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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

BRIANA ARREOLA, individually, on a representative basis, and on behalf of all others similarly situated;

Plaintiff,

vs.

FLEET SERVICES, INC., a California Corporation; DICK VAN ECK, an individual; and DOES 1 through 20, inclusive;

Defendants.

Case No.: 30-2023-01316151-CU-OE-CXC
[Assigned to Hon. Layne Melzer, Dept CX102, for all purposes]

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA REPRESENTATIVE ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; AND [PROPOSED] FINAL ORDER AND JUDGMENT

<u>Hearing</u>
Date: September 18, 2025
Time: 2:00 p.m.
Dept: CX102

Complaint filed: March 30, 2023

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

PLEASE TAKE NOTICE THAT on September 18, 2025, at 2:00 p.m., or as soon thereafter as this matter may be heard by the Honorable Layne Melzer in Department CX102 of the Orange County Superior Court located at located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Briana Arreola ("Plaintiff" or "Class Representative") will respectfully move this Court for an Order granting final approval of the class action and Private Attorneys General Act of 2004 ("PAGA") representative action settlement between Plaintiff and Defendants Fleet Services, Inc. ("Fleet Services") and Dick Van Eck (collectively, "Defendants"), which was preliminarily approved by the Court on or about April 10, 2025. This Motion, which is supported and unopposed by Defendants, seeks final approval and entry of judgment of a $275,000 settlement on behalf of the Class Members.

Specifically, Plaintiff will and hereby does move the Court to grant final approval of the Amended Class Action and PAGA Representative Action Settlement Agreement and Release of Claims ("Settlement Agreement"), and enter the proposed order and final judgment filed concurrently herewith:

1. Finally certifying the Class, as defined in the Settlement Agreement and the Court's Order Granting Preliminary Approval of the Settlement;
2. Finally appointing Plaintiff as Class Representative for purposes of settlement;
3. Finally appointing Plaintiff's Counsel as Class Counsel for purposes of settlement;
4. Finding that the Class Notice was properly provided to the Class in accordance with the Court's Order Granting Preliminary Approval;
5. Finally approving the settlement as fair, adequate, and reasonable, based upon the terms set forth in the Settlement Agreement;
6. Binding Participating Class Members and Aggrieved Employees to the terms of the Settlement Agreement, including the Released Class Claims and Released PAGA Claims specified therein; and
7. Retaining jurisdiction to enforce the Settlement Agreement.

This Motion will be based upon this notice; the attached memorandum of points and authorities; the Declarations of the Administrator (Nathalie Beltran of ILYM Group), Class Counsel (Brian Mankin and Misty Lauby), and Plaintiff filed concurrently herewith; the records and files in this action; and any other further evidence or argument that the Court may receive at or before the hearing.

Dated: August 26, 2025 LAUBY, MANKIN & LAUBY LLP

BY: ______________________________
Brian J. Mankin, Esq.
Attorneys for Plaintiff and the Class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. SUMMARY OF ARGUMENT AND ESSENTIAL POINTS

Pursuant to California Rules of Court, Rule 3.769 (d) and (e), Plaintiff Briana Arreola ("Plaintiff" or "Class Representative") respectfully requests that this Court grant final approval of the Amended Class Action and PAGA Representative Action Settlement Agreement and Release of Claims ("Settlement Agreement" or "S.A.") on behalf of all Class Members, which includes all current and former nonexempt (hourly paid) employees employed by Defendant Fleet Services, Inc. ("Fleet Services") in California during the Class Period of March 30, 2019, through April 20, 2024. The Settlement is supported and unopposed by Defendants Fleet Services and Dick Van Eck (collectively, "Defendants") (Plaintiff and Defendants collectively, the "Parties").

There are several essential reasons why this settlement should be approved, and judgment entered accordingly, as follows:

- After considerable written discovery and then a robust exchange of information for mediation, and arms-length negotiation brokered by an experienced mediator, the Parties reached a $275,000 settlement tailored to a limited release of the claims alleged on behalf of Class Members;
- The Class Members were deemed to participate in the Settlement, and were not required to submit a Claim Form to receive funds;
- No reversion to Defendants;
- There was one objection (which offered no specific criticism of the Settlement other than to express a general dislike for lawsuits) and one opt-out, meaning that 99% of the Class elected to participate in the settlement.

In accordance with the analysis and law set forth herein as well the preliminary approval motion, the Settlement should be approved and judgment entered based on the determination that the Settlement is fair, reasonable, adequate, and in the best interests of the Class. (Declaration of Class Counsel Brian J. Mankin ["Mankin Decl."] ¶¶ 13).

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II. PERTINENT BACKGROUND AND SETTLEMENT TERMS

Fleet Services is a heavy-duty truck parts and service company with four locations in California. Plaintiff and each of the Class Members worked at one or more of the locations in California. The primary claims, which Defendants disputed, involved allegations that Fleet Services failed to pay the Class Members for all wages owed, failed to provide compliant meal and rest breaks, and issued inaccurate and incomplete wage statements, as well as claims for waiting time penalties and PAGA penalties arising from the same underlying conduct.

The Settlement includes 103 Participating Class Members (excluding the one opt-out), and the following is a breakdown of how the funds are allocated under the Settlement Agreement (Declaration of Administrator, Nathalie Beltran ["Beltran Decl."] ¶ 15):

	Total Amount
Gross Settlement Amount	$ 275,000.00
Attorneys' Fees (1/3)	$ 91,666.67
Litigation Costs	$ 18,936.23
Administrator Costs	$ 7,950.00
PAGA Penalties	$ 27,500.00
Class Representative's Service Award	$ 5,000.00
Net Settlement Amount	**$ 123,947.10**

The Participating Class Members were deemed to participate in the Settlement and did not need to submit a claim form to receive payment. Each Participating Class Member will receive a pro rata share of the Net Settlement Amount according to the percentage of Weeks Worked during the Class Period, such that the amount actually distributed to Participating Class Members will equal 100% of the Net Settlement Amount. (S.A. ¶ 45(c)).

Assuming all amounts in the Settlement are finally approved by the Court, the average Individual Class Payment is estimated to be $1,203.37, the *highest* individual settlement payment is approximately $2,878.20, and the *lowest* is $10.86 for a short-term employee who worked only one Workweek. There is a total of 11,412 Weeks Worked in the Class Period by the Participating Class Members, resulting in a per Workweek value of approximately $10.86. (Beltran Decl. ¶ 15).

In addition, there are 67 Aggrieved Employees who will receive a share of the PAGA Penalties based on a pro-rata basis. Thus, the $6,875 PAGA Penalties allocated to the Aggrieved Employees will be divided and paid on a Weeks Worked basis with an average pay of $102.61 to each. (Beltran Decl. ¶ 16).

The Settlement provides that 15% of the Individual Class Payments will be allocated as wages subject to withholding of all applicable local, state, and federal taxes, and the remaining 85% will be allocated as interest and penalties (pursuant to, *e.g.*, California Labor Code §§ 203, 210, 226, 2699, etc.) from which no taxes will be withheld. (S.A. ¶ 45(d)). The Individual PAGA Payments will be classified entirely as civil penalties and shall be reported as required on an IRS Form 1099. (S.A. ¶ 45(h)).

Defendants shall fund the Settlement Amount, plus Defendants' share of payroll taxes owed on the Individual Class Payments, within 30 days of the Effective Date. (S.A. ¶ 68). Within 10 days after receiving the payment from Defendants, the Administrator shall issue a disbursement to fund all court-approved payments. (S.A. ¶ 69). Class Members will have 180 calendar days to cash each check. For any and all checks that are not cashed within the 180-day period, the checks will be void, a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Participating Class Member and/or Aggrieved Employee. (S.A. ¶ 69(a)).

III. THE NOTICE PROCESS

A. NOTICE TO THE CLASS MEMBERS

Pursuant to the Court's Order Granting Preliminary Approval and the Settlement Agreement, the Parties directed the Administrator to review and update the Class Members' addresses, mail the Court-approved Notice Packet, and process their responses. (Beltran Decl. ¶ 3).

After the Administrator received the Class Data, it performed a National Change of Address search for all Class Members to confirm their mailing addresses. (*Id.* at ¶ 6). On June 3, 2025, the Notice Packets were sent via first-class mail to 104 Class Members. (*Id.* at ¶ 7). For any Notice Packet that was returned by the USPS as undeliverable and without a forwarding address, the Administrator performed an advanced address search (i.e. skip trace) to locate updated addresses and then promptly re-mailed the Notice Packets to the updated addresses. Ultimately, the Administrator reported that only 2 Notice Packets were deemed undeliverable, resulting in a **98%** success rate in mailing the Notice Packets. (*Id.* at ¶ 10).

In accordance with California Rules of Court, Rules 3.766 (d) and 3.769(f), the Notice Packet provided Class Members with (1) a brief explanation of the case; (2) an explanation of each Class Member's right to object to the Settlement or opt out of the settlement class; (3) an explanation of the process (and relevant deadlines) through which a Class Member could object or opt out; (4) notice about the binding nature of the Judgment for Class Members who do not opt out of the Settlement; (5) an explanation of each Class Member's right to appear through counsel; (6) an explanation of each Class Member's right to appear at the fairness hearing and express views on the Settlement, i.e., object or otherwise respond; and (7) an explanation of each Class Member's right to participate in the Settlement and receive payment accordingly. (*See* **Exhibit A** to the Beltran Decl.).

B. THERE IS ONE OBJECTION AND ONE OPT-OUT TO THE SETTLEMENT

California law makes clear that the percentage of objectors and opt-outs to a settlement is an important factor in a court's consideration of a proposed class action settlement. *See Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Indeed, the Ninth Circuit and other federal courts recognize that in the final fairness analysis, the number or percentage of class members who object to a proposed settlement is a significant factor. *See Mandujano v. Basic Vegetable Prods., Inc*. (9th Cir. 1976) 541 F.2d 832, 836; *In re American Bank Note Holographics, Inc*. (SDNY 2001) 127 F.Supp.2d 418, 425 ("[i]t is well settled that 'the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.'").

Here, there was one objection, one opt-out, and zero disputes as to the Weeks Worked credited, meaning that 99% of the Class Members have elected to participate and receive a share of the Settlement. (Beltran Decl. ¶¶ 11-14, and Exhibits B & C for true and correct copies of the objection and opt-out). Notably, the objection is completely meritless and merely expressed frustration towards lawsuits generally. Although the objector noted that they suffered no violations and railed against the lawyer's "money grab," this person (interestingly) remained a Participating Class Member in order to receive a portion of the settlement funds, rather than give-up the money by opting-out.

Considering this positive reaction to the Settlement and its overall terms, it is clear that the Settlement, which was the product of arm's-length negotiations, is fair and reasonable, and the Parties therefore respectfully request that the Court grant final approval and enter the proposed judgment as requested. *See Dunk, supra,* 48 Cal.App.4th at 1800-1802 (declaring that class action settlements should be approved if they are fair and reasonable, and a low percentage of objectors and opt-outs is evidence of an agreement's fairness).

IV. EVALUATION OF THE SETTLEMENT

It is axiomatic that California law strongly favors and encourages settlements. *See Stambaugh v. Super. Ct.* (1976) 62 Cal.App.3d 231, 236. This presumption in favor of settlements applies with particular force in the context of class actions. *See Ferguson v. Lieff, Cabraser, Heimann & Bernstein* (2003) 30 Cal.4th 1037, 1054 (Kennard, J., concurring and dissenting) ("[p]ublic policy favoring settlement is especially weighty for class actions"); *Bell v. Am. Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608 (affirming approval of a class settlement and implicitly endorsing its citation of federal precedent for the notion that there is a "strong public policy in favor of settlement of class actions"); *Van Bronkhorst v. Safeco Corp*. (9th Cir. 1976) 529 F.2d 943, 950 ("It hardly seems necessary to point out that there is an overriding public interest in settling and quieting litigation. This is particularly true in class action suits.").

When entertaining a request for final approval of a class action settlement, a court's fundamental consideration is whether the settlement is fair, adequate, and reasonable. *See Dunk*, *supra*, 48 Cal.App.4th at 1801, fn. 7 (noting that state courts look to federal authority concerning the approval of class settlements); California Rules of Court, Rule 3.769(g).

Fairness is presumed when: "(1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors and opt outs is small;" (*Dunk*, *supra*, 48 Cal.App.4th at 1802); courts also consider(5) the range of reasonableness of the settlement fund to a possible recovery in light of all attendant risks of litigation. *See id.* All five of these factors are discussed in detail below.

A. THE SETTLEMENT WAS REACHED THROUGH INFORMED ARMS-LENGTH NEGOTIATION

Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless evidence to the contrary is offered. Thus, there is a presumption here that the settlement negotiations were conducted in good faith. *See* 3 Alba Conte & Herbert Newberg, Newberg on Class Actions, § 11.51. The proposed Settlement was the product of arm's-length negotiation before a highly experienced and reputable class action mediator.

Here, Plaintiff and Class Counsel have diligently investigated the claims raised in this litigation and, after taking into account the disputed factual and legal issues involved in this action, the risks attending further prosecution, and the benefits to be received pursuant to the compromise and settlement of the action as set forth in the Settlement Agreement, concluded that the Settlement terms are fair, reasonable, and in the best interest of the Class Members.

As the Settlement Agreement itself reveals, the Settlement is designed to fairly and adequately compensate all Class Members. And, pursuant to California Rules of Court, Rule 3.769(b), the Parties have disclosed the agreed upon and proposed attorney fee award, which is well within the range of reasonableness for matters of this nature.

B. PLAINTIFF'S INVESTIGATION WAS SUFFICIENT

As set forth at the time of preliminary approval, Class Counsel aggressively litigated this matter and performed a comprehensive investigation into the facts and merits of the wage and hour claims alleged. Notably, in preparation for mediation, the Parties informally exchanged documents and information that allowed both sides to calculate the potential damages and penalties at issue and evaluate potential risk and exposure, including extensive policies and procedures pertaining to each claim alleged, as well as statistics relating to the number of current and former Fleet Services' employees, workweeks, and pay periods at issue. In this regard, Defendants provided a sampling of timekeeping and payroll records, which allowed both Parties to thoroughly analyze each potential claim. Additionally, during this process, Class Counsel analyzed, researched, and investigated the potential issues in the action, including matters related to the calculation of damages, trial, and appellate issues and related risks.

C. Class Counsel are Experienced in Similar Litigation and Endorse the Settlement

Class Counsel are experienced in this type of litigation, and they have (and hereby do) represent that this Settlement is fair and reasonable. (Mankin Decl. ¶¶ 2-6, 13); *see 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1152 (affirming final approval of a class settlement where counsel were all experienced litigators with class-action experience and had recommended the settlement based on the negotiated terms).

D. Reasonable Estimate of the Nature and Amount of Recovery

Plaintiff's Motion for Preliminary Approval contained a comprehensive *Kullar* analysis which sufficiently provided the Court with "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409, later clarified *Kullar* by noting that an explicit statement of the maximum theoretical amount that the class members could recover was not part of the "basic information" that counsel was required to produce:

> Greenwell misunderstands *Kullar*, apparently interpreting it to require the record in all cases to contain evidence in the form of an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims – a number which appears nowhere in the record of the case. But *Kullar* does not, as Greenwell claims, require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."

Of course, a settlement is not judged against what might have been recovered had a plaintiff prevailed at trial, nor does a settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc*. (2001) 91 Cal.App.4th 246, 250 ("Compromise is inherent and necessary in the settlement process … even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'").

In light of the uncertainties of protracted litigation, this negotiated Settlement reflects the best practicable recovery for the Class. While the total settlement amount is, of course, a compromise figure, the potential risks and opportunities of both Parties were effectively weighed and considered by the Parties, resulting in a fair and equitable settlement. Based upon detailed data obtained through discovery and information exchanges, and factoring in claim certification prospects and liability probabilities, Class Counsel formulated detailed damages models to evaluate the claims for mediation in order to reach a realistic and reasonable resolution.

V. <u>THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE</u>

For their efforts in creating a common fund for the benefit of the class, the Settlement Agreement provided that Class Counsel seek reasonable fees of $91,666.67, which is one-third (1/3) of the common fund Settlement Amount and results in a ***negative multiplier***. These fees are warranted under the law and are within the range of fees commonly awarded in similar cases.

As shown herein, the requested percentage of one-third of the settlement fund as payment for attorneys' fees should be granted for several reasons. First, one-third is the standard benchmark in California for class action settlements. *See, e.g.*, *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n. 11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery."). Second, the California Supreme Court upheld that the percentage of the fund method survives in California class action cases. *See Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480. Third, the requested amount is eminently reasonable through the prism of a lodestar cross-check. Accordingly, this request for attorneys' fees should be granted final approval.

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A. Plaintiff is Entitled to Recover Reasonable Attorneys' Fees Under the Labor Code

Plaintiff and the Class in this action are entitled to recover reasonable attorneys' fees, expenses, and costs under section 218.5 of the Labor Code, which provides that, "[i]n any action brought for the nonpayment of wages ... the Court shall award reasonable attorneys' fees and costs to the prevailing party." In addition, Plaintiff and the Class are entitled to recover reasonable attorneys' fees pursuant to section 1194.2 of the Labor Code, which provides that, "… any employee receiving less than the legal minimum wage … applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage… including … reasonable attorney's fees, and costs of suit." Plaintiff is also entitled to fees and costs under section 226(e) of the Labor Code (an employee who prevails on a claim for itemized wage statement violations "is entitled to an award of costs and reasonable attorneys' fees"), under the PAGA (Labor Code, § 2699(g), which provides "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid"), and, potentially, section 1021.5 of the California Code of Civil Procedure.

B. Class Counsel's Request for Fees is Reasonable and Properly Calculated as a Percentage of the Common Fund

Under the "common fund" doctrine, the request for attorneys' fees in the amount of 1/3 of the common fund is reasonable and appropriate, because (1) it is within the approved range of percentages awarded as attorneys' fees in similar cases; (2) it is supported by the high quality of Class Counsel's work on this case and the results obtained for the Class; (3) the Class had sufficient notice of the fee request; (4) it is supported by the fact that this case was handled on a contingency basis and was undertaken despite various risks and expenses; and (5) the lodestar cross-check supports the fee request.

1. The Attorneys' Fees Requested Fall Within the Reasonable Range Awarded in Cases Under the Established Common Fund Method

The California Supreme Court approved trial courts' usage of the common fund method of awarding attorneys' fees in wage and hour class actions, like this one, and upheld a fee award of 1/3 of the total settlement amount obtained for the class. *See Laffitte, supra,* 1 Cal.5th at 506; *see also,* 4 Newberg on Class Actions, § 14:6 at 552; *Chavez, supra,* 162 Cal.App.4th at 66 n. 11 ("[F]ee awards in class actions average around one-third of the recovery."). Specifically, in *Laffitte*, the Court wrote: "[w]e join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created." *Laffitte, supra,* 1 Cal.5th at 503. The California Supreme Court also noted that trial courts have the discretion to award fees as a percentage of the common fund, with or without the necessity to conduct a lodestar cross-check. *Id.* at 506. ("…[Courts] … retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee.").

The California Supreme Court's *Laffitte* decision was consistent with its prior rulings recognizing that "when a number of persons are entitled in common to a specific fund, and an action brought by … plaintiffs for the benefit of all results in the creation or preservation of that fund, such … plaintiffs may be awarded attorneys' fees out of the fund." *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478 ("[A] lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to reasonable attorneys' fees from the fund as a whole."). Notably, when fees are calculated as a percentage of the common fund, they should be calculated based on the amount that was available to be claimed, rather than as a percentage of the actual amount claimed. *See Boeing Co., supra,* 444 U.S. at 475-476, 480-481 (holding that attorneys for a successful class may recover a fee based on the fund created for the class, even if some class members make no claims against the fund, so that money remains in it that will be returned to the defendant, explaining: "[t]heir [class members'] right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel."); *see also Williams v. MGM-Pathe Communs. Co*. (9th Cir. 1997) 129 F.3d 1026, 1027 (finding the trial court "abused its discretion by basing the fee on the class members' claims against the fund rather than on a percentage of the entire fund or on the lodestar").

2. High Quality of Work and Excellent Result Obtained Support the Award

In addition to the fact that a Class benefit was created with a non-reversionary common fund settlement, the fairness of the requested fee award of 1/3 of the Settlement Amount is supported by the high quality of work performed by Class Counsel and the positive result obtained for the Class in spite of the risks of ongoing litigation. This result occurred because Class Counsel diligently, efficiently, and creatively pursued this case and reached a settlement for the benefit of the entire Class. The fact that the Settlement was embraced and supported by the Class, as evidenced by a 99% participation rate, demonstrates that Class Counsel obtained a favorable result for the Class.

3. Class Members Had Sufficient Notice of the Requested Fees

Rule 3.769 of the California Rules of Court requires that the Class Members be given notice of any agreement regarding an application for attorneys' fees. Here, the Class Notice preliminarily approved by the Court and distributed to the Class Members apprised them that "Up to one-third of the Settlement Amount to Class Counsel for attorneys' fees ($91,666.67) and up to $20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment." (Beltran Decl., Exh. A.)

The Class Notice also advised the Class Members of the procedures for objecting to and opting-out of the proposed Settlement and appearing at the final approval hearing, where they could present their objections to any aspect of the Settlement, including the amount of attorneys' fees to be awarded to Class Counsel. *Litwin v. iRenew Bio Energy Solutions, LLC* (2014) 226 Cal.App.4th 877, 883 ("Procedural due process requires that affected parties be provided with 'the right to be heard at a meaningful time and in a meaningful manner.'"). In accordance with the foregoing, it is respectfully submitted that the instant notice complied with Rule 3.769 and, as a result, the Class Members' due process rights were fulfilled.

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4. The Contingent Nature of the Representation Further Supports the Fee Award of One-Third (1/3) of the Common Fund

An additional factor militating in favor of the granting of the requested fee award is the fact that this case was both legally and financially risky for Class Counsel. *See Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-1049. Class Counsel have been representing the Class in this matter on a strictly contingency basis, and as such, incurred the risk of non-recovery after a substantial investment of time, money, and resources, and have done so since the inception of this case without any payment or compensation. Specifically, there was the prospect of enormous cost that is inherent in class action litigation; the risk that Defendants could prevail on their argument that the class should not be certified; and the risk that Defendants could prevail on the merits of some or all of the claims.

The court in *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359 analyzed this issue and held that, when determining the market-level compensation to award to contingent fee attorneys, the analysis must take into account the large risk inherent in such situations:

> [T]he market value of the services provided by plaintiffs' counsel in a case of this magnitude must take into consideration that any compensation has been deferred for up to four years from the time an hourly fee attorney would begin collecting fees from his or her client; that the demands of the present case substantially precluded other work during that extended period, which makes the ultimate risk of not obtaining fees all the greater (since the attorneys must use savings or incur debt to keep their offices afloat and their families fed during the years-long litigation); and that a failure to fully compensate for the enormous risk in bringing even a wholly meritorious case would effectively immunize large or politically powerful defendants from being held to answer for constitutional deprivations, resulting in harm to the public.

Id. at 399-400.

Indeed, as Class Counsel can attest, not all class/PAGA cases are successful. Many cases end with no fees or a greatly reduced fee that is far less than the lodestar, often due to no fault of counsel (i.e., bankruptcy; change in the law; consolidation, coordination, or preemption; being top filed, etc.). According to Mayer Brown LLP's study entitled, *Do Class Actions Benefit Class*

Members?: An Empirical Analysis of Class Actions, cited in *Laguna v. Coverall North America, Inc*. (9th Cir. 2014) 753 F.3d 918, only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.[1]

To offset these risks and unfavorable results, courts historically award a multiplier on Class Counsel's lodestar, as discussed further below. Because if the *best* Class Counsel could hope for is merely to be paid its customary hourly rate multiplied by the number of hours worked on a case, then Class Counsel would not be compensated for the hardships and serious risks they faced litigating contingency cases and incurring losses on the unfavorable results, and would not be incentivized to take on similar cases in the future. (See *id*.)

The availability of a "lodestar multiplier" allows Class Counsel to be an advocate for employees and take on risky cases where Class Counsel may have to shoulder the risks of litigation in other cases, so that the class members do not have to forego their right to the justice system. A multiplier ensures that class members in the future will have access to competent counsel who are willing to offer contingency fee agreements in speculative cases and be available and willing to take on cases to help all California employees – not just those employed by large corporations.

However, in this case, Class Counsel is actually seeking a negative multiplier. For all of the above reasons, the contingent nature of this case and the availability of a lodestar multiplier supports a fee of one-third of the common fund and granting of fee request.

5. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award

Despite recognized limitations of the so-called lodestar method, some California and federal courts acknowledge the utility of a lodestar "cross-check." [2] (*Lealaov. Beneficial California, Inc. (2000)* 82 Cal.App.4th 19, 45-46.) Under the "lodestar multiplier" method of cross-checking the reasonableness of attorneys' fees in class actions, courts ascertain class

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[1] www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

[2] In practice, the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient hours have been expended. Herr, David F., *Manual for Complex Litigation,* § 14.121 (1988); *see also In re Activision* (N.D. Cal 1989) 723 F.Supp 1373.

counsel's total "lodestar" amount by multiplying the number of hours reasonably expended by each attorney or legal staff member on the case by their hourly rates, and then enhance or reduce this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty or difficulty of the case, its contingent nature, and the degree of success achieved. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Press v. Lucky Stores, Inc*. (1983) 34 Cal.3d 311, 322; *Lealao, supra,* 82 Cal.App.4th at 43 [declaring that a court has discretion to use a multiplier to ensure that the "fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation"].)

Historically, California courts have approved multipliers of 1.5 to 4. However, in this case, Class Counsel has a ***negative multiplier***, as the actual aggregated lodestar between the Plaintiff's attorneys that worked on this case is approximately $156,500, as summarized in the following table, and in the submitted declaration of Class Counsel:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin *Trial Counsel / Partner* (23 Years)	**$950**	**86.6**[3]	**$82,270**
Misty Lauby *Handling Attorney* (16 Years)	**$650**	**114.2**	**$74,230**
Grand Total for All Attorneys			**$156,500**

(Mankin Decl. ¶ 26; Lauby Decl. ¶ 10-11).

The hourly rates above are comparable to those of other attorneys with equal or similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at *www.laffeymatrix.com* indicates that the benchmark rates are: $777/hour for an 8–10-year attorney, $878/hour for a 11–19-year attorney, and $1,057/hour for a 20+ year attorney).

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[3] Includes an estimated 15 hours of additional work preparing for and attending the hearing (inclusive of finalizing and filing the motion, appearing at the hearing, addressing the Court's questions/concerns, submitting revised documents, responding to class members who are anxious to receive their check, and so on), as well as 15 hours in anticipated work to be performed after the final approval, working with counsel, administrator, and Class Members (which includes up to 1.5 years of case management relating to ensuring timely payment from Defendants, reviewing the calculations, checks are timely mailed, responding to class members questions about the timing of checks/missing checks/lost checks and remailings, working with the administrator regarding uncashed checks and remailings, assisting with the Administrator's declarations regarding payments and uncashed checks, potentially filing an amended judgment, appearing at the final disbursement hearing and/or submitting paperwork related thereto).

Moreover, the Wolters Kluwer 2023 Real Rate Report ("Real Rate Report") provides directly applicable information in this regard. The Real Rate Report is based on an enormous and statistically significant compilation of data, comprising millions of billing entries from a hundred thousand individual timekeepers who worked at thousands of law firms. The Real Rate Report compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. For the southern California area: (a) the rate for partners in Los Angeles is between $840 and $1,159 per hour for the middle and upper quartiles, and (b) the rates for associates with seven or more years of experience, the median rate is $674 per hour, and the upper quartile rate is $888 per hour. And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, reviews, or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms, which makes it "a much better reflection of true market rates than self-reported rates in all practice areas." *Brown v. CVS Pharmacy, Inc*. (C.D. Cal. Apr. 24, 2017) 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*, *supra*, 22 Cal.4th at 1085 (holding that rates should be premised upon precisely this form of independent, "objective" rate data that reflects "fair market" rates actually billed to clients "in the community for similar work"). (Mankin Decl., ¶ 25.)

Class Counsel are also highly experienced in Class/PAGA litigation, including having been named by the LA Times as one "Southern California Leading Lawyers" in the May 2023 issue of Consumer Attorneys of Southern California (a recognition given to 17 employment and/or labor law attorneys in 2023), having been selected as "Super Lawyer" in employment litigation over the last 5 consecutive years, having achieved large settlements, and having prevailed at trial in PAGA-only actions and Class Action jury trials. (Mankin Decl. ¶¶ 2-6). Indeed, Class Counsel's rates are typical of the rates charged by defense counsel with similar experience doing similar employment law work in this region.

Thus, Class Counsel's rates reasonable and typical, and the attorneys' fees requested confirm that the fee request is fair and reasonable under the lodestar multiplier cross-check.

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VI. THE REQUESTED COSTS AND SERVICE AWARD ARE REASONABLE

A. THE REQUESTED COSTS ARE REASONABLE AND MERIT APPROVAL

Class Counsel requests reimbursement of their actual out-of-pocket expenses incurred to prosecute this action. These expenses were incidental and necessary to the effective representation of the class members. *See Harris v. Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19. Class Counsel are permitted to recover their litigation costs and expenses under the common fund doctrine. *See Serrano*, *supra*, 20 Cal.3d at 35 (declaring that the common fund doctrine permits recovery of fees and costs from the fund); *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 (holding that costs are recoverable from the common fund "[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of attorneys' fees by . . . [plaintiffs'] attorneys"). Furthermore, Class Counsel are entitled to recover "those out-of-pocket expenses that 'would normally be charged to a fee-paying client.'" *Harris*, *supra*, 24 F.3d at 19.

The Settlement Agreement authorized litigation costs of up to $20,000.00. (S.A. ¶ 45(f)). Class Counsel's actual costs through the final approval hearing are estimated to be $18,936.23. (Mankin Decl. ¶ 29). These costs include mediation fees, filing fees, and other costs that include Attorney Service charges, expert discovery fees, CourtCall charges, and process service fees. (*Id.*) These costs are reasonable and uncontested, and should be approved, with the savings placed in the Net Settlement Amount and paid to Participating Class Members.

B. THE REQUESTED SERVICE AWARD IS REASONABLE AND MERITS APPROVAL

A named plaintiff is an essential ingredient of any class action, and an incentive award is appropriate to induce individuals to step forward and assume the burdens and obligations of representing a class. Courts regularly approve service payments to compensate named plaintiffs for their services to the class and risks incurred during the course of the litigation. *See, e.g., Bell v. Farmers Insurance Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding "service payments" to named plaintiff for their efforts in bringing class action); *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958-959 (stating that incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.”).

The Settlement Agreement provides an incentive service award payment to Plaintiff in the amount of $5,000.00. This amount is reasonable given the average recovery that Class Members will receive, as well as the time and effort that Plaintiff devoted to this case, and the risk that accompanied the litigation. Her efforts included providing factual background for the Class and PAGA complaint; providing documents and information about Fleet Services’ policies; participating in phone calls to discuss litigation and settlement strategy; making herself available throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel prepare for mediation; and reviewing the settlement documents. Plaintiff also assumed significant risk in bringing this litigation – namely, had she lost, she could have been ordered to pay Defendants’ costs.

Plaintiff also committed a significant number of hours to assist with the litigation and settlement processes of this case. The requested Service Award is reasonable, particularly in light of the substantial benefits Plaintiff generated for the Class Members, the risks she undertook, and in exchange for executing a general release against Defendants while giving up the right to pursue any separate individual claims. (*See* Plaintiff Decl. for supporting information).

The Class Notice sent to each Class Member detailed the proposed Service Award. No Class Member objected to the proposed payment to Plaintiff. Thus, Plaintiff requests that the Court approve the award because it is both reasonable and appropriate.

VII. OTHER MATTERS FOR FINAL APPROVAL

A. SETTLEMENT ADMINISTRATION COSTS

ILYM Group agreed to administer the Settlement for a flat (“not to exceed”) fee of $7,950. (Beltran Decl. ¶ 17). This amount was fully disclosed to the Class Members in the Class Notice, and no Class Members objected to it. As such, the Parties request that the Administrator’s fee request be approved.

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B. UNCASHED CHECKS

The Settlement Agreement provides that uncashed checks (following a 180-day check cashing period after the final payment is issued) will be submitted to the to the California State Controller's Office in the name of the Class Member and/or Aggrieved Employee.

C. FINAL REPORT

Defendants are required to fund the Settlement within 30 days of the Effective Date. In light of the objection, the Effective Date will occur 61 days after the Final Order is entered. The Administrator will then have 10 calendar days after Defendants' deposit of the Settlement Amount to issue payment to the Class Members and Aggrieved Employees, who will then have 180 calendar days to cash their check. Thus, the deadline to cash checks should occur on or about June 26, 2026. The Controller's Office dormancy rules require the Administrator to hold any uncashed check funds for one year, so it is anticipated that the uncashed check funds will likely be sent to the State Controller by August 2027. Therefore, the Parties propose submitting a declaration from the Administrator and holding a final disbursement hearing in the latter part of 2027 (assuming that the Court wants to wait until the settlement funds have been fully distributed to the Class Members and State Controller before closing this matter).

D. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY ("LWDA")

As set forth in the Mankin Declaration at ¶ 31, the Settlement Agreement and this entire motion are concurrently being submitted to the LWDA in accordance with Labor Code section 2699(l)(2).

VIII. CONCLUSION

Plaintiff respectfully submits that the Settlement is fair, adequate, and reasonable, and merits Court approval. This motion is unopposed by Defendants.

Dated: August 26, 2025

LAUBY, MANKIN & LAUBY LLP

BY: ______________________

Brian J. Mankin, Esq.
Attorneys for Plaintiff and the Class

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 5198 Arlington Avenue, PMB 513, Riverside, CA 92504.

On August 26, 2025, I caused to be served the foregoing document(s) described as follows:

NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA REPRESENTATIVE ACTION SETTLEMENT; DECLARATIONS IN SUPPORT THEREOF; AND [PROPOSED] FINAL ORDER AND JUDGMENT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

[ ] **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

[ ] **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

[X] **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

[ ] **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

[ ] **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list.

[X] **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 26, 2025, Riverside, California.

[ ] **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Tracie Chiarito

Tracie Chiarito, Declarant

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