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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

FREDERICK BERNARD on behalf of himself
and all similarly situated persons, and the
general public,

Plaintiff,

vs.

OPTIMA TAX RELIEF, LLC; OPTIMA
FINANCIAL GROUP, LLC; and DOES 1
through 25, inclusive,

Defendants.

Case No.: 30-2022-01288055-CU-OE-CXC

[Assigned for all purposes to the
Honorable William Claster, Dept. CX101]

**PLAINTIFF'S NOTICE OF
MOTION AND UNOPPOSED MOTION
FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

DATE: September 4, 2026

TIME: 9:00 a.m.

DEPT: CX101

Reservation #: 74922966

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on September 4, 2026 at 9:00 a.m. or as soon thereafter as
3 counsel may be heard in Department CX101 of the Superior Court of the State of California for the
4 County of Orange, 751 W Santa Ana Blvd, Santa Ana, CA 92701, Plaintiff FREDERICK BERNARD
5 (hereafter “Plaintiff”) will and hereby does, move for an Order granting final approval of the class
6 action and PAGA settlement provisionally approved by this Court on March 26, 2026 and entry of
7 final judgment pursuant to Code of Civil Procedure § 382 and California Rule of Court, rule 3.769.

8 This motion is made on the grounds that the settlement is fair, reasonable, and adequate
9 because it is the product of arm’s-length, good-faith negotiations after significant litigation, given the
10 relative strengths and weaknesses of the claims and defenses, as well as the risks involved in pursuing
11 further litigation. This motion will be based upon this Notice, the accompanying Memorandum of
12 Points and Authorities, Declaration of Matthew Righetti, Declaration of John Glugoski, Declaration
13 of Reuben D. Nathan, Declaration of Cassandra Polites on behalf of ILYM Group, Inc., and
14 Declaration of Plaintiff Fredrick Bernard, as well as the pleadings and papers on file herein and upon
15 any other matters that may be presented to the Court at the hearing.

16 **NATHAN & ASSOCIATES, APC**

17
18 Dated: August 8, 2026

19 By: /s/ Reuben D. Nathan
20 Reuben D. Nathan, Esq.
21 Attorney for Plaintiff
22 FREDERICK BERNARD
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

3 This case arises against Defendants OPTIMA TAX RELIEF, LLC (“OTR”) and OPTIMA
4 FINANCIAL GROUP, LLC (“OFG”) (collectively the “Defendants” or “OPTIMA”)) for various
5 alleged wage and hour violations suffered by Plaintiff and the Class Members. OTR and OFG are
6 privately held tax resolution companies that exist under the laws of the State of California. Plaintiff
7 worked as a non-exempt employee from approximately June 2016 to November 2022 in the State of
8 California.

9 The lengthy procedural history and discovery efforts in this case are outlined in the Declaration
10 of Reuben Nathan filed concurrently herewith (“Nathan Decl.”) ¶¶4-9, 15 and in the Nathan Decl. ISO
11 MPA, ROA No. 347, ¶ 4; and Glugoski Decl. ISO MPA, ROA No. 345, ¶¶ 8-17.

12 The Gross Settlement Amount for release of the class, PAGA, and Plaintiff’s individual claims
13 is \$1,500,000.00. Joint Stipulation of Class Action and PAGA Settlement (“Settlement Agreement”)
14 ¶16. The settlement class consists of 1,405 employees and provides the settlement class with an average
15 gross payment of approximately \$1,067.62 per class member based on Class and Subclass before
16 deduction for costs of administration, attorney fees and costs, and plaintiff enhancement.

17 Pursuant to California Rules of Court, rule 3.769, Plaintiff now asks the Court to grant final
18 approval of the Settlement because it is fair, reasonable and in the best interests of the Class Members
19 and to approve of Class Counsel’s request for attorneys’ fees and costs. The proposed Settlement before
20 this Court is a full and complete settlement of the claims asserted against Defendants in this action.

21 If all relief requested by Plaintiff is granted, Defendant will pay One Million Five Hundred
22 Thousand Dollars and No Cents (\$1,500,000.00) to settle all claims raised in the Second Amended
23 Complaint filed by Plaintiff on March 12, 2024, which includes a payment of \$37,500.00 to the
24 California Labor and Workforce Development Agency (i.e., 75% of the \$50,000.00 amount allocated
25 from the Settlement Fund to resolve the PAGA allegations). This is a significant result for the both the
26 class, which consists of 1,405 individuals (current and former similarly situated employees within the
27 statute of limitations) and the LWDA.

28 On March 26, 2026, this Court entered an Order Granting Preliminary Approval of Class

1 Action and PAGA Settlement and directed Class Notice to be sent to the Class Members. The notice
2 and response period is complete and there have been zero (0) opt outs and zero (0) objections, which
3 speaks to the support in favor of the settlement by Class Members. As set forth below, the settlement
4 is fair, reasonable, and adequate, and Plaintiff respectfully requests that the Court grant final approval.

5 **II. SUMMARY OF THE CLAIMS**

6 This class action is brought on behalf of all non-exempt employees that were employed by
7 Defendants in the State of California. Defendants employed Plaintiff Frederick Bernard from
8 approximately June 2016 through November 2022. On or about October 25, 2022, Plaintiff initiated
9 this action in Orange County Superior Court. Based upon matters learned during discovery the
10 pleadings were amended three times. The Second Amended Complaint asserts claims for alleged
11 violations of California Labor Code sections §§ 201, 202, 203, 204, 221, 223, 224, 226, 226(a), 226.7,
12 226.7(a), 510, 512(a), 1194, 1197, 1197.1, 1198, 2751, 2800, 2802 *et seq.*, and 2698, *et seq.*, and
13 California Business and Professions Code section 17200, et al., various sections of Wage Order 4-2001,
14 including §§ 3(A), 11, and 12, and the California Labor Code.¹ The current pleading also includes a
15 PAGA claim seeking penalties pursuant to California Labor Code section 2698-2699, et seq. More
16 specifically, in the Second Amended Complaint, Plaintiff alleged the following causes of action: (1)
17 Failure to Pay Overtime; (2) Improper Meal Periods; (3) Improper Rest Periods; (4) Improper Wage
18 Statements; (5) Unlawful Deductions; (6) Failure to Reimburse; (7) Wages not paid on Separation; (8)
19 Unlawful Business Practices; and (9) Violation of Labor Code § 2698 et seq.

20 **III. TERMS AND CONDITIONS OF THE SETTLEMENT**

21 The material terms and conditions of the Settlement are summarized below.

22 1. Class Definition. The First Addendum to Joint Stipulation of Class Action and PAGA
23 Settlement (“Addendum”) (Exhibit A to the Nathan Declaration filed on March 10, 2026), consistent
24 with the preliminary approval order, provides for a settlement Class defined as:

25 “Class Members” or “Settlement Class” means all individuals employed in California
26 by Defendants in hourly, non-exempt positions during the Class Period. The Settlement

27
28 ¹ The claims also include alleged violations of IWC California Wage Order 4-2001 and California Code
of Regulations, Title 8, section 11040, et seq.

Class consists of two (2) overlapping subclasses: (a) the General Non-Exempt Subclass (1,343 employees; 121,330 total Workweeks) for purposes of General Non-Exempt Subclass Claims; and (b) the Phone/Commission Subclass (1,269 employees; 116,325 Workweeks) for purposes of Phone/Commission Subclass Claims. Membership in the Phone/Commission Subclass shall be determined by Defendants’ records identifying employees who received commission/bonus-based compensation or were assigned to phone-based roles during the Class Period. All Phone/Commission Subclass Members are also members of the General Non-Exempt Subclass.”

Addendum § C

2. Subclass Definitions. The Addendum provides for subclasses defined as:

“Phone/Commission Subclass” or “Phone/Commission Subclass Members” means all individuals employed in California by Defendants in hourly, non-exempt positions who, at any point during the Class Period, received commission-based compensation or were assigned to a phone-based role that triggered entitlement to overtime premium pay, minimum wage guarantees, or both, under California law and applicable IWC Wage Orders. Defendants’ records identify 1,269 such employees with a combined total of 116,325 Workweeks (“Phone/Commission Workweeks”) during the Class Period.

Addendum § A-1

“General Non-Exempt Subclass” or “General Non-Exempt Subclass Members” means all Class Members — i.e., all individuals employed in California by Defendants in hourly, non-exempt positions during the Class Period — including the Phone/Commission Subclass Members. The General Non-Exempt Subclass consists of 1,343 employees with a combined total of 121,330 Workweeks (“General Non-Exempt Workweeks”) during the Class Period. For the avoidance of doubt, Phone/Commission Subclass Members are members of both the Phone/Commission Subclass and the General Non-Exempt Subclass and shall participate in both settlement pools as described herein.

Addendum § A-2

(Nathan Decl. ¶ 13)

3. Settlement Fund. The settlement fund of One Million Five Hundred Thousand Dollars (\$1,500,000.00) (the “Gross Settlement Amount” or “Settlement Fund”) is a fixed common fund with no reversion to the Defendants. (Settlement Agreement ¶ 16, 59(a)). The Settlement Fund will be used to satisfy all elements of the Settlement. Defendants will separately pay Defendants’ share of its payroll tax burden. (Nathan Decl. ¶ 14)

4. Settlement Class Information. According to ¶ 67 of the Settlement Agreement, Defendants estimated that there would be 1,343 participating Class Members that were employed for

an estimated 121,330 total workweeks between the start of the Class Period and September 8, 2025. As of the date of the ILYM Decl., ILYM has reported that there are a total of 1,405 Participating Class Members who worked a combined total of 127,560.72 workweeks. (Declaration of Cassandra Polites of ILYM Group, Inc. (“Decl. of ILYM”) ¶ 5, 15; Nathan Decl. ¶ 15).

5. Net Recovery Payouts: The Settlement Fund provides the highest Individual Class Payment to Pool A Participating Class Member is currently estimated to be approximately \$1,669.20, the average Individual Class Payment is currently estimated to be approximately \$482.78 and, the lowest Individual Class Payment is currently estimated to be approximately \$0.73. These amounts are subject to employee-side tax and withholdings. The highest Individual Class Payment to Pool B Participating Class Member is currently estimated to be approximately \$577.24, the average Individual Class Payment is currently estimated to be approximately \$164.40 and, the lowest Individual Class Payment is currently estimated to be approximately \$0.25. These amounts are subject to employee-side tax and withholdings. (Decl. of ILYM ¶¶ 17, 19; Nathan Decl. ¶ 16)

Pool A and Pool B are defined in the Addendum as follows:

“Pool A” means the portion of the Net Settlement Amount allocated to compensate the Phone/Commission Subclass Members for the Phone/Commission Subclass Claims (as defined in Section B below). Pool A shall equal 73.5% of the Net Settlement Amount, reflecting the relative value of the Phone/Commission Subclass Claims as a proportion of the overall settlement. The Pool A Workweek Value shall be calculated by dividing the total dollar amount of Pool A by the total Phone/Commission Workweeks (116,325).

Addendum § A-3

“Pool B” means the portion of the Net Settlement Amount allocated to compensate all General Non-Exempt Subclass Members for the General Non-Exempt Subclass Claims (as defined in Section B below). Pool B shall equal 26.5% of the Net Settlement Amount, reflecting the relative value of the General Non-Exempt Subclass Claims as a proportion of the overall settlement. Pool A and Pool B shall together equal one hundred percent (100%) of the Net Settlement Amount. The Pool B Workweek Value shall be calculated by dividing the total dollar amount of Pool B by the total General Non-Exempt Workweeks (121,330).

Addendum § A-4

(Nathan Decl. ¶ 17)

6. Summary of the Settlement Terms. The Settlement Agreement involves the formation of a non-reversionary fund consisting of \$1,500,000.00 (“Gross Settlement Amount”). The Gross

Settlement Amount will be used to pay the Class Representative Service Payment, payment for Plaintiff's general release, PAGA Penalties, Attorneys Fees and Costs, and settlement administration costs as follows: (1) \$10,000.00 to Plaintiff for Class Representative Service Payment (Settlement Agreement allows up to \$20,000.00) and \$25,000.00 to Plaintiff for a general release; (2) PAGA Penalties of \$50,000.00 (\$37,500.00 to the LWDA and \$12,500.00 to PAGA members); (3) an award of not more than \$500,000.00 (33.3% of the Settlement Fund) to Class Counsel for attorneys' fees; (4) \$29,117.68 for attorneys' costs (Settlement Agreement allows up to \$50,000.00); and (5) \$14,250.00 for settlement administration costs (Settlement Agreement allows up to \$50,000.00). The Employee PAGA Amount of \$12,500.00 will be allocated to Aggrieved Employees regardless of whether he or she opted out of the Class Settlement, on a pro rata basis using their PAGA Pay Periods. (Settlement Agreement ¶¶ 2, 6, 16, 24, 38, 57; ILYM Decl. ¶ 20; Nathan Decl. ¶ 18).

7. Net Settlement Amount: means the Gross Settlement Amount, less the Class Counsel Award, Class Representative Service Awards, PAGA Payment, and Settlement Administration Costs. (e.g., approx. \$871,632.32) (ILYM Decl. ¶ 14; Nathan Decl. ¶ 19)

8. Notice Process and Approval Rate. The Settlement Administrator mailed the Class Notice to Class Members on May 12, 2026. (ILYM Decl. ¶ 7). Class Members did not have to submit a claim form to participate in the Settlement; however, the Class Notice contained personalized calculations and Class Members were given an opportunity to confirm or dispute workweeks credited by Defendants. During the notice period, there were zero (0) valid disputes about workweeks credited, zero (0) objections to the settlement and zero (0) Class Members opted out of the Settlement. (Decl. of ILYM ¶¶ 7-13; Nathan Decl. ¶ 20).

9. Net Settlement Payout. If the Court grants final approval of the Settlement, the entire Settlement Fund will be paid out with no reversion to the Defendants. (Settlement Agreement ¶59(a)). Parties agree Defendants will pay the Gross Settlement Amount of \$1,500,000.00 including the Settlement Administration Costs, and Employment Taxes, within thirty (30) calendar days of the

Effective Date². (Settlement Agreement ¶ 59; Nathan Decl. ¶ 21).

10. Unclaimed Funds. If any settlement checks remain uncashed 180 days after they are mailed by the Settlement Administrator, the Settlement Administrator will deposit such funds with the State of California Controller's Office Unclaimed Property Fund in the names of those Class Members who did not cash their checks. (Settlement Agreement ¶ 59(a)(vii); Nathan Decl. ¶ 22).

11. Settlement Administrator's Fees. The Settlement Administrator's charges are \$14,250.00 from the Settlement Fund. (ILYM Decl. ¶ 14, 22).

12. Release. As part of the Settlement, Plaintiff and all Class Members who do not opt out of the Settlement will release all claims against Defendants as follows:

"PAGA Release" or "PAGA Released Claims" means the release by all PAGA Members for all claims for penalties under PAGA that arise out of or relate to California Labor Code sections 201-204, 210, 218, 221-224, 225.5, 226, 226.3, 226.7, 500-508, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698 et seq., 2751, 2800 et seq., 2802, 2810.5, California Code of Regulations, Title 8, Section 11040 and Industrial Welfare Commission Wage Order 4-2001, Sections 3, 11 and 12, as pled in the Operative Complaint and the PAGA Notices, during the PAGA Period³. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), Class Members who exclude themselves from this Settlement shall still receive an Individual PAGA Payment directly from the Settlement Administrator for the amount of each such individual's estimated share of the PAGA Payment as calculated by the Settlement Administrator, and shall not be able to object to or exclude themselves from releasing the PAGA Released Claims against Defendants.

Settlement Agreement ¶ 26

"Released Claims" includes all claims under state or local law, whether statutory, common law, or administrative law, whether in law or equity, for all claims other than the PAGA Released Claims that are pled in the Operative Complaint, based on or arising out of the factual allegations therein, during the Class Period, including: (a) all claims for failure to pay overtime and double time under Cal. Labor Code §§ 510, 1194, 1198 and IWC Wage Order 4-2001, §3(A); (b) all claims for improper meal periods

² "Effective Date" means the date on which this Final Order and Judgment becomes final; if no appeal is filed, sixty-one (61) calendar days after entry; if an appeal is filed, upon final affirmance or dismissal of the appeal. (Settlement Agreement ¶ 11.)

³ "PAGA Period" means November 1, 2021, through the date of entry of the Preliminary Approval Order, subject to the Escalator Clause as set forth in Paragraph 67 of the Settlement Agreement. (Settlement Agreement ¶ 25).

under Cal. Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-2001 § 11(B); (c) all claims for improper rest periods under Cal. Labor Code §§ 226.7, 512, and IWC Wage Order 4-2001 § 12; (d) all claims for improper wage statements under Cal. Labor Code §§ 226 and 226(a); (e) all claims for unlawful deduction of wages under Cal. Labor Code §§ 204, 221-224, and 2751; (f) all claims for failure to reimburse business expenses under Cal. Labor Code §§ 2800, et seq.; (g) all claims for failure to pay all wages due upon separation under Cal. Labor Code §§ 201-203 and 218; (h) claims for unlawful or unfair business practices under Business and Professions Code, §17200; (i) claims for liquidated damages; (j) claims for interest; (k) claims for attorneys' fees; (l) claims for attorneys' costs; and (m) claims for declaratory relief.

Settlement Agreement ¶ 33

Notwithstanding the foregoing, and consistent with the subclass structure established by the First Addendum: (a) the Released Claims for minimum wage, overtime and waiting time penalties (Labor Code §§ 201-203) shall only be released by, and apply to, Phone/Commission Subclass Members; and (b) the Released Claims for failure to reimburse business expenses (Labor Code §§ 2800 et seq., 2802), improper meal periods (Labor Code §§ 226.7, 512, 558), improper wage statements (Labor Code §§ 226, 226(a)) and liquidated damages (Labor Code §1197.1) shall be released by all General Non-Exempt Subclass Members. Class Members who are not members of the Phone/Commission Subclass do not release, and are not bound by any release of, the Phone/Commission Subclass Claims. Phone/Commission Subclass Members release all Released Claims applicable to both subclasses.

Addendum § G

Phone/Commission Subclass Claims. The following Released Claims apply exclusively to Phone/Commission Subclass Members and shall be compensated through Pool A: (i) all claims for failure to pay minimum wages and overtime under California Labor Code §§ 510, 1194, 1197, 1198, and IWC Wage Order 4-2001 § 3(A); and (ii) all claims for failure to pay all wages due upon separation (waiting time penalties) under California Labor Code §§ 201-203 and 218 arising from the failure to timely pay wages.

Addendum § B-1

General Non-Exempt Subclass Claims. The following Released Claims apply to all General Non-Exempt Subclass Members (including Phone/Commission Subclass Members) and shall be compensated through Pool B: (i) all claims for failure to reimburse business expenses under California Labor Code §§ 2800 et seq. and 2802; (ii) all claims for improper meal periods under California Labor Code §§ 226.7, 512, 558, and IWC Wage Order 4-2001 § 11(B); and (iii) all claims for improper wage statements under California Labor Code §§ 226 and 226(a).

Addendum § B-2

Claims Not Subject to Subclass Limitation. The following Released Claims are not limited to any particular subclass and have been fully considered in the overall Gross

1 Settlement Amount: (i) all claims for improper rest periods under California Labor
2 Code §§ 226.7, 512, and IWC Wage Order 4-2001 § 12; (ii) all claims for unlawful
3 deduction of wages under California Labor Code §§ 204 and 221-224; (iii) all claims
4 for liquidated damages under California Labor Code § 1197.1 and (iv) claims for unfair
or unlawful business practices under Business and Professions Code § 17200 to the
extent derivative of the claims identified in Sections B-1 and B-2.

5 Addendum § B-3

6 Additional Release and Waiver of Claims by Plaintiff. In addition to the releases of
7 Released Claims and PAGA Released Claims against the Released Parties, as set forth
8 above, Plaintiff, in his individual capacity, agrees to release the Released Parties from
9 any and all claims, known and unknown, under federal, state and/or local law, statute,
10 ordinance, regulation, common law, or other source of law, arising as of the date of
11 execution of this Agreement including but not limited to claims arising from or related
12 to his employment with Defendants and his compensation while an employee of
13 Defendants (“Plaintiff’s Released Claims”). In exchange for the release, Plaintiff shall
14 receive Twenty-Five Thousand Dollars and No Cents (\$25,000.00) from Defendants,
15 paid out of the Gross Settlement Amount. On October 25, 2022, Plaintiff filed a
16 complaint that included causes of action for Harassment and Discrimination in addition
17 to the class claims that are the subject of this Agreement. On June 26, 2023, Plaintiff
18 dismissed his individual claims for Harassment and Discrimination with the intent to
19 re-file the claims, but the Parties attended mediation and continued to discuss resolution
20 of the class claims and Plaintiff’s individual claims that resulted in the within
settlement. Plaintiff enters into this general release of any and all claims against
Defendants and the Released Parties. Plaintiff’s Released Claims include all claims,
whether known or unknown. Even if Plaintiff discovers facts in addition to or different
from those that he now knows or believes to be true with respect to the subject matter
of Plaintiff’s Released Claims, those claims will remain released and forever barred.
To affect a full and complete general release as described above, Plaintiff expressly
waives and relinquishes all rights and benefits of section 1542 of the Civil Code of the
State of California and do so understanding and acknowledging the significance and
consequence of specifically waiving section 1542. Section 1542 of the Civil Code of
the State of California states as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
22 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
23 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
24 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

25 Thus, notwithstanding the provisions of section 1542, and to implement a full and
26 complete release and discharge of the Released Parties, Plaintiff expressly
27 acknowledges this Stipulation is intended to include in its effect, without limitation, all
28 claims Plaintiff does not know or suspect to exist in Plaintiff’s favor at the time of
signing this Stipulation, and that this Stipulation contemplates the extinguishment of
any such claims. Plaintiff warrants that he has read this Stipulation, including this
waiver of California Civil Code section 1542, and that Plaintiff has consulted with or

1 had the opportunity to consult with counsel of Plaintiff's choosing about this
2 Stipulation and specifically about the waiver of section 1542, and that Plaintiff
3 understands this Stipulation and the section 1542 waiver, and so Plaintiff freely and
4 knowingly enters into this Stipulation. Plaintiff further acknowledges that Plaintiff later
5 may discover facts different from or in addition to those Plaintiff now knows or
6 believes to be true regarding the matters released or described in this Stipulation, and
7 even so Plaintiff agrees that the releases and agreements contained in this Stipulation
8 shall remain effective in all respects notwithstanding any later discovery of any
9 different or additional facts. Plaintiff expressly assumes all risk of any mistake in
10 connection with the true facts involved in the matters, disputes, or controversies
11 released or described in this Stipulation or with regard to any facts now unknown to
12 Plaintiff relating thereto.

13 Settlement Agreement ¶ 57

14 (Nathan Decl. ¶ 23)

15 **IV. NOTICE TO THE CLASS WAS PROVIDED; THERE WERE NO OBJECTIONS AND**
16 **NO REQUESTS FOR EXCLUSION**

17 In its March 26, 2026, Order Granting Preliminary Approval of Class Action and PAGA
18 Settlement, the Court ordered the approved Class Notice to be mailed to all Class Members. The
19 Settlement Administrator caused the Class Notice to be mailed on May 12, 2026. The deadline to file
20 objections or to opt-out was through June 26, 2026. As of the date of filing of this Application, there
21 were no objections and zero requests for exclusion (ILYM Decl. ¶¶7-13). The Settlement has been met
22 with approval and support from the Class Members.

23 **V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION AS**
24 **THE REQUIREMENTS FOR CLASS CERTIFICATION HAVE BEEN MET**

25 The Settlement Class was preliminarily certified based upon the showing in the Motion for
26 Preliminary Approval that the requirements for class certification were met. (*Wershba v. Apple*
27 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 237-238). Under Code of Civil Procedure § 382 a party
28 seeking class certification must show the existence of an ascertainable class and a well-defined
community of interest among the class members. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d
462, 469; *Occidental Land v. Superior Court* (1976) 18 Cal.3d 355, 360; *Clothesrigger, Inc. v. GTE*
Corp. (1987) 191 Cal.App.3d 605, 612; *Daniels v. Centennial Group, Inc.* (1993) 16 Cal.App.4th 467,
471). The class representative must also show that (3) maintenance of a class action will result in a
substantial benefit to the litigants and to the Court. (*Richmond, supra*, 29 Cal.3d at 477; *Occidental*

1 *Land, supra*, 18 Cal.3d 355, 360). “The community of interest requirement embodies three factors: (1)
2 predominant common questions of law or fact; (2) class representatives with claims or defenses typical
3 of the class; and (3) class representatives who can adequately represent the class.” (*Richmond, supra*,
4 29 Cal.3d at 470).

5 The parties have agreed that subject to final approval of the Settlement Agreement and for the
6 purpose of settling their dispute, there is sufficient basis for the Court to find that these requirements
7 have been met regarding the Settlement Class. (Settlement Agreement ¶ 63).

8 **1. Ascertainable and Numerous Class**

9 Defendants identified through their records 1,405 persons who qualify as Class Members.
10 (ILYM Decl. ¶ 5). This amount is “numerous,” and it would be impracticable to try to bring each of
11 those Class Members before the Court.

12 **2. Predominating Common Questions of Law and Fact**

13 Plaintiff contends—and discovery has shown—that all Class Members share the same
14 community of interest in recovering damages for alleged wage and hour violations under the California
15 Labor Code arising from their employment with a common employer. The right to recover wages,
16 interest, penalties and attorneys’ fees is common to all Class Members and depends upon the same
17 theories, namely that Plaintiff and the Class Members were not paid the correct overtime rate, worked
18 off the clock, were not paid premiums for meal and rest breaks that were missed, interrupted, cut short,
19 were not paid all wages at termination, and were not provided accurate wage statements. *Brinker*
20 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021 [The “ultimate question” the element
21 of predominance presents is whether “the issues which may be jointly tried, when compared with those
22 requiring separate adjudication, are so numerous or substantial that the maintenance of a class action
23 would be advantageous to the judicial process and to the litigants. . . accord. *Sav-On Drug Stores, Inc.*
24 *v. Superior Court*, (2004) 34 Cal.4th 319, 326-327. The answer hinges on “whether the theory of
25 recovery advanced by the proponents of certification is, as an analytical matter, likely to prove
26 amenable to class treatment.”].

27 **3. Class Representative’s Claims Are Typical**

28 Plaintiff’s claims are typical of those of the Class in that Plaintiff and Class Members were

subject to the same type of employment practices and policies during the Class Period and make the same claims for damages. *Classen v. Weller*, (1983) 145 Cal.App.3d 27, 45-46; *Sav-On*, supra, 34 Cal.4th at 326.

4. The Class Representatives and Class Counsel Are Adequate

Plaintiff is an adequate class representative and has no conflicts of interest with other Class Members. By actively prosecuting the case through Settlement, Plaintiff has shown he has no interests antagonistic to the Class and has adequately served the Class. (Nathan Decl. ¶¶ 33, 66-69; Bernard Decl. ¶ 3, 5-6, 8).

Finally, Class Counsel has adequately represented Plaintiff and the Class Members. Proposed Class Counsel Reuben Nathan, John Glugoski, and Matthew Righetti have substantial experience in employment, consumer law and class action procedure. Each of the lead attorneys have been approved by courts to serve as Class Counsel on numerous prior occasions and they have never been rejected from serving as class counsel. (Nathan Decl. ¶¶ 29-31, 35-38, Glugoski Decl. in support of Preliminary Approval ¶3-7; Righetti Decl. ¶ 2-5; Glugoski Decl. 2).

5. There Will Be Substantial Benefit to the Court and Litigants by Certification

As explained above, the Class Members will benefit by receiving meaningful compensation for their back wages as part of a representative action rather than being required to pursue individual actions which cost would outweigh the benefits. However, those who believed they could recover a greater amount of damages were free to opt out and pursue their own actions. In addition, Class Counsel remained in contact (in addition Class Counsel interviewed over 100 former employees and obtained 95 authorizations to obtain employee records, which were also produced by Defendants during the case i.e. MPA Nathan Decl. ¶ 4) with a good portion of the Class Members who were overwhelming satisfied with the Settlement, but these individuals were prepared to enforce their rights had Defendants not reached a settlement and chose to file a motion to compel arbitration⁴. The benefit to the Court is that protracted litigation including more depositions, class certification, cross-summary judgment motions, then weeks of trial and related docket work can be avoided.

⁴ Although the figures appear to be somewhat overstated, it was Defendants' contention during the litigation that at perhaps close to 80% of employees executed agreements to arbitrate their disputes with Defendants.

1 Generally, a class suit is appropriate “when numerous parties suffer injury of insufficient size
2 to warrant individual action and when denial of class relief would result in unjust advantage to the
3 wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385; *see Vasquez v. Superior*
4 *Court* (1971) 4 Cal.3d 800, 808). In the instant case, there are 1,405 Class Members, a large percentage
5 of which are alleged to have executed arbitration agreements.⁵ Given the potential size of the claims
6 and the efforts required to enforce their rights in arbitration, a significant number of valid Class Member
7 claims would not be pursued, allowing Defendants to retain monies owed to the Class Members.

8 **VI. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION**
9 **SETTLEMENT AS IT REPRESENTS A FAIR AND REASONABLE COMPROMISE**
10 **OF THE DISPUTED CLAIMS**

11 In California, the ultimate test for approval of a proposed class action settlement is well
12 established. Among the inter-related factors that the court is to consider are: (1) whether the settlement
13 was reached through arm’s length bargaining; (2) the strength of Plaintiff’s case; (3) the risk, expense,
14 complexity and likely duration of further litigation; (4) the benefits conferred by the settlement; (5) the
15 experience and views of counsel; (6) the extent of discovery completed and the stage of the proceedings
16 and whether they are sufficient to allow counsel and the court to act intelligently; (7) the presence of a
17 governmental participant and (8) the reaction of the class members to the proposed settlement including
18 the percentage of objectors. *Wershba, supra*, 91 Cal. App. 4th at 244-45; *Dunk v. Ford Motor Co.* (1996)
19 48 Cal.App.4th 1794, 1801-02. “The list of factors is not exclusive and the court is free to engage in a
20 balancing and weighing of factors depending on the circumstances of each case.” *Wershba, supra*, 91
21 Cal.App.4th at 245. As courts have explained, “The proposed settlement is not to be judged against a
22 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”
23 (*Id.* at 246).

24 Courts presume the absence of fraud or collusion in negotiation of the settlement unless
25 evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted

27 ⁵ Defendants have provided Plaintiffs with arbitration agreements for the group of individuals that formally
28 requested their employee file and without addressing the validity of the agreements, a large portion had
arbitration agreements in their file.

1 in good faith. (*Newberg on Class Actions*, § 11.51; *In re Chicken Anti-Trust Litigation* (N.D. GA 1980)
2 560 F. Supp. 957, 962; *Mars Steel Corp. v. Continental Illinois National Bank and Trust Co.* (7th Cir.
3 1987) 834 F.2d 677, 681). Courts do not substitute their judgment for that of the proponents,
4 particularly when settlement has been reached by experienced counsel familiar with the litigation.
5 (*Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D. NY 1979) 470 F.
6 Supp 471, 474; *In re Armored Car Anti-Trust Litigation* (ND GA 1979) 472 F.Supp. 1357, 1367-1368;
7 *Sommers v. Abraham Lincoln Federal Sav. & Loan Asso.* (E.D. PA 1978) 79 F.R.D. 571).

8 Compromise is inherent and necessary in the settlement process. Thus, even if “the relief
9 afforded by the proposed settlement is substantially narrower than it would be if the suits were to be
10 successfully litigated,” this is no bar to a class settlement because “the public interest may indeed be
11 served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.”
12 *Wershba, supra*, 91 Cal.App.4th at p. 250, quoting, *Air Line Stewards, Loc. 550 v. American Airlines,*
13 *Inc.* (7th Cir.1972) 455 F.2d 101, 109.

14 Pursuant to *Kullar*, the Settlement overwhelmingly satisfies the requirements for final approval.
15 *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128.

16 **1. Settlement Negotiations Were Conducted At “Arm’s Length,” And Resulted In A Fair**
17 **Compromise, The Strength of Plaintiffs’ Case, The Expense, Complexity And Likely**
18 **Duration Of Further Litigation, Financial Condition of Defendant, And The Benefits**
19 **Conferred By The Settlement**

20 The Settlement is the product of serious, informed and non-collusive negotiations. Settlement
21 was only after vigorously pursuing litigation, researching various underlying issues, conducting
22 extensive discovery, issuing Belaire-West notice and obtaining contact information for Class Members,
23 conducting interviews of more than 100 current and former employees, creating a damage model, and
24 evaluating Defendant’s financial condition. (Nathan Decl. ¶ 9).

25 Class Counsel reviewed data, client interviews, and documents prior to resolving the case. Decl.
26 Nathan ¶ 6-7. The detailed data was sufficient to evaluate potential exposure and was in fact
27 extensively evaluated by Plaintiff. After approximately one (1) year of ongoing negotiations stemming
28 from the initial mediation, which also involved the exchange of additional data, documents, and

1 information, the parties executed a long form settlement agreement on November 5, 2025 and
2 ultimately memorialized in the Joint Stipulation of Settlement. (Nathan Decl. ¶ 8).

3 During all settlement discussions the parties conducted their negotiations at arms' length, and,
4 in spite of a mutual desire to resolve the case, always in an adversarial manner. The parties have been
5 able to construct a settlement that, given the constraints and realities of the case, is fair, reasonable,
6 adequate, and is in the best interests of the Class. (Nathan Decl. ¶ 10; Glugoski Decl. ¶¶ 20)

7 Arriving at a settlement acceptable to both parties was no small achievement. In fact,
8 Defendants vigorously defended this case and were preparing to compel certain individual cases to
9 arbitration⁶. Defendants and their counsel felt strongly about their ability to prevail on the issue of
10 class certification and believed that Defendants had defenses to a potentially large number, if not all,
11 individual claims within the Class. In their defense, Defendants contended that the within could not
12 properly be maintained as a class or PAGA action; that some or all of the claims were subject to
13 arbitration, that Defendants did not fail to pay Class Members, who are former employees, any wages
14 allegedly due at the time of their termination; that Defendants provided accurate, itemized wage
15 statements to Class Members; that Defendants provided meal and rest periods to the Class Members
16 excluding the \$24,000 in meal penalties that were not paid during the Class Period; that Defendants did
17 not fail to reimburse employees for business expenses necessarily incurred in the performance of their
18 duties; that Defendants did not violate California Business and Professions Code § 17200 et seq., and
19 that Defendants (a) is not liable for any of the penalties claimed or that could be claimed in the
20 Complaints, and/or (b) penalties would be substantially reduced by the Court.

21 The negotiations took into account the strengths and weaknesses of the opposition's positions
22 including the arbitration issue. Negotiations were protracted from the initial mediation due to a
23 difference in interpretation of certain data and documents, which took the parties almost one year to
24 work through with their experts, but communications between the parties were always cordial and
25 professional. As litigation progressed the parties' discussions involved the gradual narrowing of
26

27 ⁶ On February 5, 2025, the parties executed a tolling agreement (and multiple thereafter) to address the
28 arbitration issue while the parties exchanged further data and documents and continued to negotiate the
terms of the settlement.

opposing positions. The proposed Settlement Agreement was reached at the end of a process that was neither fraudulent nor collusive. If settlement is not approved then it will proceed to a contested hearing on class certification and then to trial with a Defendant that will most likely not be able to withstand judgment depending upon the award.

The proposed Settlement will guarantee that the Class Members will receive compensation for their claims now rather than years in the future. A settlement will also allow Class Members to receive payment without the risk of a contested motion for class certification and trial on the merits that would include all the extra time and expense involved in that process. Importantly, the proposed settlement provided Class Members with a choice by preserving for them the right to opt out.

Pursuant to *Kullar v. Footlocker* (2008) 168 Cal.App.4th 116, Class Counsel has conducted a class-wide damages assessment in light of the proof and risk factors discussed above and believe that the Settlement is fair reasonable and adequate. Class Counsel calculated the realistic total exposure i.e. damages for the Class Period of approximately \$2.5-3M, exclusive of attorneys' fees and costs, which was outlined for the Court in the Motion for Preliminary Approval. Consequently, the Settlement of \$1,500,000.00 represents an approximate 50% of the full realistic value of the claims (exclusive of wage statement, interest, penalties, and attorneys' fees and costs). (Nathan Decl. ¶ 29).

2. Class Counsel Is Experienced and Recommend Settlement

Proposed Class Counsel Matthew Righetti, John Glugoski, and Reuben Nathan have substantial experience in employment law and employment class actions. They have been approved as Class Counsel on numerous prior occasions and have never been deemed inadequate as class counsel. (Nathan Decl. ¶¶ 36-38; Glugoski Decl. ¶¶ 3-7 in Support of Preliminary Approval). Proposed Class Counsel have worked diligently to advance the interests of the class with no unnecessary duplication of effort. (Nathan Decl. ¶ 46; Glugoski Decl. ¶¶ 17 and Decl. of J. Glugoski in Support of Preliminary Approval). Proposed Class Counsel recommends settlement on the proposed terms. (Nathan Decl. ¶¶ 32; Glugoski Decl. ¶ 17). Proposed Class Counsel recommend settlement on the proposed terms. Because the Settlement was reached through arm's-length bargaining by experienced counsel following sufficient investigation and discovery, it is entitled to a presumption of fairness. (*Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.) The recommendation of experienced class

counsel is entitled to a presumption of reasonableness. (*In re Omnivision Technologies, Inc.* (N.D. Cal. 2007) 559 F. Supp. 2d 1036, 1043; *Williams v. Vukovich* (6th Cir. 1983) 720 F.2d 909, 922-923 [the court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs].)

3. No Government Participant

No government agency is directly involved in this case; *however*, Plaintiff has been authorized to prosecute the PAGA claims on behalf of the LWDA. The Settlement provides PAGA Penalties of \$50,000.00, of which \$37,500.00 will be paid to the Labor Workforce Development Agency (if this Motion is approved as requested). The remaining \$12,500.00 will be allocated to Aggrieved Employees on a pro rata basis using their PAGA Pay Periods. (Settlement Agreement ¶ 24; ILYM Decl. ¶ 20.) As required, Plaintiff provided the LWDA with requisite notice of this proposed settlement. As of the date of this filing, Plaintiff has not received any response from the LWDA. (Nathan Decl. ¶ 64)

Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable. *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL, 2009 U.S. Dist. LEXIS 33900, at *24. Moreover, the amount allocated to the LWDA is well within the range of reasonable PAGA settlement amounts approved by courts. (*Nordstrom Com. Cases* (2010) 186 Cal. App. 4th 576, 579 [“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”]); *Hopson, supra* [approving a PAGA settlement]

4. The Investigation And Discovery Completed And The Stage Of Proceedings Is Sufficient

There has been an extraordinary amount of necessary investigation and discovery in this case. Over the course of this litigation, the parties have obtained an abundance of information to assist them in properly analyzing their respective positions. Both sides have had ample opportunity to investigate the veracity and scope of the class claims. Class Counsel has conducted hundreds of interviews with Class Members to have better understanding of the claims and hurdles presented by this case.

In addition to informal discovery, Plaintiff through his counsel: 1) Conducted interviews class

1 members and reviewed documents and files; 2) Investigated the Class Members' claims based on the
2 theories of the *Bernard Action*; 3) Researched initial case investigation prior to filing the case, 4)
3 Prepared the initial complaint and two amendments, 5) Propounded voluminous sets of discovery, 6)
4 Prepared and mailed a Belaire-West notice to Class Members, 7) Interviewed over 100 Class Members,
5 8) Prepared for and attended depositions, 9) Reviewed data and files, 10) Reviewed employment
6 agreements, 11) Creating damage models, 12) Assessed risks including Defendants' insolvency 13)
7 Drafted lengthy 'meet and confer' letters, 14) Prepared stipulations, 15) Reviewed arbitration
8 agreements and employee personnel files and 16) Engaged in litigation strategy. Nathan Decl. ¶ 6;
9 Glugoski Decl. ¶18; Declaration of Reuben D. Nathan in Support of Motion for Preliminary
10 Approval (ROA # 347) ¶ 4; and Declaration of John Glugoski in Support of Motion for Preliminary
11 Approval (ROA # 345) ¶¶ 8-17.

12 Counsel for Plaintiff have further invested extensive time investigating the applicable law
13 (*Vaquero v. Stoneledge Furniture, et al., Ibarra v. Wells Fargo, et al., Magadia v. Walmart, et al., and*
14 *Ferra v. Loews Hollywood Hotel, et al.*), which is constantly evolving as it relates to class certification,
15 full briefing of motions and issues related to summary judgment, class certification, Plaintiff's claims
16 and damages, the defenses thereto, and facts discovered. Plaintiff believes that the investigation and
17 research discovered through the date of settlement has supported his main contentions alleging that
18 Defendants failed to pay overtime wages, failed to provide required premiums for meal and rest break
19 violations, failed to provide proper wage statements, unlawful deductions, failed to pay all wages owed
20 upon separation, and failed to reimburse individuals for business expenses. Glugoski Decl. ¶¶19)

21 **5. The Reaction of the Class Members**

22 "A favorable reception by the Class constitutes 'strong evidence' of the fairness of a proposed
23 settlement and supports judicial approval." (*In re PaineWebber Ltd. Partnerships Litig.* (S.D.N.Y.
24 1997) 171 F.R.D. 104, 126, *aff'd*, 117 F.3d 721 (2d Cir. 1997). "By any standard, the lack of objection
25 of the Class Members favors approval of the Settlement." (*In re Omnivision, supra*, 559 F.Supp.2d at
26 1043; *see also, Ross v. A.H. Robins* (S.D.N.Y. 1988) 700 F. Supp. 682, 684 - "The absence of objectants
27 may itself be taken as evidencing the fairness of the settlement"; *In Re Warner Communications*
28 *Securities Litigation* (S.D.N.Y. 1985) 618 F. Supp. 735, 746 - noting that two objections to settlement

1 was very low; *Milstein v. Huck* (E.D.N.Y. 1984) 600 F. Supp. 254, 267 - explaining that the reaction
2 of the class was “overwhelmingly favorable” because no objections to the settlement had been filed).
3 There have been zero (0) objections and zero (0) requests for exclusion. As such, the reaction of the
4 Class Members to the Settlement has been overwhelmingly positive, especially considering the size of
5 the class.

6 **VII. THE COURT SHOULD GRANT AN ENHANCEMENT AWARD TO THE CLASS**
7 **REPRESENTATIVE**

8 A Class Representative Service Award, at times misbranded as an “incentive award,” is
9 commonly given to the named plaintiff(s) in a class action. “[I]t is established that named plaintiffs are
10 eligible for reasonable incentive payments to compensate them for the expense or risk they have
11 incurred in conferring a benefit on other members of the class.” (*Munoz v. BCI Coca-Cola Bottling Co.*
12 *of Los Angeles* (2010) 186 Cal. App. 4th 399, 412).

13 Moreover, class members who step forward to serve as class representatives sometimes expose
14 themselves to financial risk with respect to a costs award should defendant prevail in the action. Class
15 representatives may also face retaliation for bringing suit, and courts weigh reasonable fears of
16 workplace retaliation among the factors bearing on an incentive award. (*Staton v. Boeing Co.*, (9th Cir.
17 2003) 327 F.3d 938, 977.

18 Settlement Agreement provides that the named Plaintiff Bernard may seek up to a \$20,000.00
19 as a Class Representative Service Award for his efforts spearheading the class action on behalf of the
20 Class Members. Plaintiff requests \$10,000.00 for his service as a Class Representative in this action
21 that served to recover upward of 50% of the total realistic exposure. The total sought by Plaintiff is a
22 mere 0.67% of the Settlement Fund for Bernard is reasonable and fair considering the recoveries due
23 to the absent Class Members. Nathan Decl. ¶ 67

24 As detailed in his accompanying declaration, Plaintiff was instrumental in bringing the lawsuit
25 and obtaining the Settlement on behalf of the Class. Plaintiff’s counsel has firsthand knowledge of
26 some of the efforts he expended. Plaintiff requested counsel file the lawsuit and consulted with Class
27 Counsel prior to the filing of the case and throughout the case, including, but not limited to engaging
28 in extensive discovery responses and requests, assisting counsel contact Class Members, assisting Class

1 Counsel review documents, wage statements, assisted with the formulation of discovery requests,
2 consulted with Class Counsel regarding the Settlement Agreement and prepared declarations in support
3 of preliminary approval and final approval of the Settlement. Plaintiff was prepared to take his
4 deposition on multiple occasions and ultimately attended a full day deposition. Further, Plaintiff
5 assisted Class Counsel with interpreting certain documents and communicating specific information to
6 experts. Most importantly, Plaintiff assisted Class Counsel in contacting Class Members which served
7 as a hammer to any threat by Defendants to arbitrate the claims on an individual basis. (Nathan Decl.
8 ¶ 68; Bernard Decl. ¶ 6).

9 Plaintiff has agreed to a general release of all of his individual claims against Defendants in
10 exchange for \$25,000.00. Plaintiff's individual claims were centered in harassment and discrimination,
11 which were alleged in the original complaint. Plaintiff dismissed the individual claims without
12 prejudice from the class action complaint but preserved them as he intended to litigate them and which
13 became a part of the underlying settlement negotiations including resolution of the class/PAGA action.
14 Plaintiff was subjected to discriminatory conduct and harassment pursuant to Gov. Code Section 12900,
15 et seq., which claims are unrelated in nature to the class action wage and hour claims. Additionally,
16 Plaintiff took significant risk by filing the instant action with OPTIMA being the leader of tax relief
17 industry. (Nathan Decl. ¶ 69; Bernard Decl. ¶ 7).

18 Without his efforts, the Class Members are unlikely to have obtained any recovery. Notably,
19 the proposed Class Representative Service Award was presented to the Class Members and no one
20 objected and/or requested to be excluded. (ILYM Decl. ¶¶ 9-12).

21 **VIII. THE COURT SHOULD GRANT SETTLEMENT ADMINISTRATOR COSTS**

22 ILYM Group, Inc. ("ILYM") will serve as the Settlement Administrator and will be responsible for
23 processing the settlement payments and providing notice to the Class Members. Administrator's costs
24 in the amount of \$14,250.00 shall be paid to ILYM.⁷ (Nathan Decl. ¶ 66; Decl. of ILYM ¶¶ 14, 22).

25
26 ///

27
28 ⁷ The Settlement Agreement authorizes up to \$50,000 in administration costs to ILYM (Settlement Agreement ¶¶ 37-38)

1 **IX. THE COURT SHOULD GRANT THE MOTION FOR ATTORNEY’S FEES OF**
2 **\$500,000.00 AND REIMBURSEMENT OF COURT COSTS AND EXPENSES OF**
3 **\$29,117.68**

4 Consistent with the scope of this action and nature of the relief granted to the Class, and the
5 amount of time expended in prosecution of the case, Plaintiffs and Class Counsel hereby move for an
6 award of attorney’s fees and costs of \$500,000.00 Pursuant to California Rules of Court, rule 3.769 (b),
7 Class Counsel discloses the existence of a “fee splitting agreement” that has been approved by Plaintiff
8 in writing.⁸ Class Counsel advised this Court of the fee-splitting arrangement between Class Counsel
9 at the MPA hearing. Consequently, in accordance with that agreement, Nathan & Associates seeks
10 \$250,000.00 and Righetti Glugoski, PC seeks \$250,000.00 in attorney’s fees. Class Counsel requests
11 a total of \$29,117.68 in costs (Nathan & Associates seeks costs in the amount of \$14,525.77 and
12 Righetti Glugoski, PC seeks costs in the amount of \$14,591.91). Nathan Decl. ¶¶46-47; Glugoski Decl.
13 ¶¶21).

14 **1. Attorneys Fees Award of 500,000.00 Is Justified.**

15 The requested fee is fair compensation for undertaking complex, risky, expensive, and time-
16 consuming litigation on a contingent fee basis, especially in light of the benefits achieved by Class
17 Counsel for the Class Members. As outlined above and set forth in the accompanying declarations of
18 Reuben Nathan and John Glugoski, Class Counsel diligently litigated and investigated this case without
19 duplication of efforts.

20 Courts recognize two methods for calculating attorney’s fees in class action cases. The first
21 calculates attorney fees based on a percentage of the common benefit bestowed on the class. The second
22 uses a “lodestar” as the basis, determined by multiplying the hours counsel reasonably expended by
23 reasonable hourly rates, which may be enhanced by a multiplier. (*Laffitte v. Robert Half Internat. Inc.*
24 (2016) 1 Cal.5th 480, 489; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.) The
25 requested attorneys’ fees are justified under either approach.

26 **a. Percentage of Common Fund Approach**

27 California courts have recognized that an appropriate method for awarding attorney’s fees in
28 _____

1 class actions is to award a percentage of the “common fund” created as a result of the settlement. (*City*
2 *& County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11; *Quinn v. State* (1975) 15 Cal.3d
3 162, 168; see also *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270; *Lealao,*
4 *supra*, 82 Cal.App.4th at 26). The basis of the common fund is fairness to the successful litigant, who
5 might otherwise receive no benefit because his recovery might be consumed by expenses; correlative
6 prevention of an unfair advantage to others who are entitled to share in the fund and who should bear
7 their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who
8 will be more willing to undertake and diligently prosecute proper litigation for the protection or
9 recovery of the fund if he is assured that he will be properly and directly compensated should his efforts
10 be successful. (*Sweet, supra*, 12 Cal.4th at 111). In *Quinn*, the California Supreme Court stated: “[O]ne
11 who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits
12 may require those passive beneficiaries to bear a fair share of the litigation costs.” (*Quinn, supra*, 15
13 Cal.3d at 167). Similarly, in *Sweet*, the California Supreme Court recognized that the common fund
14 doctrine has been applied “consistently in California when an action brought by one party creates a
15 fund in which other persons are entitled to share.” (*Sweet, supra*, 12 Cal.4th at 110).

16 Several courts have expressed frustration with the alternative “lodestar” approach for deciding
17 fee awards, which usually involves wading through voluminous and often indecipherable time records.
18 (*Lealao, supra*, 82 Cal.App.4th at 31 n.5, citing *In re Activision Sec. Litig.* (N.D. Cal. 1989) 723 F.
19 Supp. 1373, 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the
20 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
21 litigation by providing an incentive for early, yet reasonable settlement; and (3) it reduces the demands
22 on judicial resources. (*In re Activision Sec. Litig., supra*, 723 F. Supp. at 1378-79).

23 Plaintiff’s counsel’s request for fees of 33.3% of the Settlement Fund is within the range of
24 reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%,
25 depending on the circumstances of the case. (See, *In re: Activision Sec. Litig., supra*, 723 F. Supp. at
26 1378) According to Professor Newberg: “No general rule can be articulated on what is a reasonable
27 percentage of a common fund...Usually 50 percent of the fund is the upper limit on a reasonable fee
28 award from a common fund, in order to assure that fees do not consume a disproportionate part of the

1 recovery obtained for the class, though somewhat larger percentages are not unprecedented.” *Newberg*
2 *on Class Actions* § 14.6 at 550.

3 Courts in the Ninth Circuit look to the following factors when determining what a proper
4 percentage is for an award of attorneys’ fees: (1) the results achieved; (2) the risks of litigation; (3)
5 whether there are benefits to the class beyond the immediate generation of a cash fund; (4) whether the
6 percentage rate is above or below the market rate; (5) the contingent nature of the representation and
7 the opportunity cost of bringing the suit; (6) reactions from the class; and (7) a lodestar cross-check.
8 (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-1051). Here, Class Counsel has met
9 each and every *Vizcaino* factor such as (1) making sure each Class Member gets a monetary award
10 without having to file a claim; (2) assuming great risk in more than three years of litigation while having
11 to turn down other cases; (3) ensuring Defendants are enforcing policies that will comply with the
12 requirements of the Labor Code which serves to benefit members of both the Class and the general
13 public; (4) seeking a percentage rate that is consistent with the market rate; (5) taking the matter wholly
14 on a contingent basis at great opportunity cost; (6) virtually no negative class reaction; and (7) meeting
15 the lodestar reasonableness check. *See also, Cifuentes v. CEVA Logistics U.S., Inc.* (S.D. Cal. Oct. 23,
16 2017) 2017 U.S. Dist. LEXIS 176279, at *19-20; *Good Morning to You Prods. Corp. v.*
17 *Warner/Chappell Music, Inc.* (C.D. Cal. Aug. 16, 2016). No. CV 13-4460-GHK (MRWx), 2016 U.S.
18 Dist. LEXIS 191665, at *5-6; *Bautista v. Harvest Management Sub LLCs* (C.D. Cal. July 14, 2014)
19 2014 U.S. Dist. LEXIS 206026, at *13-14.

20 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated
21 with this case on a pure contingency basis. The factual and legal issues posed in this case were highly
22 disputed, and there were also risks as to whether or not a class would be certified, leaving a large
23 number of putative class members unlikely to receive any recovery. Even after approval of the
24 Settlement Agreement, Class Counsel will be called upon to expend additional amounts of time fielding
25 calls from Class Members, interviewing them, and resolving issues that may arise, administering the
26 settlement and reporting finality of the Settlement. The Court should finally approve the requested
27 attorney’s fees and costs, which are justified by the results achieved, the complexity of the issues, the
28 difficulty of the case, and the great risks undertaken by Class Counsel. The requested attorneys’ fees

1 and costs are not opposed by Defendants and are well within established guidelines.

2 **b. Lodestar Calculation Approach**

3 The trial court also has broad authority to calculate the lodestar. (*PLCM Group, Inc. v. Drexler*
4 (2000) 22 Cal.4th 1084, 1094-1095 - “[T]he fee setting inquiry in California ordinarily begins with the
5 ‘lodestar,’ i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate.”]).
6 “California courts have consistently held that a computation of time spent on a case and the reasonable
7 value of that time is fundamental to a determination of an appropriate attorneys’ fee award.” The
8 reasonable hourly rate is that prevailing in the community for similar work, The lodestar figure may
9 then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair
10 market value for the legal services provided. (*Id.* at 1095).

11 **c. Reasonable Hourly Rate**

12 In calculating the lodestar, a billing rate of \$1,200.00 for Attorney Matthew Righetti and
13 \$950.00 for John Glugoski of Righetti Glugoski, PC, and \$1,050.00 per hour was used for Attorney
14 Reuben Nathan. These are equivalent to their current billing rates on a non-contingency fee basis. These
15 amounts are also supported by their considerable experience and are consistent with their hourly rates
16 that have been approved by other courts, as set forth in the accompanying declarations. Righetti Decl.
17 ¶ 15 Glugoski Decl. ¶¶12; and Nathan Decl. ¶¶52-55.

18 **d. Number of Hours Expended**

19 In determining the number of hours expended by counsel, compensable hours include services
20 provided prior to the filing of the complaint that were reasonably required. (*Stokus v. Marsh* (1990)
21 217 Cal.App.3d 647, 655). Moreover, detailed time records are not required. “Testimony of an attorney
22 as to the number of hours worked on a particular case is sufficient evidence to support an award of
23 attorney fees, even in the absence of detailed time records.” (*Martino v. Denevi* (1986) 182 Cal.App.3d
24 553, 559; *see also, Wershba., supra*, 91 Cal.App.4th at 255).

25 Although not required to do so, Class Counsel has submitted detailed summary billing number
26 of hours expended. (See, Nathan Decl. ¶ 46; Glugoski Decl. ¶22 and Righetti Decl. ¶ 25)

27 As of the filing of this motion, attorney Reuben Nathan of Nathan & Associates, APC has
28 expended 350.3 hours and John Glugoski and Matthew Righetti of Righetti Glugoski, PC have

1 expended 326.4 hours in the prosecution of this lawsuit. The total hours expended by Class Counsel is
2 676.7. The lodestar of attorney Nathan, Glugoski and Righetti as of the filing of this motion is \$705,420
3 (Nathan Decl. ¶¶ 46; Glugoski Decl. ¶24 and Righetti Decl. ¶ 27).

4 There was no duplication of effort and the combined efforts of Class Counsel were required for
5 the successful outcome in the case. The case did not settle at mediation and dual tracked with heavy
6 litigation while the parties continued to exchange data, documents, and information. Nathan Decl. ¶¶
7 8, 46; Glugoski Decl. ¶¶17) It is estimated that Class Counsel will expend (in total) an additional 10
8 hours of time included their current lodestars for preparing and attending the final approval hearing and
9 overseeing the completion of administration of this Settlement including communicating with
10 numerous Class Members, resolving claims disputes, preparing pleadings for and attending the later
11 hearings, monitoring the distribution of proceeds, following up on missing payments, etc.

12 **e. Reimbursement of Court Costs and Expenses of \$29,117.68 Is Justified**

13 Nathan & Associates, APC has expended \$14,525.77 in litigation costs and expenses (Nathan
14 Decl. ¶ 47), and requests reimbursement in such amounts. Righetti Glugoski, PC has expended
15 \$14,591.91 in litigation costs (Glugoski Decl. ¶21), and requests reimbursement in such amounts. The
16 total amount in attorneys' costs is \$29,117.68.

17 **X. SUBMISSION TO THE LWDA**

18 As set forth in the Nathan Decl. at ¶ 65, this motion and supporting papers are concurrently
19 being submitted to the LWDA in accordance with California Labor Code section 2699(1)(2). The
20 proof of electronic submission is attached as "Exhibit 1" to the Nathan Decl.

21 **XI. CONCLUSION**

22 The proposed Settlement is fair, reasonable, and, adequate. It resolves the case favorably to the
23 Class by providing substantial cash payments to Class Members. It is non-collusive and was achieved
24 as the result of informed, extensive, and arms-length negotiations conducted by counsel for respective
25 parties who are experienced in wage and hour class action litigation. For the reasons set forth herein,
26 Plaintiffs respectfully request that this Court grant final approval to the proposed Settlement and enter
27 the Order and Judgment in the form submitted concurrently herewith.

28 ///

1 Respectfully Submitted,

2 Dated: August 8, 2026

NATHAN & ASSOCIATES, APC

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4 By: /s/ Reuben D. Nathan
Reuben D. Nathan, Esq.
Attorney for Representative Plaintiff
5 FREDERICK BERNARD
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