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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

SONNY WILLIAMS and STEVEN
RUNKLE on behalf of themselves, all others
similarly situated, and on behalf of the
general public,

Plaintiffs,

v.

HANSEN & ADKINS AUTO
TRANSPORT, INC.; HANSEN & ADKINS,
INC.; and DOES 1-100, inclusive,

Defendants.

Case No. CIVDS2020832

*[Assigned For All Purposes to the
Honorable Joseph T. Ortiz; Dept. S17]*

**PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS AND PAGA
ACTION SETTLEMENT**

Date: August 30, 2024

Time: 1:30 p.m.

Complaint Filed: September 25, 2020

Trial Date: None Set

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1 **I. INTRODUCTION**

2 This motion seeks final approval of a non-reversionary \$3,950,000 proposed wage and
3 hour class action settlement reached by Plaintiffs Sonny Williams and Steven Runkle (hereinafter
4 “Plaintiffs”) and Defendants Hansen and Adkins Auto Transport, Inc. and Hansen and Adkins,
5 Inc. (hereinafter “Defendants” or “Hansen and Adkins”) (hereinafter Plaintiffs and Defendants are
6 collectively referred to as the “Parties”). The settlement is on behalf of Plaintiffs and a Class
7 comprised of all individuals who signed Independent Contractor Service Agreements (“ICSAs”)
8 with Hansen & Adkins Auto Transport, Inc. and worked as truck drivers for Hansen & Adkins
9 Auto Transport, Inc. in California in service of those ICSAs at any time from July 6, 2016, to June
10 13, 2023. This motion also seeks an order entering judgment.

11 The settlement seeks relief for 135 Class Members who worked 18,152 workweeks during
12 the Class Period of July 6, 2016, to June 13, 2023.¹ The settlement will provide Class Members
13 who did not request to be excluded from the settlement (“Participating Class Members”) with an
14 average estimated payment of **\$18,152.54**, with the highest award being **\$43,741.30**.²

15 In addition, the settlement includes PAGA Aggrieved Employees. PAGA Aggrieved
16 Employees are comprised of all Class Members who worked for Defendants at any time from April
17 28, 2019, to June 13, 2023. There are 117 PAGA Aggrieved Employees who worked 4,447 pay
18 periods during the PAGA Period of April 28, 2019, to June 13, 2023.³ The Agreement allocates
19 \$100,000 to civil penalties recoverable under the Private Attorneys General Act of 2004
20 (“PAGA”), of which 75% – or \$75,000 – will be paid to the LWDA; and 25% – or \$25,000 – will
21 be distributed among PAGA Aggrieved Employees. PAGA Aggrieved Employees will receive an
22 average estimated payment of \$217.39, with the highest award being \$455.36.⁴

23 On May 3, 2024, Phoenix Settlement Administrators (“Phoenix” or the “Settlement
24 Administrator”) mailed the Class Notice via U.S. first class mail, in English and Spanish, to all
25

26 ¹ Declaration of Taylor Mitzner with Respect to Notice and Settlement Administration (“Mitzner
Dec.”) ¶ 11.

27 ² Mitzner Dec. ¶ 14.

28 ³ Mitzner Dec. ¶ 15.

⁴ Mitzner Dec. ¶ 15.

1 135 Class Members.⁵ Class Members had 45 days to respond to the Class Notices (this is referred
2 to as the “Response Deadline”), including requests for exclusion from the settlement. The
3 Response Deadline was June 17, 2024. As of the Response Deadline, the Settlement Administrator
4 did not receive any objections or requests for exclusion from Class Members.⁶

5 This matter required 1,379 hours of attorney time from Class Counsel. This litigation
6 involved investigation into the claims asserted, significant discovery including multiple
7 depositions, the production of extensive documents, the filing of a motion for class certification,
8 the Court granting class certification, a full day of mediation, lengthy post-mediation settlement
9 negotiations, and evaluation of continuing litigation.

10 As will be demonstrated herein, the attorneys’ fee request of \$1,316,535 (“Attorney Fee
11 Award”), which represents 33 1/3% of the Gross Settlement Amount (“GSA”), is fully supported
12 using the percentage fee method. The Attorney Fee Award is also supported under the lodestar
13 cross-check method. Plaintiff further moves for reimbursement of litigation costs and expenses in
14 the amount of \$40,372.12 (“Cost Award”), originally estimated not to exceed \$50,000, for costs
15 incurred in litigating this matter. Plaintiffs also move for final approval of a Class Representative
16 Service Payment to Plaintiff Williams in the amount of \$20,000 and to Plaintiff Runkle in the
17 amount of \$15,000 (\$35,000 total) in consideration for prosecuting this class action, serving as
18 Class Representatives, work performed, and risks undertaken for the payment of attorneys’ fees
19 and costs in the event they had been unsuccessful in the matter. Additionally, Plaintiffs move for
20 final approval of Administration Costs in the amount of \$7,500, originally estimated not to exceed
21 \$15,000, to Phoenix for the costs and fees of administering settlement (“Administration Costs”).

22 The requested Attorney Fee Award, Cost Award, Class Representative Service Payments,
23 and Administration Costs were fully disclosed to the Class Members when the Class Notice was
24 mailed to them. Most importantly, to date, **the settlement and all of its terms have received**
25 **unanimous support from Class Members - not a single Class Member has objected to the**
26 **settlement or requested to be excluded from it.** The Court is, therefore, respectfully requested

27 ⁵ Mitzner Dec. ¶ 5.

28 ⁶ Mitzner Dec. ¶¶ 8-9.

1 to consider the Class Members' total endorsement of the settlement and grant final approval of the
2 settlement, and approve of the Attorney Fee Award, Cost Award, Class Representative Service
3 Payments, and Administration Costs in the amounts as preliminarily approved of by this Court and
4 disclosed to the Class Members, and as requested herein.

5 Class Counsel are convinced that the proposed settlement is in the best interests of the
6 Class based on the negotiations and a detailed knowledge of the issues presented in this action.
7 The core question in the case is whether Defendants correctly classified drivers as independent
8 contractors. Plaintiffs assert that Defendants' classification was in error, and that the drivers were
9 Defendants' employees under California law. As such, all the claims alleged in this matter are
10 based on Defendants' alleged failure to classify Class Members as employees. If Plaintiffs were to
11 lose on this single issue, they and the Class Members will take nothing from this matter.

12 In reaching the proposed settlement, Class Counsel carefully weighed the strengths and
13 risks of trial and perils of litigation that affect the value of the claims. In addition, the defenses
14 asserted by Defendants, the uncertainty of maintaining class certification through trial, the
15 difficulties of complex litigation, the lengthy process of establishing specific damages and various
16 possible delays and appeals, and the possibility that they could lose on the issue of whether drivers
17 were misclassified were also carefully considered by Class Counsel in arriving at the proposed
18 settlement. Accordingly, Plaintiffs seek final approval of the Joint Stipulation and Settlement
19 Agreement (hereinafter "Agreement"⁷).

20 **II. BACKGROUND, INVESTIGATION, AND LITIGATION HISTORY**

21 Hansen & Adkins is an automobile transport logistics provider for movement of cars from
22 point to point. It is considered a contracted carriage, as it contracts with its customers, such as car
23 dealerships, to haul cars for them. To perform the hauling services for its customers, Hansen &
24 Adkins contracts with drivers, which it classifies as independent contractors, rather than
25 employees. In California, Hansen & Adkins has dispatched these contracted drivers out of
26 terminals located in Mira Loma, Wilmington, Richmond, Milpitas, and National City. It currently

27 ⁷ The Parties' Agreement is attached to the Declaration of David Mara, Esq. ("Mara Dec.") as
28 Exhibit 1. "Exhibit 1" herein refers to the Parties' Agreement.

operates out of three terminals in California – Mira Loma, Wilmington, and Richmond. (Mara Dec. ¶ 12).

a. Litigation History

On April 28, 2020, Plaintiff Sonny Williams provided notice to the Labor and Workforce Development Agency (“LWDA”) pursuant to the PAGA. Thereafter, on September 25, 2020, Plaintiff Williams filed this wage and hour putative class action against Defendants. Plaintiff Williams sought to represent all individuals who have contracted with Defendants and performed work in furtherance of said contracts within the state of California at any time during the period of the relevant statute of limitations. Plaintiff Williams alleged that Defendants violated the California Labor Code by: (1) failing to pay straight time wages; (2) failing to provide meal periods; (3) failing to provide rest breaks; (4) failing to pay wages due at termination and during employment; (5) failing to reimburse/illegal deductions; (6) knowingly and intentionally failing to comply with itemized employee wage statements; (7) violating California’s Unfair Competition Law; (8) and violations of the Private Attorneys General Act of 2004. The central issues in the case surround not only the causes of action Plaintiff Williams has alleged on a class-wide basis, but also on whether Plaintiffs and the Class were employed by Defendants under the relevant tests in California. (Mara Dec. ¶ 13).

On March 15, 2021, Defendants filed a motion to bifurcate and sequence discovery, which Plaintiff Williams opposed. On May 25, 2021, the Court denied Defendant’s motion. (Mara Dec. ¶ 14).

On January 25, 2021, Plaintiff Williams filed a first amended complaint withdrawing his causes of action for meal and rest periods. (Mara Dec. ¶ 15).

On March 24, 2023, Plaintiff Williams filed his motion for class certification, which Defendants opposed. On June 13, 2023, the Court granted class certification of the Class for Plaintiff Williams’ claims for unpaid minimum wages, reimbursements under California Labor Code section 2802, knowing and intentional failure to comply with itemized employee wage statement provisions under California Labor Code section 226, waiting time penalties under Labor

1 Code section 203, and violation of the unfair competition law. (Mara Dec. ¶ 16).

2 On August 23, 2023, Phoenix Class Action Administration Solutions mailed a Notice of
3 Pendency of Class Action to all Class Members and Class Members had until September 22, 2023,
4 to request to be excluded from the case. No Class Members requested to be excluded, as such all
5 135 Class Members remain in this case. (Mara Dec. ¶ 17).

6 On February 22, 2024, Plaintiff Williams filed a Second Amended Complaint adding in an
7 additional class representative, Steven Runkle. (Mara Dec. ¶ 18).

8 The Parties are unaware of any pending cases that will be affected by approval of this
9 settlement. (Mara Dec. ¶ 19).

10 **b. Discovery and Investigation**

11 The Parties have engaged in significant discovery. In total, Plaintiffs have propounded
12 multiple rounds of requests for production of documents and interrogatories on Defendants
13 Collectively, Defendants propounded two sets of special interrogatories, one set of form
14 interrogatories – general, one set of form interrogatories – employment, one set of requests for
15 admissions, and one set of requests for production of documents on Plaintiff Williams. This
16 discovery led to Defendants producing over thirteen thousand (13,000) documents and Plaintiffs
17 producing over four thousand (4,000) documents. (Mara Dec. ¶ 20).

18 On August 18, 2022, Defendants took Plaintiff Williams’s deposition. On August 24, 2022,
19 Plaintiffs took the deposition of Defendants’ Person Most Qualified witness, Barry Williams. On
20 August 30, 2023, Plaintiffs took a deposition of Defendants’ Person Most Qualified witness, Sara
21 Khatib. (Mara Dec. ¶ 21).

22 Plaintiffs served an out of state commission on Vertical Alliance to obtain training videos
23 and documents in its possession. Vertical Alliance produced documents for Plaintiff Williams on
24 March 24, 2023. Thereafter, Vertical Alliance produced responsive documents for all Class
25 Members. (Mara Dec. ¶ 22).

26 The discovery, investigation, and litigation process has been adequate to give Class
27 Counsel a sound understanding of the value, strength, and vulnerabilities of the Class’s claims.

Specifically, Class Counsel has conducted discovery and an investigation into the claims during the prosecution of this action. This discovery, investigation, and prosecution has included, among other things, analyzing the legal positions taken by Defendants and the developments in the law related to various claims, analyzing potential damages before and throughout the settlement negotiation process, researching the applicable law with respect to the Class's claims and Defendants' potential defenses, and assessing the risk of further litigation. (Mara Dec. ¶ 23).

c. Settlement Negotiations

The Parties attended a private mediation on April 22, 2022, with mediator Michael Dickstein. This mediation was unsuccessful, but the Parties continued to engage in informal settlement discussions facilitated by Mr. Dickstein. Mr. Dickstein issued a mediator's proposal in this case which was ultimately accepted by the Parties on October 19, 2023. The Parties then met and conferred over all the terms of the settlement and finalized their settlement in the Parties' Agreement. The Parties seek final approval of the Agreement in the instant motion. (*See* Mara Dec. ¶ 24; *see also* Exhibit 1 attached thereto).

III. TERMS OF THE PROPOSED SETTLEMENT

Under the terms of the settlement, Defendants will create a settlement fund of \$3,950,000.

a. Deductions from the Settlement

The Parties have agreed (subject to and contingent upon the Court's approval) that this action be settled and compromised for the non-reversionary total sum of \$3,950,000 ("Gross Settlement Amount" or "GSA"), which includes, subject to Court approval: (a) attorneys' fees of \$1,316,535 (33.33% of the GSA) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administering the settlement, and securing Court approval; (b) litigation costs of \$40,372.12 (originally estimated not to exceed \$50,000); (c) a Class Representative Service Payment to Plaintiff Williams in the amount of \$20,000 and to Plaintiff Runkle in the amount of \$15,000 (\$35,000 total) in consideration for prosecuting this class action, serving as Class Representatives, work performed, and risks undertaken for the payment of attorneys' fees and costs in the event they had been unsuccessful in

1 the matter; (d) settlement administration fees and expenses to Phoenix in the amount of \$7,500
2 (originally estimated not to exceed \$15,000); and (e) \$100,000 allocated to Plaintiffs' claims under
3 the PAGA. Of this payment, 75%, or \$75,000 will be provided to the LWDA, and 25%, or \$25,000,
4 will be available for distribution to Aggrieved Employees.

5 **b. Calculation of Individual Settlement Payments**

6 After all Court-approved deductions from the GSA, it is estimated that \$2,450,592.88 ("Net
7 Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement
8 payment, will be distributed to Participating Class Members.⁸ Subject to the terms and conditions
9 of the settlement, each Participating Class Member, including Plaintiffs, will be provisionally
10 assigned an award amount based on his or her tenure as part of the Class. To arrive at these figures,
11 the Net Settlement Amount will be divided by the total number of weeks worked by all Class
12 Members to arrive at a dollar value per week worked. Each Class Member's provisional award
13 will be equivalent to the number of weeks he or she performed work for Defendants during the
14 Class Period multiplied by the calculated amount to be paid per week worked. Any partial
15 workweek will be expressed as a percentage of a full workweek. (Exhibit 1 at Section III,
16 Paragraph 60(A), Page 9). This payment will be divided into a "wage portion" to compensate
17 Participating Class Members for alleged unpaid wages and a "non-wage portion" to compensate
18 Participating Class Members for alleged interest and penalties. The wage portion will make up
19 20% of each Participating Class Members' individual settlement payment, and the non-wage
20 portion will make up 80% of each Participating Class Members' individual settlement payment.
21 (See Exhibit 1 at Section III, Paragraph 60(B), Pages 9-10).

22 In addition, each PAGA Aggrieved Employee will receive a portion of the PAGA Payment
23 (\$25,000). The allocation of the PAGA Payment to each PAGA Aggrieved Employee shall be
24 calculated pro rata based on the total number of PAGA Pay Periods each PAGA Aggrieved
25 Employee worked during the PAGA Period. The pro-rata share is equal to (i) dividing the total
26 amount allocated to PAGA Aggrieved Employees by the total number of PAGA Pay Periods

27 ⁸ Participating Class Members are all Class Members who do not request to be excluded from the
28 settlement. (Exhibit 1 at Section I, Paragraph 35, Page 5).

1 worked by all PAGA Aggrieved Employees during the PAGA Period and (ii) multiplying the result
2 by each PAGA Aggrieved Employee's total PAGA Pay Periods. The Settlement Administrator
3 shall make these calculations based on the Class Data provided by Defendants. (Exhibit 1 at
4 Section III, Paragraph 61(A), Page 10). This payment will be treated as 100% penalties. (See
5 Exhibit 1 at Section III, Paragraph 61(B), Page 10).

6 Under no circumstances will any portion of the \$3,950,000 settlement revert to Defendants
7 and 100% of the NSA will be paid out to Participating Class Members. In addition, the employer's
8 share of taxes will be paid in addition to and outside of the GSA. (See Exhibit 1 at Section I,
9 Paragraph 20, Page 3).

10 **c. Release of Claims**

11 In exchange for an Individual Class Payment, Participating Class Members will agree to
12 the following release:

13 All Participating Class Members, on behalf of themselves and their respective
14 former and present representatives, agents, attorneys, heirs, administrators,
15 successors, and assigns, release Defendants and the Released Parties from all wage
16 and hour claims that were alleged, or reasonably could have been alleged, based on
17 the facts stated in the operative Second Amended Complaint, including claims for
18 misclassification of Participating Class Members as Independent Contractors.
19 Participating Class Members do not release any other claims, including claims for
20 vested benefits, wrongful termination, violation of the Fair Employment and
21 Housing Act, unemployment insurance, disability, social security, workers'
22 compensation, or claims based on facts occurring outside the Class Period.

23 (Exhibit 1 at Section I, Paragraph 38, Page 5).

24 In addition, all Aggrieved Employees will agree to the following release in exchange for
25 an Individual PAGA Payment:

26 Aggrieved Employees shall release Defendants and the Released Parties from any
27 and all claims for civil penalties under the California Labor Code and the Private
28 Attorneys General Act predicated upon the Labor Code violations asserted in the
Notice to the LWDA, the operative Second Amended Complaint, and all Certified
Claims of the Class and Sub-Classes.

(Exhibit 1 at Section I, Paragraph 33, Page 5).

In addition, Plaintiffs will agree to a general release of their claims in exchange for a Class
Representative Enhancement Payment. (See Exhibit 1 at Section III, Paragraph 66, Page 21).

1 **d. Notice to the Class**

2 On April 19, 2024, Phoenix received a data file from Defense Counsel that contained
3 names, last known mailing addresses, Social Security numbers, workweeks during the Class
4 Period, and pay periods worked during the PAGA Period for each Class Member (“Class List”)
5 during the Class Period. (Mitzner Dec. ¶ 3). The final mailing list contained one hundred thirty-
6 five (135) individuals identified as Class Members. (*Id.*). On April 22, 2024, Phoenix conducted a
7 National Change of Address (“NCOA”) search in an attempt to update the class list of addresses
8 as accurately as possible. (Mitzner Dec. ¶ 4). A search of this database provides updated addresses
9 for any individual who has moved in the previous four (4) years and notified the U.S. Postal
10 Service of their change of address. (*Id.*). On May 3, 2024, Phoenix mailed the Notice via U.S. first
11 class mail, in English and Spanish, to all one hundred thirty-five (135) Class Members on the Class
12 List. (Mitzner Dec. ¶ 5).

13 After mailing, eight (8) Notices were returned to Phoenix. None were returned with a
14 forwarding address. (Mitzner Dec. ¶ 6). For the eight (8) Notices returned from the Post Office
15 without a forwarding address, Phoenix attempted to locate a current mailing address using
16 TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing.
17 (*Id.*). Of the eight (8) Notices that were skip traced, seven (7) updated addresses were obtained and
18 the Notice was promptly re-mailed to those Class Members via first class mail. (Mitzner Dec. ¶
19 6). One (1) Notice remains undeliverable since an updated address could not be obtained via skip
20 trace. (Mitzner Dec. ¶ 7).

21 Phoenix received one (1) workweek dispute from a Class Member. (*See* Mitzner Dec. ¶
22 10). Phoenix consulted with Defendants regarding this dispute, and the dispute was resolved
23 leaving no outstanding workweek disputes. (*Id.*).

24 Class Members had until June 17, 2024, to respond to the settlement. (*See* Mitzner Dec. ¶¶
25 8-9). To date, the settlement has received support from the Class Members. Not a single Class
26 Member has submitted an objection or request for exclusion from the settlement. (*Id.*). Therefore,
27 all 135 Class Members are participating in the settlement, meaning 100% of the Class Members
28

are Participating Class Members.

e. Distribution of Funds

Defendants shall wire to the Settlement Administrator the Gross Settlement Amount no later than twenty (20) business days of the Effective Final Settlement Date. (Exhibit 1 at Section I, Paragraph 23, Page 4; *see also* Section III, Paragraph 63(K)(ii), Page 19). As there were no objections to the settlement, the Effective Final Settlement Date is the date the Court enters final approval of the settlement.⁹

Under the terms of the Agreement, within ten (10) calendar days of Defendants funding the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys' Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payments paid to the Class Representatives, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and Participating Class Members, as approved by the Court. (Exhibit 1 at Section I, Paragraph 18, Page 3; *see also* Section III, Paragraph 63(K)(iii), Page 19).

Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited at the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds

⁹ The Effective Final Settlement Date is the later of the time when either: (i) the Judgment of the Court granting final approval of the settlement is final and no longer subject to appeal, if there are objections, or (ii) the date the Court enters an order on final approval of the settlement, if there are no objections. (Exhibit 1 at Section I, Paragraph 19, Page 3).

1 associated with those Individual Settlement Share checks remaining un-cashed, shall be
2 transmitted by the Settlement Administrator to the California State Controller – Unclaimed
3 Property Division, with the identity of the Participating Class Member to whom the funds belong.
4 The funds shall be held by the California State Controller – Unclaimed Property Division in the
5 name of the Participating Class Member. (Exhibit 1 at Section III, Paragraph 63(M), Page 20).

6 **IV. ARGUMENT**

7 **a. The Settlement is Fair, Reasonable, and Adequate and Satisfies the Standard 8 for Final Approval**

9 California Rule of Court, Rule 3.769, requires court approval for class action settlements. Cal.
10 R. Ct. 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62 Cal.
11 App. 3d 231, 236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602 (“[T]he
12 law wisely favors settlements”). Accordingly, the Court must give “[due] regard to what is
13 otherwise a private consensual agreement between the parties.” *Wershba v. Apple Computer, Inc.*
(2001) 91 Cal. App. 4th 224, 245.

14 In deciding whether to approve a class settlement, a court evaluates whether the proposed
15 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
16 1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.* (9th Cir. 1982)
17 688 F.2d 615, 625); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742 43. A
18 court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801.
19 However, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-
20 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
21 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
22 is small.” *Dunk*, 48 Cal. App. 4th at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a
23 court should consider additional relevant factors, including the strength of the plaintiff’s case
24 compared to the settlement amount; the risk, expenses, complexity, and likely duration of further
25 litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th
26 at 1802; see also *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723; see also *Boyd v.*
27 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

1 At the time of preliminary approval, the Court was provided with sufficient information to
2 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
3 until after the Class had an opportunity to respond to the settlement.¹⁰ Subject only to the Class's
4 reaction to the settlement, the Court preliminarily presumed the settlement was fair, adequate and
5 reasonable. To date, not a single objection to the settlement has been submitted by any Class
6 Member to the Settlement Administrator. Thus, the settlement is entitled to the presumption that
7 it is fair and in all other respects proper and should be finally approved.

8 **b. The Court Should Approve the Requested Fees and Costs**

9 **i. The Requested Fee Award is Fair and Reasonable, Calculated as a
10 Percentage of a Common Fund**

11 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their
12 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” *Lealao v.*
13 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal.4th 1122,
14 1132 (The “experienced trial judge is the best judge of the value of professional services rendered
in his court[.]”); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118.

15 California law provides that an attorneys’ fee award should be equivalent to fees paid in
16 the legal marketplace for the result achieved and risk incurred. *Id.* at 47-50; *Laffitte v. Robert Half*
17 *Int’l, Inc.* (2016) 1 Cal.5th 480, 503. In *Lealao*, the court held that when an action leads to a
18 recovery that can be “monetized” with a reasonable degree of certainty, the trial court should
19 “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace
20 in comparable litigation.” *Lealao, supra*, 82 Cal.App.4th at 50. Fee awards that are too small will
21 “chill the private enforcement essential to the vindication of many legal rights and obstruct the
22 representative actions that often relieve the courts of the need to separately adjudicate numerous
23 claims.” *Lealao, supra*, 82 Cal.App.4th at 53. Therefore, fees in class and representative actions
24 should approximate the probable terms of a contingent fee contract negotiated by a sophisticated
25 attorney and client in comparable litigation. *Id.* at 48.

26
27 ¹⁰ See Memorandum of Points and Authorities in Support of Motion for Preliminary Approval,
28 pages 20-24. In addition to the *Dunk* factors, Class Counsel also detailed the other factors such as
the strengths of Plaintiff’s case, risks and costs of further litigation, as well as the reasonableness
of the GSA amount in light of *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

1 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their
2 efforts, irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175
3 Cal.App.4th 545, 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th
4 at 1270). It is not an abuse of discretion to choose one method over another as long as the method
5 chosen is applied consistently using percentage figures and/or rates that accurately reflect the
6 marketplace. In cases where class members present claims against a settlement amount and the
7 settlement agreement provides that the defendant agrees to paying the attorneys a percentage of
8 the same, use of that percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

9 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
10 depending on the circumstances of the case. *Conte & Newberg, Newberg on Class Actions* (4th
11 Ed., 2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F. Supp. 494
12 (awarding attorneys’ fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech*
13 *Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F. Supp. 1195 (awarding
14 approximately 53% of the settlement amount as attorneys’ fees). California courts routinely
15 approve class action attorneys’ fees awards “averag[ing] around one-third of the recovery.”
16 *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent
17 range of contingency fee in marketplace was appropriate in class actions). The Supreme Court has
18 explained that “percentage of the fund method more accurately reflects the results
19 achieved.” *Laffitte*, 1 Cal. 5th at 439. In a similar wage and hour class action, *Laffitte v. Robert*
20 *Half International, Inc.* (2016) 1 Cal. 5th 480, the California Supreme Court affirmed an award of
21 attorneys’ fees equal to 1/3 of the common fund. Here, the requested fee is at this same percentage,
22 and evidences all of the same considerations which warranted the one-third fee in *Laffitte*.

23 In short, Class Counsel’s fee request of \$1,316,535 (which represents 33 1/3% of the GSA)
24 is in line with awards in similar cases in California and nationwide and demonstrates that Class
25 Counsel’s fee request is consistent with market rates and is reasonable.

26 ///

27 ///

1 **ii. The Requested Attorneys' Fee and Cost Award is Within the Range of**
2 **Fees Approved in Comparable Common Fund Cases**

3 Class Counsel applies for an award of attorneys' fees in the sum of \$1,316,535 (33 1/3%
4 of the GSA), and litigation costs of \$40,372.12. (Mara Dec. ¶ 25). California state and federal
5 courts have recognized that an appropriate method for determining an award of attorneys' fees is
6 based on a percentage of the total value of benefits made available to Class Members by the
7 settlement, also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34
8 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West,*
9 *Inc.* (9th Cir. 1977) 557 F.2d 759, 769.¹¹ Where the amount of a settlement is a "certain easily
10 calculable sum of money," California courts may calculate attorneys' fees as a reasonable
11 percentage of the settlement. Weil and Brown, California Practice Guide, Civil Procedure Before
12 Trial, Chapter 14, § 14:145; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit
13 approach is preferred in class and representative actions because "it better approximates the
14 workings of the marketplace than the lodestar approach." *Lealao, supra*, 82 Cal.App.4th at 49.
15 The purpose of the common fund/percentage approach is to "spread litigation costs proportionally
16 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone."
17 *Vincent, supra*, 557 F.2d at 769.

18 In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: "[O]ne who
19 expends attorneys' fees in winning a suit which creates a fund from which others derive benefits
20 may require those passive beneficiaries to bear a fair share of the litigation costs." Similarly, in
21 *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme
22 Court recognized that the percentage-of-the-benefit approach has been applied "consistently in
23 California when an action brought by one party creates a fund in which other persons are entitled
24 to share." The reasons for applying this equitable doctrine include: "...fairness to the successful
25 litigant, who might otherwise receive no benefit because his recovery might be consumed by the
26 expenses; correlative prevention of an unfair advantage to the others who are entitled to share in
27 the fund and who should bear their share of the burden of its recovery; encouragement of the

28 ¹¹ The California Supreme Court has urged trial courts to consider class action federal authority.
Green v. Obledo (1981) 29 Cal.3d 126, 146; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821.

1 attorney for the successful litigant, who will be more willing to undertake and diligently prosecute
2 proper litigation for the protection or recovery of the fund if he is assured that he will be properly
3 and directly compensated should his efforts be successful.” *Id.*

4 Courts have consistently recognized that class action litigation is increasingly necessary to
5 protect the rights of individuals whose injuries and/or damages are too small to economically
6 justify legal action on an individual basis. Accordingly, in determining a reasonable fee award,
7 courts award fees to serve as an economic incentive for lawyers to pursue such litigation in order
8 to achieve increased access to the judicial system for meritorious claims and to enhance deterrents
9 to wrongdoing. This is especially true in situations where multiple similar alleged wrongs would
10 not be economically feasible to pursue individually, such as here. *See A. Conte, Attorney Fee*
11 *Awards* (2d Ed., 1993) 104, at 6.

12 When the lawsuit was originally filed, the prospect of a long, drawn-out battle with a
13 defendant represented by experienced counsel, was almost a certainty. This is especially true here,
14 where Defendants filed a motion to bifurcate discovery which Plaintiffs had to oppose, at the outset
15 of litigation. During this litigation, Plaintiffs also filed a motion for class certification that was
16 granted by the Court. By taking on this “battle” on a contingency basis, Class Counsel risked
17 substantial economic loss if the results were not successful. This substantial risk is the reason that
18 the courts approve the use of the percentage method when a settlement is obtained by the efforts
19 of class counsel. *See Vizcaino v. Microsoft* (9th Cir. 2002) 290 F.3d 1043, 1048-49 (quotations
20 omitted) (discussing the risks of engaging in litigation without certainty of compensation).

21 Under the terms of the Agreement, Defendants will pay a Gross Settlement Amount of
22 \$3,950,000. An award of attorneys’ fees is to be calculated as a percentage of the total value of
23 benefits made available to the Class Members under the settlement. In light of Class Counsel’s
24 extensive prosecution of this case which ultimately lead to the proposed settlement, the requested
25 Attorneys’ Fees are appropriate and reasonable.

26 Compensating class counsel in class litigation on a percentage basis makes good sense
27 because: (1) it is consistent with the private marketplace where contingent fee attorneys are
28

1 customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent
2 class members in achieving the maximum possible resolution of the case; and (3) it encourages
3 the most efficient and expeditious resolution of the litigation. The requested Attorneys' Fees in
4 this matter satisfies all of those factors and should be approved on a percentage basis.

5 Class Counsel have obtained a substantial recovery on behalf of Plaintiffs and the Class.
6 Thus, the requested Attorney Fee Award is appropriate.

7 **iii. A Lodestar Cross-Check with a Modest Multiplier Confirms the**
8 **Reasonableness of the Requested Fee**

9 Class Counsel's fee request is reasonable when calculated using the lodestar method. Under
10 the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent
11 on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20
12 Cal. 3d 25, 48. The court then enhances this lodestar figure by a "multiplier" to account for a range
13 of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
14 success achieved. *Id.* at 49; see also *Ketchum v. Moses* (2001) Cal.4th 1122, 1132-36; *PLCM*
15 *Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92
16 Cal.App.4th 819, 834, ("[t]here is no ... rule limiting the factors that may justify an exercise of
17 judicial discretion to [adjust the] lodestar").

18 Courts "routinely enhance[] the lodestar to reflect the risk of non-payment in common fund
19 cases." *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051; *Graham v.*
20 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 579 ("One of the most common fee enhancers [...]
21 is for contingency risk."). Such an enhancement "mirrors the established practice in the private
22 legal market of rewarding attorneys' fees for taking the risk of nonpayment by paying them a
23 premium over their normal hourly rates for winning contingency cases." *Vizcaino*, 220 F.3d at
24 1051. A risk multiplier also serves to bring the financial incentives for enforcing important rights
25 "into line with incentives [attorneys] have to undertake claims for which they are paid on a fee-
26 for-service basis." *Ketchum*, 24 Cal.4th at 1132. In determining whether or not to enhance or
27 reduce the lodestar, California courts take into account multiple factors, including: the time and
28 labor required; the skill requisite to perform the legal services properly; the preclusion of other

1 employment by the attorney due to the acceptance of the case; the contingent nature of the fee; the
2 amount involved and results obtained; the experience, reputation, and ability of the attorney; and
3 awards in similar cases. *Cates v. Chiang* (2013) 213 Cal. App. 4th 791, 822.

4 Class Counsel has worked 1,379 hours to date on this case and have calculated the lodestar
5 fee on those hours at \$1,013,500 at rates reflecting those currently earned in the marketplace. (Mara
6 Dec. ¶ 26, Exhibit 5). All of the work and tasks performed by Class Counsel were reasonable and
7 necessary to the prosecution of this case and are reflected in the result achieved. (Mara Dec. ¶ 27).

8 This was a highly contested matter which required a significant amount of time and labor
9 over the course of several years. Class Counsel had to investigate and analyze over thirteen
10 thousand (13,000) documents and data, take and defend depositions, engage in substantial motion
11 work, engage with experts and analyze reports, and interview dozens of class members, and have
12 the case prepared for a class-wide adjudication on the merits. So often, lawyers unskilled in the
13 class action aspect of wage and hour cases do not pay attention to or put the work into how the
14 evidence must be presented for class-wide adjudication. Strong class-wide cases perish in the
15 hands of inexperienced counsel because the case has not been worked up to succeed at certification.
16 Class Counsel here has considerable experience in class litigation and, from the beginning of the
17 case, is marshalling the evidence with a sharp focus on class-wide proof needed for the matter to
18 get certified. This case was no different. This filtering of voluminous evidence into class-wide
19 proof while keeping an eye on the merits of the litigation required a considerable amount of
20 attorney time and skill. This time and skill lead to Plaintiffs filing a motion for class certification,
21 which the Court granted. At the time of settlement, Counsel for Plaintiffs were well underway in
22 their preparation to file a motion for summary judgment. (Mara Decl. ¶ 28).

23 Most importantly, all services were performed by Class Counsel on a contingent basis.
24 (Mara Dec. ¶ 29). Both California and federal courts recognize that attorneys should be
25 compensated for taking on such contingent risks and provided with financial incentives to enforce
26 important rights and protections like those at issue in this case. See, e.g., *Vizcaino*, 290 F.3d at
27 1051; *Ketchum*, 24 Cal.4th at 1132-33. Here, Class Counsel bore the risk that, in spite of all of
28

1 their efforts and skill employed, there may be no recovery.

2 Class Counsel respectfully requests a fee of \$1,316,535, which, based on the total attorney
3 hours expended and rates, would require a modest 1.3 multiplier to raise the generated fees of
4 \$1,013,500 to the requested amount. Far greater multipliers have been awarded in similar cases,
5 and the total amount of fees sought by Class Counsel is also reasonable compared to fees awarded
6 in like cases. Courts routinely enhance lodestar amounts based on multipliers that “range from 2
7 to 4 or even higher.”¹² Thus, consideration of the lodestar method as a cross-check to the
8 percentage figure sought strongly supports the reasonableness of the requested fee award. Class
9 Counsel moves for and respectfully requests that the Court grant attorneys’ fees in the amount of
10 \$1,316,535.

11 **iv. Class Counsel’s Hourly Rates Are Reasonable**

12 Class Counsel’s hourly rates are between \$650 and \$800 and are in line with rates typically
13 approved in wage and hour class action litigation and which rates have been approved by Courts
14 in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego
15 County Superior Courts. (Mara Dec. ¶ 30; Exhibit 2, Westlaw Court Express’s Legal Billing
16 Report, Volume 14, Number 3, California Region for December 2012; Exhibit 3, 2014 Declaration
17 of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exhibit 4, 2012
18 National Law Journal Survey of Hourly Billing Rates for Partners and Associates).

19 A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and
20 experience in the relevant community. *PLCM Group, Inc* (2000) 22 Cal. 4th 1084, 1095; *Hopson*
21 *v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900. When determining a
22 reasonable hourly rate, courts may consider factors such as the attorney’s skill and experience, the
23 nature of the work performed, the relevant area of expertise and the attorney’s customary billing
24

25 ¹² *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 255 (2001); *see, e.g., Vizcaino*, 290 F.3d
26 at 1051 (approving multiplier of 3.65); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123
27 (2d Cir. 2005) (approving multiplier of 3.5); *Craft v. County of San Bernardino*, 624 F. Supp. 2d
28 1113, 1125 (C.D. Cal. 2008) (awarding multiplier of 5.2 and collecting cases with cross-check
multipliers ranging from 4.5 to 19.6); *Glendora Community Redevelopment Agency v. Demeter*,
155 Cal.App.3d 465, 479-80 (1984) (approving fee award with multiplier of 12).

1 rates. *Flannery v. California Highway Patro* (1998) 61 Cal. App. 4th 629, 632.

2 Class Counsel's skill and experience support their hourly rates. Their practice is limited
3 exclusively to litigation, focusing on the representation of employees in wage and hour class action
4 matters. (Mara Dec. ¶¶ 2-11). As leading attorneys in the field of wage and hour class action
5 litigation, Plaintiffs' counsel continually monitors the prevailing market rates charged by both
6 defense and plaintiff law firms and set the billing rates of their attorneys and paralegals/law clerks
7 to be consistent with the prevailing market rates in the private sector for attorneys and staff of
8 comparable skill, qualifications and experience. Other wage and hour attorneys working as class
9 counsel before California courts charge comparable if not higher rates. (Mara Dec., Exh. 2,
10 Westlaw Court Express's Legal Billing Report, Volume 14, Number 3, California Region for
11 December 2012; Exh. 3, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant*
12 *Corp.* SDSC GIC834348; Exh. 4, 2012 National Law Journal Survey of Hourly Billing Rates for
13 Partners and Associates). Therefore, as they are in line with those of the relevant community, Class
14 Counsel's hourly rates are reasonable.

15 **v. Class Counsels' Total Hours are Reasonable**

16 In determining a lodestar fee, reasonable hours include, in addition to time spent during
17 litigation, the time spent before the action was filed, including time spent interviewing clients,
18 investigating the facts and law, and preparing the pleadings. See *New York Gaslight Club, Inc. v.*
19 *Carey* (1980) 447 U.S. 54, 62; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th
20 440, 447. Further, the fee award should include fees incurred to establish and defend the attorneys'
21 fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639 ("*Serrano IV*"). Under California law,
22 counsel is entitled to compensation for every hour reasonably spent on the matter. *Id.* at 1133.

23 Class Counsel has expended a total of 1,379 hours on this case. The work performed by
24 Class Counsel in order to achieve a settlement that will provide valuable consideration to the Class,
25 averaging a \$18,152.54 settlement payment per Class Member, with the highest estimated award
26 being \$43,741.30, is outlined by Class Counsel in the declarations submitted herewith. (Mara Dec.
27 ¶¶ 31, 36). Class Counsel have been actively involved in this case, prior to the commencement of
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1 this action and all the way up to the present, and Class Counsel's dedication to providing
2 representation in the case has precluded other employment. Here, Class Counsel's many tasks, in
3 summary form, included the following: pre-filing investigation and legal research; communicating
4 with the Class Representatives; discussions with Class Members; researching and investigating
5 California's ever-evolving wage and hour laws regarding compensation, overtime, meal and rest
6 periods, itemized wage statements, waiting time penalties, and California's Unfair Competition
7 Law; conducting investigation into Defendant's pay-structures and policies for its drivers; drafting
8 and filing pleadings; engaging in conferences with Defense Counsel regarding a variety of issues
9 throughout the litigation and settlement; opposing Defendant's motion to bifurcate discovery;
10 drafting and propounding written discovery on Defendants; preparing responses to discovery
11 propounded on Plaintiff Williams; preparing deposition subpoenas for documents; extensive meet
12 and confer efforts; analyzing records produced by Defendant; taking the depositions of
13 Defendants' witnesses; preparing for and defending Plaintiff Williams' deposition; drafting and
14 filing a motion for class certification; appearing at hearings; drafting a mediation brief and
15 performing mediation damages and exposure models; preparing for and attending mediation;
16 engaging in post-mediation conferences with the mediator; drafting and revising the settlement
17 agreement and the Notice to the Class; drafting preliminary approval papers; working with
18 Settlement Administrator on the notice process; reviewing, revising, and proofing Notice papers
19 from the Settlement Administrator; reviewing weekly status reports from the Settlement
20 Administrator regarding Class participation; reviewing and editing the Settlement Administrator's
21 declaration; drafting final approval papers, and preparing for and appearing at the Final Approval
22 Hearing. (Mara Dec. ¶¶ 31, 36).

23 Class Counsel bore the risk that, despite all of their efforts and skills employed, there may
24 be no recovery. All of the work performed was reasonable and necessary to the prosecution of this
25 case. The work performed was particularly justified, in light of the extraordinary result achieved.

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1 **vi. Costs of Litigation**

2 Class Counsel seeks reimbursement of the litigation costs and expenses of \$40,372.12.
3 (Mara Dec. ¶ 37). These costs were all reasonable and necessary to the prosecution of this case
4 and the results achieved and are fair and reasonable.

5 **c. The Class Representative Service Payments are Reasonable**

6 Class Counsel seeks approval of a Class Representative Service Payments to Plaintiff
7 Williams in the amount of \$20,000 and to Plaintiff Runkle in the amount of \$15,000 (\$35,000
8 total). In agreeing to the settlement, Plaintiffs have agreed to a general release of their claims
9 against Defendants. This general release is far greater than the release being given by other Class
10 Members. This payment not only compensates Plaintiffs for the work they undertook in this case,
11 but also for the claims and potential claims they may have against Defendants that they are
12 releasing. At all times, Plaintiffs have put the Class's interests ahead of their own.

13 There are also other factors supporting the request that Plaintiffs receive the requested
14 Class Representative Service Payments. The requested Class Representative Service Payments are
15 reasonable in light of the benefits Plaintiffs have conferred upon the entire Class, resulting in
16 substantial payments averaging at \$18,152.54 with a high payment of \$43,741.30. Plaintiff
17 Williams is estimated to receive an individual settlement payment of approximately \$18,765.56.
18 When taking the requested Class Representative Service Payment into consideration, Plaintiff
19 Williams will be receiving less than the highest settlement payment (if the Class Representative
20 Service Payment is approved, Plaintiff Williams will receive a total of approximately \$38,765.56).
21 This is also true for Plaintiff Runkle. Plaintiff Runkle is estimated to receive an individual
22 settlement payment of approximately \$25,785.77. When taking the requested Class Representative
23 Service Payment into consideration, Plaintiff Runkle will also be receiving less than the highest
24 settlement payment (if the Class Representative Service Payment is approved, Plaintiff Runkle
25 will receive a total of approximately \$40,785.77). As a result of the risk, time, and effort expended
26 by Plaintiffs in brining and prosecuting this case, Class Members will receive significant
27 settlement payments which, in some cases, are higher than the payments being received by the
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1 named Plaintiffs even when taking the requested Class Representative Service Payments into
2 account.

3 The requested awards are appropriate and reasonable based upon Plaintiffs' time and effort
4 expended on this case, the risks they faced, and the outcome of this case. Plaintiffs have submitted
5 declarations detailing the efforts and time they expended on behalf of the Class in order to advance
6 this case to its successful conclusion. For example, Plaintiff Williams provided his attorneys with
7 over four thousand (4,000) documents from his employment with Defendants. He also sat for his
8 deposition. Plaintiff Runkle provided Class Counsel with contact information for other Class
9 Members for them to contact. This allowed Class Counsel to speak to Class Members about their
10 experiences working for Defendants. Both Plaintiff Williams and Plaintiff Runkle attended the
11 hearing on the motion for class certification. They have been, and continue to be, active
12 participants in this litigation. There is no question that this case would not have reached the same
13 result but for Plaintiffs' involvement and input at all stages of the litigation.

14 It should be noted that service awards are particularly important to plaintiffs in wage and
15 hour cases because they promote the important public policies underlying the wage and hour laws.
16 This strong policy is codified in California Labor Code § 90.5, which provides that "[i]t is the
17 policy of this state to vigorously enforce minimum labor standards in order to ensure employees
18 are not required or permitted to work under substandard unlawful conditions . . ." Cal. Lab. Code
19 § 90.5. Nonetheless, the California Supreme Court has noted that "retaliation against employees
20 for asserting statutory rights under the Labor Code is widespread," despite anti-retaliation statutes
21 designed to protect employees. *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–61. In this context,
22 class representatives should be rewarded for assuming the risk of retaliation for the sake of class
23 members. *See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.

24 In addition, there are few individuals that are willing to act as a class representative and
25 provide the work, diligence, and willingness to assume a substantial financial risk should
26 Defendants have prevailed in this case. Plaintiffs' willingness to assume the financial risk is
27 significant. Plaintiffs risked a potential judgment taken against them for attorneys' fees and costs
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1 if this matter had not been successfully concluded. Case law holds that a losing party is liable for
2 the prevailing party's costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in
3 some wage and hour actions, such as this case, pursuant to California Labor Code § 218.5, for
4 attorneys' fees as well. Though the fee agreement provides that Class Counsel would pay such
5 costs, Plaintiffs would nevertheless have had a cost bill entered against them leaving them
6 ultimately liable for potentially hundreds of thousands of dollars in the unexpected possibility that
7 Class Counsel did not meet their obligation to cover those costs. Unfortunately, there have been
8 several judgments entered against class representatives, e.g. *Koehl v. Verio, Inc.* 142 Cal.App.4th
9 1313, 1328 (2006) (a wage and hour class action where Defendant prevailed at trial, the named
10 plaintiffs were held liable, jointly and severally for the Defendant's attorneys' fees); *Whiteway v.*
11 *Fedex Kinkos Office & Print Services, Inc.*, 2007 U.S. Dist. LEXIS 95398 (N.D. Cal. 2007) (a
12 wage and hour misclassification case lost on summary judgment, after the case was certified, the
13 named Plaintiff was assessed costs in the sum of \$56,788.). The risk of payment of Defendants'
14 costs, in itself alone, is a sufficient basis for an award of the requested enhancement sum. Few
15 individuals are willing to take this risk, and it is clear that Plaintiffs, here, championed a cause on
16 behalf of others with potentially huge monetary risks.

17 Courts routinely approve service payments, or incentive awards, to compensate named
18 plaintiffs for the services they provide and the risks they incur during class litigation. See *In re*
19 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; see also *Bell v. Farmers*
20 *Ins. Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class
21 representatives); Manual § 21.62 n.971 (noting that service payments are warranted); *Cook v.*
22 *Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y.
23 1997) ("present or past employee whose present position or employment credentials or
24 recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his
25 or her name and efforts to the prosecution of litigation at some personal peril, a substantial
26 enhancement award is justified"); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th
27 Cir. 1974) ("We also think there is something to be said for rewarding those drivers who protect
28

1 and help to bring rights to a group of employees who have been the victims of discrimination.”).

2 Moreover, the modern-day work force is mobile, with employees holding several jobs over
3 the span of their career. It is also true that prospective employers in this computer, high-tech age
4 “Google” and/or do extensive background checks and have access to court databases to see if
5 applicants have ever filed a lawsuit or have ever been sued. Here, Plaintiffs’ conduct will not be
6 lost on a prospective employer who has to choose between an applicant who has never sued an
7 employer and one who has done so. The requested award far from compensates Plaintiffs for
8 opportunities they may lose in the future because of the exercise of a Constitutional right to Petition
9 the Courts for redress of a grievance.

10 Based on the foregoing, the Class Representative Service Payments to Plaintiff Williams
11 in the amount of \$20,000 and to Plaintiff Runkle in the amount of \$15,000 (\$35,000 total) are fair,
12 appropriate, and justified in light of the work performed, risks undertaken for payment of fees and
13 costs if this case had not been successfully concluded, stigma on future employment opportunities,
14 and the benefits all Class Members.

15 **d. The Administration Costs are Reasonable**

16 The Court-approved Settlement Administrator was responsible for formatting, printing and
17 mailing the Class Notices. The Settlement Administrator was responsible for responding to Class
18 Member inquiries, providing weekly status reports, answering questions from Counsel for the
19 Parties, and providing a declaration to document its duties and responsibilities under the
20 settlement. Plaintiffs now request that the Court finally approve the Settlement Administration
21 Costs in the amount of \$7,500 to Phoenix for services rendered and to be rendered for the notice
22 and settlement administration process.

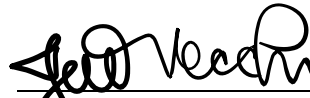
23 Following the grant of final approval, the Settlement Administrator’s duties will continue
24 in order to calculate and mail the individual settlement payments to Participating Class Members,
25 perform tax reporting obligations, disburse other payments as ordered by the Court, and perform
26 such other duties as set forth in the Agreement. Administration Costs in the amount of \$7,500 to
27 Phoenix for services rendered and to be rendered is fair and reasonable and should be granted.

1 **V. CONCLUSION**

2 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
3 of the settlement, and award Class Counsel attorneys' fees in the sum of \$1,316,535 and litigation
4 expenses of \$40,372.12 to Class Counsel, Class Representative Service Payments to Plaintiff
5 Williams in the amount of \$20,000 and to Plaintiff Runkle in the amount of \$15,000,
6 Administration Costs in the amount of \$7,500 to Phoenix, and a payment to the LWDA in the
7 amount of \$75,000 (which is 75% of \$100,000 allocated to Plaintiffs' claims under PAGA).

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10 Dated: August 7, 2024

MARA LAW FIRM PC

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12 David Mara, Esq.

13 Jil Vecchi, Esq.

14 Attorneys for the Class
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