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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA – HALL OF JUSTICE**

MARIE SAVERY, Individually and on Behalf
of Other Members of the Public and those
Similarly Situated,

Plaintiff,

v.

ATX LEARNING, LLC.,
AUSTIN TEXAS LEARNING GROUP, LLC.,
and DOES 1-10, Inclusive,

Defendants.

CASE NO: 2023CUOE013956

*Assigned for all purposes to Hon. Matthew P.
Guasco*

CLASS ACTION/PAGA ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF’S UNOPPOSED MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT, APPROVAL OF PAGA
SETTLEMENT, AND APPROVAL OF CLASS
REPRESENTATIVE SERVICE
ENHANCEMENT PAYMENT, SETTLEMENT
ADMINISTRATION EXPENSES, AND
ATTORNEYS’ FEES AND COSTS**

Hearing:

Date: October 29, 2024

Time: 8:20 a.m.

Location: Dept.: 20

Action Filed: September 13, 2023

SAC Filed: June 21, 2024

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1 **I. INTRODUCTION**

2 On June 21, 2024, this Court granted preliminary approval of a proposed Settlement¹ reached in the
3 Action after a full-day mediation with Hon. Jonathan Cannon (Ret.) (“Mediator”).² The \$380,000 all-cash,
4 non-reversionary Settlement achieves an excellent result under the circumstances of action and ATX’s
5 financial circumstances, and reaps both monetary benefits through a “checks-mailed” settlement, and
6 significant injunctive relief in the form of changes to ATX’s employment practices and agreements.
7 Richard Decl., ¶¶17-21, 34-40; Irshad Decl. ¶4.³ The Court-appointed administrator, ILYM Group, Inc.
8 (“Administrator” or “ILYM”), mailed the Notice Packet on July 26, 2024 to 307 Class Members. Polites
9 Decl., ¶7. The Settlement has been extremely well received. To date, there are no objections and there is a
10 99.7% participation rate, with just one (1) request for exclusion from the Class Settlement. *Id.*, ¶¶12-13.
11 The average cash award under the Settlement is approximately \$640.67, with the highest being
12 approximately \$3,571.27. *Id.*, ¶20. In exchange for Settlement benefits, there is a narrowly tailored release
13 of claims. Agreement, ¶¶21-23, 30, 52-53.

14 Plaintiff now moves for final approval of the Class Settlement, confirmation of PAGA Settlement
15 approval, and approval of administration costs, attorneys’ fees and costs, and class representative service
16 payment. As detailed below and in the accompanying declarations, Plaintiff submits that the Settlement
17 and all requested payments are fair, adequate and reasonable and that the Class meets all of the requirements
18 for class certification for settlement purposes. Accordingly, Plaintiff respectfully requests that the Court
19 approval the Settlement in full and enter concurrently submitted [Proposed] Order of Final Approval of
20 Class Action Settlement and Approval of PAGA Action Settlement and Final Judgment.

21
22 ¹ Capitalized terms not otherwise defined have the same definitions in the Class and PAGA Action
23 Settlement Agreement and Release (“Settlement” or “Settlement Agreement” or “Agreement”) attached as
24 **Ex. 1** to the filed Declaration of Diane E. Richard (“Richard Decl.” or “Richard Declaration”).

25 ² The Order Granting Preliminary Approval of Class Action Settlement and Approval of PAGA Settlement
was entered on June 27, 2024 (“Preliminary Approval Order”).

26 ³ “Irshad Decl.” or “Irshad Declaration” refers to the Declaration of Rahil Irshad (filed in conjunction with
27 the motion for preliminary approval/PAGA approval) which is attached to the concurrently filed Richard
28 Declaration as **Ex 2**. “Savery Decl.” or “Savery Declaration” refers to the Declaration of Marie Savery in
Support of Settlement, and “Polites Decl.” or “Polites Declaration” refers to the Declaration of Cassandra
Polites of ILYM Group, Inc. regarding Notice and Settlement Administration filed concurrently herewith.

1 **II. SUMMARY OF THE LITIGATION AND SETTLEMENT EFFORTS**

2 On September 13, 2023, Plaintiff commenced her putative class action lawsuit. Through the Second
3 Amended Complaint, Plaintiff claims Defendants had unlawful noncompete agreements and damage
4 limitation agreements, did not pay proper and timely wages and business reimbursements, did not provide
5 compliant wage statements, other records, and breaks, and engaged in unfair competition. The lawsuit seeks
6 a variety of remedies including wages, penalties, interest, and declaratory/injunctive relief. Defendants
7 deny liability and allege a variety of defenses. Richard Decl., ¶¶13-15. Settlement Class Counsel has
8 conducted discovery and investigation which has included, among other things, inspection and analysis of
9 policies and employment contracts, pay and time records, and research of applicable law with respect to
10 claims and defenses. *Id.*, ¶16. Prior to attending the March 6, 2024 mediation, the Parties performed
11 significant work, exchanging data, documents and legal positions with each other and participating in
12 mediation discussions both with each other and with the Mediator. With the assistance of Mediator Cannon,
13 the Parties explored settlement in light of the financial hardship that ATX attests to. Following Settlement
14 Class Counsel’s thorough analysis of significant discovery and differing legal positions, the disclosure of
15 ATX’s financial hardship, substantial arm’s-length bargaining by the Parties and the mediator’s proposal,
16 the Parties agreed to settle the Action. The Parties thereafter, through arm’s-length bargaining, negotiated
17 terms of the Memorandum of Understanding, the Settlement Agreement, and the Notice Packet. *Id.*, ¶¶17-
18 20. In summary, discovery and investigation has been conducted to assess the relative merits of the claims
19 and defenses, and to compromise the issues on a fair and equitable basis. *Id.*, generally.

20 **III. SUMMARY OF THE SETTLEMENT**

21 **A. Terms of Settlement**

22 The settled Class is “all current and former employees of Ausin Texas Learning Group, LLC. (also
23 known as ATX Learning, LLC or ATX Learning) (“ATX”) who worked in California for ATX at any time
24 during the Class Settlement Period of September 13, 2019 to April 15, 2024.”⁴ ILYM has identified 307
25

26 ⁴ Aggrieved Employees are defined as “all current and former employees of Ausin Texas Learning Group,
27 LLC. (also known as ATX Learning, LLC) (“ATX”) who worked in California for ATX at any time during
28 the PAGA Settlement Period of September 12, 2022 to April 15, 2024.” There are 219 Aggrieved Employees
and 2,237 PAGA Pay Periods. Politics Decl., ¶¶5, 18. This is seven (7) less Aggrieved Employees than the
226 persons originally estimated by Defendants. Agreement, ¶8.

1 Class Members who worked 7,104 Class workweeks. Polites Decl., ¶5; Agreement, ¶6.⁵

2 The Settlement includes both an injunctive relief and a lump-sum cash component:

3 Injunctive Relief: The Settlement achieves substantial benefit from the injunctive relief in the form
4 of changes to wage and hour practices and employment agreements, that the lawsuit, Plaintiff and
5 Settlement Class Counsel were a catalyst for. Agreement, ¶31; Richard Decl., ¶¶21, 28, 30, 34. Defendants
6 attest that Plaintiff and Settlement Class Counsel were a catalyst for the changes. Irshad Decl., ¶4.

7 Cash Payment: Defendants will pay a \$380,000 fixed, “non-reversionary” common-fund amount
8 (the Gross Settlement Amount or the “GSA”). The GSA is inclusive of all payments to be distributed under
9 the Settlement. Agreement, ¶¶ 14, 33-37, 39, 50. In addition to the GSA, Defendants are to separately pay
10 required employer payroll taxes on the wage component of each Class Members’ Individual Class
11 Settlement Payment. *Id.*, ¶14, 33.⁶ Subject to Court approval, the following distributions will be made from
12 the \$380,000 GSA: (i) LWDA PAGA Payment for its 75% share (\$3,750) and Individual Settlement PAGA
13 Payment to Aggrieved Employees for their 25% share (\$1,250); (ii) Settlement Administration Costs
14 (requesting \$6,950) (see Polites Decl., ¶21); (iii) Service Enhancement Payment (requesting \$10,000.00);
15 and (iv) Attorneys’ Fees and Costs (requesting \$152,000 in fees and \$10,613.10 in costs). Agreement, ¶¶14,
16 34-37. The fund remaining for Class Members from the GSA after these deductions is the Net Settlement
17 Fund (“NSF”), *Id.*, ¶¶16, 39. Should the Court grant full approval to the Settlement, the NSF is estimated
18 to be \$195,436.90, from which Individual Class Settlement Payments will be disbursed to Class Members.

19 This is a “checks-mailed” settlement meaning the Administrator will disburse the funds without
20 Settlement Class Members or Aggrieved Employees submitting a claim form. Agreement, ¶40. Individual
21 Settlement Payments are comprised of two components: (i) Individual PAGA Settlement Payments, for
22 settlement of PAGA Claims, are calculated using PAGA pay periods worked during the PAGA Period and

24 ⁵ Defendants represented in the Agreement there are approximately 303 Class Members and 6,785
25 workweeks. Agreement, ¶¶6, 50. ILYM determined there are 307 Class Members (four (4) additional Class
26 Members) and 322 additional Class workweeks representing less than a 1.5% Class Member increase and
less than a 5% workweek increase. The Agreement’s Escalator clause in paragraph 50 has not been
triggered as the number of workweeks did not increase by more than 10%.

27 ⁶ Separately-paid employer payroll taxes are estimated to be \$7,797.93. Polites Decl., ¶22. Defendants
28 therefore will be funding approximately a \$387,797.93 settlement, which is the \$380,000 GSA combined
with the approximate \$7,797.93 in employer payroll taxes.

will be issued to Aggrieved Employees pro rata from the PAGA Fund; (ii) Individual Class Settlement Payments, for settlement of Class Claims, are calculated using workweeks worked during the Class Period and will be issued to Participating Class Members pro rata from the NSF. Eligibility and calculations for these awards are set forth in paragraph 40 of the Agreement. Should the Court approve less than any amounts allocated under the Settlement and/or should any Class Member not participate in the Class Settlement (i.e. by requesting exclusion from the Class Settlement⁷), the remainder will be allocated to the NSF and distributed to Settlement Class Members pro rata. One hundred percent (100%) of Individual PAGA Settlement Payments is allocated as penalties, reported via IRS Form 1099 as non-wage income. For the Individual Class Settlement, Payments, twenty percent (20%) is characterized as wages for settlement of wage claims and reported via IRS Form W-2, and eighty percent (80%) is characterized as penalties and interest, reported via IRS Form 1099. Agreement, ¶40.

B. Preliminary Approval, Notice Process, and Response to the Settlement

This Court granted preliminary approval, in doing so, also ordered ILYM to mail the Notice Packet to Class Members. Richard Decl., ¶35. ILYM received the Notice Packet on June 21, 2024 and the file containing information for Class Members on July 12, 2024. After updating the addresses, ILYM mailed the Class Notice to 307 individuals. Polites Decl., ¶¶4-7. ILYM received thirty-one Notice Packets returned as undeliverable; sixteen were able to be re-mailed as a result of skip tracing. A total of fifteen Notice Packets are determined to be undeliverable. *Id.*, ¶¶8-1380. As a result of this notice process, to date, ***no Class Member has objected*** to the Settlement, and ***just one (1) Class Member has requested exclusion*** from the Settlement, resulting in a 99.70 participation rate. *Id.*, ¶¶12-13; Richard Decl., ¶38.⁸ Should the Settlement and all requested payments receive full and final approval, ILYM states that Settlement Class Members average gross pre-tax settlement award is approximately \$640.67. Polites Decl., ¶20.⁹

⁷ This is the case here as one (1) Class Member has requested exclusion from the Class Settlement. As a result, that Class Member's share of the Class settlement fund will be allocated to the Net Settlement Fund and distributed to Settlement Class Members pro rata.

⁸ Further, no objection has been submitted by the LWDA upon submission of the settlement to it. Richard Decl., ¶36. Upon preliminary approval, Class Counsel served the LWDA with the Order Granting Preliminary Approval of Class Action Settlement and Approval of PAGA Settlement. *Id.*

⁹ The highest pre-tax award is approximately \$3,558.41, and the lowest is approximately \$27.58. Plaintiff's estimated gross total is \$1,208.21. For those Settlement Class Members who are also Aggrieved

1 **C. Settlement Funding and Distributions**

2 Within fourteen (14) calendar days of the Funding Date (funding to occur within seven (7) days of
3 the Effective Date but not earlier than December 15, 2024), the Settlement Administrator shall distribute
4 the GSA including payments to Settlement Class Members and Aggrieved Employees. Agreement, ¶¶12,
5 33, 57. Any returned checks will be resent after a skip trace. Settlement checks will be negotiable for a
6 period of 180 days from the check issuance date, and after this time period, will be cancelled. The
7 Settlement Administrator will transmit funds from any after-the-void date cancelled checks to the
8 California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no
9 unpaid residue subject to the requirements of California Code of Civil Procedure §384. Agreement, ¶58.

10 **IV. THE COURT SHOULD CONFIRM ITS CONDITIONAL CERTIFICATION OF THE**
11 **CLASS FOR SETTLEMENT PURPOSES**

12 A class may be certified when it meets the requirements of Section 382 of the Code of Civil
13 Procedure ("Section 382") including that it is ascertainable, sufficiently numerous, and has a well-defined
14 community of interest. In the settlement context, the Court may use a lesser standard to determine the
15 appropriateness of a settlement class as opposed to a litigated class certification. *Dunk v. Ford Motor Co.*,
16 48 Cal. App. 4th 1794, 1806-07 & n.19 (1996). The Parties have agreed to certification solely for purposes
17 of Settlement, and this Court found that the Class meets requirements for certification, for settlement
18 purposes, when it granted preliminary approval of the Settlement and conditional certification of the Class
19 on June 27, 2024. No events have occurred that would change the propriety of certification. Moreover, the
20 positive reaction to the Settlement during the notice process supports certification. This Court should
21 confirm its conditional certification of the Class.

22 **V. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE AND SHOULD**
23 **RECEIVE FINAL COURT APPROVAL**

24 The Settlement is fair, adequate, and reasonable as it provides monetary benefits and injunctive
25 relief to Settlement Class Members. The fairness, adequacy, and reasonableness are also illustrated by the
26 lack of objectors to date.

27 _____
28 Employees, the highest pre-tax gross combined class and PAGA award is approximately \$3,571.27, with
the average being approximately \$640.67, and the lowest being approximately \$27.58. Plaintiff's combined
gross total is approximately \$1,220.50. Polites Decl., ¶¶17, 19-20.

1 **A. The Three-Step Class Action Settlement Approval Process**

2 The law favors settlement, particularly in class actions and other complex cases where substantial
3 resources can be conserved by avoiding the time, cost, and rigors of formal litigation. *See Potter v. Pac.*
4 *Coast Lumber Co. of Cal.*, 37 Cal. 2d 592, 602-03 (1951); *see also* William B. Rubenstein, et al., 4 Newberg
5 on Class Actions §13:44 (5th ed. 2013) (“Newberg”) (“[T]he law favors settlement, particularly in class
6 actions”). These concerns apply with particular force in an action such as this, where allegedly
7 improper practices affected many employees.

8 A class action may not be dismissed, compromised, or settled without the approval of the Court.
9 Cal. R. Ct. 3.769 ("Rule 3.769"). Judicial protocol calls for the following steps in the class settlement
10 approval procedure: (i) preliminary approval of the proposed settlement at an informal hearing; (ii)
11 dissemination of mailed and/or published notice of the settlement to all affected class members; and (iii) a
12 "formal fairness hearing," or final settlement approval hearing, at which class members may be heard
13 regarding the settlement, and evidence and argument concerning the fairness, adequacy, and reasonableness
14 of the settlement may be presented. Cal. R. Ct. 3.769(c), (d), (f), (g). This commonly used procedure
15 safeguards class members' procedural due process rights and enables the court to fulfill its role as the
16 guardian of class interests. *See Newberg, supra*, §13:10.

17 The first step of this process was completed when this Court granted preliminary approval of the
18 Settlement. Cal. R. Ct. 3.769(d); *see also Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 232-34
19 (2001); Newberg, *supra*, §13:10. The second step - the dissemination of the Class Notice - is complete as
20 well. The Parties worked with ILYM to implement the Court-approved notice program, which employed
21 the best practicable means to disseminate notice, to Class Members, of the Settlement and of the final
22 approval process. Cal. R. Ct. 3.769(f). The third and last step is the final approval hearing at which time
23 this Court shall determine whether the Settlement is fair, adequate, and reasonable. Cal. R. Ct. 3.769(g).
24 At the hearing, this Court will decide whether to grant final approval and whether to enter a final judgment.

25 **B. The Settlement Is Presumptively Fair**

26 When presented with a motion for final approval under Section 382, a court inquires whether the
27 settlement is “fair, adequate and reasonable.” *See Wershba*, 91 Cal. App. 4th at 244-45; *Dunk v. Ford*
28 *Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). A review shows that the Settlement is fair. Indeed, this

1 Court should begin its analysis with a presumption that the Settlement is fair: "[A] presumption of fairness
2 exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
3 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar
4 litigation; and (4) the percentage of objectors is small." *Dunk*, 48 Cal. App. 4th at 1802; *Wershba*, 91 Cal.
5 App. 4th at 245. Each indicia of fairness is present here.

6 The Parties negotiated the Settlement of the complex claims at issue in good faith and at arm's-
7 length, following investigation of the claims. Richard Decl., ¶¶16-33. The Parties performed significant
8 work, exchanging data, documents and legal positions with each other and participating in mediation
9 discussions both with each other and with the Mediator. *Id.* Settlement Class Counsel is experienced in
10 class action wage-and-hour litigation of this type. Richard Decl., ¶¶3-6. Additionally, the presumption of
11 fairness and adequacy is appropriate here because the reaction of Class Members has been very positive –
12 no one to date has objected to the Settlement. *See Dunk*, 48 Cal. App. 4th at 1802. The four *Dunk* factors
13 are present here and thus it is appropriate for the Court to presume that the Settlement is fair and worthy of
14 final approval. Cal. R. Ct. 3.769(g).

15 **C. Each of the Relevant Criteria Supports Final Approval of the Settlement**

16 California courts consider several factors, including the following, when reviewing final approval:
17 (i) the value of the settlement; (ii) the risks inherent in continued litigation; (iii) the extent of discovery
18 completed and the stage of proceedings when settlement was reached; (iv) the complexity, expense, and
19 likely duration of litigation in the absence of settlement; (v) the experience and views of class counsel; and
20 (vi) the reaction of class members. *See Wershba*, 91 Cal. App. 4th at 244-45; *see also Dunk*, 48 Cal. App.
21 4th at 1801. Each of these criteria supports final approval.

22 **1. The Value of the Settlement Favors Final Approval**

23 The Settlement is well within the range of possible approval. Defendants agreed to a \$380,000
24 common fund. Settlement Class Members have claimed 100% of the funds available to Settlement Class
25 Members. The average gross settlement award (inclusive of PAGA payments) is approximately \$640.67
26 with the highest estimated at \$3,571.27, and are based on a workweek formula. Polites Decl., ¶20. This is
27 a good resolution and a fair and adequate compromise in relation to the claimed harm and adjustments for
28 risk associated with this complex action including ATX's financial circumstances. Moreover, the injunctive

1 relief achieved provides significant value. Richard Decl., ¶¶28-34.

2 **2. The Risks Inherent in Continued Litigation Are Substantial and Favor Final Approval**

3 Defendants vigorously contested the claims, which are subject to legal uncertainties, and asserted
4 numerous defenses raising challenging legal issues. Plaintiff faced the risks of appeals. There is also a risk
5 that if litigation continued, a trial judgment could ultimately not be paid by Defendants. The defenses and
6 inherent risks of litigation favor approval here. *Id.*, ¶¶29, 32-33.

7 **3. The Settling Parties Engaged in Extensive Investigation of the Claims, Which Favors Final Approval**

8 Before arriving at the Settlement, the Parties engaged in extensive investigation, research, and
9 discovery, and evaluated the strengths and weaknesses of this Action. The discovery conducted and the
10 information exchanged are sufficient to assess reliably the merits of the respective Parties' positions and
11 to compromise the issues on a fair and equitable basis. *Id.*, ¶¶13-20, 32-33.

12 **4. The Complexity, Expense, and Likely Duration of Continued Litigation in the Absence of Settlement Favors Final Approval**

13 Employment class action cases are expensive and time consuming to prosecute. This action in
14 particular is a difficult and challenging case given the novel legal issues, uncertainties in the law, defenses
15 raised by Defendants and its financial conditions. Continued litigation would likely be complex and
16 expensive. Settlement avoids the need for contested class certification and summary judgment motions,
17 and trial, all of which would be time consuming and costly for the Parties and the Court.

18 **5. The Experience and Views of Class Counsel Favor Final Approval**

19 The endorsement of the settlement by qualified, well-informed class counsel as fair is entitled to
20 significant weight. *See Dunk*, 48 Cal. App. 4th at 1802. Settlement Class Counsel supports the Settlement
21 as fair, adequate, reasonable, in the best interests of the Settlement Class. Richard Decl., ¶¶32-33.

22 **6. Class Members' Positive Reaction to the Settlement Favors Final Approval**

23 Of high importance is the fact that, to date, not a single one of the Class Members has objected to
24 the Settlement, and there is a 99.7% participation with just one (1) opt-out. The Court should construe the
25 overwhelming non-opposition to the Settlement as a strong indication of Class Members' support for the
26 Settlement as being fair, adequate, and reasonable and, thus, deserving of final approval.

27 For these reasons, the Settlement should be approved as being fair, adequate and reasonable.
28

1 **VI. THE ADMINISTRATION EXPENSES SHOULD BE FINALLY APPROVED**

2 ILYM's fees and costs in connection with the administration of this Settlement are \$6,950.00.
3 Polites Decl., ¶21; Exhibit B. ILYM's work to date has included the mailing of and re-mailings of Notice
4 Packets, address verifications, initial calculations, and status reporting. Future work includes the
5 calculation of awards, distributions including issuance and mailing of funds and transmission of any
6 unclaimed funds to Unclaimed Property Fund, tax filing and reporting, and any other tasks that the Parties
7 agree to and/or the Court orders ILYM to perform. *See generally*, Polites Declaration. These are all
8 customary tasks and charges. For these reasons, the \$6,950 is fair and reasonable and should be finally
9 approved.

10 **VII. THE REQUESTED ATTORNEYS' FEES AWARD WARRANTS FINAL APPROVAL AS**
11 **FAIR AND REASONABLE, CONFIRMED BY A LODESTAR CROSS-CHECK**

12 Settlement Class Counsel respectfully submits that the attorneys' fees award of \$152,000 (40% of
13 the \$380,000 GSA) is fair and reasonable. The award is appropriate under the "common fund" doctrine
14 and is supported by a lodestar cross-check.¹⁰ A cross-check results in a *0.115 negative multiplier* since
15 Settlement Class Counsel's lodestar is approximately \$172,042.50 (which is \$20,042.50 or 11.50% less
16 than the requested fees). This application for fees, made pursuant to Rule 3.769(b) (requiring approval of
17 the fees paid through class settlement), addresses the reasons 40% in fees is fair, reasonable and warranted
18 here in this smaller case where both cash and injunctive relief was achieved.

19 **A. The Fee Award Is Fair and Reasonable Under the Common Fund Doctrine**

20 Courts have long recognized the "common fund" doctrine, under which attorneys who create a
21 common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the
22 fund. *See Serrano v. Priest*, 20 Cal. 3d 25, 34 (1977) (quoting *D'Amico v. Bd. of Med. Exam'rs*, 11 Cal. 3d
23 1, 25 (1974)); *Glendale City Emps.' Ass'n v. City of Glendale*, 15 Cal. 3d 328, 341 n.19 (1975); *Quinn v.*
24 *State of Cal.*, 15 Cal. 3d 162, 167-68 (1975); *see also Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980);
25 *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970). The California Supreme Court has held that,
26 "when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff
27

28 ¹⁰ Separately, Sections 218.5, 226(e)(1), (h), 925(c), 1194, 2699, 2802(c) of the Labor Code and section 1021.5 of the Code of Civil Procedure all provide for an award of attorney's fees and costs.

1 or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or
2 plaintiffs may be awarded attorneys' fees out of the fund." *Serrano*, 20 Cal. 3d at 34 (quoting *D'Amico*, 11
3 Cal. 3d at 25); *see also Boeing Co.*, 444 U.S. at 478 ("[A] lawyer who recovers a common fund for the
4 benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as
5 a whole."); *Mills*, 396 U.S. at 391-92 (U.S. Supreme Court endorsing the common fund approach in class
6 actions). The common fund doctrine is explained as follows: "Where the lawsuit results in the recovery of
7 a fund or property benefiting others as well as plaintiff (e.g., a class action), the court has inherent equitable
8 power to order plaintiff's attorney fees paid out of the common fund or property.... Such 'fee spreading'
9 assures that all of those benefited by the litigation pay their fair share of obtaining the recovery." William
10 E. Wegner, et al., *California Practice Guide: Civil Trials and Evidence*, §17:172.3 (2016).

11 The percentage-of-the-fund approach appears to be the preferred method of awarding fees in
12 traditional common fund cases, such as this case. *See Serrano*, 20 Cal. 3d at 35. Where the settlement
13 amount is "a certain or easily calculable sum of money," use of the percentage-of-the-fund method is
14 appropriate. *Id.* In *Glendale* (at 341 & n.19), the California Supreme Court upheld an attorneys' fee award
15 based on a percentage of the common benefit obtained in a lawsuit for retroactive wages: "That [fee] award
16 may be sustained under the rule that a litigant who creates a fund in which others enjoy beneficial rights
17 may require those beneficiaries to pay their fair share of the expense of litigation." *see also, Sprague v.*
18 *Ticonic Nat'l Bank*, 307 U.S. 161, 164-67 (1939).

19 Attorneys' fee awards of 40% are established by California law and practice, and recognize that
20 higher percentages are warranted in smaller cases. *See e.g., Van Vranken v. Atl. Richfield Co.*, 901 F. Supp.
21 294, 297 (N.D. Cal. 1995) (class counsel fee awards of 30-50% are more typical where the common fund
22 is less than \$10 million); *Williams v. Costco Wholesale Corp.*, 02-cv-2003 IEG, 2010 WL 2721452 at *6
23 (S.D. Cal. July 7, 2010 (courts awarded between 33.33% and 40% in wage hour class actions); *Cicero v.*
24 *DirectTV, Inc.*, No. EDCV 07-1182, 2010 WL 2991486 at *7 (C.D. Cal. July 27, 2010) (observing that
25 "30-50% [is] commonly awarded in cases in which the common fund is relatively small" and that in
26 California "courts usually award attorneys' fees in the 30-40% range). Here, given the small size of the
27 fund, the request is fair and reasonable in light of awards in California. *See also*, Richard Decl., ¶53 (partial
28 list of courts awarding 40% fees to Settlement Class Counsel).

B. A Lodestar/Multiplier Cross-Check Confirms that the Requested Fees are Fair and Reasonable

Under the lodestar cross-check/multiplier method,¹¹ the Court first determines a lodestar value for the fees by multiplying the time reasonably spent by Settlement Class Counsel on the case by a reasonable hourly rate. *In re Consumer Privacy Cases*, 175 Cal. App. 4th 545, 556-557 (2009). Here, Settlement Class Counsel's hours spent on the matter are reasonable. Richard Decl., 48-52, 54-58; Ex. 3. Further, Settlement Class Counsel's hourly rate is comparable to those charged by class action attorneys and is within the market rate.¹² Richard Decl., ¶53; Ex. 4. The lodestar then may be enhanced or reduced by applying a multiplier to take into account the contingent nature and risk associated with the action, delayed payment, and other factors such as the degree of skill required, and success achieved. *Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001). Here, Settlement Class Counsel's \$172,042.50 lodestar results in a 0.115 negative multiplier in light of the \$152,000 fee request. Richard Dec., ¶¶49-50, 52, 54. Although a positive multiplier is especially warranted here (and positive multipliers of 2.5 and higher are routinely awarded in both California state and federal courts), Settlement Class Counsel does not seek any positive multiplier given lodestar is greater than the requested fees. *See, e.g., Vizcaino v Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (3.65 multiplier applied after analyzing most commonly applied multipliers); *Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66 (2008) (2.5 multiplier); *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 255 (2001) ("Multipliers can range from 2 to 4 or even higher."). Accordingly, a lodestar/multiplier confirms the reasonableness of Settlement Class Counsel's attorney fee request.

¹¹ The Richard Declaration provides information supporting attorney experience, status, and hourly rate, as well as the number of hours expended on the action. As noted in this declaration, significant time and resources were expended on bringing the Action to successful resolution on behalf of the Class and to obtain both a cash recovery and injunctive relief. A lodestar/multiplier crosscheck confirms the reasonableness of the attorneys' fees request. Richard Decl., ¶¶3-6, 48-58; Ex. 3.

¹² While the Richard Declaration details some of Settlement Class Counsel's court-approved class action and PAGA fees/hourly rate, it is noted that the Santa Barbara Superior Court fully approved Settlement Class Counsel's class/PAGA fees as fair and reasonable in 2021 with a \$690/hour rate, and in 2019 the San Bernardino Superior Court awarded the full amount of fees requested, as fair and reasonable, with a \$690 hourly rate and a 2.3 multiplier. Settlement Class Counsel's rate has been modestly increased to \$725/hour in 2024. In 2024, the Orange County Superior Court fully approved Settlement Class Counsel's class/PAGA fees, as fair and reasonable, with a \$725 hourly rate, awarding a 40% fee award on a settlement that included both cash and injunctive relief. Richard Decl., ¶53.

1 **C. The Circumstances of This Action Support the Requested Fee Award**

2 Given the contingent nature of this case, the experience, reputation, and ability of Settlement Class
3 Counsel, and the significant results achieved in this small case including injunctive relief, a \$152,000 fee
4 award is reasonable.

5 **1. The Contingent Nature of This Action and the Preclusion of Other Employment**

6 As California law recognizes, Settlement Class Counsel's commitment to this litigation should not
7 be assessed in a vacuum. *See Serrano*, 20 Cal. 3d at 49. A relevant factor in determining attorneys' fees is
8 whether the litigation required Settlement Class Counsel to forego other employment. *Id.* Another factor is
9 the contingent nature of the Action. *Beasley v. Wells Fargo Bank*, 235 Cal. App. 3d 1407, 1419 (1991)
10 (award of enhanced fees is intended to compensate for the risk of loss in contingency cases as a class
11 action); *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1217-18 (2008) (contingent fee must be
12 higher than a fee for the same legal services paid as it compensates not only for the legal services rendered
13 but also for the loan of those services). From the outset to the present, undertaking representation in this
14 action has involved significant financial risk for Settlement Class Counsel. Class Counsel undertook this
15 matter solely on a contingent basis with no guarantee of recovery. Settlement Class Counsel placed its own
16 resources at risk to pursue this action with no guarantee of success, spending hundreds of hours and many
17 thousands of dollars in costs. Richard Decl., ¶¶52, 55, 59; Ex. 4-5.

18 **2. The Experience, Reputation, and Ability of Class Counsel, and the Skill Displayed in Litigation**

19 Settlement Class Counsel has substantial experience in handling wage-and-hour and other class and
20 complex litigation. Settlement Class Counsel's skills in developing a factual record and convincing
21 Defendants of the exposure under the law were essential to achieving the Settlement. Through Settlement
22 Class Counsel's skill, experience, and reputation, the Settlement was achieved. *Id.*, ¶¶3-6, 49-58.

23 **3. The Results Achieved in the Settlement**

24 The excellent results achieved support the request for attorney's fees. Class Members' support for
25 the results is demonstrated by the absence of any objections to the Settlement or the request for fees, both
26 of which were described in the Notice Packet. Due to Settlement Class Counsel's efforts, Settlement Class
27 Counsel were able to negotiate for the benefit of the Class a settlement not only comprised of a cash
28 component of \$380,000 but also injunctive relief sought through the Action (which as detailed in the

Richard Declaration has significant value). Richard Decl., *generally*. Attorneys' fees may be received on the value of injunctive relief under the catalyst theory. See *Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553 (2004). Here, the work Settlement Class Counsel performed and the results achieved fall squarely under recoverable fees as a catalyst. See e.g. Richard Decl., ¶34; Ex 2 (Irshad Decl., ¶4 "...Although ATX denies any liability, as a result of the lawsuit and the settlement, and the work of Class Representative and Class Counsel, ATX has changed some of its employment practices."); Agreement, ¶31 (Defendants will make changes "to its wage and hour practices and employment agreement...Defendants' acknowledge and agree that Class Representative and Settlement Class Counsel were a catalyst for the changes.")

4. No Class Member Objected to Class Counsel's Fee Award

Settlement Class Counsel's intention to request \$152,000 for payment of attorney's fees from the GSA was clearly disclosed to each Class Member in the Court-approved Notice Packet. Not a single one of the Class Members has objected to attorney's fees. The Class Members clearly approve the award of attorney's fees. Settlement Class Counsel respectfully requests \$152,000 in attorney's fees be awarded.

VIII. CLASS COUNSEL'S REQUESTED COST AMOUNT WARRANTS FINAL APPROVAL AS FAIR AND REASONABLE

Documented costs that Settlement Class Counsel seeks are \$10,613.10.¹³ Richard Decl., ¶¶59-60; Exh. 5. The Settlement provides for all cost recovery and it was disclosed in the Notice Packet that costs were expected to not exceed \$11,500.00. Settlement, ¶34; Ex. A. Settlement Class Counsel seeks \$886.90 less than the expected-to-not exceed amount. The NSF available to Class Members therefore will increase by \$886.90. The cost request is fair, adequate and reasonable. The reasonably incurred costs include court fees, LWDA fees, service fees, mediation fees, postage, research, copying, document management and scanning and printing fees, and litigation support service fees. Richard Decl., ¶¶59-60; Ex. 5. Such costs are appropriate and routinely approved for reimbursement in these types of cases. See, e.g., *In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig.*, MDL No. 726, 1989 WL 73211, at *6 (C.D. Cal. Mar. 9, 1989); *Trustees of Const. Industry & Laborers Health and Welfare Trust v. Redlands Ins. Co.*, 460 F. 3d 1253, 1258-59 (9th Circ. 2006) (costs for legal research reimbursable). Labor Code

¹³ This amount includes future anticipated costs of \$600.00 for items such as litigation support costs and filing fees through finality of the case and includes fees in connection with approval/notice of entry of order and judgment.

§§218.5, 226(e)(1), (h), 925(c), 1194, 2699, 2802(c) and Code of Civil Procedure §1021.5 also all provide for an award of attorney costs. Further, Settlement Class Counsel’s intention to request costs from the GSA was clearly disclosed in the Notice Packet and Class Members were informed that costs were expected to not exceed \$11,500.00. To date, not one of the Class Members have objected to the cost request. The costs, undertaken and advanced by Settlement Class Counsel, benefited the Class Members, Aggrieved Employees, and the State of California. In light of the foregoing, the \$10,613.10 in costs is fair, adequate and reasonable. Plaintiff respectfully requests the Court grant final approval of this amount.

IX. THE SERVICE PAYMENT WARRANTS APPROVAL AS FAIR AND REASONABLE

A named plaintiff is an essential ingredient of any class action and, thus, a service/incentive award is appropriate. *Stanton v. Boeing Co.*, 327 F.3d 938, 977 (2003); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998). For the reasons stated herein and in the Savery and Richard Declarations, it is respectfully submitted that the requested \$10,000 service payment is fair and reasonable, and, warrants approval. Also significant is that the \$10,000 payment to the Class Representative was clearly disclosed to Class Members in the Notice Packet, and not a single Class Member to date has objected to it. The requested award is a fair and reasonable sum in light of: (i) Plaintiff’s time, efforts and contributions made; (ii) the monetary and substantial injunctive relief achieved and the fact that Class Members are greatly benefitting from the Action; (iii) the risks Plaintiff took; and (iv) the stigma brought to her by suing a former employer. Further supporting the award is that Plaintiff agreed to the “General Release - Class Representative” (a release much broader than the narrow release for Settlement Class Members and Aggrieved Employees), for which consideration is required. Agreement, ¶¶35,67; Richard Decl., ¶¶39-47; Savery Declaration ¶¶5-6,9.

First, Plaintiff has been active participants in the Action and provided significant contributions including unpaid time on the case. Richard Decl., ¶41. *Second*, had it not been for Plaintiff, no Class Member would receive the benefits of the Settlement including a cash payment and injunctive relief. Plaintiff and Settlement Class Counsel did all the work and secured an excellent result in light of the challenges faced. Plaintiff took the risk that this lawsuit would have negative impacts to her including financial and career risks. *Id.*, ¶¶34, 41, 43, 45-47.¹⁴ *Fourth*, by being a publicly named representative in a

¹⁴ If class representatives do not prevail in litigation, they are potentially liable for the prevailing party’s costs. *See, e.g., Earley v. Superior Court*, 79 Cal. App. 4th 1420, 1433-34 (2000); *Van de Kamp v. Bank of*

1 class action lawsuit against a former employer, the Class Representative risks reputational repercussions.
2 For the foregoing reasons, the requested service payment is fair and reasonable and should be finally
3 approved. The Savery Declaration details these efforts and risks. *See generally*, Savery Declaration.

4 **X. CONCLUSION**

5 For all of the foregoing reasons, Plaintiff respectfully submits this Court should grant full and final
6 approval to the Settlement, grant Plaintiff's motion in its entirety, and adopt the [Proposed] Order of Final
7 Approval of Class Action Settlement and Approval of PAGA Action Settlement and Final Judgment.

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9 Respectfully submitted,

RICHARD LAW, P.C.

10 Dated: October 7, 2024

By: Diane Richard
DIANE E. RICHARD,
Attorney for Plaintiff Marie Savery

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Am. Nat'l Trust & Sav. Ass'n, 204 Cal. App. 3d 819, 869 (1988). While potentially personally liable for costs in an unsuccessful suit, the representative does not reap all of the benefits in a successful one.

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PROOF OF SERVICE

Marie Savery v ATX Learning, LLC. et al (Case No.: 2023CUOE013956)

1. At the time of service, I was a United States citizen, a resident of the County of San Diego, over 18 years of age, and not a party to or interest in this action.

2. My business address is 5060 N. Harbor Drive, Suite 265, San Diego, CA 92106.

3. On **October 7, 2024**, I served the following document(s), including all exhibits thereto:

- **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, APPROVAL OF PAGA SETTLEMENT, AND APPROVAL OF CLASS REPRESENTATIVE SERVICE ENHANCEMENT PAYMENT, SETTLEMENT ADMINISTRATION EXPENSES, AND ATTORNEYS' FEES AND COSTS**

4. I served the document(s) on the following:

GREENBERG TRAURIG, LLP

Ryan C. Bykerk

1840 Century Park East, Suite 1900

Los Angeles, California 90067-2121

Telephone: (310) 586-7700; Facsimile: (310) 586-7800

Electronic Service Addresses: bykerkr@gtlaw.com

5. The document(s) were served by the following means:

- ☒ **BY ELECTRONIC SERVICE** –Based on a court order, court rule, or an agreement of the parties to accept electronic service, I caused such document(s) to be delivered to the person(s) at the electronic service address set forth above. Said document(s) was/were served electronically and the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **October 7, 2024**, at San Diego, California.

Diane Richard

Name

/s/ Diane Richard

Signature