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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

CINDY GALLOWAY, as an individual and on all others similarly situated and aggrieved, Plaintiff, vs. P.F. CHANG'S III, LLC, an Arizona limited liability company; P.F. CHANG'S CHINA BISTRO, INC., a Delaware Corporation; PEI WEI ASIAN DINER, LLC, a Delaware limited liability company; and DOES 1 to 100, inclusive, Defendants.	Case No.: 20STCV36407 Assigned for All Purposes to: Hon. Maureen Duffy-Lewis Dept. 38 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND REQUEST FOR ATTORNEY'S FEES AND COSTS** Date: November 3, 2025 Time: 8:30 a.m. Dept.: 38

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I. INTRODUCTION

Plaintiffs Cindy Galloway, Julio Sandoval, Jordan Cookson, and Edgar Villalobos seek final approval of a non-reversionary class action settlement resolving wage and hour claims on behalf of 10,237 individuals who worked for Defendants P.F. Chang's China Bistro, Inc. and P.F. Chang's III, LLC ("PFC" or "Defendants") as current and former non-exempt employees of Defendants who worked in California during the time period from November 10, 2018, through and including July 15, 2024. The proposed $4,000,000 total settlement provides about $2,360,811 in cash payments to the Class, with an average award of about $230 plus additional amounts payable under PAGA. The remaining balance will cover a modest service award to Plaintiffs, settlement administration costs, civil penalties to the state, and reasonable attorney's fees and costs. The parties and their counsel finalized the settlement after extensive and difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved the settlement on August 6, 2025. Since then, the Court-approved notice form was mailed to the Class Members on August 19, 2025, and they reacted very favorably to the settlement. As of the filing of this motion, there are no objections, and no class member has requested exclusion.

Class Counsel secured an excellent settlement with Defendants after some five years of investigation, litigation, and settlement negotiation and administration, all without any compensation for services rendered or costs expended. The class notice duly informed the class members that Class Counsel would request attorney's fees not to exceed 1/3 of the Gross Settlement Amount, along with reimbursement of no more than $45,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not one Class Member objected* to the proposed fee award. Consistent with the Settlement and notice, Plaintiffs now respectfully request the Court award Class Counsel's fees in the amount of $1,333,333.33 and costs in the amount of $19,304.70, as described in the Declarations of Nikki Trenner ("Trenner Decl.") and James Hawkins ("Hawkins Decl.') filed herewith. The requested attorney's fees are well within the range of reasonableness, especially considering the complex and risky nature of this litigation, the contingent risk assumed, the five year delay in payment and, when subjected to a lodestar crosscheck, results in a fee equal to the base lodestar with a modest and reasonable 2.89 upward modifier.

Accordingly, on behalf of herself and the Settlement Class, Plaintiffs respectfully request the Court grant this motion, give full and final approval to the settlement, grant Class Counsels' request for attorney's fees and costs, and enter judgment accordingly.

II. BACKGROUND/LITIGATION HISTORY

Defendants own and operate a well-known national chain of Asian restaurants, including around 22 locations in California. Plaintiffs all were employed by Defendants as a non-exempt employees in Defendants' California restaurants during the Class Period. (Trenner Decl., ¶ 2.)

On September 23, 2020, after exhausting administrative remedies, Plaintiff Galloway filed a PAGA Action against Defendants in Los Angeles County Superior Court, titled *Galloway v. P.F. Chang's III, LLC,* Case No. 20STCV36407. On April 19, 2022, Plaintiff Sandoval filed a PAGA Action against Defendants in Los Angeles County Superior Court, Case No. 22STCV13060. On November 10, 2022, Plaintiffs Cookson and Villalobos filed a class action complaint against Defendants in San Diego County Superior Court. After removal to federal court by Defendants, the Cookson Class Action is currently pending in the United States District Court, Southern District of California. (Trenner Decl., ¶ 3.)

In April 2024, the Parties to the above cases participated in a global mediation with Louis Marlin, Esq., respected wage and hour class action mediator. The mediation lasted a full day and, while the Parties did not settle at the mediation, they continued to negotiate with the mediator's assistance and ultimately reached agreement on all major issues to resolve the matters on a global basis following a mediator's proposal. They then formally reduced the proposed settlement to the Agreement now before the Court for approval. (Trenner Decl., ¶ 4.)

Finally, in order to fully effect a global settlement of the above cases, the Parties stipulated to file a First Amended Complaint in this matter to include all plaintiffs and claims alleged in the three complaints. The operative FAC, filed on November 25, 2024, alleges claims for minimum and overtime wages, meal and rest break violations, inaccurate wage statements, waiting time penalties, unfair competition, and penalties under PAGA. (Trenner Decl., ¶ 5.) The Court preliminarily approved the settlement on August 6, 2025.

Class Notices were mailed to class members on August 18, 2025, and Class Members have until October 18, 2025 to opt out or object to the proposed settlement. (Declaration of Nathalie Beltran ("Beltran Decl."), ¶¶ 7, 11-12.)

III. TERMS OF THE PROPOSED SETTLEMENT

Under the settlement, Defendants will pay $4,000,000.00 into a common fund, the Maximum Settlement Amount. Reasonable attorney's fees of up to $1,333,333.33 (1/3 of the MSA), litigation costs of up to $45,000 (only $19,304.70 is requested), enhancement awards to Plaintiffs of up to $10,000 each, settlement administration costs of $46,550, and $200,000 for civil penalties under PAGA (of which 75%, or $150,000, will go to the Labor & Workforce Development Agency, and 25%, or $50,000 will go to the Aggrieved Employees) all will be paid from the Gross Settlement Amount. The remainder of about $2,360,811.97 will be allocated among the Participating Class Members based on their total weeks worked during the Class Period. No portion of the Maximum Settlement Amount will revert to PFC. (Trenner Decl., ¶ 6.)

A. Certification of the Settlement Class

The Court conditionally certified a settlement class including all current and former non-exempt employees of Defendants who worked in California during the time period from November 10, 2018, through and including July 15, 2024. The Settlement Administrator ultimately mailed class notices to 10,237 individuals identified as members of the Class. (Beltran Decl., ¶ 7.) Nothing has changed to require reconsideration of the Court's certification of the Settlement Class.

B. The Benefit Conferred on the Settlement Class

This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to penalties and interest. Qantas will pay any and all applicable employer-side payroll taxes separately and in addition to the Gross Settlement Amount. Subject to the Court's approval, any amounts not claimed (because a class member does not cash his or her settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. (Trenner Decl., ¶ 7.)

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for Qantas during the Class Period while employed in a non-exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Qantas and the number of instances they missed a meal break and/or rest break, were not provided compensation in lieu of such missed breaks, or lost pay due to the alleged off the clock work. (Trenner Decl., ¶ 8.)

The average class settlement award will be approximately $230, and class awards will range from about $__ to over $1,500. The average PAGA award will be about $5.48, and PAGA awards will range from $__ to $33.10. (Beltran Decl., ¶¶ 14-15.)

C. <u>Settlement Administration</u>

ILYM, Inc., as the Court-approved Settlement Administrator, mailed the Notice Packet to the Class members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. (Beltran Decl., ¶¶ 3-10.) The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms, including the estimated relief each Class Member will receive, the amounts to be requested for attorney's fees and the class representative enhancement awards, and the right to opt out of or object to the settlement. (Beltran Decl., ¶ 7; Exh. A.) ILYM mailed 10,237 Notice Packets on August 18, 2025. (Beltran Decl., ¶ 7.) Ultimately, 563 Notice Packets were deemed undeliverable, representing a 94.5% success rate. (Beltran Decl., ¶ 10.) The response window for opting out of or objecting to the settlement will expire on October 18, 2025. (Beltran Decl., ¶¶ 11-12.) As of the filing of this motion, ILYM has received zero requests for exclusion (for a 100% participation rate), and zero objections to the settlement. (Beltran Decl., ¶¶ 11-12).

After the close of the response period and prior to the final approval hearing, ILYM will submit a supplemental declaration updating the Court on the final class member response.

D. Release of Claims

All Participating Class Members will release Defendants and the Released Parties from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the operative complaint during the Class Period. Plaintiffs and the LWDA will release those PAGA claims alleged in the PAGA notice to the extent alleged in the operative complaint. The Class and PAGA releases are limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint, and the PAGA notice for the PAGA claims. Only Plaintiffs are entering into a full general release of all claims and waiver of Civil Code section 1542. (Trenner Decl., ¶ 9.)

E. PAGA Penalties and Notice to the LWDA

As noted, the Parties allocated $200,000 from the MSA to resolution of Plaintiffs' alleged claims for PAGA civil penalties, and Plaintiffs submit that amount is fair, adequate and reasonable, and furthers PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiffs gave notice of the settlement and the final approval hearing to the LWDA via its online portal. (Trenner Decl., ¶ 10; Exh. 1.)

IV. ARGUMENT

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A. Conte, 4 *Newberg on Class Actions* (4th ed. 2002), § 11.41; *Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276, *cert. denied*, 506 U.S. 953; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,950; *Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly compromised, the settlement of a class action requires court approval. Cal. Rule of

Court 3.769; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud or collusion, and to ensure fairness to absent class members. *Dunk*, 48 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, et seq. Review is accomplished through a two-step process intended to determine whether, under the totality of circumstances, the settlement is fair, reasonable and adequate. *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91 Cal.App.4th at 245.

On a motion for final approval, the trial court is charged with determining whether, in light of the total circumstances of the action and the response of the class members to the proposed settlement, the settlement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801-02; *Wershba*, 91 Cal.App.4th at 244-45. The court has broad discretion in making that determination and may consider a number of relevant factors, including: the strength of plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of further litigation; the amount offered in settlement; the extent of discovery and stage of the proceedings; the experience and opinion of counsel; and the reaction of class members to the settlement. *Id.* In light of the strong judicial policy favoring the settlement of class actions, courts generally apply a presumption of fairness to a proposed class action settlement when: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk*, 48 Cal.App.4th at 1802; *Wershba*, 91 Cal.App.4th at 245.

The proposed settlement of this action warrants final approval under the standards summarized above. The settlement is fair, reasonable and adequate, and represents a favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by the class members, as there were no objections and no class members opted out.

A. <u>The Settlement Is the Product of Arm's-Length, Informed Negotiations</u>

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by Louis Marlin, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. (Trenner Decl., ¶ 4.) Moreover, Plaintiffs and their counsel were well-informed about the facts and the law, and counsel at Crosner Legal and James Hawkins APLC have years of litigation experience, including litigating wage and hour class actions. Plaintiffs' counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. (Trenner Decl., ¶¶ 25-34; Hawkins Decl., ¶¶ 5-11.) Defendants likewise were represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients, and nothing was "left on the table."

B. <u>The Class Reacted Favorably to the Settlement</u>

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and zero Class Members requested exclusion. (Beltran Decl., ¶¶ 11-12.) As many courts recognize, class member reaction to the settlement is one of the most important factors to consider in determining if final approval should be granted. *Mandujano v. Basic Vegetable Prods., Inc.*, 541 F.2d 832, 837 (9th Cir. 1976); *see also In re: American Bank Note Holographics,* 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy") (internal quotation marks omitted).

C. <u>The Settlement is Fair and Reasonable Based on the Strengths of Plaintiffs' Case and the Risks and Costs of Further Litigation</u>

Prior to mediation, the parties engaged in both formal and informal discovery to facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information regarding PFC's payroll practices, a representative sampling of pay stubs and time records for about 25% of the class members, applicable compensation plans, meal and rest break policies, etc., and information from Defendants regarding class size and breakdown, number of work weeks/pay periods, average rates of pay, and other information used to formulate a damages model. Plaintiffs then had that information reviewed with the assistance of a consulting expert. Plaintiffs' counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable. (Trenner

Decl., ¶ 11.)

Plaintiffs first assert Defendants' failed to pay for all hours worked, and allege PFC fails to relieve employees of all duties during meal periods because it requires employees to remain on premises and perform work-related tasks during meal periods. Plaintiffs allege this resulted in unpaid "off the clock" work and estimated they lost about one hour of compensable work time each week. In response, PFC argued its timekeeping and payroll policies accurately tracked and paid for all hours worked by the Settlement Class Members, and that its policies strictly forbade any off the clock work. Thus, per Defendants, if any off the clock work occurred it was done in violation of company policy and without the company's knowledge or authorization. *White v. Starbucks Corp.* (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). For these reasons as well, PFC argued that class certification would be impossible due to the individualized inquiries that would be needed to determine if off the clock work occurred and the reasons therefor. Without considering any of Defendants' defenses to certification or on the merits, Plaintiffs' expert estimated Defendants' maximum exposure for this claim as about $5,816,500 on the off the clock claim. (Trenner Decl., ¶ 12.)

Plaintiffs next contend Defendants failed to provide legally compliant meal and rest breaks. Specifically, as discussed above, Plaintiffs contend Defendants contend PFC regularly required employees to perform while purportedly clock out on meal breaks. Beyond that, Plaintiffs further allege their experts' review of the time and payroll data suggests substantial "de facto" violations for lunch breaks that were taken late, cut short or interrupted by work, or not provided at all. Plaintiffs contend that due to the volume of work Defendants imposed and inadequate staffing resulted in these "de facto" meal period violations and violated Labor Code sections 512, 226.7, and the applicable IWC Wage Order, as well as *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004 and *Augustus v. ABM Security Serv., Inc.* (2016) 2 Cal.5th 257 for failure to provide compliant meal and rest periods within the applicable time frames. Plaintiffs similarly allege that ten-minute rest periods either were not provided or were non-compliant and cut short or interrupted. (Trenner Decl., ¶ 13.)

Defendants deny Plaintiffs' contentions, claiming they made meal and rest breaks available to Settlement Class Members in compliance with California law. Defendants contend their meal and rest break policies are lawful and that Settlement Class Members were provided with all required breaks, or that PFC paid appropriate meal period premiums on the rare occasions a violation did occur, as reflected in its time/payroll records. The payroll data produced by Defendants confirms that Defendants paid a substantial amount of meal period premiums. Defendants further argued Plaintiffs' meal and rest break claims are not susceptible to common proof, as the claims would require individualized inquiry, including whether there was an unlawful companywide policy, whether employees had the opportunity to take meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and whether Defendants ever prevented them from taking meal and rest periods. Accordingly, Defendants contend these claims are vulnerable to a ruling that class treatment is not appropriate. (Trenner Decl. ¶ 40.) Without taking into consideration any of Defendants' defenses to certification or on the merits, Plaintiffs calculated Defendants' maximum exposure for the meal and rest break claims as approximately $10,492,880 for the meal break claims and the rest break claims at about $27,863,510. (Trenner Decl., ¶ 14.)

Plaintiffs next contend that PFC's tip policy violates California law and resulted in Settlement Class Members not receiving all of their tip wages. Here, Plaintiffs contend PFC's mandatory tip pooling policy is not "fair and equitable" in that it was a regular occurrence for managers and supervisors to serve a table and keep the tips from the customer, thereby contributing nothing to the tip pool. *Etheridge v. Reins Internat. California, Inc.*, (2009) 172 Cal.App.4th 908, 926 (fair and reasonable distribution of tips will usually be found where an employer has an impartial system for deciding how much is paid to each employee). Plaintiffs argued this arbitrary policy resulted in a decrease of the overall funds in the tip pool which caused employees to be undercompensated for tips during these shifts. On the other hand, PFC argued its tip policy was entirely compliant with the Labor Code and that it fully compensated all employees eligible to receive tip wages, and that managers did not receive any portion of tips to which they were not entitled. Without taking into consideration any of Defendants' defenses to certification or on the merits, Plaintiffs calculated Defendants' maximum exposure for the tip claims at approximately

$1,118,560 (Trenner Decl., ¶ 15.)

Plaintiffs' claims for inaccurate wage statements allege both facial and derivative violations of Labor Code § 226. On the alleged facial violations, Plaintiffs claim the wage statements do not provide accurate overtime rates and accurate overtime hours because instead of multiplying the regular rate of pay by one and one-half, Defendants' pay stubs provide multiple rate categories. In other words, Defendants' pay stubs list various categories of hourly rates and two separate categories of total hours. Under this model, the total regular and overtime hours listed in the wage statements, when added together, do not sum up the total hours worked by the employee during the applicable time period. *McKenzie v. Fed. Express Corp.* (C.D. Cal. 2011) 765 F. Supp. 2d 1222, 1229 (citations omitted). [Trenner Decl., ¶ 16.]

On the alleged violations of Labor Code § 226 (wage statement violations) and §§ 201-203 (waiting time penalties), Defendants argued their wage statements complied with Section 226 and provided all required information. As a result, Defendants argued employees could quickly and easily arrive at their total hours worked and applicable rates of pay without resorting to any other documents. *General Atomics v. Superior Court* (2021) 64 Cal. App. 5th 987. As far as the derivative claims, they will rise or fall along with the primary unpaid wage claims, in addition to being subject to "good faith" and other defenses available to Defendants. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). Without taking into consideration any of Defendants' defenses to certification or on the merits, we calculated Defendants' maximum exposure for wage statement penalties as $9,260,400 and the maximum exposure for waiting time penalties at about $21,024,000. (Trenner Decl., ¶ 17.)

As far as potential PAGA liability, the theoretical civil penalties likely exceed $71 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code sections at issue, and recover the maximum penalty for every single pay period at issue. (Trenner Decl., ¶ 18.) As with the class claims, Plaintiffs discounted the potential PAGA penalties based on Defendants' various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated $200,000 to PAGA penalties.

Plaintiffs submit this amount is reasonable under the circumstances and in line with comparable settlements in other wage and hour class actions in California. *E.g.*, *Van Kempen v. Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement.

Thus, Plaintiffs and their counsel discounted the value of the class claims consistent with the risks discussed above, as well as the potential applicability of arbitration agreements signed by many Settlement Class Members. They carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued, and concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $4,000,000 recovery represents a significant percentage of Defendants' potential exposure and, given Defendants' multi-layered defenses and all other potential risks of continued litigation, a total recovery for the class of $4,000,000, which will result in average award of some $ 230 per class member, plus additional sums under PAGA, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Settlement Class Members without further delay.

[Trenner Decl., ¶¶ 19-20; Hawkins Decl., ¶¶ 11, 24.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. *Wershba,* 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); *White v. Experian Information Solutions, Inc.* (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims); *Lane v. Facebook, Inc.* (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"). Importantly as well, the proposed settlement is non-reversionary and will provide immediate benefits to the Settlement Class Members without a claims process. *White*, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* (3d ed. 2010) at 20, available at http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. PLAINTIFFS' ENHANCEMENT AWARDS

Pursuant to the terms of the settlement, Plaintiffs each seek a modest incentive award of $10,000 for their service in bringing these claims on behalf of the Class. These requests are reasonable given the risks each undertook on behalf of the Class Members, and by contacting and retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendants' litigation costs.

Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing themselves at risk of discrimination by future prospective employers. As set forth in more detail in their respective declarations, Plaintiffs provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. (Declaration of Edgar Villalobos, ¶¶ 2-17; Declaration of Jordan Cookson, ¶¶ 2-17; Declaration of Cindy Galloway, ¶¶ 2-9; Declaration of Julio Sandoval, ¶¶ 2-9; Trenner Decl., ¶ 21.) Accordingly, the requested enhancement payments to Plaintiffs are appropriate and justified as part of the settlement. *Staton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000).

VI. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to ILYM for its services as the Settlement Administrator. As set forth in the Declaration of Nathalie Beltran, ILYM has performed and will continue to perform its required duties through final distribution of the settlement funds and incurred $46,550 in fees and expenses. (Beltran Decl., ¶ 16.) Plaintiffs accordingly request the Court approve payment of $46,550 to ILYM from the MSA. (Trenner Decl., ¶ 22.)

VII. ATTORNEY'S FEES AND COSTS

A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved

This Court has discretion over the amount of attorneys' fees awarded and court approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; *Levy v. Toyota Motor Sales, U.S.A.* (1992) 4 Cal.App.4th 807, 813; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the marketplace for cases involving significant contingent risk, such as this one. *Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper* (1980) 445 U.S. 326, 338, rehg. den. 446 U.S. 947; *Lealao,* 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed private bargaining, if it were truly possible, might have reached" in determining a reasonable fee, and a fee award should approximate a "range of fees freely negotiated in comparable litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and justified by the work performed, the benefits obtained, and the contingent risk assumed.

As addressed in detail above, at the time the parties reached the tentative settlement success for Plaintiffs and the putative class was far from certain. Plaintiffs faced a real risk that some or all the claims would not be certified for class treatment, as Defendants had strong arguments that their compensation policies were legal and properly compensated the class members. Even if Plaintiffs certified some or all of the claims and ultimately prevailed on the merits, it undoubtedly would have taken several years to realize any recovery while they pursued class certification, trial, and an almost certain appeal. (Trenner Decl., ¶¶ 12-18.)

Nonetheless, Plaintiffs succeeded and expeditiously obtained the relief he set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of over $230, and with a maximum award of over $1,500. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement, as there are no objections and no opt outs to the settlement as of the filing of this motion. (Beltran Decl., ¶¶ 11-12.)

B. <u>The Requested Fee Award Is Reasonable and Appropriate</u>

The United States Supreme Court has ruled the parties to a class action properly may negotiate not only the settlement of the action itself but also the payment of attorney's fees. *Evans v. Jeff D.* (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In *Hensley v. Eckerhart* (1983) 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee provisions are the ideal towards which the parties should strive: "A request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." The United States Supreme Court has reemphasized this policy and further stressed trial courts have "a responsibility to encourage agreement" on fees. <u>Blum v. Stenson</u> (1984) 465 U.S. 886, 902 n.19.

As part of the Settlement, Qantas agreed not to object to an award of no more than 1/3 of the MSA for attorney's fees, or $1,333,333.33, and up to $45,000 in reimbursement for litigation costs and expenses (although only $19,304.70 is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior.

Lealao, 82 Cal.App.4th at 47.

Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. (Trenner Decl., ¶ 23.) The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

C. Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund

In approving fee applications, courts typically apply either a percentage-of-recovery method or the lodestar method. *Laffitte v. Robert Half Int'l., Inc.* (2016) 1 Cal.5th 480, 489*;* *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254, *disapproved on other grounds, Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260. The California Supreme Court recently recognized the advantages and equities of calculating attorney's fees using the percentage-of-the-common-fund method in another wage-and-hour case:

> The recognized advantages of the percentage method-including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation convince us the percentage method is a valuable tool that should not be denied our trial courts.

Laffitte, 1 Cal.5th at 503 (citations omitted).

Indeed, both California and federal courts have long recognized an appropriate method for determining the award of attorney's fees is based on a percentage of the total value of benefits afforded to class members by the settlement. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gernert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund recovered operates to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent,* 557 F.2d at 769.

In determining a reasonable common fund fee award, courts should also consider the fact that fees serve as an economic incentive for lawyers to bring class action litigation to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. Conte, *Attorney Fee Awards* (2d ed. 1993) § 104. Without prosecution on a contingent basis and use of the class action mechanism, the courthouse door would effectively be closed to most class members due to the relatively small size of their individual claims in relation to the enormous time and cost associated with class action litigation.

Here, Class Counsel seek a fee award for their successful prosecution and resolution of this action of no more than 1/3 of the MSA, and specifically $1,333,333.33. The percentage requested is justified for the reasons set forth further below, and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. *In re Warner Communications Sec. Litig.* (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, *Newberg on Class Actions* (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

D. <u>A Lodestar Cross-Check Also Supports Class Counsel's Fee Request</u>

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 623.9 hours of time on this matter, resulting in a modest and very reasonable lodestar of $461,232.50.

As is fully detailed in the Trenner and Hawkins Declarations, Class Counsel's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiffs and the putative class, including legal research, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other employees of the Defendants; (2) drafting PAGA notice letters; (3) drafting the initial complaints and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) addressing the removal to federal court; (6) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (8) engaging in substantial informal discovery, including propounding informal discovery “requests” and reviewing documents and other information produced; (9) working with a consulting expert on the analysis of Defendants’ production; (10) drafting a mediation brief and accompanying damages model after review and analysis of Defendants’ formal and informal discovery production; (11) attending an all-day mediation; (12) negotiating and drafting the settlement agreement and related documents; (13) drafting the motion for preliminary approval, and attending the hearing; (14) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (15) drafting the motion for final approval and attorney’s fees, and attending the final approval hearing; and (16) extensive communications with the Plaintiffs regarding case status, case investigation and document review, mediation, and settlement terms. (Trenner Decl., ¶ 24, Exh. 2; Hawkins Decl., ¶¶ 12-23.) Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, attend to distribution of settlement funds, and on the compliance hearing.

In pursuing this matter, Class Counsel incurred total attorney’s fees of $461,232.50, and the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a successful conclusion (623.9 attorney hours), and the requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. On a lodestar basis, the fee request of $1,333,333.33 results in a multiplier of 2.89, which is a modest enhancement entirely in line with California law. (Trenner Decl., ¶¶ 25-36; Hawkins Decl., ¶¶ 12-23, Exhs. 1-2.) Indeed, California courts routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of class action cases. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of 2.5); *Wershba,* 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); *City of Oakland Oakland Raiders* (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the requested 2.89 multiplier effectively operates to show that the percentage fee request is reasonable considering the challenges presented in this contingency fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and delay in payment during the five years counsel has been representing Plaintiffs. Thus, the multiplier results in a fee constituting a fair return on the contingency.

E. <u>The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar Cases.</u>

What has now emerged in most fee award decisions is the recognition that fee determinations in both common fund and statutory fee situations are incapable of mathematical precision because of the intangible factors that must be resolved in the court's discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In determining an appropriate fee in a common fund case, a Court must decide, based on the unique posture of each case, what percentage of the common fund would most reasonably compensate Class Counsel given the nature of the litigation and the performance of counsel. *Paul, Johnson, Alston & Hunt v. Graulty* (9th Cir. 1989 886 F.2d 268, 272) (the benchmark percentage fee may be adjusted to account for the circumstances involved in a case).

Courts apply a five-part test in calculating a reasonable percentage fee in common fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *Laffitte,* l Cal.5th at 489.

1. The Results Achieved.

Class Counsel obtained an excellent result in this case for the Class Members. The Settlement provides real monetary benefits to the Class Members, and the Settlement is particularly advantageous to the Class Member because the proceeds will be distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable result. Considering many individual claims would be very modest and would not be cost-effective to pursue successfully, the Settlement provided them with fair compensation for their claims. Moreover, the absence of any objection to either the Settlement or the attorney's fee request bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated by the fact that not only one class member opted out. Additionally, the settlement amounts to a substantial percentage of the maximum value of the amount the Class might have obtained if it had tried the case and recovered on all theories seeking recovery of wages and penalties. "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *In re Omnivision Techs., Inc.* 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

2. Class Counsel Bore Considerable Risk.

At the time of filing the complaint, Class Counsel recognized that they would have to expend a substantial amount of time and advance significant costs to prosecute a statewide class action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against a sophisticated company represented by first-rate attorneys. Despite their belief in the validity of Plaintiffs' claims, they also knew they faced substantial risks of class certification and the ability to prove class-wide and individual damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendants would dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's firm, not receiving any compensation for several years while simultaneously advancing litigation costs posed considerable risk and difficulty. (Trenner Decl., ¶¶ 37-38.)

3. The Skill Required and the Quality of Work.

Practice in the narrow area of wage and hour litigation requires skill, knowledge and experience. The issues presented in this case required more than just a general appreciation of wage and hour law and class action procedure. This Settlement was possible only because counsel persuaded Defendants that Plaintiffs and the putative class had a realistic chance of prevailing on their claims despite Defendants' contrary arguments, and that the case would be pursued through class certification and trial if necessary. In successfully navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a risky and difficult case.

4. The Contingent Nature of the Fee and Risk Assumed

There is a substantial difference between the risk assumed by attorneys being paid by the hour and attorneys working on a contingent fee basis. The attorney being paid by the hour can go to the bank with his fee. *Powers v. Eichen* (9th Cir. 2000) 229 F.3d 1249, 1256. The attorney working on a contingent basis can only log hours while working without pay towards a result that will hopefully entitle him to a market fee considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this risk in this all or nothing contingent fee case wherein the necessity and financial burden of private enforcement makes the requested award appropriate.

Counsel retained on a contingency fee basis, whether in private matters or in class action litigation, is entitled to a premium beyond their standard, hourly, non-contingent fee schedule to compensate for both the contingent risk assumed and the delay in payment. The simple fact is that despite the most vigorous and competent of efforts, success is never guaranteed. *McKittrick v. Gardner* (4th Cir. 1967) 378 F.2d 872, 875. Indeed, if counsel is not adequately compensated for the risks inherent in difficult class actions, competent attorneys will be discouraged from prosecuting similar cases. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33; *Cazares v. Saenz* (1989) 208 Cal.App.3d 279, 287.

Here, the contingent fee practices of Plaintiffs' counsel simply do not accommodate the investment of unnecessary time in a case, and the adverse resolution of any one of several difficult issues present in this matter could have doomed the entire effort. As discussed, the attorney's fees in this case were not only contingent but fairly risky, and there was always a distinct possibility Plaintiffs' counsel would receive nothing for any number of reasons. (Trenner Decl., ¶¶ 37-38.) Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel also support the fee requested.

5. Awards in Other Cases

As discussed, the attorney's fees requested by Class Counsel are within the range of fees awarded in comparable cases, as California courts regularly approve class action fee awards amounting to 1/3 of a common fund, as approved by the California Supreme Court in *Lafitte*. Additionally, review of class action settlements over the past 10 years shows that the courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. *In re Warner Communications Sec. Litig.* (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, *Newberg on Class Actions* (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented."). Class Counsel's requested fees equal to 1/3 the gross amount recovered on behalf of the class and are well within the range of reasonableness under either the percentage of the recovery or the lodestar method in light of the contingent risk assumed, the delay in payment, the result achieved, and the overall quality of the representation.

F. <u>Class Counsels' Costs and Expenses are Reasonable</u>

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

As explained in the Trenner and Hawkins Declarations, Class Counsel incurred a total of $19,304.70 in expenses incurred in connection with this litigation. These expenses include the amounts paid for court filing fees, service of process, expert fees, postage, and mediation fees, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter, and were necessary for the successful prosecution of the case and should be reimbursed in full. (Trenner Decl., ¶¶ 39-40; Hawkins Decl., ¶ 26, Exh. 3.)

VIII. CONCLUSION

For all the foregoing reasons, Plaintiffs Cindy Galloway, Julio Sandoval, Jordan Cookson, and Edgar Villalobos respectfully request that the Court grant this motion and grant final approval of the proposed class action settlement and approve the payment of PAGA penalties to the State. Plaintiffs further request the Court approve payment of the Settlement Administrator's fees and expenses, approve the requested class representative enhancement payments, approve the award of attorney's fees and costs as requested, and enter judgment in this action. Finally, Plaintiffs request the Court set a non-appearance case review regarding settlement compliance for November 2, 2026, or a later date convenient for the Court.

Dated: October 10, 2025

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