JAMES HAWKINS APLC
James R. Hawkins (#192925)
Gregory Mauro (#222239)
Michael Calvo (#314986)
Lauren Falk (#316893)
Ava Issary (#342252)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com
Email: Lauren@jameshawkinsaplc.com
Email: Ava@jameshawkinsaplc.com

Attorneys for Plaintiff PAUL F. MAISNIER
individually and on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

PAUL F. MAISNIER, individually and on behalf of all others similarly situated,

Plaintiff,

v.

NATIONAL VISION, INC. dba AMERICA'S BEST CONTACTS AND EYEGLASSES; and DOES 1-50, inclusive,

Defendant.

Case No. 24CV018644

ASSIGNED FOR ALL PURPOSES TO:
Honorable Jill Talley, Dept. 23

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF PAGA CLASS/COLLECTIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES ; DECLARATIONS OF CLASS COUNSEL; DECLARATION OF PLAINTIFF MAISNIER

Date: July 25, 2025
Time: 9:00 a.m.
Dept.: 23

TO THE HONORABLE COURT, ALL PARTIES, AND COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that on July 25, 2025 at 9:00 a.m. or as soon thereafter as the matter may be heard in Department 23 before the Honorable Jill Talley of the Sacramento County Superior Court, Plaintiff PAUL F. MAISNIER ("Plaintiff"), by and through Plaintiff's counsels of record, will and hereby moves the Court for Final Approval of the Stipulation Of Class, Collective, And Representative Action Settlement, awarding attorneys' fees, litigation costs, Enhancement Payment, Settlement Administration Costs, and entering final approval and judgment.

This Motion is made pursuant to Rule 3.769 of the California Rules of Court and Labor Code section 2699(l). This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the accompanying Declarations of James R. Hawkins ("Hawkins"), the declaration of Nathalie Hernandez of ILYM Group, the declaration of Plaintiff PAUL F. MAISNIER, the Stipulation Of Class, Collective, And Representative Action Settlement (the "Settlement Agreement"), attached to the Hawkins Declaration, argument of counsel, all papers and pleadings filed in the action, and upon any further information or evidence requested by the Court at the time of hearing on this Motion.

Dated: July 2, 2025

JAMES HAWKINS APLC

BY: ______________________

James Hawkins
Gregory Mauro
Michael Calvo
Lauren Falk
Ava Issary

Attorneys for Plaintiff PAUL F. MAISNIER and the Proposed Class

TABLE OF CONTENTS

I. INTRODUCTION……………………………………………………………………….1

II. BACKGROUND, INVESTIGATION, DISCOVERY……….…………………….......3

A. THE SETTLEMENT PROVIDES REASONABLE COMPENSATION TO CLASS MEMBERS…………………………………………………………4

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE….6

A. TERMS OF THE SETTLEMENT…………………………………………….….6

B. RELEASED CLAIMS………………………………………...……………..6

C. THE CLASS MEMBERS SUPPORT THE SETTLEMENT- ZERO (0) OBJECTIONS AND THREE (3) OPTOUTS…….…………………..................6

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE……….…...7

A. THE SETTLEMENT SATISFIES THE STANDARD FOR FINAL APPROVAL……………………………………………………………………7

V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS……..8

A. THE REQUESTED FEE AWARD IS FAIR AND REASONABLE, AND CALCULATED AS A PERCENTAGE OF A COMMON FUND……………..8

1. The Requested Attorneys' Fee is Within the Range of Fees Approved in Comparable Common Fund Cases…………………………………10

2. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee……………….……………………………………...11

3. Class Counsel's Hourly Rates are Reasonable……….….…………..11

4. Class Counsel's Total Hours are Reasonable…………...……...……12

5. Costs of Litigation are Reasonable…………………………………..13

B. THE ENHANCEMENT PAYMENT IS REASONABLE……………………………………………………………….13

C. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE…...14

D. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE…...14

E. THE COURT SHOULD APPROVE THE FLSA PORTION OF THE SETTLEMENT……………………………………………………………………..14

VI. CONCLUSION………………………………………………………………………15

TABLE OF AUTHORITIES

Balderas v. Massage Envy Franchising, LLP,
2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014)…………………………………………5

Bell v Farmers Ins. Exchange,
(2004) 115 Cal App 4th 715…………………………………...……………………...13

Birch v. Office Depot, Inc.,
USDC Southern District, Case No. 06cv1690 DMS (WMC)………………...….………10

Children's Hosp. and Med. Ctr. v. Bonta
97 Cal.App.4th 740 (2002)………………………………………..………..…..……11

City and County of San Francisco v. Sweet
(1995) 12 Cal.4th 105……………………………………………………….……………10

Dunk v. Ford Motor Company
(1996) 48 Cal.App.4th 1794……………………….....……………………….................8

Flannery v. California Highway Patrol
(1998) 61 Cal. App. 4th 629……………………………………………….……………12

In Re Armored Car Antitrust Litig.,
472 F. Supp. 1357 (N.D. Ga. 1979)……………………………………………………5

In re Cellphone Fee Termination Cases
(2010) 186 Cal. App. 4th 1380……………………………………………………….….13

In Re Four Seasons Secs. Laws Litig.,
58 F.R.D. 19 (W.D. Okla.1972)…………………………………………………………….5

In re Rite Aid Corp. Securities Litigation,
396 F.3d 294 (3d Cir. 2005)……………………………………………………….…...9
In re Vitamin Cases,
110 Cal. App. 4th 1041, 1058-1059 (2003)……………………………………………...11
In re Warfarin Sodium Antitrust Litig.,
212 F.R.D. 231 (D. Del. 2002)..5
Ketchum v. Moses
(2001) 24 Cal. 4th 1122………………………………………………………….….11
Laffitte v. Robert Half Int'l, Inc
1 Cal.5th 480, 506 (2016), ……………………………………………….……........9
Martin v. Ameripride Servs.,
2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011)………………………………10
New York Gaslight Club, Inc. v. Carey
(1980) 447 U.S. 54……………………………………………………..……..12
Officers for Justice v. Civil Serv. Comm'n of City & Cnty. of S.F.
(9th Cir. 1982) 688 F.2d 615……………………………………………………...…7
PLCM Group, Inc v. Drexler
(2000) 22 Cal. 4th 1084……………………………………………….………………11
Potter v. Pacific Coast Lumber Co. of Cal.
(1951) 37 Cal. 2d 592………………………………………….……………..…...7
Quinn v. State of California
(1995) 15 Cal.3d 162……………………………………………………….........9
Rawlings v. Prudential-Bache Properties, Inc.,
9 F.3d 513 (6th Cir. 1993)…………………………………………………...…..…..9
Rippee v. Boston Mkt. Corp.,
USDC Southern District, Case No. 05cv1359 BTM (JMA)…………………………...10
Serrano v. Priest,

20 Cal.3d 25, 34 (1977)……………………………………………………….........8

Serrano v. Priest

(1982) 32 Cal.3d 621…………………………………………………….....…...12

Serrano v. Unruh,

32 Cal.3d 621, 627 (1982)……………………………………….……….......11

Stambaugh v. Superior Court

(1976) 62 Cal. App. 3d 231…………………………………………….….…….7

Syers Props. III, Inc. v. Rankin,

226 Cal.App.4th 691 (2014)……………………………………………………..12

Thayer v. Wells Fargo Bank

92 Cal. App. 4^{th} 839……………………………………………….…………..11

Vincent, supra,

557 F.2d at 769…………………………………………………………..……..9

Wershba v. Apple Computer, Inc.

(2001) 91 Cal. App. 4th 224………………………………………..…........7, 8, 9, 10

<u>Statutes, Rules and Regulations</u>

California Rules of Court 3.769…………………………………………………..…………7

California Rules of Court 3.769 (g)……………………………………..……..……..……7

<u>Secondary Authorities</u>

Manual § 21.62 n.971………………………………………………………………………13

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This Court preliminary approved the settlement on or about April 14, 2025. (James Hawkins Decl. "Hawkins", **Exhibit A** - Preliminary Approval Order). Plaintiff MAISNIER ("Plaintiff"), now respectfully requests that this Court grant final approval of the settlement agreement attached to the Hawkins Declaration as **Exhibit B**, along with the Amendment To Joint Stipulation Of Class, Collective, And Representative Agreement attached to the Hawkins Declaration as **Exhibit C,** which seeks to resolve claims against NATIONAL VISION, INC. dba AMERICA'S BEST CONTACTS AND EYEGLASSES. ("Defendant") in exchange for a Gross Fund Value of ("GFV") of Four Million Four Hundred and Fifty Thousand Dollars and Zero Cents ($4,450,000.00).

The Class Members overwhelmingly supported the Settlement, as there is a 99.92% participation rate, with zero objections and three opt outs resulting in a large participation from all Class Members (3,733). To determine a Participating Class Member's individual settlement award payment, the Net Settlement Fund will be divided by the total number of workweeks worked by all Settlement Class Members during the Class Period, multiplied by the number of workweeks worked by that Participating Class Member. Based on these calculations, the Participating Class Members will receive an estimated average gross payment of $694.68, with the estimated highest gross payment being $2,580.96, and the estimated lowest gross payment being $11.95. Based on these calculations, the 3,545 FLSA Collective Members will receive an estimated average gross payment of $14.10, with the estimated highest gross payment being $49.33. Aggrieved Employees will receive an estimated average gross payment of $30.00, with the estimated highest gross payment being $86.19, and the estimated lowest gross payment being $0.61. (Administrator Decl. of Nathalie Hernandez-hereinafter "Hernandez", ¶ 15).

Additionally, there are 2,917 Aggrieved Employees who worked a total of 144,157 workweeks during the PAGA Period. (Hawkins Decl., ¶¶ 16-17).

Plaintiff also moves for final approval of attorneys' fees in the amount of $1,481,729.21[1] which is one third of GFV. As will be demonstrated herein, Class Counsel's attorney fee request is supported using the percentage fee method and the lodestar method. Second, Plaintiff moves for final approval of payment of the litigation costs in the amount of $13,914.84, all of which was incurred in litigating this matter. Third, Plaintiff moves for final approval of the Enhancement Payment to Plaintiff in the sum of $25,000.00, to compensate the Class Representative for their service as the Class Representative and providing a general release of his claims against Defendant – a release significantly greater than the Class Members provided – and for the risks absorbed and time spent litigating the case. Plaintiff played a vital role in representing Class Members in this case and spearheading the lawsuit to seek monetary relief on behalf of all Class Members. Fourth, Plaintiff moves for final approval of the payment of $27,950.00 in administrative costs to ILYM Group. Fifth, Plaintiff moves for final approval of the $250,000.00 PAGA Payment and the payment to the Labor and Work Development Agency ("LWDA") for its share of the PAGA Payment ($162,500.00, which is 65% of $250,000.00; with the remaining $87,500.00 payable to Aggrieved Employees).

This case required many hours of attorney and Plaintiff time who sought relief on behalf of 3,736 potential class members within the State of California defined all current and former non-exempt employees who were employed by Defendant NATIONAL VISION, INC. dba AMERICA'S BEST CONTACTS AND EYEGLASSES for the Class Period is May 1, 2020 through June 17, 2024 and the FLSA Period September 20, 2020, through the June 17, 2024.

This litigation involved the review and analysis of documents, policies, and practices, as well as a full day of mediation. Most importantly, the Settlement and all its terms received overwhelming support from Class Members, as there were no objections and only one request for exclusion. Therefore, Plaintiff respectfully request the Court grant final approval of the Settlement, attorneys' fees, litigation costs, Enhancement Payment, Settlement Administration

[1] The original Attorneys Fees requested were $1,483,000. Plaintiff's counsel is now requesting fees of $1,481,729.21 (instead based on the amount of the settlement reverting to Defendant due to the 3 requests for exclusion. This amount reverting to Defendant is $4,812.36 (See Hernandez Decl. at paragraphs 14-15).

Costs, and payment to the LWDA in the amounts preliminarily approved by the Court and as fully disclosed to Class Members.

II. BACKGROUND, INVESTIGATION, DISCOVERY

On September 20, 2022, Plaintiff filed a class action complaint, *Paul Maisnier v. National Vision, Inc. d/b/a America's Best Contacts and Eyeglasses*, in the Superior Court for the State of California, County of Alameda, Case No. 22CV018224, which Defendant removed to the United States District Court, Northern District of California, Case No. 3:22-cv-07859 ("Federal Court Action"). Plaintiff's class action complaint alleges causes of action for (i) failure to pay hourly and overtime wages; (ii) failure to provide meal periods or compensation in lieu thereof; (iii) failure to provide rest breaks or compensation in life lieu thereof; (iv) failure to timely pay wages; (v) failure to provide accurate itemized wage statements; (vi) failure to reimburse reasonable business expenses; (vii) unlawful wage deductions; and (viii) violation of California's Unfair Competition Law. (Hawkins Decl. ¶¶ 3-6).

On November 29, 2022, Plaintiff filed a complaint for civil penalties under the California Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq., entitled *Paul Maisnier v. National Vision, Inc. d/b/a America's Best Contacts and Eyeglasses*, in the Superior Court for the State of California, County of Alameda, Case No. 22CV022738 ("PAGA Action"). Plaintiff's complaint in the PAGA Action seeks civil penalties based on alleged violations of the California Labor Code, including Labor Code §§ 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1175, 1182.12, 1194, 1194.2, 1197, 1198, 2802, and the California Wage Orders. The PAGA Action asserts the same alleged Labor Code violations Plaintiff alleged in his September 20, 2022, notice of intent to sue to the Labor and Workforce Development Agency. *Id*.

The Parties agreed, for purposes of settlement, to Plaintiff filing a consolidated Complaint in Sacramento County Superior Court, including the claims alleged in the Federal Court Action, the PAGA Action, and a claim under the FLSA (the "Action"). Defendant denies all material allegations set forth in the Action, and has asserted numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation, Defendant desires to fully and finally settle the Released Claims. (Settlement Agreement ¶3).

On March 11, 2024, the Parties engaged in private mediation with a well-respected wage and hour class action mediator, Brandon McKelvey. In preparation for the mediation Defendant provided Class Counsel with hire and term dates for all employees, time and payroll records and relevant policies for Class Members, PAGA Group Members, and Collective Members during the Class Period. (Hawkins Decl. ¶¶ 3-6).

The settlement discussions were conducted at arm's-length, and the settlement is the result of an informed and detailed analysis of Defendant's potential liability in relation to the costs and risks associated with continued litigation. Based on the documents produced, as well as Class Counsel's own independent investigation and evaluation, Class Counsel believes that the Settlement with Defendant for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant. (Hawkins Decl. ¶ 4-12, Ex. B.)

In reaching the proposed settlement, Plaintiff counsel's negotiation efforts took into consideration relevant factors such as the size of the class, the information, data, and documents obtained in the litigation and/or otherwise exchanged pursuant to the mediation privilege; the experience of the named Plaintiff; the strengths and weaknesses of the case; the uncertain outcome and risk of litigating complex actions; the time and expense in litigating a case through trial; Defendant's defenses; and the non-reversionary nature of the settlement.

A. THE SETTLEMENT PROVIDES REASONABLE COMPENSATION TO CLASS MEMBERS

As a result of the mediation, the parties agreed to settle this matter for a Gross Settlement Amount ("GFV") of $4,450,000.00 (Hawkins Decl., ¶ 5, Hernandez Decl., ¶ 14). Based on their own respective independent investigations and evaluations, and after taking into account the sharply disputed factual and legal issues involved in this matter, the risks attending further prosecution of the case, and the monetary benefits received under the Settlement despite the questionable nature of the claims, Plaintiff's counsel is of the opinion that Settlement for the consideration and on the terms set forth in the Settlement Agreement remains fair, reasonable and adequate and is in the best interests of the Class Members. (Hawkins Decl., ¶¶ 5-13).

Even without the presumption of fairness and reasonableness, the settlement is clearly within the range of reasonableness as thoroughly discussed in detail in the motion for preliminary approval, and as considered by the Court in granting preliminary approval, (Hawkins Decl., ¶¶ 9-18; Ex. A- Order Granting Preliminary Approval).

Accounting for the risks of continued litigation and impediments to discovery, Plaintiff determined that a settlement amounting to $4,450,000.00 was fair and reasonable and the court preliminarily agreed. (Hawkins Decl., ¶¶ 11-23). *See, e.g., In re Warfarin Sodium Antitrust Litig.,* 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.,* 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP,* 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery "[fell] within the range of possible initial approval based on the strength of plaintiff's case and the risk and expense of continued litigation."); *In re Omnivision Techs., Inc.,* 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).[2] (*Id.*)

\\

[2] *See also In re Uber FCRA Litig*., No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. 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) (granting preliminary approval to class action settlement representing "8.1% of the full verdict value" with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiff valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc*., No. 12-cv-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.").

III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE

A. TERMS OF THE SETTLEMENT

The GFV is ($4,450,000.00). This amount includes, the Settlement Administration Costs of $27,950.00; the Enhancement Payment of up to $25,000.00 to Plaintiff; Court-approved attorneys' fees up to $1,481,729.21, litigation costs to Class Counsel in the amount of $13,914.84; and PAGA penalties of $250,000.00 with 65% of that amount paid to the LWDA and the remaining 35% paid to the Aggrieved Employees. The Net Settlement fund available to the settlement class is approximately $2,595,322.80. (Hernandez Decl., ¶ 14).

The Settlement is a common fund settlement with no reversion to Defendant. Thus, each of the participating Settlement Class Members will be paid his or her pro-rata share of the NSA.

B. RELEASED CLAIMS

Subject to approval by this Court, and in exchange for the consideration recited in the Settlement Agreement, the Released Claims are all claims that have been or could have been reasonably alleged or asserted in the PAGA Notices and as defined in the Settlement. (Hawkins Decl., Ex. B- Settlement Agreement ¶7).

C. THE CLASS MEMBERS SUPPORT THE SETTLEMENT – ZERO (0) OBJECTIONS AND THREE (3) OPT-OUTS

On April 14, 2025, the Court granted Preliminary Approval of the Settlement, conditionally certified the class for settlement purposes, appointed ILYM Group to act as the administrator, approved the Notice to be sent to the Class, and directed that the Notice be mailed to the Class via U.S. First Class Mail. (Hawkins Decl., Ex. A- Order Granting Preliminary Approval). On or about April 18, 2025, ILYM mailed the Notices to 3,736 Class Members. (Hernandez Decl., ¶7). Out of the 3,736 Notices, only 81 were deemed undeliverable after attempts to ascertain the addresses. (Hernandez Decl., ¶¶ 7-11). As a result of the mailing, there is a 99.92% participation rate and 3,733 Class Members will be mailed a settlement check. (*Id.* ¶ 13).

The Settlement Administrator will be responsible for undertaking appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments and Individual PAGA Payment in accordance with this Agreement. All settlement checks mailed out will expire after one hundred eighty (180) days. However, ninety (90) days, and again one hundred thirty-five (135) days, after first distributing settlement checks, the Settlement Administrator shall distribute reminder postcards via U.S. Mail to all Collective Members, all Settlement Class Members who did not timely opt-out of the settlement, and all PAGA Group Members, who have yet to deposit or otherwise negotiate their settlement checks, reminding them of the deadline to do so. (Settlement Agreement ¶ 21).

The sum value of all expired checks will be tallied by the Settlement Administrator. All such uncollected funds associated with Settlement Class Members and PAGA Group Members' checks will escheat to the State of California's Controller, to be held in the name of each expired check payee, pursuant to applicable unclaimed property laws. The Settlement Administrator shall undertake amended and/or supplemental tax filings and reporting, required under applicable local, state, and federal tax laws, that may be necessitated due to the cancellation of any Individual Settlement Payment and Individual PAGA Payment checks. Settlement Class Members whose checks are cancelled shall, nevertheless, be bound by this Agreement. The Parties agree that this disposition results in no "unpaid residue" under California Civil Procedure Code section 384.

(Settlement Agreement ¶ 21).

Any checks issued out of the FLSA Settlement Fund that are cancelled due to a failure to deposit or cash the check within one hundred and eighty (180) days shall be returned to Defendant, as no FLSA release will be effectuated as to those individuals. (Settlement Agreement ¶ 7(s)).

IV. <u>THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE</u>

A. THE SETTLEMENT SATISFIES THE STANDARD FOR FINAL APPROVAL

California Rule of Court, Rule 3.769, requires court approval for class action settlements. Cal. R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62 Cal. App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602 ("[T]he law wisely favors settlements"). Accordingly, the Court must give "[due] regard to what is otherwise a private consensual agreement between the parties." *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 245.

In deciding whether to approve a class settlement, a court evaluates whether the proposed settlement is "fair, adequate, and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm'n of City & Cnty. Of S.F.* (9th Cir. 1982) 688 F.2d 615, 625). A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801. However, "a presumption of fairness exists where: (1) the settlement is reached through arms-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." *Id.* at 1802; *accord Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider additional relevant factors, including the strength of the Plaintiff's case compared to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802.

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the Settlement as explained in the Notice. Subject only to the Class's reaction to the Settlement, the Court preliminarily presumed the Settlement was fair, adequate, and reasonable. Following dissemination of the Notice, and adequate time provided to the Class to object to the Settlement, no class member submitted objections and no Class Member excluded themselves from the settlement, ***resulting in a 99.92% participation rate from the Class***. (Hernandez Decl., ¶ 13). Thus, the proposed Settlement is entitled to the presumption that it is fair and in all other respects proper and should be finally approved.

V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS

A. THE REQUESTED FEE AWARD IS FAIR AND REASONABLE, CALCULATED AS A PERCENTAGE OF A COMMON FUND

Class Counsel applies for an award of attorneys' fees in the sum of $1,481,729.21 of the GFV, and litigation costs of $13,914.84 (Hawkins Decl., ¶¶ 24-28, Ex. D). When a settlement results in a common fund for the benefit of a class, class counsel may be awarded fees as a percentage of the common fund. *See Wershba*, *supra*, 91 Cal.App.4th at 254 (recognizing the "percentage of recovery" method). The California Supreme Court confirmed in *Laffitte v. Robert Half Int'l, Inc.* that "[t]he percentage of fund method survives in California class action cases." 1 Cal.5th 480, 506 (2016), in stating:

> The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that should not be denied our trial courts.

Id. at 503 (internal citation omitted); *see also e.g.*, *Serrano v. Priest*, 20 Cal.3d 25, 34 (1977) ("when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or Plaintiff for the benefit of all results in the creation or preservation of that fund, such plaintiff or Plaintiff may be awarded attorney's fees out of the fund."); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the common fund obtained for the benefit of all parties, the trial court acts within its equitable power to prevent the other parties' unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorney's fees more accurately reflects the results achieved for the putative class than the lodestar method and "establishes reasonable expectations on the part of Plaintiff's attorneys as to their expected recovery; and it encourages early settlement, which avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.").[3]

The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent*, *supra*, 557 F.2d at 769. In *Quinn v. State of California* (1995) 15 Cal.3d

[3] *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 ("We hold further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee").

162, 167, the Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." The reasons for applying the common fund doctrine include: "…fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful." *Id*. Because there is a defined and clearly traceable benefit to the Class, the Court can base an award of attorneys' fees using a 'common fund' approach to compensate Class Counsel.

1. The Requested Attorneys' Fee is Within the Range of Fees Approved in Comparable Common Fund Cases

Assessing an appropriate fee based on a percentage of the fund involves considering "all of the circumstances of the case." Appellate cases addressing fees arise almost exclusively where awards were challenged by Defendant or objectors – the only parties with standing to appeal. *Wershba,* 91 Cal.App.4th at 236.

The requested fee falls in the mid-range of percentage class fee awards, which generally range from 20% to 50% of a common fund, and it constitutes fair compensation for undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well as the result achieved for the benefit of the Class. Numerous courts in California routinely approve fee requests equal to or greater than 35% of the common fund. *See Martin v. Ameripride Servs.*, 2011 U.S. Dist. LEXIS 61796, *22-23 (S.D. Cal. 2011) (collecting cases); *Birch v. Office Depot, Inc.*, USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a $16 million wage and hour class action settlement); *Rippee v.*

Boston Mkt. Corp., USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a $3.75 million wage and hour class action settlement). In fact, the Sacramento County Superior Court has awarded fees of 35% of the common fund in wage and hour class actions. (*McMahon v. Airco Mechanical, Inc.*, Case No. 34-2019-00259269; *Uribe v. EcoGuard Pest Management, Inc.*, Case No. 34-2021-00300650; *Arroyo v. Epic Home Solar*, Case No. 34-2021-00310634; *Blair v. Clark Wagaman Designs*, Case No. 34-2021-00313156).

In short, Class Counsels' fee request of $1,481,729.21 (33.33% of the common fund) is in line with awards in similar cases in California and demonstrates that Class Counsels' fee request is consistent with market rates and is reasonable.

2. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Class Counsels' fee request is also 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"].

As of the date of filing, Class Counsel worked approximately 433.30 documented hours on this case. for a lodestar value of approximately $332,992.00. (Hawkins Decl., ¶ 26) 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 4.45. Where "exceptional effort produced an exceptional benefit," a fee award may be enhanced. *Thayer v. Wells Fargo* 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).

3. Class Counsel's Hourly Rates are Reasonable

Class Counsels' hourly rates are between $200 and $950 and are in line with rates typically approved in wage and hour class action litigation and which rates have been approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County Superior Courts. (Hawkins Decl., ¶24); *Children's Hosp. and Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 746 (2002) (noting rates were reasonable where they were "within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work").

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632. Class Counsels' skill and experience support their hourly rates. Our practices are limited exclusively to litigation, focusing on the representation of employees in wage and hour and consumer class action matters. (Hawkins Decl., ¶ 24). As prominent attorneys in the field of wage and hour class action litigation, Class Counsel continually monitors the prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of their attorneys and paralegals to be consistent with the prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates. Therefore, as they are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

4. Class Counsel's Total Hours are Reasonable

In determining a lodestar fee, reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing clients, investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

Class Counsel expended a combined total of approximately 433.30 hours on this case. The work performed to achieve a settlement that will provide valuable consideration to the Class is summarized by Class Counsel in the declaration submitted herewith. (Hawkins Decl., ¶¶ 25-28); *Syers Props. III, Inc. v. Rankin*, 226 Cal.App.4th 691, 699 (2014) ("Because time records are not required under California law …, there is no required level of detail that counsel must achieve.") (internal quotations omitted). All tasks and work performed were reasonable and necessary for the prosecution of this case. The work performed was justified considering the result achieved. All of the work and tasks performed by Class Counsel were reasonable and necessary for the prosecution of this case. (Hawkins Decl., ¶¶25-28).

5. Costs of Litigation are Reasonable

Class Counsel seeks reimbursement of the litigation costs and expenses of $13,914.84. These costs were reasonable and necessary to prosecute this case, and the results achieved are fair, and reasonable. (Hawkins Decl., ¶¶ 25-28, Ex. D).

B. THE ENHANCEMENT PAYMENT IS REASONABLE

Class Counsel seeks approval of a $25,000.00 Enhancement Payment to the named Plaintiff/Class Representative. The requested enhancement award is reasonable in light of the general release of all claims Plaintiff agreed to, greater than the release given by Class Members, the benefits Plaintiff conferred upon the entire Class resulting in payments to all Class Members, the time spent assisting counsel with the investigation and prosecution of these claims and consenting to the proposed Settlement. Furthermore, in pursuing this action on behalf of the Class, Plaintiff risked a judgment for attorneys' fees and costs in the event this matter had been lost. (Hawkins Decl., ¶¶ 29-30; *See also* declaration of Plaintiff Maisnier filed concurrently herewith)

Courts routinely approve service payments, or incentive awards, to compensate named Plaintiff for the services they provide and the risks they incur during class litigation. *See In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers Ins. Exch*. (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives); Manual § 21.62 n.971 (noting that service payments are warranted). Based on the foregoing, the $25,000.00 Enhancement Payment is fair, appropriate, and justified as part of the overall settlement.

C. THE SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE

The Parties agreed to hire ILYM Group as the administrator, and the Court approved this choice. ILYM Group's total fees and costs for services in connection with the administration of this Settlement, which includes fees and costs incurred to-date, as well as anticipated fees and costs for completion of the settlement administration, are $27,950.00. ILYM Group's work in connection with this matter will continue with the calculation of the settlement award payments, issuance and mailing of the settlement award checks, the necessary tax filing and reporting on such payments, and any other tasks that the Parties mutually agree to and/or the Court orders ILYM Group to perform. (Hernandez Decl., ¶15). Following the grant of final approval, the Administrator's duties will continue in order to calculate and mail the Individual Settlement Payment checks to Class Members, Aggrieved Employees, and FLSA Employees, perform tax reporting obligations, disburse other payments as ordered by the Court, and perform such other duties as set forth in the Settlement Agreement. The fee of $27,950.00 for services rendered and to be rendered is fair and reasonable and should be granted.

D. THE SETTLEMENT PENALTIES UNDER PAGA ARE REASONABLE

The PAGA payment of $250,000.00 with 65% of to the LWDA and 35% to the aggrieved employees is reasonable under the circumstances. The Parties negotiated a good faith amount for PAGA penalties. The PAGA penalties allocation is not the result of self-interest at the expense of other Class Members. The LWDA was also provided notice of the Settlement with the concurrent filing of the preliminary approval motion and the instant motion. Plaintiff did not receive a response or objection to the Settlement from the LWDA. Thus, Plaintiff requests the Court finally approve the PAGA allocation in the amount of $250,000.00 with 65% being paid to the LWDA and 35% being distributed to the aggrieved employees.

E. THE COURT SHOULD APPROVE THE FLSA PORTION OF THE SETTLEMENT

With respect to FLSA collective action settlements, if a bona fide dispute exists, "[c]ourts often apply the Rule 23 factors in evaluating the fairness of an FLSA settlement, while recognizing that some do not apply because of the inherent differences between class actions and FLSA collective actions." *Khanna v. Inter-Con Sys., Inc.*, No. 2:09-cv-02214KJM-EFB, 2013 WL 1193485, at *2 (E.D. Cal. Mar. 22, 2013) (internal quotations and citations omitted). "Under this approach, a 'district court must ultimately be satisfied that the settlement's overall effect is to vindicate, rather than frustrate, the purposes of the FLSA.'" *Cavazos v. Salas Concrete Inc*., No. 1:19-cv-00062-DAD-EPG, 2022 WL 506005, *6 (E.D. Cal., Feb. 18, 2022)). Each factor is addressed in turn above and, for those reasons, Plaintiff requests the Court approve the FLSA settlement in full. All FLSA Collective Members are also Class Members so the FLSA Settlement Fund represents an additional payment FLSA Collective Members will receive *on top* of their class settlement payment.

The settlement provides for the distribution of $50,000 to 3,545 FLSA-covered employees who collectively worked 198,653 workweeks. Although the gross per-workweek value may appear modest, the settlement represents a fair, reasonable, and adequate resolution in light of the disputed issues, the litigation risks, and the burdens of continued litigation. Here, the settlement amount was the product of informed, arm's-length negotiations and reflects the realities of litigation, including the strength of defenses and the scope of damages exposure. Accordingly, final approval is appropriate and warranted.

VI. CONCLUSION

Based on the foregoing, Class Counsel respectfully requests the Court grant final approval of the Class Action Settlement, award (1) Class Counsels' fees in the sum of $1,481,729.21 and litigation costs of $13,914.84; (2) award the named Plaintiff an Enhancement Payment in the sum of $25,000.00; (3) award $27,950.00 to ILYM Group, for settlement administration services, and (4) approve the PAGA Payment of $250,000.00 with a $162,500.00 of that sum paid to the LWDA and the remaining $87,500.00 paid to the Aggrieved Employees.

Dated: July 2, 2025

JAMES HAWKINS APLC

BY: ______________________________

James Hawkins
Gregory Mauro
Michael Calvo
Lauren Falk
Ava Issary

Attorneys for Plaintiff and the Proposed Class