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Attorneys for Plaintiff RONALD MEJIA,
individually and on behalf of all others similarly situated

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

RONALD MEJIA, individually and on behalf of all others similarly situated,

Plaintiff,

v.

SUNBELT RENTALS, INC., a North Carolina Corporation; and DOES 1-10, inclusive,

Defendant.

CASE NO.: 22STCV10099
consolidated with 22STCV17704

Hon. William F. Highberger
Dept. 10 (Spring Street)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND PAGA ACTION SETTLEMENT

Date: July 31, 2025
Time: 10:00 a.m.
Dept.: 10

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Ronald Mejia ("Plaintiff" or "Class Representative") respectfully moves for final approval of a $1,300,000.00 non-reversionary, Gross Settlement Amount ("GSA") memorialized in the Parties' (1) Class and PAGA Action Settlement Agreement and (2) the Amendment to Class and PAGA Action Settlement Agreement ("Settlement", "Settlement Agreement" or "S.A.") which after deductions for attorneys' fees and costs, the Class Representative Enhancement Award, Settlement Administration fees, and the payment to the LWDA, will provide an estimated Net Settlement Amount ("NSA") to the 2,429 participating Class Members of approximately $683,875.57 as follows:

	Total Amount
Gross Settlement Amount	$1,300,000.00
Attorneys' Fees (1/3 of GSA)	$433,333.33
Actual Litigation Costs	$25,341.10
Administrator Costs	$19,950.00
PAGA Penalty	$130,000.00
Class Representative Enhancement Award	$7,500.00
Net Class Settlement Amount	**$683,875.57**[1]

The Settlement was preliminarily approved on March 21, 2025. On April 21, 2025 the Court-approved Notice Packet (consisting of the Notice of Class Action and PAGA Settlement, Change of Address form, and pre-printed return envelope) was sent to 2,430 Class Members via U.S. First Class Mail. On May 1, 2025, the Notice Packet was also emailed to all individuals with an available address.[2] Through these means, the Notice Packet informed the Class Members of their rights and benefits under the Settlement, including their estimated Settlement Payments if they did not request exclusion, and the May 21, 2025 deadline to dispute workweeks, request exclusion, or object to the Settlement.[3] Following the May 21, 2025 deadline, **zero objections have been raised and only one (1) Class Member opted out**. These results demonstrate the

[1] Declaration of Nathalie Hernandez on behalf of ILYM Group, Inc., ("Hernandez Decl.") ¶ 15.
[2] *Id.*, ¶¶ 7- 8.
[3] *Id.*, ¶¶ 12-13.

overall tremendous support for this Settlement which represents a 99.96% participation rate.[4] As a result of the successful Notice campaign, the compendium of information available to the Parties and their counsel, and Class Counsel's and Class Members' support for this Settlement as fair and reasonable, it now merits final approval.

II. RELEVANT PROCEDURAL HISTORY AND FACTUAL BACKGROUND

For a discussion of relevant procedural history and facts regarding this case, please see the Declaration of James Hawkins In Support of Final Approval ("Hawkins Decl.") at paragraphs 2 to 6.

III. SUMMARY OF SETTLEMENT AND NOTICE PROCESS

Under the preliminarily-approved Settlement, Defendant will pay $1,300,000.00 ("Gross Settlement Amount" or "GSA") for the release of Class Members' claims, which are only those claims actually alleged in the action or that could have been alleged based on the facts stated in the operative Complaint, consistent with principles of *res judicata.* (*See, Rangel v. PLS Check Cashers of California, Inc.*, 899 F.3d 1106 (9th Cir. 2018).[5] Further key terms include:

"Class," "Classes," "Class Member," or "Class Members" are defined as "all current and former non-exempt employees of Sunbelt in California who were paid Paid Time Off ("PTO") (as denoted on an employee's paystub with the pay code, "PTO") at any time from March 23, 2018 through July 28, 2024." (the "Class Period"). (Settlement Agreement ¶ 2)".

Attorneys' Fees and Costs. The Settlement provides for an attorneys' fees and costs award of 1/3 (33.333)% of the settlement amount (i.e. $433,333.33), a typical percentage[6] in the resolution of common fund wage and hour cases. Class Counsel have devoted numerous hours to and faced significant risk in the prosecution of these matters and, more importantly, made a substantial fund available to a large number of otherwise-underrepresented, low-paid workers.

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[4] *Id.*, ¶¶ 12-14.

[5] This Motion occasionally cites federal case law and commentaries thereon which construe authority for conditional class certification and settlement approval in California courts. The California Supreme Court has authorized and urged California's trial courts to use federal resources for guidance in considering class issues. *Vasquez v. Superior Court*, 4 Cal.3d 800, 821 (1971); *Green v. Obledo*, 29 Cal.3d 126, 145-46 (1981).

[6] *See, e.g., Davis v. The Money Store, Inc.*, Case No. 99AS01716 (Sacramento Super. Ct. 2000) (33 1/3 % fee award); *Haitz v. Meyer, et al*., No. 572968-3 (Alameda Super. Ct., 1990) (45% fee award); *Ibrahimi v. Walgreen*, (Contra Costa Super. Ct. 2019) Case No. MSC16-02120) (35% fee award in wage and hour class action); *Rippee v. Boston Mkt. Corp.*, 2006 U.S. Dist. LEXIS 101136 (S.D. Cal. Oct. 10, 2006) (40% fee award); Exhibit "D" (Compendium of Settlement Item Awards).

Class Counsel also incurred ordinary litigation costs over the past 3 years and now seeks costs of $25,341.10. Notably, this amount does not account for additional future expenses in overseeing the settlement process, making appearances, filing court documents, ensuring claims administration compliance with this Court's orders, responding to Class Members, etc. Since costs in the amount of $25,341.10 are reasonable and served to benefit the Class, they warrant reimbursement.

PAGA Penalty Amount. The Settlement also provides for $130,000.00 to be paid to settle any and all claims for which penalties under PAGA may be sought or are otherwise available. Of the $130,000.00 PAGA Penalty Amount, 75% will be paid to the LWDA in the amount of $97,500.00. The remaining 25% will be paid to the Aggrieved Employees in the amount of $32,500.00.

Class Representative Enhancement Award. The Settlement also provides for an Enhancement Award as a service payment to the Plaintiff for his role as Class Representative in the amount of $7,500.00 for his time, risk and effort in bringing the lawsuit, representing the large Class, and in consideration for the claims released. Plaintiff.[7] The proposed $7,500.00 Enhancement Award is also reasonable given the minimal impact these amounts will have on any settling Class Member's level of recovery.

Settlement Administration Costs. The settlement administration costs of $19,950.00 are reasonable given the size of the Class and the work required to send the Notice, process settlement checks, set up and administer a settlement website, communicate extensively with Class Members and Class Counsel, and perform post Final Approval administration.[8]

Results of the Notice Process. In accordance with the Court's granting of preliminary approval, the Settlement Administrator sent the Notices by first class mail to all Class Members at their last known addresses, updated using the National Change of Address ("NCOA") Database. As detailed below, when Notices were returned by the post office, the claims administrator researched further, performed "skip traces" and then, when possible, re-mailed those Notices to

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[7] Hawkins Decl., ¶ 38; *See generally* Declaration of Ronald Mejia In Support of Final Approval ("Mejia Decl.).
[8] Hernandez Decl., ¶ 16.

better mailing addresses. Only 51 Notice Packets out of the 2,430 Notices were deemed undeliverable – an excellent result in wage and hour actions.[9] The deadline for Settlement Class Members to exclude themselves or object to the Settlement was May 21, 2025. **Only one Class Member opted out and zero Class Members objected, resulting in 99.96% participation.**[10]

The Participating Class Members are expected to receive an estimated, average Individual Settlement Payment of $281.43, with the highest Individual Settlement Payment currently estimated to be $714.67 and the lowest estimated to be $31.07.[11] The average PAGA Payment to the eligible Aggrieved Employees is currently estimated to be $16.75, with the highest PAGA Share currently estimated to be $30.36 with the lowest estimated to be $2.17.[12] These are significant individual recoveries, particularly in light of the risks of litigation.

IV. THE SETTLEMENT MERITS FINAL APPROVAL

When evaluating a class action settlement under California Code of Civil Procedure § 382 for final approval, a court's inquiry focuses upon whether the settlement is "fair, adequate and reasonable." *Wershba v. Apple Computer Inc.*, 91 Cal.App.4th 224, 244-245 (2004); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996). A settlement is "fair, adequate and reasonable" and, therefore, merits final approval when "the interests of the class are better served by the settlement than by further litigation." *Manual for Complex Litigation* (4th ed. 2008) § 21.61, 462 ("*Manual*"). These conditions are met here.

While the Court possesses "broad discretion" in determining whether a proposed class action settlement is fair, the Court's inquiry "must be limited 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 negotiation Parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Dunk*, 48 Cal.App.4th at 1801 (quoting *Officers for Justice Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982)). A court's approval of a class action settlement will only be reversed for a clear abuse of discretion. *Dunk*, 48 Cal.App.4th at 1802.

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[9] *Id.*, ¶ 11.
[10] *Id.*,¶¶ 12-13.
[11] *Id.*, ¶ 15.
[12] *Id.*

A. THE SETTLEMENT IS PRESUMED FAIR

"[A] presumption of fairness exists where: (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; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802 (citing Newberg & Conte, *Newberg on Class Actions (2002)* § 11.41, pp. 11-91). Here, the Settlement clearly meets these points and, as this Court noted in its preliminary approval Order, it is, thus, presumed fair.

The Settlement was reached through arm's-length negotiations. On June 11, 2024, Mejia and Sunbelt participated in mediation to reach a global class settlement of the Class and PAGA Actions. While the parties were not successful in resolving the Lawsuits during the mediation, subsequent negotiations facilitated by mediator Kristin Rizzo have resulted in the class-wide resolution of this matter to fully resolve the Class and PAGA Actions. Finally, as discussed *infra*, **zero Class Members objected, and one opted out**. Accordingly, the presumption that the Settlement is fair applies. *See In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011) (the presence of a neutral mediator is a factor weighing in favor of finding of no collusion); *In re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS 108195 (N.D. Cal. Nov. 5, 2008) (mediator's participation weighs considerably against any inference of a collusive settlement); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a "mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure."); *Villegas v. J.P. Morgan Chase & Co.*, No. 09–00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"); *Ogbuehi v. Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014) (participation in mediation "tends to support the conclusion that the settlement process was not collusive"). At all times, the Parties' negotiations were adversarial and non-collusive.

B. <u>AS THIS COURT PREVIOUSLY FOUND, THE RELEVANT CRITERIA SUPPORT FINAL APPROVAL</u>

California Courts consider several factors in deciding whether to grant final approval of a class action settlement, including (1) the amount offered in settlement, (2) the risks inherent in continued litigation, (3) the complexity, expense, and likely duration of the litigation absent settlement, (4) the extent of discovery completed and the stage of the proceedings when settlement was reached, (5) the experience and views of class counsel, and (6) the reaction of class members. *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91 Cal.App.4th at 244-45; *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 119 (2008). Here, evaluation on each of these factors favors final approval of the Settlement.

1. The Value of the Settlement and the Risks Inherent in Continued Litigation Favor Final Approval

When evaluating the Settlement for fairness, the Court should weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. In making a fairness determination, "[t]he most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." *Kullar*, 168 Cal.App.4th 116, 128 (2008). This analysis often includes a comparison of the amount of the proposed settlement with the value of the damages potentially recoverable if successful in further litigation, appropriately discounted for the risk of not prevailing. *Dunk*, 48 Cal.App.4th at 1801-1802; *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 617-619 (N.D. Cal. 1979). As this Court has previously determined, the Settlement is appropriate under the *Dunk/Kullar* analysis.

<u>PTO</u>

Based on the due diligence of analysis of the data and records produced in this litigation and in consideration of the prior related settlements against Defendant, the value of the claims in this matter rested in the claims associated with PTO and the regular rate for overtime and sick-pay. Therefore, these are the predominant claims contemplated by the settlement and serve as the basis of the Release in this matter.

As a result, there are 22,016 Impacted Pay Periods during the class period, and 14,986 pay periods during the PAGA Period. "Impacted Pay Periods" means those pay periods where a Class Member and/or Aggrieved Employee was paid "PTO" (as denoted on the paystub with the pay code, "PTO", of each Class Member and/or Aggrieved Employee) during the Class and PAGA Periods based on Defendant's records; provided the allocation of Impacted Pay Periods shall be subject to the following annual caps, which are consistent with the annual caps under Labor Code § 246.[13]

Through the payroll data provided to Plaintiff, it was determined that there were 2,502 payments made to the class that contained additional forms of remunerations potentially not accurately captured into the employees' regular rate. This resulted in the following estimated maximum exposure for underpayments of the Class: (1) approximately $389,755.00 of overtime underpayments and (2) approximately $450,637.00 of sick-pay underpayments, totaling approximately $840,392.00 of underpayments relating to overtime and sick-pay. Plaintiff will use this maximum exposure for purposes of calculating the realistic total recovery.[14]

<u>Waiting Time, Wage Statement, and PAGA Penalties</u>

Defendant contends Plaintiff could not successfully argue that derivative waiting time penalties were owed. Further, Plaintiff would still face a difficult, if not impossible, hurdle to overcome the willfulness threshold required by Labor Code section 203. Plaintiff evaluated and considered the former Class Members who have separated from Defendant's employ during the Class Period. Plaintiff applied the three-year statute of limitations and argued that the employer's underlying violation was willful. Defendant disagreed with this analysis, with respect to the "willfulness" prong and argued that Plaintiff could not show willfulness. The considerable risk that Defendant could defeat certification and prevail on its defenses defeating any and all recovery to the class warranted a compromise of the class claims. Similarly, Defendants contend that they have complied with all such requirements with respect to payroll records and wage statements at

[13] Hawkins Decl., ¶ 20.
[14] *Id.* ¶ 21.

all times. Further, Plaintiff would still face a difficult, if not impossible, hurdle to overcome the willfulness threshold required by Labor Code section 226. Defendant contends its practices have been in compliance with applicable law as set forth above, and that Plaintiff has no basis for asserting a claim under the UCL.[15]

The maximum estimated exposure for the Labor Code section 203 claim was calculated at $10,644,359.00 (for approximately 1,458 employees). Similarly, the maximum estimated exposure for the Labor Code section 226, premised on Defendant's failure to incorporate hourly rates for PTO accrued, was calculated at approximately $5,596,600.00 (for approximately 1,888 employees). The maximum estimated exposure is likely to be reduced significantly, by up to half the above stated values, when only the Impacted Pay Periods are taken into account. Given the defenses asserted for the underlying regular rate, overtime, and sick pay claims and the lack of evidence supporting the necessary "willfulness" prong for a Labor Code section 203 claim, Class Counsel believes that there are significant hurdles to certification of the Labor Code section 203 and Labor Code section 226 claims. As such, Plaintiff ascribes no realistic exposure for purposes of calculating realistic total recovery.

The maximum estimated exposure for the PAGA claim was calculated at approximately $2,997,000.00 in PAGA penalties (14,986 Impacted Pay Periods x $200). Further, based on the policies and practices to date, while this number may ultimately be substantially reduced under section 2699(e)(2), Plaintiff is using maximum exposure for purposes of calculating the realistic total recovery.

<u>The Risks</u>

Class certification was somewhat uncertain given the requirements under the California Supreme Court decision in *Brinker Restaurant Corp. v. Superior Court*. Plaintiffs also considered Defendants' arguments that subsequent decisions citing and relying on the U.S. Supreme Court decision in *Wal-Mart v. Dukes*, 564 U.S. 338 (2011) arguably make it more difficult to certify a

[15] *Id.* ¶ 22.

class in this case based upon the need to demonstrate that common issues are superior and could be dealt with in "one stroke" and that the "trial by formula" (*Duran v. U.S. Bank* (2014) 59 Cal.4th 1172) could not satisfy such requirements based upon due process grounds. However, Plaintiff disagreed that the subsequent decisions citing *Walmart*, applied to the facts in this case. Additionally, Plaintiff believes the cases denying certification are distinguishable and that the facts in this case are more akin to the facts in cases where certification had been granted, Class Counsel recognize the risk of an adverse finding on certification and considered and weighed this risk in determining to settle and compromise these claims. Lastly, Plaintiffs believe the decisions in *Sav-On Drug Stores, Inc. v Sup. Ct*, (2004) 34 Cal. 4th 319, 340, and *Bell v Famers Ins. Exchange*, (2004) 115 Cal. App. 4th 715, provide the applicable framework for class certification trial by formula plans. *See also Duran v. Superior Court*, 2014 Cal. LEXIS 5569 (Cal. Aug. 13, 2014).[16]

Further, beyond the risk of an adverse ruling on the merits or certification, Class Counsel considered the fact that continued litigation would likely take years and would be extremely expensive given the breadth and complexity of the claims. In this case, post-trial and appellate proceedings are likely to occur, which will surely drag the case far into the future even with a positive trial result. When facing a distant and unsure resolution of the allegations in this action, the swift, sure and substantial Settlement is all the more reasonable. Avoiding such costly litigation in favor of more immediate benefits to the Class was a consideration favoring settlement. Given these realities, it is highly likely that the future expense of this litigation, and its likely duration if the settlement is.[17]

In contrast, the Settlement provides real and significant benefits for the Class, Aggrieved Employees, and the State of California here and now, while avoiding the further expenses, risks, and delay of prolonged litigation with only the possibility of recovery. Based on the foregoing, Plaintiff's predicted realistic total recovery for the Class if the matter proceeded through trial would be approximately $3,837,392.00. As a result, the GSA of $1,300,000.00 represents approximately

[16] Hawkins Decl., ¶¶ 15-16, 24-26.
[17] *Id.* ¶ 25.

34% of the realistic exposure for the claims at issue. This recovery could easily be much lower if at trial there were no liability, PAGA penalties were reduced, or damages for certain Impacted Pay Periods could not be proven for certain individuals. The proposed GSA is within the "ballpark of reasonableness" and should be approved. Counsel for Plaintiff believe that this is a fair and reasonable Settlement in light of the complexities of the case, the state of the law and uncertainties of class certification and litigation, the policies and practices Defendants has had in place or implemented during the purported liability period, and the benefit to be recovered for the Class.[18]

C. <u>THE COMPLEXITY, EXPENSE AND LIKELY DURATION OF CONTINUED LITIGATION SUPPORT APPROVAL</u>

In evaluating for fairness, the Court should weigh the benefits of settlement against the expense and delay involved in achieving an equivalent or even more favorable result at trial. *Young v. Katz*, 447 F.2d 431, 433 (5th Cir. 1971); *Kullar*, 168 Cal.App.4th 116, 120 (2008). As California jurists have recognized, there exists "an overriding public policy favoring settlement of class actions." *Ferguson v. Lieff, Cabraser, Heimann & Bernstein*, 30 Cal.4th 1037, 1054 (2003) (citing *Franklin v. Kayrpo Corp.*, 884 F.2d 1222, 1229 (9th Cir. 1989) ("public policy favor[s] the compromise and settlement of disputes")). The alternative to a class action, namely numerous individual actions, could tax private and judicial resources for years. Given the relatively modest, though not inconsequential, amount of damages individual Class Members allegedly incurred, it would be uneconomical to secure individual legal representation, even for those with the resources to do so. But, here, the Settlement provides *all* Class Members, regardless of their means, the opportunity of monetary recovery in a prompt and efficient manner, without the risk of the Court denying class certification and/or finding no liability, and these workers recovering nothing at all.

Class Counsel also considered that, even if Plaintiffs prevailed, on both class certification and liability, the remaining processes could be lengthy and costly, potentially including appeals. As such, even a successful judicial resolution at the trial court level can be just the beginning of a lengthy, expensive process, stalling payments to class members for years. This judicial purgatory

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[18] *Id*. ¶ 26.

is compounded by the risk of adverse appellate rulings, which would remand the action to the trial court for further litigation, possibly with negative precedent.[19] The complexity, expense, and delay of continued litigation in this matter supports final approval of the Settlement.

D. <u>THE DISCOVERY AND FACTUAL INVESTIGATION SUPPORT APPROVAL</u>

The Settlement comes at a point in the litigation where counsel for Plaintiffs and Defendant had clear views of the strengths and weaknesses of their respective cases. "[T]he extent of discovery completed and the stage of the proceedings" are factors courts consider in determining the fairness, adequacy and reasonableness of a settlement." *Dunk*, 48 Cal.App.4th at 1794. Class Counsel conducted extensive pre-filing due diligence and engaged in informal discovery. The parties also engaged in substantial written discovery, including Defendant's production of more than 45,000 pages of records regarding Class Members, including time, payroll, and PTO records. Undoubtedly, the parties have thoroughly investigated, and are sufficiently knowledgeable of the facts to form educated assessments regarding their respective positions and the value of the case.[20]

All of this was confirmed by the extensive mediation, during which all of the claims and defenses were thoroughly argued and vetted by the experienced mediator, which led directly to the mediator's proposal that is the basis of the agreed settlement.

E. <u>THE EXPERIENCE AND VIEWS OF COUNSEL FAVOR FINAL APPROVAL</u>

Class Counsel supports the Settlement as fair, reasonable, and adequate, and believes it in the best interest of the Class as a whole.[21] Class Counsel has substantial experience prosecuting complex litigation and/or class action lawsuits, has prosecuted a multitude of such cases involving

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[19] *See, e.g., Chau v. Starbucks Corp.*, 174 Cal.App.4th 688 (2009) (appellate court reversed an $86 million restitution award to a certified class of hourly employees).

[20] Hawkins Decl., ¶¶ 7-13, 15-27.

[21] "When approving class action settlements, the court must give considerable weight to class counsel's opinions due to counsel's familiarity with the litigation and its previous experience with class action lawsuits." *Alberto v. GMRI, Inc.*, *Not Rpt'd in* F. Supp. 2d, 2008 WL 4891201 (E.D. Cal. 2008) (*citing Officers for Justice*, 688 F.2d at 625 and *In re Washington Public Power Supply System Securities Litigation*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989)).

the same issues as presented here.[22] As discussed above, Class Counsel is intimately familiar with the litigation, having conducted extensive investigation and negotiation on behalf of the class. The endorsement by well-informed and qualified counsel of a settlement as fair, adequate, and reasonable is entitled to significant weight. *Dunk*, 48 Cal.App.4th at 1802; *Ellis Naval Air Rework Facility*, 87 F.R.D. 15 (N.D. Cal. 1980); *Boyd*, 485 F. Supp 610, 617 (N.D. Cal. 1979).

F. THE CLASS MEMBERS' REACTION FAVORS FINAL APPROVAL

Finally, when determining if a settlement is reasonable, a court looks to "the reaction of class members to the proposed settlement." *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91 Cal.App.4th at 244-245; *Kullar*, 168 Cal.App.4th at 119. Here, Class Members' response to the Settlement has been favorable; there is only one opt out and zero objections. The lack of any objections and a single opt-outs speaks volumes about the fairness, reasonableness, and adequacy of this Settlement. Class Members' reaction thus shows tremendous support for the Settlement. Accordingly, the Settlement as a whole is presumed to be fair, reasonable, and adequate, and the Court should grant final approval of the Settlement in its entirety. *Dunk*, 48 Cal.App.4th at 1802.

V. THE COURT-ORDERED NOTICE PROGRAM IS CONSTITUTIONALLY SOUND AND HAS BEEN FULLY IMPLEMENTED

California statutory and case law vests the Court with discretion in fashioning an appropriate notice program. *Cal. Civ. Code* § 1781; *Cartt v. Superior Court*, 50 Cal.App.3d 960, 973-974 (1975). To protect the rights of absent class members, the parties must provide the class with the best notice practicable, but due process does not require actual notice to parties who cannot reasonably be identified. *See, Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-812 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (U.S. 1974); *Manual* § 21.311, n. 882 at 432; *Cal. Rules of Ct., Rule* 3.766(d).

The Court-approved Notice program met this standard and has now been fully implemented. The Settlement Administrator mailed the Notice Package to the entire class on April 21, 2025 and on May 1, 2025 also emailed the Notice Packet to all individual with an available

[22] Hawkins Decl., ¶¶ 29-33.

email address. Only 51 Notice Packets out of the 2,430 mailed Notices were deemed undeliverable. This is unquestionably an excellent result.[23] Moreover, the lack of objections and the single opt-out request to the Settlement demonstrates that the Class does overall support the Settlement. It is a good result for those Class Members who were harmed.

VI. AN AWARD OF ATTORNEYS' FEES AND COSTS IS APPROPRIATE

A. A COMMON FUND FEE AWARD IS WARRANTED

Public policy promotes approval of fee requests since "[t]he function of an award of attorney's fees is to encourage the bringing of meritorious…claims which might otherwise be abandoned because of the financial imperatives surrounding the hiring of competent counsel." *City of Riverside v. Rivera*, 477 U.S. 561, 578 (1986) (internal quotation marks and citations omitted). Additionally, attorneys' fees are awarded based on the value of the common benefit made available to the class, regardless of whether the settlement contains a reversion provision. *Williams v. MGM-Pathe Communs. Co.*, 129 F.3d 1026, 1027 (9th Cir. 1997); *Boeing Co. v. Van Gemert*, 44 U.S. 472, 480-81 (1980). In this case, there will be no reversion of any kind to the Defendant, further rendering the fees request appropriate. Specifically, the Settlement provides for an attorneys' fee award of 1/3 of the Gross Settlement Amount (i.e. $433,333.33), a typical percentage in the resolution of common fund cases.[24] Class Counsel has devoted numerous hours to and faced significant risk[25] in the prosecution of this matter and, more importantly, made a substantial fund available to a large number of otherwise-underrepresented, low-paid workers.

The "common fund" method, or "percentage-of-the-benefit" analysis, calculates attorneys'

[23] Hernandez Decl., ¶¶ 7-10.

[24] *See, e.g., Barbosa v. Cargill Meat Solutions Corp.*, 2013 U.S. Dist. LEXIS 93194 (E.D. Cal. 2013) (33% fee award of gross fund); *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804, at *9 (C.D. Cal. 2014) (33 1/3% fee award in wage and hour class action); *Morris v. Lifescan, Inc*. 54 Fed.Appx. 663 (9th Cir. 2003) (affirming 33% fee award); *Savage v. California Family Health LLC*, Case No. 34-2016-00192282-CU-OE-GDS (Sacramento Super. Ct. 2017) (1/3 fee award in wage and hour class action); *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482 (E.D. Cal. 2010) (33 1/3% award in wage and hour class action)

[25] Class Counsel undertook this matter solely on a contingent basis, with no guarantee regarding the potential duration of the litigation or even the ultimate reimbursement of fees or costs. Looking, *ad hoc*, at the fact that if a settlement did occur, that doesn't change the risks accepted at the inception of the case or at any point along its timeline. Nor , looking more broadly, does it account for the countless cases that do not settle, do not settle well and/or are dismissed after sometimes thousands of hours of work thereon.

fees based on a percentage of the common benefit to the class. *In re Consumer Privacy Cases*, 175 Cal.App.4th 545 (2009); *Serrano v. Priest*, 20 Cal.3d 25 (1977). In cases where a common fund has been created—i.e., where each class member will "receive a mathematically ascertainable payment"[26]—California state courts,[27] the Ninth Circuit[28] and the United States Supreme Court[29] agree that awarding attorneys' fees as a percentage of the common fund is the proper method.[30]

The *Serrano* factors further justify the common fund fee award.[31] *Serrano* explained the trial courts may consider additional factors when considering a fee award: (1) time and labor required, (2) the contingent nature of the fee agreement, (3) extent to which the nature of the litigation precluded other employment by the attorneys, (4) experience, reputation, and ability of the attorneys who performed services in the litigation and their displayed skill, (5) amount involved and the results obtained, and (6) the informed consent of the client to the fee agreement. *Serrano*, 20 Cal.3d at 49.

1. Time and Labor

Class Counsel has invested considerable amounts of time and labor in litigating the Class' claims, incurring approximately 429.90 hours in prosecuting this litigation.[32] In so doing, Class Counsel drew on their experience litigating wage and hour class actions against employers very much like this one in order to minimize wasted effort. Class Counsel's efforts include, *inter alia*, conducting written discovery (both formal and informal), production and review of documents, obtaining data for mediation, interviews with putative Class Members, a mediation session and continued hard-fought negotiations. [33]

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[26] *Vasquez*, 266 F.R.D. 482 at *491 (E.D. Cal. 2010).
[27] *Lealao v. Beneficial California*, 82 Cal.App.4th 19 (2000); *Serrano v. Priest*, 20 Cal.3d 25 (1977).
[28] *Staten v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003); *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).
[29] The United States Supreme Court has always computed common fund fee awards on a percentage of the fund basis. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 100 S Ct. 745 (1980); *Central Railroad & Banking Co. of Georgia v. Pettus*, 113 U.S. 116, 5 S.Ct. 387 (1885); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 59 S.Ct. 777 (1939).
[30] A lodestar approach (enhanced by a multiplier) can be used as an alternative to the common fund theory when "there is no way to gauge the net value of the settlement or any percentage thereof." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998).
[31] *Serrano v. Priest*, 20 Cal.3d 25 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794 (1996).
[32] Hawkins Decl., ¶ 36.
[33] Attorney fee awards in common funds cases are intended to compensate class counsel for work performed both before *and after* the date of judgment. In nearly every class action, the efforts during litigation and in pursuing approval

2. Contingent Nature of Fees, Preclusion of Other Employment and Informed Consent of Plaintiff

The fee award is further supported by the contingency risk assumed in prosecuting the case.[34] The California Supreme Court has recognized that attorney fee awards should be enhanced to compensate attorneys for the risks of loss involved in contingency cases. *Ketchum v. Moses*, 24 Cal.4th 1122, 1133 (2001); *Graciano v. Robinson Ford Sales, Inc.*, 144 Cal.App.4th 140, 154 (2006); *See also, In re Consumer Privacy Cases*, 175 Cal.App.4th at 556.

Class Counsel undertook this matter solely on a contingent basis, with no guarantee regarding the potential duration of the litigation or the ultimate recovery of fees or costs. While Class Counsel believes the claims in this case are meritorious, it also recognized the factual and legal challenges involved in complex litigation, generally, as well as the specific risks posed by the facts in this case. While attorneys who represent corporations are routinely paid on an hourly basis, plaintiffs in wage and hour cases can rarely afford to pay their attorneys by the hour, especially if they expect to be represented by a law firm well known for achieving good results. As firms committed to wage and hour class actions, including the one at hand, Class Counsel must accept these cases on a wholly contingent basis, with no guarantee of recovery of fees, or even the reimbursement of litigation costs. As California case law recognizes, Class Counsel's commitment to this litigation should not be assessed in a vacuum.[35] The 429.90 hours Class Counsel spent on

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of the settlement are only part of the overall work picture. Post-judgment, class counsel is required to stay in close contact with the claims administrator to ensure payment of the settlement proceeds, to communicate with class members, with their CPAs (regarding the tax treatment of settlement proceeds), even with other attorneys, to report compliance with the terms of the Court's final approval order thereon and myriad other tasks. Although rarely discussed in connection with requests for attorneys' fees and costs, it's not unusual for some of these efforts to take place years after judgment. With a class of this magnitude, these are efforts that will assuredly be required by Class Counsel.

[34]California courts "agree...that 'riskiness,' difficulty or contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award." *Salton Bay Marina, Inc.*, 172 Cal.App.3d at 955 (*citing La Mesa-Spring Valley School Dist. of San Diego County v. Nobuo Otsuka*, 57 Cal. 2d 309, 316 (1962); *See also, In re Quantum Health Resources, Inc. Sec. Litig.*, 962 F. Supp. 1254, 1257 (C.D. Cal. 1997).

[35]*Glendora Community Redevelopment Agency*, 155 Cal.App.3d at 475 (recognizing that "a busy lawyer" with a good "reputation" might be "reluctant to accept the employment because of the preclusion of other business"); *Cal. Rules Prof. Conduct, R*. 4-200 (B)(4) (when determining whether a fee is appropriate, individual attorneys must consider "[t]he likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member").

litigation, investigation and settlement efforts in this case prevented them from pursuing other hourly or contingency fee-based work.

Therefore, the agreement of Plaintiffs to enter contingency fee arrangements supports the requested attorney fee award. *Glendora*, 155 Cal.App.3d at 472. Here, Plaintiff entered into consensual contingency fee agreements and expressly endorse Class Counsel's request for attorneys' fees and costs. Additionally, Class Members have been notified of the requested attorneys' fees and costs by means of the Notice.[36] In light of the work performed, risks assumed and results achieved, it is clear that Class Counsel's fee request is supported and should be approved.

3. Experience of Class Counsel

The experience and ability of Class Counsel were essential to the settlement achieved here. Class Counsel developed an extensive factual record, convinced Defendant of its exposure, and expertly negotiated the terms of the Settlement. Only counsel who have a successful history litigating these types of cases and who are well versed in class action litigation and wage and hour law in this jurisdiction could have effectively marshaled the evidence and presented it to achieve this Settlement.[37] "The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award." *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2007). Here, Class Counsel was still able to secure a great result for Class Members despite the risks in this case.

B. <u>THE LODESTAR METHODOLOGY ALSO JUSTIFIES APPROVAL OF THE REQUESTED FEES</u>

While the percentage-of-the-benefit approach is endorsed as the better approximation of the workings of the marketplace than the lodestar approach, courts may also use the lodestar method to "cross-

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[36] Litigants are familiar with one-third fee recoveries being the norm–this percentage (or higher awards of 35% or 40%) being common in employment, personal injury and other areas of litigation within the commonplace experience of these class members. Also, as suggested by the compendium of examples cited throughout this brief, it is a judicial benchmark as well. Indeed, "[e]mpirical studies show that…fee awards in class actions average around one-third of the recovery." *4 Newberg* § 14.6

[37] Hawkins Decl., ¶¶ 29-33.

check" the results of the other.[38] The lodestar is calculated based on reasonable hours at reasonable prevailing hourly rates for the attorneys, and counsel is entitled to compensation for every hour reasonably spent on the matter. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131-33. The reasonableness of hours is assessed by "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself[.]" *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.

Class Counsel's fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano*, 20 Cal. 3d at 48. The court then may enhance this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id*. at 49; *see also Ketchum v. Moses*, 24 Cal.4th 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001), ["[t]here is no…rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar"].

Here, Class Counsel spent approximately 429.90 hours litigating this matter and finalizing the Settlement for a lodestar value of approximately $341,217.00.[39] In light of the facts and circumstances of this matter, as well as the results that Class Counsel have achieved, Class Counsel have spent a reasonable number of hours performing work on this matter. In addition, Class Counsel will continue to perform work on this matter through the date of final approval and in connection with the implementation of the Settlement and thus respectfully request the Court apply a modest multiplier of 1.27. Where "exceptional effort produced an exceptional benefit," a fee award may be enhanced. *Thayer v.* 92 Cal. App. 4th at 838; *In re Vitamin Cases*, 110 Cal. App. 4th 1041, 1058-1059 (2003) (high-quality work from counsel supports multiplier).

[38] *Laffitte*, *supra*, 1 Cal.5th at 505 (explaining that "[a] lodestar cross-check is simply a quantitative method for bringing a measure of the time spent by counsel into the trial court's reasonableness determination" and "the lodestar calculation . . . does not override the trial court's primary determination of the fee as a percentage" and "does not impose an absolute maximum or minimum on the potential fee award."); *see also, e.g.*, *Vizcaino*, 290 F.3d at 1050 ("[W]hile the primary basis of the fee award remains the percentage method, the lodestar may provide a useful perspective on the reasonableness of a given percentage award.").

[39] Hawkins Decl., ¶ 36.

C. CLASS COUNSEL'S COSTS ARE REASONABLE

Over the course of this litigation, Class Counsel incurred ordinary litigation costs over the past three years totaling $25,341.10. While the Settlement provided a ceiling for litigation costs of $30,000.00, Class Counsel kept costs at bay and are now respectfully seeks litigation costs in the amount of $25,341.10.[40] Noteably, this amount does not account for additional future expenses in overseeing the settlement process, making appearances, filing court documents, ensuring claims administration compliance with this Court's orders, responding to Class Members, etc. Since these costs are reasonable and serve to benefit the class, they warrant reimbursement.[41]

VII. REPRESENTATIVE PLAINTIFF DESERVES THE PROPOSED ENHANCEMENT AWARD

The Settlement further provides for, and Plaintiff now requests and Enhancement Award of $7,500.00. An Enhancement Award to the lead Plaintiff in class action litigations are commonplace and 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".[42] Enhancement Awards "are intended to advance public policy by encouraging individuals to come forward and perform their civic duty in protecting the rights of the class and to compensate class representatives for their time, effort and inconvenience … Federal authority is in accord."[43]

Courts in California may consider the following factors in determining the appropriateness of such an award: (1) the risk to the class representative in commencing suit, (2) the notoriety and

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[40] Hawkins Decl., ¶ 37, Exh. 1.

[41] *In re United Energy Corp. Sec. Litig., Not Rpt'd in* F.Supp., 1989 WL 73211, * 6 (C.D. Cal. 1989) ("[a]n attorney who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved"); 1 Alba Conte, *Attorney Fee Awards* § 2:08 at 50-51 ("The prevailing view is that expenses are awarded in addition to the fee percentage."); *In re Warner Comm. Sec. Litig*., 618 F.Supp. 735 (S.D.N.Y.1985); *In re GNC Shareholder Litig.: All Actions*, 668 F.Supp. 450, 452 (W.D. Pa. 1987)
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[42] Plaintiffs risked being "blacklisted" by other future employers for having sued this defendant in a class action. As well stated by a New York Southern District Court: "[T]he fact that a plaintiff has filed a federal lawsuit is searchable on the internet and may become known to prospective employers when evaluating the person . . . Even where there is not a record of actual retaliation, notoriety, or personal difficulties, class representatives merit recognition for assuming the risk of such for the sake of absent class members." *Guippone v. BH S&B Holdings LLC*, 2011 U.S. Dist. LEXIS 126026, at **4, 20 (S.D.N.Y. Oct. 28, 2011).

[43] *In re California Indirect Purchases*, 1998 WL 1031494, 11 (Alameda Super. Ct. 1998) (internal citations omitted).

personal difficulties encountered by the class representative, (3) the amount of time and effort spent by the class representative, (4) the duration of the litigation, and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

The proposed Enhancement Award is reasonable given the work the Plaintiff performed on behalf of fellow Class Members, the risks they faced and those continued to be faced for their participation in the litigation (e.g., retaliation from future employers), and the minimal impact the request will have on the amount of any class member's level of recovery. As detailed in Plaintiff's declaration, previously submitted in support of Preliminary Approval, and Plaintiff's declaration filed in support of this Motion for Final Approval, Plaintiff spent considerable time prosecuting this action with Class Counsel. This included and was not limited to frequent emails and telephone calls with counsel to address issues surrounding the organizational structure of the company, job duties they and other Class Members performed, production of document, responding to discovery, being deposed, and communications surrounding mediation and settlement.[44]

VIII. REIMBURSEMENT OF ADMINISTRATION FEES IS APPROPRIATE

As set forth in the accompanying ILYM Group, Inc. Declaration, the total costs incurred and to be incurred by ILYM Group, Inc., for the notice and settlement administration process are $19,950.00. This amount includes the total cost for services in connection with the administration of the Settlement, including fees incurred and anticipated future costs for completion of the administration. This amount includes the total cost for services in connection with the administration of the Settlement, including fees incurred and anticipated future costs for completion of the administration.[45]

Accordingly, the Court should grant final approval of payment to ILYM Group, Inc., a necessary third-party for its handling of the notice and settlement process, in the amount of $19,950.00.

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[44] Hawkins Decl., ¶ 38; Mejia Decl., ¶¶ 9-11.
[45] Hernandez Decl., ¶ 16.

IX. CONCLUSION

Based upon the foregoing, Plaintiff respectfully requests the Court grant final approval of the Settlement and approve Class Counsel's application for attorneys' fees and costs, the PAGA Penalty Payment, the requested Enhancement Award to Plaintiff, and reimbursement of the settlement administration costs.

Dated: July 9, 2025

JAMES HAWKINS APLC

By: ______________________________

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