

James R. Hawkins, SBN 192925
Isandra Fernandez, SBN 220482
isandra@jameshawkinsaplc.com
Lance Dacre, SBN 190305
lance@jameshawkinsaplc.com
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiff, ALEXANDRIA ILENE KABITZKE,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – HALL OF JUSTICE

ALEXANDRIA ILENE KABITZKE on behalf
of herself and all others similarly situated,

Plaintiff,

v.

CENTRO DE SALUD DE LA COMUNIDAD
DE SAN YSIDRO d/b/a SAN YSIDRO
HEALTH, a California corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No. 37-2022-00046873-CU-OE-CTL
Judge: Hon. Gregory Pollack

**NOTICE OF UNOPPOSED MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT; [PROPOSED] ORDER**

[Declarations of Lance Dacre, Kyle
Nordrehaug, Esther Bylsma, Alexandria Ilene
Kabitzke, Audrey Heredia, Jacqueline
Hernandez and Nathalie Hernandez,
Concurrently Filed Herewith]

Date: October 9, 2024
Time: 1:30p.m.
Dept.: 71

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1 **PLEASE TAKE NOTICE THAT** on October 9, 2024 at 9:30 a.m. in Department 71 of
2 the above-entitled court located at 330 W Broadway, San Diego, California 92101, Plaintiff
3 Alexandria Ilene Kabitzke will and hereby does move the Court for an Order (1) granting final
4 approval of the Stipulation of Class Action and PAGA Settlement and Addendum thereto ; 2)
5 approving the “Maximum Settlement Amount” of Two Million Nine Hundred Thousand Dollars
6 (\$2,900,000.00); (3) approving all Individual Settlement Payments and PAGA Settlement
7 Payments; (4) allocating a Class Representative Service Awards of Ten Thousand Dollars
8 (\$10,000) to Plaintiff Alexandria Ilene Kabitzke and Twenty Thousand Dollars (\$20,000) each to
9 Intervenor Audrey Heredia and Jacqueline Hernandez; (5) approving One Hundred Thousand
10 Dollars (\$100,000) in PAGA penalties; (6) approving costs of administering the Settlement to the
11 Settlement Administrator, ILYM, Group Inc. in the amount of Thirty Thousand Dollars
12 (\$30,000); (7) approving payment of One Million One Hundred Sixty Thousand Dollars
13 (\$1,160,000) in attorneys’ fees and total attorneys’ cost of One Hundred Sixty Eight Thousand
14 Seven Hundred Four Dollars and Fifty- Two Cents (\$168,704.52)

15 This unopposed motion is made pursuant to California Rules of Court Rule 3.769, which
16 requires court approval of the settlement of a putative class action. Further, this Motion will be
17 based on the following: the Memorandum of Points and Authorities set forth herein; the
18 Stipulation of Class Action and PAGA Settlement, and the Addendum thereto, attached to the
19 Declaration of Lance Dacre as Exhibits 1 and 2; the Declarations of Lance Dacre, Alexandria
20 Ilene Kabitzke, Nathalie Hernandez, Kyle Nordrehaug, Esther Bylsma, Audrey Heredia,
21 Jacqueline Hernandez, [Declarations of James Hawkins and Maria Roberts previously filed in
22 support of Plaintiff’s Second Amended Motion for Preliminary Approval], and upon the oral
23 arguments of counsel (should there be any) and upon the complete records and file herein.

24 Dated: September 19, 2024

JAMES HAWKINS, APLC

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26 
27 Isandra Y. Fernandez
28 Lance Dacre
Attorneys for Plaintiff Alexandria Ilene Kabitzke

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Alexandria Ilene Kabitzke (“Plaintiff”), seeks final approval of the Class Action
4 and PAGA Settlement Agreement reached with Defendant Centro de Salud de la Comunidad de
5 San Ysidro, dba San Ysidro Health (“Defendant” and/or “SYH”), (Plaintiff and Defendant
6 collectively, the “Parties”).

7 On May 8, 2024, this Court preliminarily approved the settlement amount of Two Million
8 Nine Hundred Thousand Dollars (\$2,900,000.00) as being fair, adequate, and reasonable.
9 Further, this Court preliminarily appointed Plaintiff’s counsel, James Hawkins, Isandra
10 Fernandez, and Lance Dacre of James Hawkins APLC as Class Counsel, the named Plaintiff
11 Alexandria Ilene Kabitzke as Class Representative, and preliminarily certified the Class defined
12 as: persons employed by SYH as non-exempt employees from December 15, 2016, to March 24,
13 2023 (the “Class Period”). The Court also preliminarily approved ILYM Group, Inc. (“ILYM”) as the Settlement Administrator.

14
15 On May 24, 2024, the Parties notified the Class Members about the settlement through
16 the Settlement Administrator, ILYM. (Declaration of Nathalie Hernandez (“Hernandez Decl.” ¶
17 7.) The deadline for requests for exclusions from and objections to the Settlement expired July 8,
18 2024, forty-five (45) days after the mailing (Hernandez Decl. ¶¶ 11-12.) As previously set forth
19 in Plaintiff’s Second Amended Motion for Preliminary Approval (“Second Amended
20 Preliminary Approval Motion”), this is a cash settlement with no reversionary aspect. Every
21 Class Member who has not opted out of the Settlement will automatically be mailed an
22 individual settlement payment.

23 Most importantly, the Settlement and all its terms received overwhelming support from
24 99.92% of the Class Members. Specifically, out of the 3,795 class members there are only three
25 (3) requests for exclusion and zero (0) objections to the settlement. (Hernandez Decl. ¶¶ 11-14.)
26 Therefore, Plaintiff respectfully requests the Court grant final approval of the Settlement, Class
27 Counsel’s requested Attorney Fees and Costs amounts, Class Representative Service Awards
28

1 payments, Settlement Administrator Costs payment, and the PAGA Penalties in the amounts
2 preliminarily approved by the Court and as fully disclosed to Class Members.

3 **II. LITIGATION AND SETTLEMENT**

4 **A. Pleadings**

5 On September 8, 2022, Plaintiff Kabitzke filed a putative wage and hour class action
6 complaint against Defendant, in San Diego Superior Court, alleging the following causes of
7 action: (1) Failure to Pay Lawful Wages; (2) Failure to Provide Lawful Meal Periods or
8 Compensation in Lieu Thereof; (3) Failure to Provide Lawful Rest Periods or Compensation in
9 Lieu Thereof; (4) Failure to Pay Employee Expenses; (5) Failure to Timely Pay Wages During
10 Employment; (6) Failure to Timely Pay Wages at Termination; (7) Failure to Provide Accurate,
11 Itemized Wage Statements; and (8) Violations of the Unfair Competition Law. (Declaration of
12 Lance Dacre (“Dacre Decl.” ¶ 2.)

13 On November 9, 2022, Defendant removed this case to the United States District Court
14 for the Southern District of California under CAFA, Case No. 3:22-cv-01752-H-BGS (hereafter
15 referred to as the “Class Case”). On November 18, 2022, Plaintiff filed a separate complaint
16 asserting a single cause of action for Labor Code violations and seeking penalties under PAGA
17 in San Diego Superior Court against Defendant. (Dacre Decl. ¶ 3.)

18 Two other lawsuits were previously filed against SYH alleging overlapping claims for an
19 overlapping time period. These lawsuits are *Jaqueline Hernandez v. Centro de Salud de la*
20 *Comunidad de San Ysidro, Inc.*, San Diego Superior Court Case No. 37-2021-00017369
21 (Hernandez), and *Audrey Heredia v. Centro de Salud de la Comunidad de San Ysidro, Inc.*, San
22 Diego Superior Court Case No. 37-2020-00046387 (“Heredia”) (referred to as Intervenors’
23 Actions)

24 **B. Discovery and Mediations**

25 As discussed in the Second Amended Preliminary Approval Motion, Class Counsel
26 conducted a thorough investigation into the factual and legal issues implicated by Plaintiff’s
27 claims and was able to objectively assess the settlement’s reasonableness through exchange of
28 informal discovery. Specifically, through exchange of informal discovery, SYH produced to

1 Plaintiff more than 100,000 pages of documents, including all of its pertinent policies,
2 handbooks, the time and wage records for more than 1,100 putative class members dating back
3 as far as 2016, copies of its arbitration policies, and copies of all pleadings, motions, court
4 orders, depositions, discovery requests and responses and everything produced in discovery in
5 Intervenor's Actions, which involve over-lapping putative class and PAGA claims against SYH,
6 as well as a list of pay rates and dates of employment for the approximate 3700 putative class
7 members and the aggrieved employees. SYH also produced nearly 100 affidavits signed by
8 current/former nonexempt employees and others, which supported SYH's position that the wage
9 and hour /PAGA claims pled against it were not supported and contrary to their experience
10 working for SYH. (Dacre Decl. ¶ 4).; See Declaration of Maria Roberts filed in support of the
11 Second Amended Preliminary Approval Motion ("Roberts" Decl. ¶ 5.) SYH also provided all
12 briefing and a related court order issued by the Superior Court in early 2023 denying certification
13 on all putative class claims pled in one of Intervenor's Actions, the *Hernandez* case. (*Id*);
14 Roberts Decl. ¶ 6.)

15 After conducting extensive informal discovery, exchanging hundreds of thousands of
16 pages of relevant documents and records, having that information reviewed and analyzed by
17 Class Counsel and by their experts, and engaging in numerous discussions regarding the claims
18 alleged, on March 21, 2023, the Parties attended mediation with Hon. Ronald M. Sabraw (Ret.),
19 an experienced wage and hour class action mediator and former Supervising Judge of the
20 Complex Division of the Alameda Superior Court. (Dacre Decl. ¶ 5.) Through mediation, the
21 Parties exchanged further information concerning the putative class and PAGA claims and
22 SYH's defenses, but did not settle. But the dialogue continued, and ultimately a mediator's
23 proposal was made and accepted on March 24, 2023. (Dacre Decl. ¶ 6.; Roberts Decl., ¶ 7)

24 The March 2023 mediation with Judge Sabraw followed months of efforts by SYH in
25 2022 to settle Intervenor's Actions, with the assistance of mediator, Hon. William Pate (ret.) over
26 a 7-month period. Despite these efforts (which cost SYH more than \$50,000 in fees and costs)
27 and Defendant's willingness to pay millions of dollars to buy its peace in cases in which it denies
28 liability, the cases did not resolve. (Roberts Decl., ¶ 7.)

1 After the Parties reached a settlement in principle in the instant case, their counsel spent
2 months in continued negotiations about the settlement terms and in the process exchanged
3 additional detailed information pertinent to the settlement. (Dacre Decl., ¶ 7.; Roberts Decl., ¶
4 8.) Beginning in early April 2023, the Parties exchanged numerous drafts of the long-form
5 Settlement Agreement and notice and had multiple calls and e-mail communications regarding
6 the terms of the documents and revisions thereto. (Dacre Decl. ¶ 8.) The principal terms and
7 provisions of the settlement were finally approved by the Parties on or about July 25, 2023, and
8 the Settlement Agreement was fully executed as of August 7, 2023. (Dacre Decl. ¶ 9.)

9 After the motion for preliminary approval was first filed in this case, Intervenor moved
10 to intervene and the Court recommended that Plaintiff's counsel and the lawyers for Intervenor
11 mediate the allocation of the proposed attorneys' fees in this case. (Dacre Decl. ¶ 10.) On
12 January 26, 2024, counsel for Plaintiff and all Intervenor mediated with Judge Pate and
13 thereafter reached a settlement which also resulted in the Addendum to the Settlement
14 Agreement. (*Id.*) It is the preliminarily approved Settlement Agreement and Addendum thereto
15 which is now before this Court for final approval. (Dacre Decl. ¶ 11., Exhs. 1 and 2.)

16 **C. The Preliminarily Approved Settlement**

17 On April 2, 2024, Plaintiff filed the Second Amended Motion for Preliminary Approval
18 of Class Action and PAGA Settlement.¹ On May 8, 2024, the Court entered the Order granting
19 preliminary approval and preliminarily appointed Class Counsel (James R. Hawkins, Isandra
20 Fernandez and Lance Dacre of James Hawkins APLC), the Class Representatives (Alexandria
21 Ilene Kabitzke), and the Settlement Administrator (ILYM Group, Inc.). The Court also approved
22 the proposed Notice of Class Action and PAGA Settlement. Now that administration has been
23 completed, subject to the Court's final approval, the fees and expenses will be paid from the
24 Maximum Settlement Amount ("MSA") of Two Million Nine Hundred Thousand Dollars
25 (\$2,900,000) as follows:

26 _____
27 ¹ On August 21, 2023, Plaintiff filed the Motion for Preliminary Approval of Class Action and PAGA Settlement
28 ("Preliminary Approval Motion"). Thereafter, Intervenor sought to intervene through an *ex parte* application
followed by a noticed motion. On December 8, 2023, Plaintiff filed an Amended Preliminary Approval Motion.
Thereafter, Plaintiff reached an agreement with Intervenor as summarized in the Addendum to the Settlement
Agreement which resulted in the filing of the Second Amended Motion for Preliminary Approval.

1 1. Subject to Court approval, Class Counsel shall be paid up to One Million One
2 Hundred Sixty Thousand Dollars (\$1,160,000) in attorneys' fees (i.e., 40% of the MSA) and total
3 actual costs of \$168,704.52¹ (\$24,572.31 to counsel for Kabitzke, \$115,017.48 to counsel for
4 Heredia, \$29,114.73 to counsel for Hernandez. (Exh. 2, ¶ 6.) Pursuant to the Settlement
5 Agreement 55% of the fee award will be allocated to counsel for Kabitzke, with 27% to
6 Heredia's counsel and 18% to counsel for Hernandez. (*Id.*)

7 2. Subject to Court approval, the Named Plaintiff Alexandra Kabitzke shall be paid a
8 Class Representative Service Award of \$10,000 for her time and effort in bringing and
9 presenting the Action, serving as class representative and releasing her Released Claims. (Exh. 1,
10 p. 17, ¶ 56(b).) Subject to Court approval, Intervenor Audrey Heredia and Jacqueline Hernandez
11 shall each be paid a Class Representative Service Award not to exceed \$20,000 each for their
12 time and effort in bringing and presenting the Action and releasing their Released Claims. (Exh.
13 2, ¶ 5.)

14 3. Subject to Court approval, \$30,000 will be set aside from the MSA to cover the
15 Settlement Administrator's costs of administering this Settlement ("Administrator Expenses
16 Payment"). (Exh. 1, p.18, ¶ 54I.)

17 4. Subject to Court approval, \$100,000 will be set aside from the MSA for the
18 PAGA Penalties, out of which 75% (\$75,000) will be paid to the LWDA and 25% (\$25,000) will
19 be distributed among the Aggrieved Employees ("Individual PAGA Payment"). (Exh. 1, pp.15-
20 16, ¶ 54(a)(ii).)

21 5. Individual PAGA Payment to each Class Member: Each Participating Class
22 Member will be entitled to a *pro rata* share of the portion of the PAGA Payment allocated to
23 aggrieved employees. The Settlement Administrator shall divide a 25% portion of the PAGA
24 Payment amount by the total number of Compensable pay periods during the PAGA Period.
25 ("Pay Period Value"). The Settlement Administrator shall then multiply the number of
26 Compensable pay periods for each Aggrieved Employee by the Pay Period Value. (Exh. 1,
27 pp.15-16, ¶ 54(a)(ii).)

28 ¹ This amount is less than the \$175,500 maximum amount set forth in the Addendum to Settlement. (Ex.2,¶ 6)

1 6. Tax allocation of Individual Class Payments shall be: one-fourth (1/4) as wages
2 subject to all applicable tax withholdings, one-half (1/2) as non-wage penalties not subject to
3 payroll tax withholdings, and one-fourth (1/4) non-wage interest not subject to payroll tax
4 withholdings. The Settlement Administrator shall issue an IRS Form W-2 to each Class Member
5 for the portion of each Individual Settlement Payment allocated as wages and subject to all
6 applicable tax withholdings. The Settlement Administrator shall issue an IRS Form 1099 to each
7 Class Member for the portions of each Individual Settlement Payment allocated as non-wage
8 penalties and interest and not subject to payroll tax withholdings. (Exh. 1, p.16, 54(a)(iv).)

9 7. The MSA shall not include Defendant's share of taxes on the wages portion of
10 Individual Settlement Payments, which will be paid by Defendant separately and in addition to
11 the Maximum Settlement Amount. (Exh. 1, p. 2 ¶ 21.)

12 **D. Dissemination of Notice Packet**

13 On May 13, 2024, Defendant's counsel provided ILYM a Class List containing data for
14 3,795 individuals (full names, last known mailing addresses, social security numbers, and such
15 other formation as was necessary for ILYM to calculate workweeks during the Class Period and
16 PAGA pay periods during the PAGA. (Declaration of Nathalie Hernandez from ILYM
17 "Hernandez Decl." ¶ 5.) The mailing addresses contained in the Class List were processed and
18 updated utilizing the National Change of Address Database ("NCOA"). (Hernandez Decl. ¶ 6.)
19 On May 24, 2024, the Class Notice was mailed to all 3,795 Class Members. (Hernandez Decl. ¶
20 7.) A total of 218 Notice Packets were returned by the post office. ILYM performed an
21 advanced address search (i.e. skip trace) through which ILYM was able to locate 151 updated
22 addresses and ILYM promptly mailed a Class Notice to those updated addresses. (Hernandez
23 Decl. ¶ 8.) Ultimately, after additional searches, 62 Notice Packets were deemed undeliverable
24 because ILYM was unable to find a better address. (Hernandez Decl. ¶¶ 9-10.)

25 **E. The Settlement Provides Reasonable Compensation to the Class Members**

26 Even without the presumption of fairness and reasonableness, the Settlement is clearly
27 well within the range of reasonableness. All Settlement Class Members will be paid their portion
28 of the Net Settlement Fund. Subject to Court approval, the Net Settlement Fund amount available

1 to pay the Settlement Class is approximately \$ 1,391,295.48. (Hernandez Decl. ¶ 15.) As of this
2 date, 3,792 Class Members are to be paid Individual Settlement Payments out of the Net
3 Settlement Fund. (*Id.*) The *average* estimated Individual Settlement Payment to Class Members
4 is \$366.61, the *highest* estimated Individual Settlement Payment is \$1,012.63, and the *lowest*
5 estimated Individual Settlement Payment is \$.44 (*Id.*) Also as of this date, the *average* estimated
6 Individual PAGA Payment is \$6.59 the *highest* estimated Individual PAGA Payment is \$28.13
7 and the *lowest* estimated Individual PAGA Payment is \$.01 (*Id.*)

8 Even without the presumption of fairness and reasonableness, the settlement clearly is
9 within the range of reasonableness as thoroughly discussed in detail in the motion for
10 preliminary approval, and as considered by the Court in granting preliminary approval. As
11 explained at preliminary approval, accounting for the risks of continued litigation, Plaintiff
12 determined that a settlement amounting to \$2,900,000 was fair and reasonable. The specific
13 details of the claims and their valuations addressed in the Second Amended Motion for
14 Preliminary Approval are set forth in the Declaration of James Hawkins filed in support of said
15 Motion (“Hawkins Decl.” ¶¶ 14-21). This is a fair and reasonable recovery and aligned with
16 settlements previously approved by Courts. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212
17 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6%
18 to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357,
19 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were
20 approved); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving
21 8% of damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D.
22 Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell]
23 within the range of possible initial approval based on the strength of plaintiff’s case and the risk
24 and expense of continued litigation.”); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042
25 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).¹ (*Id.*)

27 ¹ *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal.
28 June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to
deducting attorneys’ fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v.*
Mistras Grp., Inc., No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016)

1 Through her counsel, Plaintiff took into consideration the significant risks that class
2 certification could be denied on the central claim, that the claims would be referred to individual
3 binding arbitration for the majority of the putative class members and/or that a merits decision on
4 the central claim would not favor the Class. (Dacre Decl. ¶ 12.) Plaintiff’s counsel also
5 considered the expense and length of continued proceedings necessary to continue the Action
6 against Defendant through trial and any possible appeals and the difficulties in establishing the
7 alleged damages. (*Id.*). The settlement is fair, reasonable, and adequate, given the significant
8 risks to Plaintiff and Class Members of prevailing on class certification or at trial, and thus
9 leaving employees with no recovery. (Dacre Decl. ¶ 13.)

10 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

11 The law favors settlement, particularly in class actions and other complex cases in which
12 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation.
13 *City of Seattle* 955 F.2d at 1276; *Potter v Pacific Coast Lumber Company*, (1951) 37 Cal. 2d.
14 592, 602-603.; 4 NEWBERG §11.41. When faced with a motion for final approval of a class
15 action settlement under *Code of Civil Procedure* §382, a court inquires whether the settlement is
16 “fair, adequate, and reasonable.” See e.g., *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*,
17 (2010) 186 Cal. App. 4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168
18 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.

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24 (granting preliminary approval to class action settlement representing “8.1% of the full verdict value” with net
25 settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*,
26 No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement
27 with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-
28 02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement
amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount
distributable to class after accounting for attorneys’ fees and other deductions represented approximately 6.1% of
maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D.
Cal. July 29, 2010) (granting final approving where “[t]he proposed settlement amount is [. . .] only about five
percent of the estimated damages before fee and costs—even before any reduction thereof for attorney’s fees and
costs.”).

A. This Court Preliminarily Found This Settlement to be Fair, Adequate and Reasonable and Nothing Has Changed to Disturb That

Before granting final approval of a class action settlement, courts must determine that the proposed settlement is fair, reasonable, and adequate — and not a product of fraud, overreaching, or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor Co.*, supra, 48 Cal.App.4th at 1801. Courts must presume that a settlement is fair, reasonable, and adequate, and thus appropriate for Final approval when the following three factors are satisfied: (1) the Parties reached settlement via arms-length negotiations; (2) counsel conducted sufficient investigation and discovery to allow themselves and the court to act intelligently; and (3) counsel is experienced in similar litigation *Id.* at 1802. *See also 7-Eleven Owners for Fair Franchising v. Southland Corp.*, (2000) 85 Cal. App. 4th 1135, 1146. Further, as discussed below, although not determinative, courts consider the percentage of objectors in determining whether a presumption of fairness exists. (*Id.*) There is no question that these factors are satisfied here. The Parties conducted a sufficient amount of discovery, participated in private mediation, and numerous conferences of counsel that ultimately led to an arms-length settlement that provides for substantial recovery. Moreover, out of 3, 792 Class Members there were three requests for exclusion from, and zero objections to, the Settlement (Hernandez Decl. ¶¶ 11-12.)

B. The Settlement Resulted From Non-Collusive, Arms-Length Negotiations

There certainly is no collusion between the Parties. As discussed in the Second Amended Preliminary Approval Motion, the Parties participated in a full day mediation on March 21, 2023, with Judge Sabraw. (Dacre Decl. ¶ 5.) Following an unsuccessful mediation, the Parties received and accepted a mediator's proposal from Judge Sabraw for resolution of all claims. (Dacre Decl. ¶ 6.) In sum, armed with all of the relevant information and the help of a highly experienced mediator, counsel for the Parties engaged in lengthy, serious, and meaningful negotiations which has resulted in the Settlement Agreement. Thereafter, Plaintiff's counsel and Intervenor's counsel attended mediation and agreed to the allocation of the proposed attorney's

1 fee award and service awards as set forth in the Addendum to the Settlement Agreement. (Dacre
2 Decl., ¶ 11.; Exh. 2.)

3 The involvement of a neutral third-party mediator is a factor that favors approval and
4 evidences the presumptive fairness of the arms-length negotiations. Indeed, courts should give
5 considerable weight to the competency and integrity of counsel and the involvement of a neutral
6 mediator in assuring themselves that a settlement agreement represents an arms-length
7 transaction entered without self-dealing or other potential misconduct *Kullar v. Foot Locker*,
8 *supra*, 168 Cal. App. 4th at 129. Here, the Parties engaged in a mediation session with a
9 knowledgeable wage and hour mediator Hon. Judge Sabraw (Dacre Decl. ¶ 5.)

10 **C The Settlement is Supported by Substantial Investigative and Discovery**
11 **Efforts**

12 As discussed in the preliminary approval papers, supporting declaration and herein, Class
13 Counsel analyzed a significant amount of information that Defendant produced in informal
14 discovery requests and requests in preparation for mediation (Dacre Decl. ¶¶ 4-6.) The Parties
15 have conducted significant investigation of the facts and law during the prosecution of the
16 Action. Class Counsel's research enabled them to pinpoint the relevant issues and claims and to
17 assess potential liability and damages. These efforts resulted in the parties having a clear view of
18 the strengths and weaknesses of their respective cases and achieving a resolution on favorable
19 terms, as was evidenced during mediation and negotiations leading to Settlement (Dacre Decl. ¶
20 6.)

21 **D Class Counsel is Experienced in Similar Litigation**

22 The endorsement of qualified and well-informed counsel of the settlement as fair is
23 entitled to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the
24 preliminary approval papers and set forth in the declaration of Class Counsel, Class Counsel
25 have represented, mediated, and settled other employee class actions in wage and hour litigation
26 and have knowledge of the strengths and weaknesses of the claims against Defendant and the
27 benefits of the proposed settlement under the circumstances of the case. (Dacre Decl. ¶¶ 15-20)
28

1 Class Counsel contends that the Settlement is fair, adequate, reasonable, and in the best interests
2 of the Class as a whole.

3 **E. Class Members' Positive Reaction to the Settlement Favors Final Approval**

4 Finally, courts look at the reaction of class members to determine if a settlement that
5 directly affects their interests should be approved as fair, adequate, and reasonable. As noted
6 above, out of 3,795 Class Members presumed to have received the Class Notice, there were three
7 requests for exclusion and no objections (Hernandez Decl. ¶¶ 11- 12.)

8 A court may appropriately infer that a class action settlement is fair, adequate, and
9 reasonable even when class members object to it. Indeed, a court may approve a class action
10 settlement as fair, adequate, and reasonable even over the objections of a significant percentage
11 of class members. *See Boyd v. Betchel Corp.* (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v.*
12 *General Motors* (5th Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec.*
13 *Litig.* (D. Ariz. 1989) 720 F. Supp. 1379, 1394. In this case, there were no objections to the
14 Settlement. The Court should construe this as a further indication of Class Members' support for
15 the Settlement as fair, adequate, and reasonable.

16
17 **IV. CLASS REPRESENTATIVES ENHANCEMENT PAYMENTS ARE**
18 **REASONABLE**

19 The settlement provides for Class Representative Service Awards to be paid to the Class
20 Representative and both Intervenor. The purpose is to provide an additional incentive payment,
21 taking into consideration the risks, time and effort in coming forward to fulfill all the duties
22 associated with being a Class Representative. Awarding incentive awards to compensate named
23 plaintiff in class actions has been specifically recognized. See, e.g., *Clark v. American*
24 *Residential Services, LLC*, (2009) 175 Cal App 4th 785, 804 (incentive awards to named
25 Plaintiffs appropriate for participation in class action); *Bell v Farmers Ins. Exchange*, (2004)
26 115 Cal App 4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in
27 bringing class case).

1 As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive
2 awards are "intended to compensate class representatives for work done on behalf of the class, to
3 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
4 recognize their willingness to act as a private attorney general." *Cellphone Termination Fee*
5 *Cases*, (2010) 186 Cal. App. 4th 1380, 1394 (approving an incentive award of \$10,000).

6 The Class Representative Service Awards are intended to compensate named Plaintiff
7 Alexandria Kabitzke as Class Representative and Intervenors Audrey Heredia and Jacqueline
8 Hernandez for their willingness to accept the responsibility of representing the interests of all
9 Class Members. The purpose is to provide an incentive payment, taking into consideration the
10 risks, time, and effort expended by their coming forward to provide invaluable information and
11 to litigate this matter on behalf of all Class Members. (Dacre Decl. ¶ 14.) The Enhancement
12 Payments are also in consideration for executing a general release of all their claims against
13 Defendant (Declaration of Alexandria Ilene Kabitzke ("Kabitzke Decl." ¶6.) Declaration of
14 Audrey Heredia ("Heredia Decl." ¶ 10.)and Declaration of Jacqueline Hernandez , "Hernandez
15 Decl." ¶15.).

16 Plaintiff and Intervenors also risked potential judgment against them if this case had been
17 unsuccessful. In class action losses, class representatives are deemed the losing party that is
18 liable for the prevailing party's costs *Earley v. Superior Court*, (2000) 79 Cal. App. 4th 1420,
19 1433-1434. Finally, Plaintiff and Intervenors also risked this lawsuit having a negative impact
20 on future employment opportunities, as prospective employers may be less inclined to hire an
21 employee who has served as a class representative (Kabitzke Decl. ¶ 7.; Hernandez Decl. ¶ 16.;
22 Heredia Decl. ¶ 5.) *See, e.g. Staton v. Boeing*, 327 F.3d 938, 977 (9th Cir. 2003). As such,
23 Plaintiff respectfully request that this Court approve the Class Representative Service Awards in
24 the amounts of \$10,000 to Ms. Kabitzke and \$20,000 each to Ms. Hernandez and Ms. Heredia.

25 **V. CLASS COUNSEL'S REQUEST FOR FEES IS REASONABLE**

26 Subject to court approval, this settlement amount of \$2,900,000 includes an allocation of
27 \$1,160,000 in Class Counsel Fees. Plaintiff and class members are entitled to recover their
28 attorneys' fees and costs. (Labor Code §2802; Code Civ. Proc. §1021.5(a); *Earley v. Super. Ct.*,

(2000) 79 Cal.App.4th 1420. A fee award is justified when class benefits are obtained via settlement. *Maria P. v. Riles*, (1987) 43 Cal.3d 1281, 1290-91; *Westside Cty. for Indep. Living, Inc. v. Obledo*, (1983) 33 Cal.3d 348, 352-53. Fee awards may be based on (1) the percentage-of-the-benefit method; or (2) the lodestar plus multiplier method. See *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27. Both methods are proper in California, with courts often only using a lodestar-multiplier method as a check against the reasonableness of a percentage fee award. (See, e.g., *Serrano v. Priest (Serano III)*, (1977) 20 Cal.3d 25, 48-49 fn. 23; *People ex rel. Dept. of Transportation v. Yuki*, 31 (1995) Cal. App. 4th 1754, 1769-1772; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, (1985) 172 Cal. App. 3d 914, 954.)

Here, the lodestar is significantly more than the requested fee amount and therefore a lodestar-multiplier check is not necessary. The amount requested constitutes a “percentage of the fund” deemed reasonable in similar wage and hour settlements of this size and approved by California courts. This is not only warranted based on the contingency risk Plaintiff’s and Intervenor’s counsel agreed to incur for the benefit of the class members and aggrieved employees, but also based on the hard fought and beneficial results achieved.

A. Class Counsels’ Requested Fees Are Reasonable Under the Lodestar/Multiplier Analysis Although One Is Not Required

When fees are allocated by percentage method, courts have discretion to “cross-check” the fees awarded through the lodestar method. However, the Supreme Court in *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th at 505, “emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the trial court’s primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award.”

Courts have defined reasonable multipliers on a lodestar cross-check to “range from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001). In determining the outcome of a fee award in a class action matter, one of the main benchmarks to consider is the result for the class. The Supreme Court has said that in an award of attorney’s

1 fees the “most critical factor is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S.
2 424, 436 (1983). The “benefit obtained for the class” is considered the “foremost” consideration
3 in determining the appropriate fee in a common fund case. *In Re Bluetooth*, 654 F.3d at 942.

4 The lodestar-multiplier method begins with a calculation of time spent and reasonable
5 hourly compensation of each attorney and paralegal who worked on the case. Then to
6 compensate counsel for risk, quality, and result, courts commonly apply a "multiplier" to the
7 lodestar in awarding attorneys' fees. California courts often increase the base lodestar with a
8 multiplier after considering: (1) the continuing obligation of Plaintiffs’ counsel to devote time
9 and effort to the litigation; (2) the extent to which the litigation precluded other employment by
10 the attorneys; (3) the contingent nature of the fee agreement, both from the point of view of
11 eventual success on the merits and securing an award; (4) the experience, reputation, and ability
12 of the attorneys who performed the services, and the skill they displayed in litigation; (5) the
13 amount involved and the results obtained on behalf of the class by Plaintiffs ’s counsel; and (6)
14 the reaction of the class members. *See, e.g. Serrano, supra*, 20 Cal. 3d at 49; *Dunk v. Ford Motor*
15 *Co., supra*, 48 Cal. App. 4th at 1810 n.21. However, no rigid formula applies, and each factor
16 should be considered only “where appropriate.” *See Dept. of Transp. v. Yuki*, (1995) 31 Cal.
17 App. 4th 1754, 1771; *See also Serrano, supra*, 20 Cal.3d at 49.

18 **1. Time and Effort**

19 Class Counsel, who are experienced wage and hour class action attorneys, have put a
20 significant number of hours in this case. Class Counsel had to conduct substantial investigation,
21 research numerous issues, engage in motion practice, review and analyze policies, independently
22 analyze time records, and wage statements, as well as dedicate substantial time to analyze data,
23 time records and payroll records (Lance Decl. ¶ 21.) Those efforts, along with negotiating
24 settlement, attempting to obtain preliminary approval, preparing and filing the final approval
25 papers, required a significant amount of time and labor (*Id.*)

26 Since on or about August 2022, prior to the inception of the filing of this lawsuit on
27 September 8, 2022, , the total amount of attorney time estimated to have been expended thus far,
28 and estimated to be expended in finalizing this matter is 311 hours and Class Counsel’s total

1 lodestar is \$249,915, (Dacre Decl. ¶ 22.) Additionally, Intervenor's total hours and lodestar
2 amounts are 899 hours \$587,072.5 lodestar for Hernandez's Counsel [Blumenthal Nordrehaug
3 Bhowmik De Blouw LLP] (Nordrehaug Decl. ¶ 6.) and 5,479 hours and \$4,435,992.5 lodestar
4 for Heredia's Counsel [Schneider Wallace Bylsma Konecky, LLP](Bylsma Decl. ¶ 21) Class
5 Counsel and Intervenor's total lodestar amount significantly exceeds the fees requested.

6 Here, the tasks and work performed by Class Counsel were reasonable and necessary to
7 the prosecution of this case and justified, particularly in light of the result achieved.

8 Additionally, Intervenor's counsel dedicated a significant amount of time in litigating the related
9 *Heredia* and *Hernandez* class action and PAGA cases and, as per the agreement reached in the
10 Addendum to the Settlement preliminarily approved by the Court, request compensation for the
11 years spent litigating their respective cases. Accordingly, Class Counsel respectfully submits that
12 the fee request of \$1,160,000 is reasonable, fair, and should be awarded.

13 **2. Extent Litigation Precluded Other Employment**

14 Inherent to class action litigation is the amount of time and labor required to properly
15 adjudicate the case. From start to settlement, judgment or verdict, class action litigation
16 commands commitment, an extensive amount of time, labor and resources to successfully
17 litigate. Although this litigation did not conclusively preclude other employment it did impact
18 Class Counsels' ability to take on other class action cases. Class Counsel work at boutique law
19 firms with few attorneys and staff. (Dacre Decl. ¶ 16.)

20 **3. Contingent Nature of the Agreement**

21 In *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132, the court noted, the economic
22 rationale for contingency cases has been explained as follows: "A contingent fee must be higher
23 than a fee for the same legal services paid as they are performed. As discussed further below, the
24 contingent fee compensates the lawyer not only for the legal services he renders but also for the
25 loan of those services. The implicit interest rate on such a loan is higher because the risk of
26 default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher
27 than that of conventional loans." (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534,
28 567.) "A lawyer who both bears the risk of not being paid and provides legal services is not

1 receiving the fair market value of his work if he is paid only for the second of these functions. If
2 he is paid no more, competent counsel will be reluctant to accept fee award cases.” *Id.* Here,
3 Class Counsel took the matter on a contingent basis (Dacre Decl. ¶ 23.)

4 **4. Experience, Reputation, and Ability of Plaintiff’s Counsel**

5 Class Counsel also has considerable experience and has demonstrated competence with
6 litigating wage and hour class actions. (Dacre Decl. ¶¶ 15-20) Likewise, Intervenor’s counsel;
7 have also demonstrated competence in litigating wage and hour class action. (Nordrehaug Decl.,
8 ¶¶ 3-5) (Bylsma Decl. ¶¶ 4-5.) Class Counsel’s skill and experience in litigating wage and hour
9 class actions, in state and federal forums, contributed to the results obtained on behalf of the
10 putative class members (Dacre Decl. ¶¶ 15-20.)

11 **5. Results Obtained on Behalf of the Class by Plaintiff’s Counsel**

12 The award of attorney fees should reflect the successful outcome of the case *Hensley v.*
13 *Eckerhart*, (1983) 461 U.S. 424,440. As already discussed herein and in the preliminary approval
14 motion, this case involves numerous and difficult issues largely precluding a clear-cut outcome
15 as to liability. Here, the majority of class members signed binding individual arbitration
16 agreement precluding litigation on a class wide basis. (Dacre Decl. ¶ 12.) There also were
17 significant class certification issues stemming from the fact concerning whether individual issues
18 predominate and whether class member declarations and statistical samplings can support
19 certification. (*Id.*) Defendant recognized the uncertainty of Plaintiff’s claims and vigorously
20 disputed liability, Class Counsels’ ability to obtain certification, and the amount of damages.(*Id.*)
21 Nevertheless, despite the obstacles as already discussed in the preliminary approval motion and
22 herein, Class Counsel obtained favorable financial compensation for the class members. All
23 Class Members who did not opt out of the Settlement will receive payments. The *average*
24 estimated Individual Settlement Payment to Class Members is \$366.61, the *highest* estimated
25 Individual Settlement Payment is \$1,012.63, and the *lowest* estimated Individual Settlement
26 Payment is \$.41. (Hernandez Decl. ¶ 15.)

27 Despite the complexity of the case, Class Counsel has, through the investment of
28 substantial effort, and the resources of their boutique law firm, been able to secure compensation

1 on behalf of the Class Members where the risk could potentially leave employees with no
2 recovery. (Dacre Decl.¶ 16.)

3 **6. Reaction of Putative Class Members**

4 As already discussed herein, the reaction of the Class Members has been positive.
5 Specifically, not one of the Class Members objected to Class Counsel’s request for attorneys’
6 fees and only three requested exclusion which also provides compelling evidence that the request
7 is fair, adequate, and reasonable.

8 In sum, based on the six factors discussed above, Class Counsel’s lodestar in this action
9 should be enhanced by the application of a multiplier although one is NOT requested as the
10 Lodestar amount is more than the fees Class Counsel is requesting. Additionally, by settling this
11 case prior to trial rather than continuing to litigate issues that remain somewhat unsettled,
12 counsel obtained favorable results for the class at far less expense to the parties, the counsel and
13 to this Court.

14 **B. Class Counsels’ Requested Fees Are Reasonable Under the Percentage of the**
15 **Benefit Method.**

16 **1. Attorney’s Fees Should be Based Upon the Total Benefit to the Class.**

17 Under California law, courts have the discretion to award fees under the percentage
18 method when fees are drawn from an ascertainable fund. *See Laffitte v. Robert Half Int’l*, 1 Cal.
19 5th 480, 503 (2016) (“*Laffitte II*”) (“We join the overwhelming majority of federal and state
20 courts in holding that when class action litigation establishes a monetary fund for the benefit of
21 the class members, and the trial court in its equitable powers awards class counsel a fee out of
22 that fund, the court may determine the amount of a reasonable fee by choosing an appropriate
23 percentage of the fund created.”). The common fund method “better approximates the workings
24 of the marketplace than the lodestar approach” in setting the price of contingent fees. *See Lealao*
25 *v. Beneficial Cal. Inc.* 82 Cal. App. 4th 19, 48 (2000) (“*Lealao*”). The percentage method
26 “provide[s] incentives roughly comparable to those negotiated in the private bargaining that
27 takes place in the legal marketplace.” (*Id.*)
28

1 The primary benefit of the percentage method is that it focuses on the benefit conferred
2 on the class as a result of the efforts of Class Counsel. Awarding Class Counsel fees based on a
3 percentage of the recovery has the advantages of eliminating the incentive for attorneys to
4 increase hours unnecessarily, encouraging early settlement of disputes, and preserving judicial
5 resources otherwise used to monitor attorneys' billable hours. See *In re Activision Sec. Litig.*,
6 (N.D. Cal. 1989) 723 F. Supp. 1373, 1378-79; *MANUAL FOR COMPLEX LITIGATION* 4th ed.
7 §14.121 (2004) ("in practice, the lodestar method is difficult to apply, time consuming to
8 administer, inconsistent in result. . . capable of manipulation,... [and] creates inherent incentive
9 to prolong the litigation"); See also *In re Quantum Health Resources, Inc.* (C.D.Cal. 1997) 962
10 F.Supp. 1254, 1256 (noting that lodestar "creates an incentive to keep litigation going in order to
11 maximize the number of hours included in the court's lodestar calculation").

12 The percentage of the fund method survives in California class action cases. *Laffitte v*
13 *Robert Half Intern, Inc.* (2016) 1 Ca. 4th 480, 506. [See also. *Chavez v. Netflix, Inc.*, (2008) 162
14 Cal. App. 4th 43 at 65, 66; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.*,
15 (2005) 127 Cal. App. 4th 387, 397 [the common fund doctrine is "frequently applied in class
16 actions when the efforts of the attorney for the named class representatives produce monetary
17 benefits for the entire class"]; *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. 4th at 254.

18 **2. The Contingent Nature of Class Counsel's Representation Supports the**
19 **Requested Fees Based on Percentage of the MSA.**

20 Further, the contingent nature of Class Counsels' representation also warrants the
21 requested attorney fees based on the percentage of the MSA. The risks in taking on any class
22 action are enormous especially in regards to wage-and-hour class actions because the wage laws
23 are still developing and a change in the law could wipe out a Plaintiffs' recovery. Litigating a
24 class action through trial takes years and requires the investment of hundreds of thousands of
25 dollars. Attorneys willing to undertake this risk deserve appropriate compensation. As elaborated
26 by the California Supreme Court in *Graham v. Daimler Chrysler Corp.*, (2008) 34 Cal. 4th 553,
27 579-580, counsel should be awarded a fee enhancer for taking on contingent cases because a
28 "contingent fee compensates the lawyer not only for the legal services he renders but for the loan

1 of those services. The implicit interest rate on such a loan is higher because the risk of default
2 (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that
3 of conventional loans."

4 As the California Supreme Court specifically explained:

5 A contingent fee must be higher than a fee for the same legal services paid as they
6 are performed. The contingent fee compensates the lawyer not only for the legal
7 services he renders but for the loan of those services. The implicit interest rate on
8 such a loan is higher because the risk of default (the loss of the case, which
9 cancels the debt of the client to the lawyer) is much higher than that of
10 conventional loans. A lawyer who both bears the risk of not being paid and
11 provides legal services is not receiving the fair market value of his work if he is
12 paid only for the second of these functions. If he is paid no more, competent
13 counsel will be reluctant to accept fee award cases.

14 *Id.* at 580. (citing *Ketchum v. Moses*, (2001) 24 Cal. 4th 1122, 1132-33).

15 In the legal marketplace, an attorney whose compensation is entirely dependent on
16 success – who takes a significant risk – should and does expect a significantly higher fee than an
17 attorney who is paid a market rate as the case goes along, win or lose. *See, e.g., Rader v.*
18 *Thrasher*, (1962) 57 Cal. 2d 244, 253 (“[a] contingent fee contract, since it involves a gamble on
19 the result, may properly provide for a larger compensation than would otherwise be reasonable”
20 (citation omitted); *Salton Bay Marina v. Imperial Irrig. Dist.*, (1985) 172 Cal. App. 3d 914, 955
21 (contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee
22 award)).

23 Class Counsel represented the Class Members in this matter and has borne the entire risk
24 and costs of litigation on a pure contingency basis. To date, Class Counsel has not received any
25 compensation and expended litigation costs on behalf of the class. Class action contingency
26 cases are inherently risky. Upon retention, Class Counsel makes a commitment to litigate the
27 case through trial. These types of cases can take years, hundreds of hours of work and cost an
28 enormous amount of money; these risks are known upon retention. The risks involved coupled
with the contingency basis of this case further support Class Counsel’s request for attorneys’ fees
and costs (Dacre Decl. ¶ 23.)

1 **3. Additional Factors re: Contingency Market Rate Justify the Requested**
2 **Fee Award**

3 Further, important public policies underlie a court's determination of a motion for
4 attorneys' fees in class actions. Employees who are wronged by an employer's violation of state
5 and federal labor laws should have access to counsel with the ability and resources necessary to
6 litigate complex cases. *See e.g., Say-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Ca1. 4th
7 319, 340 (enforcement of labor laws and class action device both matters of public policy); Our
8 legal system places unique reliance on private litigants to enforce substantive provisions of
9 employment law through class actions. *See e.g. Gentry v. Superior Court*, 42 Cal. 4th 443, 450-6
10 (2007) (confirming the public importance of private enforcement of overtime laws through class
11 actions); *Lealao*, 82 Cal. App. 4th (legal system relies on private litigants to enforce substantive
12 provisions of law through class and derivative actions; attorneys providing the essential
13 enforcement services must be provided incentives roughly comparable to those negotiated in the
14 private bargaining that takes place in the legal marketplace).

15 As the California Court of Appeal recognized in *Thayer v. Wells Fargo Bank, supra*, 92
16 Cal. App. 4th at 839: "Adequate fee awards are perhaps the most effective means of achieving
17 [the] salutary goal [of encouraging `private attorney general actions and] [c]ourts should not be
18 indifferent to the realities of the legal marketplace or unduly parsimonious in the calculation of
19 such fees." *See also Lealao*, 82 Cal.App.4th at 53 (cautioning against fee awards that are too
20 small and therefore "chill the private enforcement essential to vindication of many rights..."). At
21 a minimum, attorneys providing these substantial benefits should be paid an award equal to the
22 amount negotiated in private bargaining that take place in the legal marketplace. *Deposit*
23 *Guaranty Nat. Bank, Jackson, Miss. v. Roper*, (1980) 445 U.S. 326, 338; *Lealao*, 82 Cal. App. 4th
24 at 49-50.

25 **4. Counsel's Requested Fee Award is Within California's Benchmark**
26 **Awards and Thus Reasonable**

27 In addition to the forgoing, Class Counsel's request for attorneys' fees in the amount of
28

1 \$ 1,160,000, or not more than 40% of the \$2,900,000 MSA is within the “zone of
2 reasonableness.” The fee amount presently sought is not extraordinary, but actually falls at the
3 “average” fee deemed reasonable under California State court authority, as it is recognized that
4 “courts may award attorney’s fees in the 30-40% range in wage and hour class actions that result
5 in recovery of a common fund under \$10 million.” See e.g. *Martin v. AmeriPride Servs.*, 2011
6 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). *Birch v. Office Depot, Inc.*, USDC
7 Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a \$16 million wage
8 and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case
9 No. 05cv1359 BTM (JMA) (awarding a 40% fee on a \$3.75 million wage and hour class action
10 settlement).

11 Additionally, as already discussed herein, Class Counsel and Intervenor’s Counsel have
12 entered into a joint prosecution agreement and Addendum to the Settlement Agreement and
13 agreed to split the requested fees: 55% to counsel for Kabitzke, 27% to Heredia’s counsel and
14 18% to counsel for Hernandez. (Exh.2 ¶ 6.) Class Counsel’s attorneys’ fee request is fair and
15 reasonable and is consistent with the awards in California. It is also reasonable given the history
16 of the Action, the time and effort expended by Class Counsel and Intervenor’s Counsel, and the
17 results obtained.

18 VI. COUNSEL’S REQUESTED COSTS ARE REASONABLE

19 Class Counsel has not only expended substantial time in diligently prosecuting this
20 Action, but have also expended considerable resources during litigation with no guarantee that
21 their costs would be reimbursed. The Settlement provides for reasonable actual costs of up to
22 \$175,500 (Addendum, ¶ 6.) Counsel’s and Intervenor’s total actual costs amount is \$168,704.52
23 (\$24,572.31 to counsel for Kabitzke, [Dacre Decl. ¶ 24. (Exh. 3.) \$115,017.48 to counsel for
24 Heredia [Bylsma Decl. ¶ 23, Ex. 3.] and \$29,114.73 to counsel for Hernandez [Nordrehaug Decl.
25 ¶ 8, Ex. 2.) Thus, Class Counsel respectfully requests that the Court approve the requested cost
26 amount as per the Settlement Agreement.

1 **VII. THE SETTLEMENT ADMINISTRATOR'S EXPENSES ARE**
2 **REASONABLE**

3 ILYM was retained to administer the notice and claims process. ILYM' duties included,
4 but were not limited to: (a) printing and mailing the Court Approved Notice of Class Action and
5 PAGA Settlement ("Class Notice") (b) receiving undeliverable Notices; (c) receiving any
6 requests for exclusion; (d) answering questions from Class Members. Should the Court grant
7 final approval of this Settlement, ILYM will be responsible for further duties, including but not
8 limited to: (e) calculating Individual Settlement Payments, (f) calculating Individual PAGA
9 Payments, (g) distributing funds, (h) tax-reporting following final approval; (i) mailing
10 Settlement checks; (j) and for such other tasks as the Parties mutually agree or the Court orders
11 ILYM to perform (Hernandez Decl. ¶ 16.) Class Counsel respectfully requests that, as per the
12 Settlement Agreement, that ILYM be awarded costs in the amount of \$30,000. (Settlement
13 Agreement, p.18, ¶ 54(e);(Id.)

14 **VIII. CONCLUSION**

15 For all of the foregoing reasons, Plaintiff respectfully request that the Court: (1) grant
16 final approval of the Settlement, including the gross settlement amount of \$2,900,000; (2)
17 confirm James R. Hawkins, Isandra Fernandez, and Lance Dacre, of James Hawkins APLC as
18 Class Counsel; (3) approve distribution of payments to the Settlement Class; (4) approve
19 (\$100,000) in PAGA penalties; (5) approve Class Representative Service Awards of \$10,000 to
20 Plaintiff Alexandria Ilene Kabitzke and \$20,000 each to Intervenors Audrey Heredia and
21 Jacqueline Hernandez; (6) approve costs of administering the Settlement to the Settlement
22 Administrator, ILYM, Group Inc. in the amount of \$30,000; (7) approve payment of One
23 \$1,160,000 in attorneys' fees and total attorney costs of \$168,704 to be allocated as per the
24 Settlement Agreement.

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1 Finally, Plaintiff respectfully request that the Court enter the [Proposed] Order and
2 Judgement Granting Final Approval of Class Action and PAGA Settlement, filed concurrently
3 herewith).

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5 Respectfully submitted,

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7 Dated: September 19, 2024

JAMES HAWKINS, APLC

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10 
11 Isandra Fernandez, Esq.
12 Lance Dacre, Esq.
13 Attorneys for Plaintiff
14 Alexandria Ilene Kabitzke
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