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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FERNANDO COPPEL, PABLO  
MARTINEZ, TYLER MITCHELL,  
JUDITH URIOSTEGUI, ELIZABETH  
USSELMAN, individually and as a  
representative of a Putative Class of  
Participants and Beneficiaries, on  
behalf of the SWBG, LLC 401(K)  
PLAN (FKA SEAWORLD PARKS  
AND ENTERTAINMENT 401(K)  
PLAN),

Plaintiffs,

v.

SEAWORLD PARKS &  
ENTERTAINMENT, INC.  
("SEAWORLD"); SWBG ORLANDO  
CORPORATE OPERATIONS GROUP,  
LLC ("SWBG"); BOARD OF  
DIRECTORS OF SEAWORLD AND  
SWBG, INVESTMENT COMMITTEE  
OF SEAWORLD PARKS &  
ENTERTAINMENT 401(K) PLAN  
SWBG, LLC 401(K) PLAN; MARK G.  
SWANSON (CEO); ELIZABETH  
GULACSY (CFO); and DOES 1  
through 50,

Defendants.

Case No. 3:21-cv-01430-RSH-DDL

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' UNOPPOSED MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

PER CHAMBERS RULES, NO ORAL  
ARGUMENT UNLESS SEPARATELY  
ORDERED BY THE COURT.

**Hearing Date:** August 28, 2025

**Time:** 1:30pm

**Judge:** Hon. Robert S. Huie

**Courtroom:** 3B (3rd Flr)

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**MEMORANDUM OF POINTS AND AUTHORITIES**

Fernando Coppel, Pablo Martinez, Tyler Mitchell, Judith Uriostegui, and Elizabeth Usselman, individually and on behalf of a putative class of participants and beneficiaries of the SWBG, LLC 401(k) Plan (formerly the SeaWorld Parks and Entertainment 401(k) Plan) (“Plaintiffs”), respectfully submit this Memorandum in support of their Motion for Final Approval of the Settlement Agreement.

The Settlement Agreement, dated December 23, 2024, resolves Plaintiffs’ claims against SeaWorld Parks & Entertainment, Inc.; SWBG Orlando Corporate Operations Group, LLC (“SWBG”); the Boards of Directors and Investment Committees of SeaWorld and SWBG; Mark G. Swanson (CEO); and Elizabeth Gulacsy (CFO) (collectively, “Defendants” or “SeaWorld,” and together with Plaintiffs, “the Parties”). The Settlement reflects the resolution reached following an in-person mediation with JAMS Mediator David Geronemus, Esq., on September 4, 2024. Plaintiffs now seek final approval of the Class Action Settlement under Federal Rule of Civil Procedure 23(e).

**I. INTRODUCTION**

On May 8, 2025, the Court issued its Preliminary Approval Order (ECF No. 266), which (1) preliminarily approved the Settlement; (2) appointed a Settlement Administrator; (3) designated Christina Humphrey Law, P.C. and Tower Legal Group, P.C. as Class Counsel; (4) approved the class notice plan and schedule; and (5) set the date for a Fairness Hearing.

Pursuant to the notice plan approved by the Court, class notices were mailed on June 24, 2025, to 35,654 class members, and, as of July 11, 2025, no objections to the Settlement have been submitted. (See Declaration of Administrator Makenna Snow “Snow Dec.” ¶¶ 8 and 12). The deadline to object to the Settlement is August 4, 2025 (Snow ¶ 12), and the deadline for the Independent Fiduciary to complete its Review and provide a report to Counsel is July 24, 2025 (CAH Dec. Preliminary



Approval, ECF 263-2, Settlement Agreement at 2.1.1(iii)).<sup>1</sup> Supplemental declarations updating the Court on the status of the administration and the independent fiduciary's conclusions will be filed by August 11. [See Declaration of Christina A. Humphrey ("Humphrey Dec. Final Approval"), ¶¶ 3-4.]

The Court previously found the Settlement to be the product of arm's-length negotiations and determined it to be fair, reasonable, and adequate. Given the substantial relief the Settlement provides—without requiring Class Members to submit claims—and to avoid the continued burden, expense, and risk of litigation, Plaintiffs respectfully request that the Court grant final approval.

## II. FACTUAL BACKGROUND

The basic facts and procedural history of this action are well-known to this Court and set forth in greater detail in the Court's Preliminary Approval Order, ECF No. 266. The Settlement was reached after almost four (4) years of hard-fought litigation, three complaints, extensive motion practice, comprehensive discovery, including the closure of written discovery by the time of mediation, six (6) depositions, and after arms-length negotiations, and multiple rounds of negotiations between experienced and informed counsel. A full-day, in person mediation took place before a well-respected neutral mediator, David Geronemus Esq., (the "Mediator") of JAMS. *Id.* As a result, Plaintiffs and Class Counsel believe this Settlement to be fair, adequate, and reasonable and submit that it is in the best interest of the Class.

### A. The Settlement

#### 1. Settlement Fund and Released Claims

Following considerable investigation and careful consideration of Plaintiffs' claims, motion practice, fulsome discovery, and arms-length negotiations up to the

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<sup>1</sup> All further references to the Settlement Agreement shall be "Settlement Agreement" located at ECF 263-2, Ex. A to Humphrey Declaration in Support of Preliminary Approval.

precipice of trial, the Parties reached agreement on the Settlement. In exchange for the Settlement Class' release of the claims described in Section 1.36 of the Agreement, Defendants have agreed to pay a Settlement Amount of \$1,250,000. The Settlement Fund will be used to pay all Settlement-related costs associated with the Settlement, including: (1) compensation to authorized current and former Plan participants and beneficiaries; (2) all claims for attorneys' fees and expenses approved by the Court (\$437,500 in attorney fees and \$273,540 in costs); (3) all costs arising from evaluation of the settlement by the Independent Fiduciary as described in Section 5.1.3 of the Agreement (\$17,500); (4) all costs necessary to administer the Settlement, including payment for the services of ILYM Group (\$74,500); (5) recordkeeper costs of \$1,500 and (6) payment of Case Contribution Awards to Plaintiffs not to exceed \$7,500.00 each, subject to Court approval. [Settlement Agreement at Section 1.7.]

2. Distribution of Settlement Funds to Class Members

The amount paid to each Class Member has been determined by the Plan of Allocation that is based on the average size of each Class Member's account during the Class Period. [Settlement Agreement at Exhibit B (ECF No. 263-2)]. Participants, and Beneficiaries with Active Accounts do not need to do anything affirmative to receive payment under the Settlement, as their Plan accounts will automatically be credited the amount due to them under the Settlement. [*Id.* at II.E]. As for Authorized Former Participants and Beneficiaries who no longer have Active Accounts, those individuals will be sent a check. [*Id.* at II.F] There are 35,654 total participating class members. [Snow Dec. at ¶ 8.] After the payments have been issued to the Class members, any amount remaining in the Settlement Fund from uncashed checks after 180 days will be distributed to a cy pres, the Pension Rights Center. [Settlement Agreement 5.6-5.7]

//

1           3.     Attorneys’ Fees, Costs, And Case Contribution Awards

2           Class Counsel seeks fees in the amount not to exceed 35% of the gross  
3 settlement (maximum \$437,500), attorney expenses of \$273,540, which shall be  
4 recovered from the Gross Settlement Amount. Class Counsel also will seek  
5 reimbursement for all litigation costs and expenses advanced and carried by Class  
6 Counsel for the duration of this Class Action through judgment and Case  
7 Contribution Awards for Plaintiffs in the amount of \$7,500 each.

8           Plaintiffs’ collective lodestar is \$1,330,876 with a collective 1783.52 hours  
9 spent on litigation. A breakdown of time spent on litigation, risks undertaken, and  
10 costs are available at the Humphrey Dec. Final Approval, ¶¶ 5-10 and Declaration of  
11 James A. Clark (“Clark Dec. Final Approval”), ¶¶ 3-8. Declarations from each of  
12 the Plaintiffs are also submitted in support of their application for a Case  
13 Contribution Award of \$7,500 each. [See Declarations of Coppel, Martinez,  
14 Mitchell, Uriostegui, and Usselman submitted herewith.]

15           **B. Dissemination of the Class Notice**

16           In compliance with the Preliminary Approval Order, ILYM Group  
17 disseminated the Settlement Notice via first-class mail to 35,654 Class Members on  
18 June 24, 2025. [Snow Dec. at ¶ 8]. Of the 35,654 Notices mailed, 3,337 were  
19 returned as undeliverable. [*Id.* at ¶ 9]. ILYM Group was able to obtain updated  
20 addresses through “skip-tracing” for 2,549 addresses and those notices were re-  
21 mailed. [*Id.* at ¶ 10.] ILYM Group deemed a total of 788 Notice Packets were  
22 undeliverable, meaning only a *de minimis* 2.21% of the Class Members did not  
23 receive mailed Notices. [*Id.* at ¶ 11].

24           The same day as the mailing, ILYM Group also established a website,  
25 www.ilymgroup.com/SeaWorld, for the Settlement pursuant to the terms of the  
26 Settlement, which provided information about the case and relevant deadlines  
27 pursuant to the template approved by this Court. [*Id.* at ¶ 7.] Furthermore, in  
28

1 accordance with the Settlement Agreement and the Preliminary Approval Order,  
2 ILYM Group established a toll-free telephone number, to which Class Members  
3 could direct questions about the Settlement. [*Id.*]

4 ILYM Group provided a full accounting of expenditures made in connection  
5 with the Settlement, and it provided any and all information that was requested by  
6 the Parties or their counsel. ILYM's final bill is \$74,500. [Snow Dec. at ¶ 15].

7 Finally, ILYM Group has not received any objections to the fairness,  
8 reasonableness, or adequacy of the Settlement, any terms therein, or to the proposed  
9 Administrative Expenses, Attorneys' Fees and Costs, or Plaintiffs' Case Contribution  
10 Awards. [*Id.* at ¶ 12]. The deadline to file an objection is August 4, 2025. The  
11 Parties will lodge a supplemental declaration from ILYM Group on August 11 to  
12 update the Court on whether any objections were filed.

13 **C. The Settlement Will be Reviewed by An Independent Fiduciary**

14 To further ensure that the Settlement Agreement is fair, reasonable, and  
15 adequate, the Parties retained an Independent Fiduciary, Newport Group, Inc., to  
16 approve and authorize the Settlement on behalf of the Plan and Class Members. [*See*  
17 Settlement Agreement at Section 2.1.] Defendants, Defendants' Counsel, Plaintiffs,  
18 and Class Counsel provided the Independent Fiduciary with sufficient information so  
19 that the Independent Fiduciary could review and evaluate the Settlement. *Id.*;  
20 [Humphrey Dec. Final Approval at ¶ 3]. Furthermore, the Independent Fiduciary is  
21 complying with all relevant conditions set forth in Prohibited Transaction Class  
22 Exemption 2003-39, "Release of Claims and Extensions of Credit in Connection  
23 with Litigation," issued December 31, 2003, by the United States Department of  
24 Labor, 68 Fed. Reg. 75,632, as amended ("PTE 2003-39"), in making its  
25 determination, for the purpose of Defendants' reliance on PTE 2003-39. *Id.* The  
26 report will be lodged with the Court in a supplemental declaration by Christina A.  
27 Humphrey no later than August 11, 2025. [Humphrey Dec. Final Approval ¶ 3].

### III. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

#### A. The Settlement Is Fair, Reasonable, and Adequate

“The standard for reviewing class action settlements at the final approval stage is well-settled. Rules 23(e)(2) states that the district court may only approve the settlement if ‘it is fair, reasonable, and adequate.’” *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1035 (N.D. Cal. 2016) (citing Fed. R. Civ. P. 23). In determining whether a proposed settlement meets this standard, the Ninth Circuit suggests consideration of the following non-exhaustive factors:

- (1) the strength of the plaintiff's case;
- (2) the risk, expense, complexity, and likely duration of further litigation;
- (3) the risk of maintaining class action status throughout the trial;
- (4) the amount offered in settlement;
- (5) the extent of discovery completed and the stage of the proceedings;
- (6) the experience and view of counsel;
- (7) the presence of a governmental participant; and
- (8) the reaction of the class members to the proposed settlement.

*Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004) (citing *Linney v. Cellular Alaska P'ship.*, 151 F.3d 1234, 1242 (9th Cir.1998)).

The factors considered at final approval stage mirror those contemplated at preliminary approval stage. Having already preliminarily approved the fairness of the settlement, and because there have been no intervening circumstances that would alter that conclusion, the Court should find the same here as Notice has been completed in accordance with the Court's Preliminary Approval Order and all of the below factors support final approval of the Settlement. *See Cotter*, 193 F. Supp. 3d at 1036-37 (recognizing that a Court's inquiry at final approval is equally careful as the preliminary approval analysis).

#### 7. The Strength of Plaintiffs' Case and The Risk, Expense, Complexity And Likely Duration of Further Litigation

1 First, as recognized by the Court at preliminary approval, there is uncertainty  
2 inherent in any trial and always some risk of loss on the merits. *LaGarde v.*  
3 *Support.com, Inc.*, 2013 WL 1283325, at \*4 (N.D. Cal. Mar. 26, 2013) (“In light of  
4 the risks and costs of continued litigation, the immediate rewards to class members  
5 are preferable.”). See also, *In re Heritage Bond Litig.*, No. 02-ML-1475 DT, 2005  
6 WL 1594403, \*7 (C.D. Cal. June 10, 2005) (“[W]hile Plaintiffs are confident of the  
7 strength of their case, it is imprudent to presume ultimate success at trial and  
8 thereafter.”). Moreover, even if the Court entered judgment in Plaintiffs’ favor, it  
9 could be overturned on appeal. See *Betancourt v. Advantage Human Resourcing,*  
10 *Inc.*, No. 14-cv-01788-JST, 2016 WL 344532, at \*4 (N.D. Cal. Jan. 28, 2016). As a  
11 result, the first factor favors settlement.

12 The second factor, the risk, expense, complexity, and potential for further  
13 durations points in favor of settlement, especially with a smaller plan with \$300  
14 million in assets. “[U]nless the settlement is clearly inadequate, its acceptance and  
15 approval are preferable to lengthy and expensive litigation with uncertain results.”  
16 *Nat’l Rural Telecomm. Coop.*, 221 F.RD. at 527. This is because “trials of class  
17 actions are inherently risky and unpredictable propositions.” *Cervantez v. Celestica*  
18 *Corp.*, No. 07-729-VAP (OPx), 2010 WL 2712267, \*3 (C.D. Cal. July 6, 2010). In  
19 several opinions issued within the past year, courts have entered judgment in favor  
20 of defendants following bench trials, finding that fiduciary committees acted  
21 prudently where they conducted quarterly meetings, monitored investment  
22 performance, maintained a watchlist, and relied on the advice of a financial advisor.  
23 See *Mattson v. Milliman, Inc.*, 2024 WL 3024875, at \*18 (W.D. Wash. June 17,  
24 2024); *Nunez v. B. Braun Med., Inc.*, 2023 WL 5339620 (E.D. Pa. Aug. 18, 2023);  
25 *Falberg v. Goldman Sachs Group, Inc.*, 2024 WL 619297, at \*3 (2d Cir. Feb. 14,  
26 2024); *In re: Prime Healthcare ERISA Litig.*, 2024 WL 3903232, at \*10, \*21 (C.D.  
27 Cal. Aug. 22, 2024).



1  
2 In the action, there existed the potential for further litigation including post-  
3 trial motions and a likely appeal. “[I]t is the very uncertainty of outcome in litigation  
4 and avoidance of wastefulness and expensive litigation that induce consensual  
5 settlements.” *Officers for Justice v. Civ. Serv. Comm’n of City & Cnty. of San*  
6 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). Even though the Parties were prepared  
7 to go to trial, considering the reality of a likely appeal, “it could be years before  
8 Plaintiffs see a dollar.” *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1042  
9 (N.D. Cal. 2008); see also *Wren v. RGIS Inventory Specialists*, C-06-05778 JCS,  
10 2011 WL 1230826, at \*7 (N.D. Cal. Apr. 1, 2011) (finding that the risk, expense,  
11 complexity, and duration of further litigation support approving a settlement even  
12 though plaintiffs’ claims had survived summary judgment); *Deaver v. Compass*  
13 *Bank*, No. 13-222, 2015 WL 8526982, \*7 (N.D. Cal. Dec. 11, 2015) (“Although  
14 [p]laintiffs might have received more if they proceeded through litigation and  
15 prevailed on the merits of their case, they might also receive less and there is a value  
16 to the class in obtaining the money now”); *Rodriguez v. W. Publ’g Corp.*, 563 F.3d  
17 948, 966 (9th Cir. 2009)(risks in litigating weigh in favor of approving a class  
18 settlement).

19 Having already analyzed these two factors, this Court has concluded that “the  
20 costs and risks of proceeding with litigation likely render the agreed-upon settlement  
21 amount adequate relief for the class.” [ECF No. 266] Nothing regarding the strength  
22 of Plaintiffs’ cases or the potential of further litigation has changed since the Court’s  
23 Preliminary Approval Order, and as such, these two factors still support the Court  
24 granting final approval.

25 2. The Amount Offered In Settlement

26 The total Settlement Amount is \$1,250,000 and will provide proportional  
27 recompense to Class Members based on the size of their Plan accounts during the  
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1 Class Period. [See Settlement Agreement at Exhibit B]. In evaluating the amount of a  
2 settlement, “the Court may compare the settlement amount to the parties’ estimates  
3 of the maximum amount of damages recoverable in a successful litigation.”  
4 *Betancourt*, 2016 WL 344532, at \*5. However, “[i]t is well-settled law that a cash  
5 settlement amounting to only a fraction of the potential recovery does not per se  
6 render the settlement inadequate or unfair.’ Plaintiffs here have agreed to accept a  
7 smaller certain award rather than seek the full recovery but risk getting nothing.” *In*  
8 *re: Prime Healthcare ERISA Litig.*, 2024 WL 3903232, \*10 and 21 (C.D. Cal. Aug.  
9 22, 2024); *In re Omnivision Techs, Inc.*, 559 F. Supp. 2d at 1042 (citing *Officers for*  
10 *Justice*, 688 F.2d at 628); *see also Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir.  
11 2003).

12 The Court preliminarily approved the Settlement on May 8, 2025, finding that  
13 the proposed \$1.25 million recovery—approximately 11.5% of Plaintiffs estimated  
14 maximum potential recovery of \$10.8 million—was fair, reasonable, and adequate  
15 under the standards set forth by the Ninth Circuit. In doing so, the Court  
16 acknowledged that while the settlement amount reflects only a portion of potential  
17 damages, such a discount is not dispositive and must be evaluated in light of the  
18 risks, costs, and delays inherent in continued litigation. The Court credited Plaintiffs’  
19 expert-supported damages assessment, which identified potential losses stemming  
20 from (1) excessive recordkeeping fees and share class violations, (2)  
21 underperformance of the Plan’s investment lineup, and (3) stable value fund  
22 transition-related losses. Recognizing that courts routinely approve ERISA class  
23 action settlements with similar or lower recovery percentages and emphasizing the  
24 value of a certain and immediate resolution, the Court concluded that the proposed  
25 Settlement reflected a reasonable compromise reached through arm’s-length  
26 negotiations and warranted preliminary approval.

27 Here, the highest gross settlement payment is estimated to be \$2,156.67, with  
28



1 an average gross settlement payment of \$39.92, which is a great result for a small  
2 plan with small amounts invested by participants (many seasonal workers subject to  
3 auto enrollment) and total assets on the lower end (\$300 million). [Snow Dec. ¶ 15  
4 for highest gross settlement payment and average gross settlement payment]. In light  
5 of the foregoing, the Settlement Amount, considering the uncertainty of trial and the  
6 difficulty of attaining maximum damages even with a successful result, favors final  
7 approval of the Settlement. See *Edwards v. City of Long Beach*, 2011 WL 13180208,  
8 at \*3, n. 5 (C.D. Cal. Oct. 31, 2011) (“[t]he reasonableness of a settlement is not  
9 dependent upon it approaching the potential recovery plaintiffs might receive if  
10 successful at trial”); *Nat’l Rural Telecomm. Coop.*, 221 F.R.D. at 527 (“a proposed  
11 settlement may be acceptable even though it amounts to only a fraction of the  
12 potential recovery”).

13 3. The Extent of Information Exchanged and the Stage of the Proceedings

14 This factor analyzes whether “the parties have sufficient information to make  
15 an informed decision about settlement.” *Linner v. Cellular Alaska P’Ship*, 151 F.3d  
16 1234, 1239 (9th Cir. 1998); *see also Cabiness v. Educ. Fin. Solutions, LLC*, No. 16-  
17 cv-01109-JST, 2019 WL 1369929, at \*5 (N.D. Cal. Mar. 26, 2019) (finding “the  
18 extent of discovery completed supports approval of a proposed settlement,  
19 especially when litigation has ‘proceeded to a point at which both plaintiffs and  
20 defendants ha[ve] a clear view of the strengths and weaknesses of their cases’”)  
21 (citing *Chun-Hoon v. McKee Foods, Corp.*, 716 F. Supp. 2d 848, 851-52 (N.D. Cal.  
22 2010) (finding this factor supports final approval when “[t]he parties have engaged  
23 in several years of litigation, including depositions, substantial research, an  
24 interlocutory appeal, and several motions’’)). Here, the Parties have litigated this  
25 matter for four years, including extensive pre-litigation investigation, conducting  
26 multiple rounds of discovery, reviewing and producing thousands of documents by  
27 Plaintiff and Defendants, briefing multiple motions, and issuing twelve subpoenas.

1 The Parties took the depositions of each named Plaintiff, and of the SeaWorld  
2 Defendants' Expert. Furthermore, several discovery related motions have been fully  
3 filed, briefed, litigated, and adjudicated. (ECF Nos. 131-133, 135-140, 143-147, 154-  
4 162, 184-185, 216, 223-226, 229-233, 236-246, and 248-253). [Humphrey Dec.  
5 Preliminary Approval, ECF No. 263-2 Approval, ¶¶ 23-25, and 33] *Id.*; *see also*  
6 *Acosta v. Frito-Lay, Inc.*, 2018 WL 2088278, at \*9 (N.D. Cal. May 4, 2018) (finding  
7 this factor favored approval of a settlement when the parties "participated in several  
8 rounds of discovery production and mediation"). This factor heavily favors final  
9 approval of the Settlement Agreement.

10 4. The Views and Experience of Counsel

11 Class Counsel and Defense Counsel support the settlement agreement. *See In*  
12 *re Omnivision*, 559 F.Supp. 2d at 1043 (holding "[t]he recommendations of  
13 plaintiffs' counsel should be given a presumption of reasonableness"); *Nat'l Rural*  
14 *Telecomm. Coop.*, 221 F.R.D. at 528 ("[g]reat weight is accorded to the  
15 recommendation of counsel, who are most closely acquainted with the facts of the  
16 underlying litigation"). Counsel for both Plaintiffs and Defendants have experience  
17 litigating ERISA claims, and their knowledge regarding the merits of the case is  
18 important, considering the extensive document exchange and the number of  
19 complex, contested issues in this case. Furthermore, Class Counsel has litigated a  
20 number of class action cases and reached approved settlement agreements in many of  
21 them. [Humphrey Dec. Class Certification, ECF No. 149-2, ¶¶ 3-8] *see Cabiness*,  
22 2019 WL 1369929, at \*6 ("Class Counsel have extensive experience litigating class  
23 action and consumer protection cases. That they advocate in favor of the settlement  
24 weighs in favor of approval."); *see also Acosta*, 2018 WL 2088278, at \*9 (giving  
25 value to opinion of counsel who had been named class counsel in 23 class actions).  
26 Moreover, Lead Class Counsel has tried and appealed many class action cases and  
27 understands the possibilities of recovery and risks associated with such trials and  
28

appeals. [*Id.* at ¶ 5].

5. The Reaction of Class Members

As described above, ILYM provided Notice to Class Members via U.S. mail and e-mail on June 24, 2025. [Snow Dec. at ¶ 8, Exhibit A attached thereto.] Here, no Class Members objected to the Settlement in accordance with the Settlement Agreement and ILYM Group did not receive any objections to the Settlement, the proposed Administrative Expenses, Attorneys’ Fees and Costs, or Plaintiffs’ Case Contribution Awards. [Snow Dec. at ¶ 12] The fact that not one of the 35,654 Class Members objected to the Settlement clearly supports final approval. See *Meija v. Walgreen Co.*, No. 2:19-cv-00218 WBS AC, 2021 WL 1122390, at \*7 (E.D. Cal. Mar. 24, 2021) (“the reaction of the class members to the proposed settlement, also weighs in favor of final approval [when] no class members objected to the settlement”) (internal citations omitted); *Noll*, 309 F.R.D. at 608 (“A low number of ... objections in comparison to class size is typically a factor that supports settlement approval.”).

6. Plaintiffs’ Case Contribution Awards are Fair and Typical

Case Contribution Awards are “awards that are intended to compensate class Representatives for work undertaken on behalf of a class ‘are fairly typical in class action cases.’” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted). Such 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.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009).

Named Plaintiffs have actively participated in the litigation and assisted Class Counsel in attending a settlement conference with the Court, responding to two sets of discovery, producing documents, traveling and missing work for an in person

1 deposition, providing declarations in support of class certification, making  
2 themselves available for mediation, and assisting in the settlement process.  
3 [Usselman Dec. ¶ 5, Uriostegui Dec. ¶ 5, Mitchell Dec. ¶5, Martinez ¶5, Coppel ¶5).  
4 Consistent with awards regularly granted under similar circumstances, Named  
5 Plaintiffs should be compensated for their work done in support of the litigation and  
6 for assisting Class Counsel in achieving a strong settlement on behalf of the Class, as  
7 well as the reputational and other risks they undertook in bringing this Action. See  
8 *Johnson*, 2018 WL 2183253, at \*8 (granting case contribution awards based on class  
9 counsel’s attestation as “to each class representative’s cooperation and work” in the  
10 case, including providing information to counsel, producing documents and  
11 responding to discovery requests, communicating with counsel and remaining  
12 informed about the case, participating in the mediation process, and approving the  
13 settlement agreement).

14 Accordingly, Plaintiffs request that the Court approve a contribution award in  
15 the amount of \$7,500 each to Named Plaintiffs. See *Gramstad v. Ventura Foods,*  
16 *LLC*, (C.D. Cal. Feb. 14, 2025) Case No. 8:22-cv-02290-MWC-JDE, Docket 67, p  
17 4:15-22 (ERISA class action settling after motion to dismiss denied and approving  
18 \$7,500 award with no discovery to Plaintiffs and no Plaintiffs’ deposition); and  
19 *Aquino et. al. v. 99 Cents Only Stores, LLC, et. al.*, (C.D. Cal. Jan. 02, 2024) Case  
20 No. 2:22-cv-01966-SPG-AFM, Docket No. 79, p. 12:12-15 (ERISA class action  
21 settling after motion to dismiss denied and approving \$7,500 award with no  
22 discovery to Plaintiffs and no Plaintiffs’ deposition). Notice of the anticipated  
23 request was provided to all members of the Settlement Class and no objections to the  
24 awards were made. [Snow Declaration, ¶ 8 and Exhibit A to her declaration]

25 In sum, and for all of the reasons outlined above, Class Counsel respectfully  
26 request that the Court award the requested Attorneys’ Fees, Expenses, and Class  
27 Contribution Awards.

**B. Plaintiffs’ counsel’s rates are consistent with rates in complex ERISA cases**

“ERISA is an ‘enormously complex’ statute, and many ERISA matters also involve facts that are ‘exceedingly complicated.’” *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723-JSC, 2022 WL 425559, at \*4 (N.D. Cal. Feb. 11, 2022) (quoting *Conkright v. Frommert*, 559 U.S. 506, 509 (2010)). Accordingly, “these cases require highly skilled counsel who could understand the complexity of the law and adapt case law accordingly.” *Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCX), 2020 WL 5668935, at \*4 (C.D. Cal. Sept. 18, 2020) (cleaned up). In light of the complexity of the issues raised by ERISA breach of fiduciary claims, the *Marshall* Court in 2020 approved a rate scheme as follows: for attorneys with at least 25 years of experience, \$1,060 per hour; for attorneys with 15–24 years of experience, \$900 per hour; for attorneys with 5–14 years of experience, \$650 per hour; for attorneys with 2–4 years of experience, \$490 per hour; and for paralegals and law clerks, \$330 per hour. *Id.* at \*7.

More recently, in similar ERISA breach of fiduciary duty class litigation, the Court approved “rates ranging from \$280 to \$1,050.” *Gamino v. KPC Healthcare Holdings, Inc.*, No. 5:20-CV-01126-SB-SHK, 2023 WL 3325190, at \*6. (C.D. Cal. Mar. 11, 2023); *see also Foster*, 2022 WL 425559, at \*9 (rates between \$275 and \$975 per hour “in line with the rates charged by other ERISA litigators in the San Francisco Bay Area.”); *Rollins v. Dignity Health*, No. 13-CV-01450-JST, 2022 WL 20184568, at \*5–6 (N.D. Cal. July 15, 2022) (approving in ERISA class case “Partners’ and Counsels’ rates rang[ing] from \$625 to \$1,060” and “non-partner and non-counsel attorneys, including associates, litigation assistants, and document analysts rang[ing] from \$215-\$625.”).

Here, Plaintiffs’ counsel’s rates are consistent with the rates awarded in those cases. For Christina A. Humphrey, partner at Humphrey Law, P.C. with 24 years of

1 experience, her rate is \$950/hr. [Humphrey Dec. Final Approval ¶ 5].  
2 My former colleague who was previously employed at my firm, Robert N. Fisher  
3 had been practicing for ten (10) years while employed by my firm, and is billed at  
4 \$650/hr. [*Id.*] For James A. Clark and Renee Ortega, partners at Tower Legal  
5 Group, P.C., who each have 14 years of experience, their rate is \$750. [Clark Dec.  
6 Final Approval ¶ 4] This range of hourly rates for a similar action has previously  
7 been determined to be reasonable. See *Gramstad v. Ventura Foods, LLC*, (C.D.  
8 Cal. Feb. 14, 2025) Case No. 8:22-cv-02290-MWC-JDE, Docket 67; and 61-1, p  
9 16:13-23 (approving a range of \$215 per hour for a paralegal, and \$700 to \$950 for  
10 the same counsel herein), and *Aquino et. al. v. 99 Cents Only Stores, LLC, et. al.*,  
11 (C.D. Cal. Jan. 02, 2024) Case No. 2:22-cv-01966-SPG-AFM, Docket No. 79, p.  
12 12:12-15 (approving a range of \$215 per hour for a paralegal, and \$650 to \$925 for  
13 the same counsel herein).

14 These rates are justified by the prevailing rates for ERISA matters and the  
15 experience and skill of the attorneys involved. [See Humphrey Class Certification  
16 Dec. (ECF No. 149-2) ¶¶ 3-8; Clark Class Certification Dec. (ECF No. 194-4) ¶¶ 3-  
17 13.]

18 **C. Plaintiff’s counsel’s request for 35% of the settlement amount is**  
19 **consistent with awards in other class cases, particularly ERISA**  
20 **litigation**

21 An attorney fee of one third of the settlement fund is routinely found to be  
22 reasonable in class actions. “Nationally, the average percentage of the fund award  
23 in class actions is approximately one-third.” *Multi-Ethnic Immigrant Workers Org.*  
24 *Network v. City of Los Angeles*, No. 07- 3072-AHM, 2009 WL 9100391, at \*4  
25 (C.D. Cal. June 24, 2009); see also *Romero v. Producers Dairy Foods, Inc.*, No. 05-  
26 484, 2007 WL 3492841, at \*4 (E.D. Cal. Nov. 14, 2007) (“fee awards in class  
27 actions average around one-third of the recovery”) (quoting Newberg on Class  
28



1 Actions § 14.6 (4th ed. 2007)). “An award of one third is within the range of  
2 percentages which courts have considered reasonable in other class action  
3 lawsuits.” *Boyd v. Bank of Am. Corp.*, No. SACV 13-0561-DOC, 2014 WL  
4 6473804, at \*10 (C.D. Cal. Nov. 18, 2014); *Marshall v. Northrop Grumman*  
5 *Corporation* 2020 WL 5668935 ,\*8 (C.D.Cal. Sept. 18, 2020). The Ninth Circuit  
6 has also approved of an award of attorney fees of one third of the common fund. *In*  
7 *re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (one-third fee from a  
8 \$12 million common fund)

9 When assessing an attorneys’ fee award as a percentage of the common fund,  
10 courts consider “(1) the results achieved; (2) the risk of litigation; (3) the skill  
11 required and the quality of work; (4) the contingent nature of the fee and the  
12 financial burden carried by the plaintiffs; and (5) awards made in similar cases.” *In*  
13 *re Omnivision Technologies*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (citing  
14 *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002)).

15 Here, each of these factors weighs in favor of the requested award. As to the  
16 first factor, Plaintiffs estimate that the recovery achieved on behalf of the class is  
17 11.5% of the estimated potential damages. [See Humphrey Preliminary Approval  
18 Dec. (ECF No. 263-2) ¶¶ 81-85] This compares favorably to other cases in which  
19 courts have awarded 1/3 of the common fund as attorneys’ fees. *See Waldbuesser*,  
20 2017 WL 9614818, at \*2 (C.D. Cal. Oct. 24, 2017) (collecting cases); *see, e.g., also*  
21 *Jiangchen v. Rentech, Inc.*, No. 17-1490, 2019 WL 5173771, \*7, 9 (C.D. Cal. Oct.  
22 10, 2019) (\$2.05 million settlement or 10% of maximum damages; 33.3% fee  
23 award); *In re Rite Aid Corp. Sec. Litig.*, 146 F.Supp.2d 706, 715 (E.D. Pa. 2001)  
24 (noting that since 1995, class action settlements have typically “recovered between  
25 5.5% and 6.2% of the class members’ estimated losses”).

26 As to the other factors, counsel has recounted the costs that they bore and the  
27 efforts spent investigating this case pre-suit and litigating this action all at risk of  
28

1 potentially not recovering anything in fees. [See Humphrey Preliminary Approval  
2 Dec. (ECF No. 263-2) ¶¶ 81-85] Courts in this district have recognized that  
3 achieving positive results in complex ERISA cases requires skill and comes with  
4 the risk of nonpayment that justifies a fee of at or around 1/3 of the common fund.  
5 *See, e.g., Marshall*, 2020 WL 5668935, at \*9 (awarding attorneys’ fees of 1/3 of  
6 settlement fund of \$12.3 million in ERISA action); *Gamino*, 2023 WL 3325190, at  
7 \*5 (C.D. Cal. Mar. 11, 2023) (30%); *Waldbuesser*, 2017 WL 9614818, at \*3 (1/3);  
8 *Tom v. Com Dev USA, LLC*, 16-cv-01363 PSG-GJSx, 2017 WL 10378629, \*6  
9 (C.D. Cal. Dec. 4, 2017) (30%); *Downey Surgical Clinic, Inc.*, 2015 WL 12645755,  
10 at \*13 (30%).

11 Moreover, courts nationwide have routinely awarded 1/3 of the common fund  
12 in fees in similar ERISA fiduciary breach settlements. *See, e.g., Foster*, 2022 WL  
13 425559, at \*10-11; *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473,  
14 at \*3 (D. Md. Jan. 28, 2020); *In re J.P. Morgan Stable Value Fund ERISA Litig.*,  
15 No. 12-CV-2548 (VSB), 2019 WL 4734396, at \*2-4 (S.D.N.Y. Sept. 23, 2019);  
16 *Bell v. Pension Comm. Of ATH Holding Co., LLC*, No. 15-2062, 2019 WL  
17 4193376, at \*3 (S.D. Ind. Sept. 4, 2019); *Clark v. Duke*, No. 16-1044, 2019 WL  
18 2579201, at \*3 (M.D. N.C. June 24, 2019); *Sims v. BB&T Corp.*, No. 15-1705, 2019  
19 WL 1993519, at \*2 (M.D. N.C. May 6, 2019); *Ramsey v. Philips N.A.*, No. 18-  
20 1099, Doc. 27 at 5–6 (S.D. Ill. Oct. 15, 2018); *Schwartz v. Cook*, No. 15-CV-  
21 03347-BLF, 2017 WL 2834115, at \*5 (N.D. Cal. June 30, 2017); *Gordan v. Mass.*  
22 *Mut. Life Ins. Co.*, No. 13-30184, 2016 WL 11272044, at \*2 (D. Mass. Nov. 3,  
23 2016); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 149-50 (S.D.N.Y. 2010)  
24 (explaining that public policy supports granting fee awards to incentivize private  
25 enforcement of ERISA in order “to promote the important goals of protecting and  
26 preserving the retirement savings of American workers.”).

27 Furthermore, the fourth factor—the contingent nature of the fee and financial  
28



burden borne by counsel—weighs heavily in favor of the requested 35% award. ERISA class actions are among the most complex and resource-intensive matters litigated in federal court, often requiring substantial up-front investments in expert analysis at every stage: from evaluating fiduciary breaches and structuring discovery to interpreting voluminous plan-related data. These cases rarely involve simple factual disputes; rather, they hinge on expert testimony addressing nuanced financial, actuarial, and regulatory issues. Trials, which are typically bench trials, are dominated by competing expert opinions rather than lay witnesses, significantly increasing litigation costs. In this case, Plaintiffs’ counsel incurred \$273,000 in litigation expenses—most attributable to expert consultants—and expert discovery had not even concluded. This level of financial exposure is typical in ERISA class actions, where six- and seven-figure costs are common. *In re J.P. Morgan Stable Value Fund ERISA Litig.*, No. 12-CV-2548, 2019 WL 4734396 (VSB) (\$1,468,795.86 in costs); *Bell v. Pension Comm. Of ATH Holding Co., LLC*, No. 15-2062, 2019 WL 4193376, at \*1 (S.D. Ind. Sept. 4, 2019) (\$513,015.32 in costs); *Clark v. Duke*, No. 16-1044, 2019 WL 2579201, at \*4 (M.D. N.C. June 24, 2019) (\$822,212 in costs); *Sims v. BB&T Corp.*, No. 15-1705, 2019 WL 1993519, at \*5 (M.D. N.C. May 6, 2019) (\$768,176 in costs); *Marshall v. Northrop Grumman Corporation*, No. 16-cv-6794 AB (JCx) 2020 WL 5668935, \*9 (\$390,587 in costs, \$195,387.50 in expert expenses); *Kanawi v. Bechtel, Corp.*, No. 06-5566, 2011 WL 782244, at \*3 (N.D. Cal. Mar. 1, 2011). (\$1,500,000 in costs); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 149-50 (S.D.N.Y. 2010) (\$1,270,915.40 in costs). In a recent successful ERISA trial in New York, where the same defense firm in this case defended, Plaintiffs’ counsel’s costs were \$1.85 million. *See Khan v. Board of Directors of Pentegra Defined Contribution Plan, et. al.*, Case No. 7:20-cv-07561-PMH, ECF No. 301 (S.D.N.Y.)

Against this backdrop, a 35% fee is both justified and necessary to fairly

1 compensate counsel for the substantial risk and burden undertaken in pursuing this  
2 action on a fully contingent basis. Without such incentives, skilled counsel would  
3 be disincentivized from enforcing fiduciary standards that protect the retirement  
4 savings of American workers.

5 **D. A lodestar cross-check confirms that the requested fees are**  
6 **reasonable**

7 Calculation of the lodestar, which measures the lawyers' investment of time  
8 in the litigation, provides a check on the reasonableness of the percentage  
9 award." *Vizcaino v. Microsoft Corp.*, 290 F. 3d 1043, 1050 (9th Cir. 2002). Here,  
10 Class Counsel do not seek a multiplier; rather, their request for \$437,500 is 32.86  
11 percent of their lodestar of \$1,330,876. The lodestar method establishes the  
12 reasonableness of this request. *See Stewart v. Applied Materials, Inc.*, No. 15-CV-  
13 02632-JST, 2017 WL 3670711, at \*10 (N.D. Cal. Aug. 25, 2017) (awarding fees in  
14 an ERISA class action settlement using the lodestar method). Counsel's lodestar  
15 may "provide a useful perspective on the reasonableness of a given percentage  
16 award." *Vizcaino*, 290 F.3d at 1050. Here, a lodestar cross-check confirms that a  
17 35% fee award is reasonable as the lodestar far exceeds the fee requested.

18 An award of \$437,500 results in a negative multiplier and 67.14 percent  
19 reduction to Class Counsel's lodestar. "A negative multiple 'strongly suggests the  
20 reasonableness of [a] negotiated fee.' " *Moreno v. Capital Bldg. Maint. & Cleaning*  
21 *Servs.*, No. 19-cv-07087-DMR, 2021 WL 4133860, at \*6 (N.D. Cal. Sep. 10,  
22 2021) (quoting *Rosado v. eBay Inc.*, No. 5:12-cv-04005-EJD, 2016 WL 3401987, at  
23 \*8 (N.D. Cal. June 21, 2016)).

24 The percentage-of-recovery analysis therefore does not render the requested  
25 fees unreasonable. *See Edwards v. Nat'l Milk Producers Fed'n*, 2017 WL 3616638,  
26 at \*9 (N.D. Cal. June 26, 2017) ("Rather than abandon the percentage-of-recovery  
27 method, the best way to guard against a windfall is first to examine whether a given  
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percentage represents too high a multiplier of counsel's lodestar.”). Moreover, under the percentage-of-the-fund method, district courts have awarded a one-third fee “when counsel's lodestar was *less* than the fee award.” *Id.* (citing cases). *Marshall v. Northrop Grumman Corporation* 2020 WL 5668935 ,\*7.

#### IV. CONCLUSION

For the foregoing reasons and those already identified in Plaintiffs’ Preliminary Approval Motion and the Court’s Preliminary Approval Order, Plaintiffs respectfully request that the Court grant Plaintiffs’ Unopposed Motion for Final Approval of the Settlement.

Dated: July 14, 2025

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