

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)

Monnett De La Torre (State Bar #272884)

Andrea Amaya Silva (State Bar #348080)

Kendall Garald (State Bar #351773)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 599-8292

Facsimile: (619) 599-8291

jlapuyade@jcl-lawfirm.com

mdelatorre@jcl-lawfirm.com

aamaya@jcl-lawfirm.com

kgarald@jcl-lawfirm.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)

5440 Morehouse Drive, Suite 3600

San Diego, CA 92121

Telephone: (619) 255-9047

Facsimile: (858) 404-9203

shani@zakaylaw.com

Attorneys for Plaintiff MICHAEL HILLSTROM

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NAPA

MICHAEL HILLSTROM, an individual, on
behalf of himself and on behalf of all persons
similarly situated,

Plaintiff,

v.

CONSTELLATION BRANDS, INC., a
Delaware Corporation; TPWC, INC., a
Delaware Corporation; ROBERT
MONDAVI WINERY, a California
Corporation; CONSTELLATION BRANDS
U.S. OPERATIONS, INC., a New York
Corporation; FRANCISCAN VINEYARDS,
INC., a Delaware Corporation;
CONSTELLATION WINES U.S., INC., a
corporation; and DOES 1-50, Inclusive,

Defendants.

Case No. 22CV000006

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT**

Date: April 19, 2024

Time: 9:30 a.m.

Judge: Hon. Cynthia P. Smith

Dept.: A

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	OVERVIEW OF THE LITIGATION	2
III.	THE SETTLEMENT BEFORE THE COURT	4
IV.	GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL OF CLASS ACTION SETTLEMENTS	5
V.	THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE	6
	A. Class Counsel Conducted a Thorough Investigation	7
	B. The Parties Settled at Mediation	9
	C. Class Counsel is Experienced in Similar Litigation	9
	D. The Settlement Class Responded Positively to the Settlement	9
	E. The Risk, Expense, Complexity and Duration of Further Litigation Favor Settlement	10
	F. The Gross Settlement Amount is Fair and Reasonable	11
VI.	THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004 ARE REASONABLE	13
VII.	CLASS COUNSEL’S REQUEST FOR FEES AND COSTS	13
	A. Common Fund	14
	B. Class Counsel’s Lodestar Supports the Requested Attorneys’ Fees	15

///

1 C. Class Counsel’s Costs17

2 D. Plaintiff’s Service Award Is Reasonable and Should be Approved17

3
4 VIII. CONCLUSION18

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 ///

TABLE OF AUTHORITIES
CASES

1		
2		
3	<i>7-Eleven Owners for Fair Fran. v. Southland Corp.</i>	
4	85 Cal.App.4th 1135, 1150-51 (2000).....	5-6
5	<i>Austrian & German Bank Holocaust Litigation</i>	
6	80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000).....	9
7	<i>Barcia v. Contain-A-Way, Inc.</i>	
8	2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009).....	11
9	<i>Bell v. Farmers Ins. Exch.</i>	
10	115 Cal.App.4th 715, 726 (2004).....	17
11	<i>Boeing Co. v. Van Gemert</i>	
12	444 U.S. 472, 478 (1980).....	14
13	<i>Chavez v. Netflix, Inc.</i>	
14	162 Cal.App.4th 43, 66 (2008).....	14
15	<i>Clark v. American Residential Services, LLC</i>	
16	175 Cal.App.4th 785, 804-805 (2009).....	17
17	<i>Contreras v. United Food Group, LLC</i>	
18	Case No. BC389253 (L.A. County Super. Ct.).....	12
19	<i>Dunk v. Ford Motor Co.</i>	
20	48 Cal.App.4th 1794, 1801, 1810 n.2 (1996).....	5-6, 16
21	<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i>	
22	213 F.3d 454, 459 (9 th Cir. 2000)	12
23	<i>Emmons v. Quest Diagnostics Clinical Labs., Inc.</i>	
24	2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017).....	15
25	<i>Fukuchi v. Pizza Hut</i>	
26	Case No. BC302589 (LA. County Super. Ct.).....	12
27	<i>Gentry v. Super. Ct.</i>	
28	42 Cal. 4th 443, 455-56 (2007).....	15
29	<i>Glass v. UBS Fin. Servs.</i>	
30	2007 WL221862 * 5.....	10
31	<i>Hanlon v. Chrysler Corp.</i>	
32	150 F.3d 1011, 1026 (9th Cir. 1998).....	11
33	<i>Harris v. Marhoefer</i>	
34	24 F.3d 16, 19 (9th Cir. 1994).....	17
35	<i>Hopson v. Hanesbrands Inc.</i>	
36	2009 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009).....	10
37	<i>Huens v. Tatum</i>	
38	52 Cal. App. 4th 259, 265 (1997).....	5
39	<i>In re Bluetooth Headset Products Liab. Litig.</i>	
40	654 F.3d 935, 942 (9th Cir. 2011).....	14-15
41	<i>In re Cellphone</i>	
42	186 Cal.App.4th 1380.....	17
43	<i>In re Sutter Health Uninsured Pricing Cases</i>	
44	171 Cal.App.4th 495, 512 (2009).....	14
45	<i>In re Warner Communications</i>	
46	618 F.Supp. 735, 749-50 (S.D.N.Y 1985).....	14
47	<i>Iskanian v. CLS Transportation Los Angeles, LLC</i>	
48	59 Cal.4th 348 (2014).....	15

1	<i>Jack v. Hartford Fire Ins. Co.</i>	
2	No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011).....	13
3	<i>Kullar v. Foot Locker Retail, Inc.</i>	
4	168 Cal.App.4th 116, 128 (2008).....	6
5	<i>Laffitte v. Robert Half International, Inc.</i>	
6	(2016) 1 Cal.5th 480, 487-89, 496-97.....	14-16
7	<i>Magadia v. Wal-Mart Associates, Inc.</i>	
8	(9th Cir. 2021) 999 F.3d 668.....	10
9	<i>Malibu Outrigger Bd. of Governors v. Superior Court</i>	
10	103 Cal.App.3d 573, 578-579 (1980).....	5
11	<i>McKenzie v. Fed. Express Corp.</i>	
12	No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012).....	13
13	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
14	186 Cal. App. 4th 399, 408 (2010).....	6
15	<i>Officers for Justice v. Civil Service Com'n,</i>	
16	688 F.2d 615, 625 (9th Cir. 1982).....	6
17	<i>Palencia v. 99 Cents Only Stores</i>	
18	No. 34-2010-00079619 (Sacramento County Super. Ct).....	12
19	<i>Rider v. City of San Diego</i>	
20	11 Cal. App. 4th 1410, 1423 n.6 (1992).....	17
21	<i>Rebney v. Wells Fargo Bank</i>	
22	220 Cal.App.3d 1117, 1138 (1990).....	6
23	<i>Ressler v. Federated Department Stores, Inc.</i>	
24	Case No. BC335018, at *1, 9 (L.A. County Super. Ct).....	12
25	<i>Serrano v. Priest</i>	
26	20 Cal. 3d 25, 49 (1977)	16
27	<i>Stovall-Gusman v. W.W. Granger, Inc.</i>	
28	2015 U.S. Dist. LEXIS 78671, at * 12.....	12
29	<i>Taylor v. FedEx Freight, Inc.</i>	
30	2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016)	15
31	<i>Wershba v. Apple Computer</i>	
32	91 Cal. App. 4th 224, 245-46, 255 (2001).....	6, 14

RULES, CODES, AND STATUTES

33	<i>Cal. Lab. Code §2698 et seq.</i>	3
34	<i>Cal. Lab. Code § 2802</i>	3
35	<i>Cal. Bus. & Prof. Code §§ 17200 et seq.</i>	2
36	<i>Cal. Lab. Code §201-203</i>	3
37	<i>Cal. Lab. Code §1194</i>	2
38	<i>Cal. Lab. Code §1197</i>	2
39	<i>Cal. Lab. Code §1197.1</i>	2
40	<i>Cal. Lab. Code §226</i>	3
41	<i>Cal. Lab. Code §226.7</i>	3
42	<i>Cal. Lab. Code §510 et seq.</i>	3
43	<i>Cal. Lab. Code §512</i>	3

SECONDARY SOURCES

44	Newberg & Conte, <i>Newberg on Class Actions</i> , (3d ed. 1992) §11.41, pp. 11-91.....	6
----	---	---

1 **I. INTRODUCTION**

2 Plaintiff MICHAEL HILLSTROM (hereinafter “Plaintiff”) seeks final approval of the Class and
3 Representative Action Settlement Agreement (“Agreement”)¹, which if approved, would provide
4 valuable monetary relief for 832 Settlement Class Members employed by Constellation Brands, Inc. and
5 TPWC, Inc. (Collectively referred to as “Defendants”) during the Class Period. Plaintiff and Class
6 Counsel also seek approval of the Class Counsel Fees and Costs Award in the amount of **\$868,333.33**,
7 comprised of \$833,333.33 (one-third of the Gross Settlement Amount) and up to \$35,000.00 for
8 reimbursement of actually incurred litigation expenses.²

9 An objective evaluation of the proposed settlement of \$2,500,000.00 (“Gross Settlement
10 Amount”) confirms that the relief negotiated on behalf of the Class is fair, reasonable, and valuable.
11 The Settlement is a product of informed, adversarial, and non-collusive negotiations, between
12 experienced counsel, guided by the wisdom and experience of Jeffrey Ross, Esq., an experienced
13 mediator. JCL Dec., ¶ 10. Plaintiff estimates that the Settlement, if approved, would result in a Net
14 Settlement Amount of approximately **\$1,506,166.70**, an average Individual Settlement Payment of
15 **\$1,810.30**, high payment of **\$6,869.17** and a low payment of **\$23.61**. Aggrieved Employees will
16 receive an estimated average gross payment of **\$43.78**, a high payment of **\$102.74**, and a low payment
17 of **\$1.41**. Declaration of Bryn Bridley (“Atticus Dec.”), ¶¶ 12, 13 and 14.

18 The relief offered by the Settlement is immediate and is particularly impressive when viewed
19 against the difficulties encountered by plaintiffs pursuing similar wage and hour cases (*see infra*). As
20 discussed below, the proposed Settlement satisfies all criteria for final settlement approval under
21 California law and falls well within the range of reasonableness. JCL Dec., ¶ 11.

22 As discussed below, the proposed Settlement satisfies all criteria for final settlement approval
23 under California law and falls well within the range of reasonableness. Accordingly, the Class
24 Representative and Class Counsel respectfully request this Court grant final approval of the Agreement
25 and, entry of the proposed Final Approval Order and Judgment. JCL Dec., ¶ 12.

26
27 ¹ The Agreement is attached as Ex “1” to the Declaration of Jean-Claude Lapuyade (“JCL Dec.”) at ¶ 3. All citations to the
Agreement incorporate by this reference a citation to the JCL Dec., ¶ 3. Further, unless indicated otherwise, capitalized terms
used herein have the same meaning as those defined by the Agreement.

28 ² Currently Class Counsel’s actually incurred litigation expenses are \$19,048.63. Class Counsel will provide an updated
total at the time of hearing on this motion.

II. OVERVIEW OF THE LITIGATION

Defendants produce and market beer, wine and spirits, including in Napa County, where Plaintiff worked. Plaintiff was employed by Defendants from February 2018 to approximately May 2, 2021, as a non-exempt employee. JCL Dec., ¶ 13 and Declaration of Michael Hillstrom (“Hillstrom Dec.”) at ¶ 3.

Plaintiff alleges that he and class members were denied legally compliant meal and rest periods, that Defendants failed to pay for all time worked, failed to pay minimum wages and overtime wages, that Defendants miscalculated the regular rate of pay for purposes of overtime, sick pay and meal premiums, that Defendants did not provide compliant wage statements, that Defendants did not reimburse Plaintiff and class members for necessary business expenses and that Defendants did not timely pay Plaintiff and class members wages during employment and at separation. all times during his employment. Throughout his employment, Plaintiff was subject to Defendants’ written policies and procedures contained in, among other documents, the “Employee Handbook.” JCL Dec., ¶ 13.

Defendants deny liability for each of Plaintiff’s claims. Further, Defendants assert that they fully complied with all applicable employment laws and raised several other significant defenses to Plaintiff’s claims, including but not limited to, facially compliant meal and rest period policies, compliant wage statements, compliant reimbursement practices, and they maintain that they timely paid all wages due upon separation of employment. JCL Dec., ¶ 14.

On October 27, 2021, Plaintiff served Defendants and the Labor and Workforce Development Agency (“LWDA”) with a Notice of Violations (“PAGA Notice”). Plaintiff’s PAGA Notice set forth the facts and theories supporting Defendants’ alleged violations of various provisions of the California Labor Code and applicable Industrial Welfare Commissions (“IWC”) Wage Order and of his intent to pursue claims under California Labor Code Private Attorneys General Act, Cal. Lab. Code Sections 2698 *et seq* (“PAGA”). JCL Dec., ¶ 15.

On January 3, 2022, Plaintiff filed a class action complaint in the Napa County Superior Court, Case No. 22CV000006 (“Class Action”). The Class Action alleged ten causes of action against Defendants for: (1) Unfair Competition in violation of Cal. Bus. & Prof. Code §§ 17200, *et. seq.*; (2) Failure to Pay Minimum Wages in violation of Cal. Lab. Code §§ 1194, 1197, 1197.1; (3) Failure to

1 Pay Overtime Wages in violation of Cal. Lab. Code §§ 510, *et seq.*; (4) Failure to Provide Required
2 Meal Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5)
3 Failure to Provide Required Rest Periods in violation of Cal. Lab. Code §§ 226.7 & 512 and the
4 Applicable IWC Wage Order; (6) Failure to provide accurate itemized statements in violation of
5 California Labor Code §226; (7) Failure to Pay Wages When Due in violation of Cal. Lab. Code §§
6 201, 202, and 203; and (8) Failure to Reimburse for Required Expenses in violation of Cal. Lab. Code
7 § 2802; (9) Unpaid sick pay in violation of California Labor code §246, and (10) Violation of the Private
8 Attorneys General Act (Labor Code § § 2698, *et. Seq.*) JCL Dec., ¶ 16.

9 In March and April of 2022, Plaintiff propounded written discovery to Defendants. Soon
10 thereafter, the Parties agreed to mediate the Action. The Parties also agreed to stay the action including
11 formal discovery, pending mediation. The Parties attended an initial mediation on February 27, 2023,
12 with mediator Jeffrey Ross, an experienced mediator who has mediated numerous wage-hour class
13 actions. The mediation was not successful. The Parties agreed to attend a second mediation, which
14 took place on April 27, 2023. In preparation for the mediations, the Parties agreed to informally
15 produce additional documents and data points subject to the mediation privilege, including but not
16 limited to relevant wage and hour policies and procedures, such as meal and rest break policies, and
17 sample time and payroll records for the Class. Plaintiff’s counsel retained the forensic consultants at
18 Berger Consulting Group (“BCG”) to analyze Defendants’ time and payroll data. JCL Dec., ¶ 17.

19 After the April 27, 2023, mediation session, the Parties reached the basic terms of a settlement,
20 and thereafter signed a binding Memorandum of Understanding. Thereafter, the Parties drafted and
21 negotiated a long-form settlement agreement. JCL Dec., ¶ 18.

22 On November 30, 2023, this Court granted preliminary approval of the \$2,500,000.00
23 Settlement. The Gross Settlement Amount shall be used: (1) to satisfy Individual Settlement Payments;
24 (2) to satisfy the Service Award; (3) to satisfy the Class Counsel Fees and Costs Award; (4) to satisfy
25 the PAGA Payment; and (5) to satisfy the Settlement Administration Costs incurred in this action. JCL
26 Dec., ¶19. Shortly thereafter, on December 21, 2023, the Settlement Administrator mailed Notice
27 Packets to all 832 Settlement Class members. Atticus Dec., ¶ 7. The mailing of the Notice Packets
28 triggered a forty-five (45) day Response Deadline for the Settlement Class to submit requests for

1 exclusion or objections to the Settlement. Agreement, ¶ 1.10. In response, the Settlement
2 Administrator received two timely and valid exclusion requests for Cathleen Gray and Valerie Varachi.
3 Thus 830/832 (99.76%) of class members are participating in the Settlement. Atticus Dec., ¶ 10; JCL
4 Dec., ¶10.

5 **III. THE SETTLEMENT BEFORE THE COURT**

6 The Court preliminarily approved a Gross Settlement Amount of \$2,500,000.00. JCL Dec., ¶19.
7 The Gross Settlement Amount is all-in with no reversion to Defendants. Agreement, ¶ 1.14. The Net
8 Settlement Amount shall be used for the payment of all Individual Settlement Payments to satisfy all
9 Released Class Claims. The Settlement Administrator will calculate Individual Settlement Payments by
10 adding up the total number of Workweeks for all Class Members. The pro rata portion of the NSA to be
11 distributed to each Settlement Class Member shall be determined by dividing the total number of
12 workweeks worked during the Class Period into the NSA to arrive at a value per workweek for each
13 eligible Settlement Class Member. The value per workweek shall be multiplied by the number of
14 workweeks worked by each Settlement Class Member during the Class Period. For purposes of
15 payment, workweeks shall be determined based on hire dates, termination dates, and re-hire dates, as
16 applicable. Agreement, ¶ 5.1.1.1. The Settlement Administrator estimates the average Individual
17 Settlement Payment is **\$1,810.30**, the highest Individual Settlement Payment is **\$6,869.17**, and the
18 lowest Individual Settlement Payment is **\$23.61**. Atticus Dec., ¶ 13.

19 In exchange for the valuable consideration, as of the funding of the Gross Settlement Amount,
20 the Settlement Class Members will release the Released Parties from the Released Class Claims for the
21 Class Period. Agreement, ¶13.1.

22 Atticus Administration LLC was appointed as the Settlement Administrator for the class. The
23 Settlement Administration Cost is \$12,700.00. Atticus Dec., ¶ 16. These expenses shall be paid from the
24 Gross Settlement Amount. Agreement, ¶¶ 1.29 and 9.

25 Subject to Court approval, Class Counsel shall seek a Class Counsel Fees and Costs Award in the
26 amount of \$868,333.33, comprised of attorneys' fees equal to one-third of the Gross Settlement Amount
27 estimated to be at least \$833,333.00 and up to \$35,000.00 for actually incurred litigation expenses.
28 Agreement, ¶ 6.

1 Subject to Court approval, the Agreement provides for a Service Award in the amount of \$12,500
2 for Plaintiff in consideration of his time, risk, and efforts as the Class Representative on behalf of the
3 Settlement Class. Agreement, ¶7

4 As set forth in the Agreement, \$100,000.00 of the Gross Settlement Amount has been allocated
5 for civil penalties under the PAGA (“PAGA Payment”). Seventy-Five percent of the PAGA Payment
6 will be paid to the California Labor Workforce and Development Agency (“LWDA Payment”). The
7 Settlement Administrator shall distribute the remaining 25% of the PAGA Payment to the Aggrieved
8 Employees (“Aggrieved Employee Payment”). Agreement, ¶ 8.

9 As explained in further detail below, the Settlement is fair, adequate, and reasonable to the class
10 and should be granted final approval. Given the complexities of this case, the defenses asserted, and the
11 uncertainty of class certification, along with the uncertainties of proof at trial and appeal, the proposed
12 settlement is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 20.

13 Further supporting final approval, the average Individual Settlement Payment of **\$1,810.30** is
14 comparable to settlement payments in similar wage and hour class actions. This result is particularly
15 favorable considering that liability and certification were far from certain. Given the complexities of
16 this case, the defenses asserted, the uncertainty of class certification, along with the uncertainties of
17 proof at trial and appeal, the proposed settlement is fair, reasonable, and adequate, and should be granted
18 final approval. JCL Dec., ¶ 21.

19 **IV. GENERAL STANDARDS APPLICABLE TO JUDICIAL REVIEW AND APPROVAL**
20 **OF CLASS ACTION SETTLEMENTS**

21 Settlements of disputed claims are favored by the courts. *Huens v. Tatum*, 52 Cal. App. 4th 259,
22 265 (1997). In evaluating settlements, the courts have long recognized that compromise is particularly
23 appropriate since such litigation is difficult and notoriously uncertain. *7-Eleven Owners for Fair Fran.*
24 *v. Southland Corp.*, 85 Cal.App.4th 1135, 1151 (2000).

25 “[T]o prevent fraud, collusion or unfairness to the class, the settlement or dismissal of a class
26 action requires court approval.” *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996) *citing*
27 *Malibu Outrigger Bd. Of Governors v. Superior Court*, 103 Cal. App. 3d 573, 578-579 (1980). The
28 court must decide whether the proposed settlement falls within the range of reasonable settlements,

1 considering that settlements are compromises between the parties reflecting subjective, unquantifiable
2 judgments concerning the risks and possible outcomes of litigation. See also *Wershba v. Apple*
3 *Computer*, 91 Cal.App.4th 224, 246 (2001). In *Wershba*, appellants argued that the settlement was too
4 low given the “clear” liability, however, the Court rejected this argument and held that “the merits of
5 the underlying class claims are not a basis for upsetting the settlement of a class action.” *Wershba*,
6 *supra*, at 246; see also *7-Eleven, supra*, at 1150. In these cases, Courts have repeatedly emphasized that
7 there is a strong initial presumption that the compromise is fair and reasonable. *Wershba*, 91
8 Cal.App.4th at 245. The presumption of fairness exists where: (1) investigation and discovery are
9 sufficient to allow counsel and the court to act intelligently; (2) the settlement is reached through arm’s-
10 length bargaining; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
11 small. *Dunk*, 48 Cal. App. 4th at 1801, citing Newberg & Conte, *Newberg on Class Actions*, (3d ed.
12 1992) §11.41, pp. 11-91. Here, all these factors support a presumption of fairness.

13 **V. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

14 The court must determine whether the settlement is fair, adequate, and reasonable. *Dunk v. Ford*
15 *Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996); see also *Officers for Justice v. Civil Service Com'n*, 688
16 F.2d 615, 625 (9th Cir. 1982). The purpose of the requirement is "the protection of those class members,
17 including the named plaintiffs, whose rights may not have been given due regard by the negotiating
18 parties." *Dunk, supra*, at 1801.

19 The trial court has broad discretion to determine whether the settlement is fair. *Rebney v. Wells*
20 *Fargo Bank*, 220 Cal.App.3d 1117, 1138 (1990). “The well-recognized factors that the trial court should
21 consider in evaluating the reasonableness of a class action settlement agreement include 'the strength of
22 plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of
23 maintaining class action status through trial, the amount offered in settlement, the extent of discovery
24 completed and the stage of the proceedings, the experience and views of counsel, the presence of a
25 governmental participant, and the reaction of the class members to the proposed settlement.' [Citations.]”
26 *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 128 (2008); see also *Munoz v. BCI Coca-Cola*
27 *Bottling Co. of Los Angeles*, 186 Cal.App.4th 399, 408 (2010).

28 The list of factors is not exhaustive and should be tailored to each case. *Dunk, supra*, at 1801.

1 Due regard should be given to what is otherwise a private consensual agreement between the parties.
2 *Id.* The inquiry “must be limited to the extent necessary to reach a reasoned judgment that the agreement
3 is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
4 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Id.* “Ultimately, the
5 [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross
6 approximations and rough justice.' [Citation omitted.]” *Id.*

7 These factors are analyzed seriatim below and all support final approval of the class action
8 settlement before this Court.

9 **A. Class Counsel Conducted a Thorough Investigation.**

10 As detailed in the motion for preliminary approval, Class Counsel thoroughly investigated the
11 proposed Class Members’ claims, applicable law, and potential defenses. Months before filing the
12 Action, Class Counsel began its pre-filing investigation into the Plaintiff’s complaints. Class Counsel’s
13 investigation started with several lengthy interviews with Plaintiff. As part of the interview process,
14 the Plaintiff produced documents related to his employment, including portions of his time and payroll
15 records. At the conclusion of the interviews, Class Counsel determined that Plaintiff’s complaints
16 justified further inquiry. JCL Dec., ¶ 22.

17 Class Counsel subsequently requested Plaintiff’s employee files from Defendants. In response,
18 Defendants produced hundreds of pages of documents, including but not limited to, copies of
19 Defendants’ written policies and Plaintiff’s hiring documents and payroll and time records. Class
20 Counsel reviewed and analyzed the documents and determined the documents appeared to substantiate
21 Plaintiff’s claim that Defendants failed to, among other things, provide compliant meal and rest periods,
22 to provide accurate wage statements, to compensate overtime wages at the correct regular rate of pay,
23 and to reimburse for mandatory business expenses. JCL Dec., ¶ 23.

24 Specifically, Class Counsel assessed the value of the class claims using data and documents
25 provided by Defendants through informal discovery. Class Counsel obtained a sampling of aggregate
26 time and payroll data for class members, job descriptions, compensation reference guides, incentive
27 compensation plans, meal period waivers, aggregate meal premium data, and meal and rest policy
28 records for the Class Members, aggregate workweek and pay period data, class demographics,

1 Plaintiff's personnel file, time and pay documents, W-2's, hiring documents, signed policies and
2 acknowledgements and copies of applicable handbooks for all class members containing, *inter alia*,
3 compensation, timekeeping, and meal and rest period policies. In total, Class Counsel reviewed more
4 than 2,000 pages of documents and more than 2 million unique cells of time and payroll data. Class
5 Counsel retained BCG to analyze Defendants' time and payroll data to formulate damage models
6 estimating Defendants' liability exposure. Class Counsel's investigation, research, experience, and
7 damage model informed and guided the mediated negotiations that resulted in this settlement. JCL
8 Dec., ¶ 24-25.

9 BCG analyzed Defendants' time and payroll data to assist in the development of various damage
10 models. Among other things, BCG determined the approximate amount of unpaid wages, amount of
11 unpaid overtime wages, number of workweeks, pay periods, average length of shifts and average
12 number of hours worked per week. BCG also estimated the number of missed, late, or truncated meal
13 and rest periods, the amount of unpaid wages, the amount of unreimbursed expenses, the amount of
14 unpaid overtime, the amount of unreimbursed business expenses, and the amount of missed meal and
15 rest period premiums paid during the Class Period. JCL Dec., ¶ 26.

16 Overall, Class Counsel thoroughly investigated the claims at issue, including: (1) determining
17 Plaintiff's suitability as a putative class representative through interviews, background investigations,
18 and analysis of his employment files; (2) evaluating all of Plaintiff's potential claims; (3) researching
19 similar wage and hour class actions as to the claims brought, the nature of the positions, and the type
20 of employer; (4) analyzing the Class Member's time and payroll records; (5) analyzing Defendants'
21 labor policies and practices; (6) researching settlements in similar cases as well as outstanding issues
22 which could affect settlement approval; (7) evaluating Plaintiff's claims and estimating Defendants'
23 liability for purposes of settlement; (8) drafting the mediation brief; and (9) participating in the
24 mediation. This investigation allowed Class Counsel to fully assess the nature and magnitude of the
25 claims being settled, as well as the impediments to recovery, such as to make an independent assessment
26 of the reasonableness of the terms to which the Parties have agreed. JCL Dec., ¶ 27.

27 Class Counsel only agreed to enter the Settlement following this thorough investigation and
28 evaluation of Plaintiff's claims. Based on its investigation of the facts, applicable law, and marketplace

for similar settlements, and considering the risk of significant delay and uncertainty associated with litigation, and the various defenses asserted by Defendants, Class Counsel firmly believe this Agreement to be in the best interests of the Class Members. Because the Settlement's terms are fair, reasonable, and adequate, the Court should approve the Settlement. JCL Dec., ¶ 28

B. The Parties Settled at Mediation.

The Settlement is the product of two mediation sessions with respected mediator Jeffrey Ross. The Parties subsequently negotiated the terms of the Settlement. Mediator Ross helped manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks to both sides. The Parties made substantial progress with Mediator Ross's assistance. Namely, the Parties exchanged information regarding their respective claims and defenses, including their respective evaluation of the damages. The negotiations were adversarial, conducted at arms-length and tempered by the efforts of both sides to serve the interests of their clients. JCL Dec., ¶ 29.

C. Class Counsel is Experienced in Similar Litigation.

Class Counsel in this matter has extensive class action experience in multiple fields and has represented tens-of-thousands of persons in class actions. Class Counsel's experience is summarized in their concurrently filed declarations. Class Counsel has concluded the settlement is fair, adequate, and reasonable and in the best interests of the Class. JCL Dec., ¶¶ 30-36; Declaration of Shani O. Zakay ("Zakay Dec.") ¶ 4.

D. The Settlement Class Responded Positively to the Settlement

The reaction of the Settlement Class unequivocally supports approval of the Settlement. To date, only two of the 832 members of the Settlement Class opted-out of the Settlement. Moreover, there are zero objections. Stated differently, 99.76% of the Settlement Class chose to participate in the Settlement. JCL Dec., ¶ 10; Atticus Dec., ¶¶ 10-11.

The high approval by the Settlement Class strongly supports a finding that the Settlement is fair, reasonable, and adequate. *See In re Austrian & German Bank Holocaust Litigation*, 80 F. Supp. 2d 164, 175 (S.D.N.Y. 2000) Consequently, Class Counsel respectfully request the Court to follow the high approval of the Settlement Class and grant final approval of the Settlement.

///

1 **E. The Risk, Expense, Complexity and Duration of Further Litigation Favor Settlement.**

2 Although Plaintiff and Class Counsel believe that this case has merit, they recognized the
3 potential risks both sides would face if litigation of this action continued. JCL Dec., ¶¶ 37-38. As the
4 federal court in *Glass v. UBS Fin. Servs.*, 2007 WL221862 held, where the parties faced uncertainties
5 similar to those in this litigation:

6 ***“In light of the above-referenced uncertainty in the law, the risk, expense,***
7 ***complexity, and likely duration of further litigation likewise favors the***
8 ***settlement.*** Regardless of how this Court might have ruled on the merits of
9 the legal issues, the losing party likely would have appealed, and the parties
 would have faced the expense and uncertainty of litigating an appeal. The
 expense and possible duration of the litigation should be considered in
 evaluating the reasonableness of [a] settlement.”

10 With respect to the most immediate challenge, i.e., class certification, the risks attendant to the
11 certification of similar wage and hour claims are demonstrated by *Magadia v. Wal-Mart Associates,*
12 *Inc.* (9th Cir. 2021) 999 F.3d 668. There, the Ninth Circuit, vacated reversed and remanded a \$110
13 million judgement against an employer for, *inter alia*, inaccurately paying overtime, and directed the
14 trial court to enter judgement in favor of the employer. Consequently, the uncertainty of obtaining
15 certification through a contested motion is a significant risk factor favoring settlement. JCL Dec., ¶ 39.

16 Although Plaintiff is confident about the strength of his claims, Plaintiff nevertheless recognizes
17 that Defendants have factual and legal defenses that, if successful, would potentially defeat or impair
18 the value of the lawsuit. Legally, the fast-changing landscape of wage and hour litigation can drastically
19 affect the value of Plaintiff’s claims and, in fact, already has. JCL Dec., ¶ 40.

20 In a similar wage and hour case, the federal district court in *Hopson v. Hanesbrands Inc.*, 2009
21 U.S. Dist. LEXIS 33900 at * 19-20 (N.D. Cal. 2009), granted approval of an overtime class action
22 settlement and explained:

23 **Plaintiffs may have a strong case, but the risks inherent in continued**
24 **litigation are great.** Defendants strongly deny liability for Plaintiffs’
25 principal claim that full-time Service Associates were misclassified as
26 exempt. In addition to the uncertainties raised by Defendants at the
27 preliminary stage regarding Plaintiffs’ chance of success in this case,
28 Defendants note that the question of an employer’s duty to provide rest and
 meal periods is an open one, signaling even less certainty for
 Plaintiffs.....[T]he **Total Settlement amount and the Class Members’**
 expected net recovery, after fees and other costs are deducted, appear
 to be a reasonable compromise, in light of the risks of litigation.

As recognized in a federal decision approving settlement of an overtime wage class action:

The potential complexity and possible duration of trial also weigh in favor of granting final approval. Plaintiffs acknowledge the difficulties of proving damages, recognize the uncertainty of outcome, and believe defendant would appeal in the event of adverse judgment. A post-judgment appeal would require many years to resolve and delay payment to class members. Plaintiffs believe the benefits of a guaranteed recovery today outweigh an uncertain future result. Accordingly, plaintiffs argue, and the Court agrees, the actual recovery confers substantial benefits on the class that outweigh the potential recovery through full adjudication.

Barcia v. Contain-A-Way, Inc., 2009 U.S. Dist. LEXIS 17118, *9 (S.D. Cal. 2009);

In sum, while other cases have approved class certification in wage and hour claims, class certification in this action would have been hotly disputed and was by no means a foregone conclusion. Where both sides face significant uncertainty, as here, the attendant risks favor settlement. *Hanlon v. Chrysler Corp.*, 150 F. 3d 1011, 1026 (9th Cir. 1998).

Plaintiff and Class Counsel recognize the expense and length of a trial against Defendants through possible appeals which could take another three years. In arriving at their informed belief that the present settlement is fair and adequate, Class Counsel accounted for the uncertain outcome and risk inherent in complex actions such as this one. Class Counsel are also mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims asserted in the litigation. Moreover, post-trial motions and appeals would have been inevitable. Costs would have mounted, and recovery would have been delayed if not denied, thereby reducing the benefits of an ultimate victory. Plaintiff and Class Counsel believe that the Settlement confers substantial monetary and non-monetary benefits upon the Class. Based upon their evaluation, Class Representative and Class Counsel have determined that the Settlement set forth in the Agreement is in the best interest of the Class, is fair, reasonable, and adequate, and should be granted final approval. JCL Dec., ¶ 41.

F. The Gross Settlement Amount is Fair and Reasonable.

The Gross Settlement Amount of \$2,500,000.00 in this case is fair and well within the range of recognized reasonableness. As detailed at the time of preliminary approval, the Gross Settlement Amount is fair and reasonable considering the nature and magnitude of the claims being settled and the various potential impediments to recovery. Class Counsel developed varied economic damages models

1 measuring Defendants' liability exposure while accounting for the uncertainties of continued litigation.
2 The various models were informed by Class Counsel's investigation, including the analysis of a
3 significant sample of time and payroll data. As detailed in greater depth during the preliminary approval
4 process, Class Counsel projected a range of Defendants' liability exposure for the claims asserted on
5 behalf of the Settlement Class. The Gross Settlement Amount represents between approximately 19%
6 of Defendants' maximum liability and approximately 32.9% of Defendants' *class-wide* liability
7 exposure as estimated by Class Counsel at the time of mediation. JCL Dec., ¶ 42 and 58

8 In *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at * 12, the District
9 Court for the Northern District of California granted final approval in a wage and hour misclassification
10 action and found that the total settlement representing 10% of the estimated trial award was within the
11 "range of reasonableness." In *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454,
12 459 (9th Cir. 2000), the Ninth Circuit approved a settlement representing "roughly one-sixth of the
13 potential recovery." Given the amount of the settlement here as compared to potential value of the
14 claims, particularly the strength of Plaintiff's action, the settlement is clearly fair and reasonable.

15 The settlement provides significant relief to the Settlement Class Members. The average
16 settlement payment is approximately **\$1,810.30**, the highest is approximately **\$6,869.17**, and the lowest
17 is approximately **\$23.61**. Atticus Dec., ¶ 13. This average net recovery is greater than many wage and
18 hour class action settlements approved by California state and federal courts. *See, e.g., Palencia v. 99*
19 *Cents Only Stores*, No. 34-2010-00079619 (Sacramento County Super. Ct) (average net recovery of
20 approximately \$80); *Fukuchi v. Pizza Hut*, Case No. BC302589 (LA. County Super. Ct.) (average net
21 recovery of approximately \$120); *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A.
22 County Super. Ct.) (average net recovery of approximately \$120); *Ressler v. Federated Department*
23 *Stores, Inc.*, Case No. BC335018 (L.A. County Super. Ct.) (average net recovery of approximately
24 \$90).

25 Clearly the goal of this litigation to obtain redress for the class has been met by this Settlement.
26 Given the amount of the Settlement, the risks of litigation and the arm's length negotiations between
27 experienced counsel, the settlement is entitled to final approval. JCL Dec., ¶ 43.

28 ///

VI. THE PENALTIES UNDER THE PRIVATE ATTORNEY GENERAL ACT OF 2004

ARE REASONABLE

Courts routinely approve of amounts for PAGA penalties in the range of zero to two percent of the settlement. *See id.* at *1, 9 (approving a PAGA payment of 0.3%); *Jack v. Hartford Fire Ins. Co.*, No. 09cv1683 MMA (JMA), 2011 WL 4899942, at *6 (S.D. Cal. Oct. 13, 2011) (approving a PAGA payment of 0.25%); *McKenzie v. Fed. Express Corp.*, No. CV 10-02420 GAF (PLAx), 2012 WL 12882124, at *5 (C.D. Cal. Jan. 23, 2012) (acknowledging that courts approve PAGA claim settlements in the range of zero to two percent of the total settlement).

Here, Plaintiff and Defendants negotiated a good faith PAGA Payment in the amount of \$100,000 which is 4% of the Gross Settlement Amount. This amount falls well within the range of approved PAGA payments. Seventy-Five percent (75%) of the PAGA Payment (\$75,000.00) will be paid to the LWDA (“LWDA Payment”) with the remaining twenty-five percent (25%) of the PAGA Payment (\$25,000) to be distributed to the Aggrieved Employees, which is within the range of PAGA payments approved by courts and should be approved. JCL Dec., ¶ 44.

Further, on November 1, 2023, Class Counsel gave the LWDA notice of this Settlement and proposed allocation by filing a copy of the Settlement and the Motion for Preliminary Approval with the LWDA. On March 26, 2024, Plaintiff gave the LWDA notice of this motion seeking final approval of this settlement. JCL Dec., ¶¶ 6, 45. By not registering an objection with either Class Counsel or the Court, the LWDA has accepted and approved of the proposed PAGA Payment.

VII. CLASS COUNSEL'S REQUEST FOR FEES AND COSTS

As part of the settlement, the parties agreed to a Class Counsel Fees and Costs Award of **\$868,333.33**, comprised of \$833,333.33 for attorneys' fees (one-third of the Gross Settlement Amount) and up to \$35,000.00 for reimbursement of actually incurred litigation expenses. The requested attorneys' fee portion of the Class Counsel Fees and Costs Award equal to one-third of the Gross Settlement Amount is fair compensation and, respectfully, should be approved. Class Counsel undertook complex, risky, and time-consuming wage and hour litigation on a contingent basis. Further, the attorneys' fee portion of the requested Class Counsel Fees and Costs Award are within the historically recognized range attorneys' fees awarded in common fund class action settlements –

1 between 25% and 50% – and is supported by Class Counsel’s lodestar cross-check with a reasonable
2 2.14 multiplier. That is almost identical to the 2.13 multiplier approved by the Supreme Court in *Laffitte*
3 *v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, with additional work to be performed, and
4 within the recognized multiplier range of between 2 and 4³. Thus, the reasonableness of the requested
5 Class Counsel Fees and Costs Award is confirmed by reference to the lodestar with a reasonable
6 multiplier with significant additional work still to be performed. JCL Dec., ¶¶ 46-72.

7 **A. Common Fund**

8 Courts have long recognized that when class counsel’s efforts result in the creation of a common
9 fund that benefits plaintiffs and unnamed class members, class counsel have an equitable right to be
10 compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)
11 (“recogniz[ing] consistently that a litigant or a lawyer who recovers a common fund...is entitled to a
12 reasonable attorney’s fee from the fund as a whole”); *Laffitte*, 1 Cal. 5th at 488-89 (common fund
13 doctrine “long recognized” under California law). The common fund doctrine rests on the
14 understanding that attorneys should normally be paid by their clients and that, unless attorneys’ fees
15 are paid out of the common fund, those who benefit from the fund will be “unjustly enriched.” *Boeing*,
16 444 U.S. at 478.

17 As noted above, in *Laffitte*, the California Supreme Court upheld the trial court’s award of
18 33.33% of the settlement amount of \$19 million dollars with a 2.13 multiplier and affirmed that
19 “empirical studies show the percentage method with a lodestar cross-check is the most prevalent form
20 of fee method in practice.” *Laffitte*, 1 Cal. 5th at 496-97. In fact, courts have historically awarded
21 between 25% and 50% of the common fund as attorneys’ fees class action settlements. *In re Warner*
22 *Communications*, 618 F.Supp. 735, 749-50 (S.D.N.Y 1985).

23 Here, the fairest way to calculate a reasonable fee when contingency-fee litigation has produced
24 a fixed settlement amount for the Settlement Class Members is by awarding Settlement Class Counsel
25 a percentage of the total settlement sum. *See, e.g., In re Bluetooth Headset Products Liab. Litig.*, 654
26

27 ³ See *Laffitte, supra*, 1 Cal. 5th at 487 (approving 1/3 fee award with 2 multiplier); *Wershba v. Apple Computer*, 91 Cal.
28 App. 4th 224, 255 (2001) (“multipliers can range from 2 to 4 or even higher.”); *In re Sutter Health Uninsured Pricing*
Cases, 171 Cal.App.4th 495, 512 (2009) (affirming multiplier of 2.52 as “fair and reasonable”); *Chavez v. Netflix, Inc.*, 162
Cal.App.4th 43, 66 (2008) (affirming multiplier of 2.53 as well within the approved range of 2 to 4).

F.3d 935, 942 (9th Cir. 2011). More importantly, a fee award under the common fund method here would achieve the two underlying goals of the common fund doctrine by: (1) equitably requiring the beneficiaries of the common fund to pay their pro rata share of fees incurred in creating the fund; and (2) providing an incentive to attract competent counsel to handle wage and hour class actions, which California courts recognize as a fundamental tool to ensure the effective enforcement of the Labor Code and minimum labor standards. *See, e.g., Gentry v. Super. Ct.*, 42 Cal. 4th 443, 455-56 (2007) (overruled on other grounds by *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014) (emphasizing the indispensable value of private enforcement of California’s wage-and-hour laws through class actions).

The Agreement provides for payment of the Class Counsel Fees and Costs Award from the common fund. Accordingly, it is well within the Court’s discretion to award fees to Class Counsel under the common fund doctrine. Class Counsel requests attorneys’ fees in the amount of \$833,333.33 representing one-third of the Gross Settlement Amount. Class Counsel’s request is consistent with many fee awards in similar wage and hour class actions. Moreover, the requested attorneys’ fee award is in the middle of historically recognized range of attorneys’ fees awarded in common fund settlements. JCL Dec., ¶¶ 54-55.

The attorneys’ fee portion of the Class Counsel Fees and Costs Award request should be awarded based upon the Gross Settlement Amount in accordance with *Laffitte*, i.e., percentage of the fund with a lodestar cross check. As further explained below, the reasonableness of the requested \$833,333.33 attorneys’ fee award is further supported by the lodestar cross-check. JCL Dec., ¶ 46-72.

B. Class Counsels’ Lodestar Supports the Requested Attorneys’ Fees

Class Counsel’s lodestar to date is \$389,142.50 *exclusive of costs*, with significant work remaining. JCL Dec., ¶¶ 46-53. Thus, Class Counsel’s fee request is equal to Class Counsel’s lodestar with a 2.14 multiplier – almost identical to the multiplier approved in *Laffitte* – is well within the recognized multiplier range between 2 and 4. *See Taylor v. FedEx Freight, Inc.*, 2016 U.S. Dist. LEXIS 142202 (E.D. Cal. 2016) (following *Laffitte*, approved 30% fee award with cross-check lodestar multiplier of 2.26); *Emmons v. Quest Diagnostics Clinical Labs., Inc.*, 2017 U.S. Dist. LEXIS 27249 (E.D. Cal. 2017) (following *Laffitte*, approved 33% fee award with cross-check lodestar multiplier of

1.7).

Because the Settlement in this case is a pure common fund case, and the percentage of the fund is the comparable marketplace for fee awards in common fund cases, *Laffitte* supports an award based upon the percentage of the common fund. Moreover, Class Counsel's lodestar supports the requested attorneys' fees with a multiplier well within the recognized range reasonableness, and in fact, below what the California Supreme Court approved in *Laffitte*. JCL Dec., ¶ 57.

Although no rigid formula applies, an analysis of each of the following "basic factors" that California courts typically consider further supports the reasonableness of a fee request: **(1)** the result class counsel obtained; **(2)** the time and labor required of the attorneys; **(3)** the contingent nature of the case and the delay in payment to class counsel; **(4)** the extent to which the nature of the litigation precluded other employment by class counsel; **(5)** the experience, reputation, and ability of the attorneys who performed the services, the skill they displayed in the litigation, and the novelty, complexity and difficulty of the case; and **(6)** the informed consent of the clients to the fee agreement. *Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977); *Dunk v. Ford Motor Co.*, 48 Cal.App.4th at 1810 n.2. Those factors support Class Counsel's request and are addressed in more detail in Counsel's declarations submitted concurrently herewith. In short: **(1)** Considering the issues presented in the case, the Gross Settlement Amount of \$2,500,000.00 is an excellent result for the Settlement Class, **(2)** Collectively, Class Counsel worked hard on this case and, expended approximately 786.98 hours in the prosecution of this litigation in the twenty-six months since it was filed for a total lodestar of \$389,142.50, **(3)** Class Counsel undertook this litigation on a contingent-fee basis, assuming a significant risk that the litigation would yield no recovery after many years of work, **(4)** Class Counsel negotiated a one-third contingency fee arrangement, which is a reasonable arrangement to obtain competent counsel in the marketplace for representation in wage and hour class actions of this nature, and it is only equitable that Settlement Class who share in the excellent results achieved by this Settlement bear their pro rata share of the attorney's fees award to Class Counsel, **(5)** Class Counsel possesses significant experience litigating complex wage and hour class actions and the way this Settlement was achieved is demonstrative of the highly efficient way this litigation was managed and resolved (*See* Class Counsel's declarations for a detailed outline of their skills and experience), and **(6)** Class Counsel's hourly rates are set forth in the

1 concurrently filed declarations of Jean-Claude Lapuyade, Esq., and Shani Zakay, Esq. are well within
2 the range of rates billed by comparable attorneys in this market and reasonably compare with rates
3 approved by other trial courts in wage and hour class action litigation. JCL Dec., ¶¶ 46-72; Zakay Dec.,
4 ¶ 5-7.

5 **C. Class Counsel's Costs**

6 Moreover, common fund fee and expense awards include counsel's incurred expenses because
7 those who benefit from their effort should share in the cost. *See Rider v. City of San Diego*, 11 Cal.
8 App. 4th 1410, 1423 n.6 (1992). The appropriate analysis in deciding if costs are compensable is
9 whether the costs are of the type typically billed by attorneys to paying clients in the marketplace. *See*
10 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994).

11 As of the date of this filing, Class Counsel has incurred a total of \$19,048.63 litigating this action.
12 All of Class Counsel's out-of-pocket expenses are the types of expenses normally charged to paying
13 clients including the following: filing fees; copying; postage; mediation fees; and expert costs, which
14 were all incurred during, and were necessary for the successful prosecution of, the litigation and,
15 therefore, should be reimbursed. Class Counsel now requests reimbursement for those incurred
16 litigation expenses and costs in the amount up to \$35,000 as provided for in the Settlement Agreement
17 and based upon Class Counsel's billing records; unused costs awarded will be added to the Net/Gross
18 Settlement Amount. JCL Dec. ¶¶ 7, 73-75; Zakay Dec., ¶¶ 7-8.

19 **D. Plaintiff's Service Award Is Reasonable and Should be Approved**

20 Courts routinely approve service awards to compensate named plaintiffs for the services they
21 provide and the risks they incur during the class litigation. *Bell v. Farmers Ins. Exch.*, 115 Cal.App.4th
22 715, 726 (2004) The factors courts use in determining the amount of service awards include: (1) a
23 comparison between the service awards and the range of monetary recovery available to the class; (2)
24 time and effort put into the litigation; (3) whether the litigation will further the public policy underlying
25 the statutory scheme; and (4) risks of retaliation. *Clark v. American Residential Services, LLC*, 175
26 Cal.App.4th 785, 804-805 (2009).

27 Regarding the amount of the requested award, courts frequently approve awards of \$7,500.00 or
28 more. *See In re Cellphone*, 186 Cal.App.4th 1380. The amount of the requested Service Award to

1 Plaintiff for \$12,500 is reasonable by reference to the amounts that California courts (both federal and
2 state) have repeatedly awarded in similar class action settlements. Further, the almost unanimous
3 consent by the Class Members favors the Court's approval of the requested Service Award. Equally
4 important, the time, effort, and services provided to the Settlement Class justifies the requested Service
5 Award. The Class Representative performed his duties to the Settlement Class admirably. Plaintiff's
6 work is summarized in his declaration filed concurrently herewith. Plaintiff assumed the serious risk
7 of liability for Defendants' costs and potentially fees if the case was unsuccessful. Nevertheless,
8 Plaintiff knowingly and voluntarily undertook the risk to vindicate the rights of the Settlement Class.
9 Hillstrom Dec. ¶ 1-12; JCL Dec., ¶ 76-80.

10 **VIII. CONCLUSION**

11 Plaintiff respectfully submits that the proposed settlement satisfies the standard of fairness
12 established in California law and should therefore be finally approved as fair, reasonable, and adequate
13 and requests entry of the Final Approval Order and Judgment submitted herewith. Further, based on the
14 foregoing, Class Counsel respectfully requests approval of the Class Counsel Fees and Costs Award
15 payment in the amount of \$868,333.33, comprised of (1) \$833,33.33 as compensation for attorneys' fees
16 (one-third of the Gross Settlement Amount of \$2,500,000.00) and (2) litigation expenses up to
17 \$35,000.00 as supported by Class Counsel's billing records. Class Counsel and the Class Representative
18 also respectfully request approval of the requested Service Award in the amount of \$12,500 to Plaintiff.

19
20 Dated: March 26, 2024

JCL LAW FIRM, APC

21 By: 
22 Jean-Claude Lapuyade, Esq.
23 Attorneys for Plaintiff
24
25
26
27
28