffs have against the Defendants. Plaintiffs have significant viable claims beyond the allegations of this lawsuit that they had to release to confer a benefit to a significant number of employee Class Members.

VII. THE REQUESTED ADMINISTRATION EXPENSES ARE FAIR AND REASONABLE AND SHOULD BE APPROVED

As set forth in the accompanying Declaration of ILYM Group, Inc. ("ILYM"), the total costs incurred and to be incurred by ILYM for the notice and settlement administration process are $29,000.00. The costs incurred and to be incurred include, but are not limited to, administration. Accordingly, the Court should grant payment to ILYM, a necessary third-party for handling of the notice and settlement process, in the amount of $29,000.00.

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VIII. CONCLUSION

Class Counsel undertook this risk and expended hundreds of hours zealously litigating this case, despite the real possibility that they would not receive any compensation at all (or recovery of costs) if they did not achieve a favorable result for the Class. As discussed above, this case was hard fought. From the outset of this case, Class Counsel were faced with a sophisticated and well-capitalized company, represented by experienced and highly competent defense counsel with the resources of national law firms behind them. Yet, Class Counsel skillfully and zealously advocated on behalf of the Plaintiffs and the Class without burdening this Court and extracted a favorable settlement for the Class. Thus, Plaintiffs request that this Court grant final approval of the requested attorneys' fees and costs, the requested class representative enhancement awards, and the requested expenses for the settlement administrator.

Respectfully submitted,

DATED: November 17, 2025

RIGHETTI GLUGOSKI

/s/ John Glugoski
John Glugoski
Matthew Righetti
Attorneys for Plaintiffs,
IGNACIO MACIEL, RUTH TORRES

NATHAN & ASSOCIATES, APC

/s/ Reuben D. Nathan
Reuben D. Nathan
Attorneys for Plaintiffs,
IGNACIO MACIEL, RUTH TORRES