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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 JENNIFER COMBEST, as an individual and
11 on behalf of all others similarly situated,

12
13 Plaintiff,

14 v.
15

16 NINETY FIVE SOUTH, INC., a Florida
17 corporation; and DOES 1-50, inclusive

18 Defendants.
19
20
21
22

Case No.: 21STCV02842

Assigned for All Purposes to:
Hon. David S. Cunningham
Dept. SSC-11

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND REQUEST
FOR ATTORNEY'S FEES AND COSTS**

[Filed concurrently with Notice of Motion and
Motion; Declarations of Nikki Trenner and
Jennifer Beliveau; [Proposed] Order]

Date: June 20, 2023
Time: 10:00 a.m.
Dept. SSC-11

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Jennifer Combest seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 97 individuals
4 who worked for defendant Ninety Five South, Inc. (“NFS”) in the State of California as hourly
5 non-exempt employees at any time during the Class Period of January 25, 2017 to August 22,
6 2022. The proposed \$250,000 total settlement provides about \$123,447 in cash payments to the
7 Class, with an average award of about \$1,272, plus additional amounts payable under PAGA. The
8 remaining balance will cover a modest service award to Plaintiff, settlement administration costs,
9 civil penalties to the state, and reasonable attorney’s fees and costs. The parties and their counsel
10 finalized the settlement after extensive and difficult arms-length negotiations overseen by an
11 experienced and highly-regarded mediator. The Court conditionally certified the Class and
12 preliminarily approved the settlement on February 1, 2023. Since then, the Court-approved notice
13 form was mailed to the Class Members on March 14, 2023, and they reacted very favorably to the
14 settlement. As of the filing of this motion, there are no objections, and no class member has
15 requested exclusion.

16 Class Counsel secured an excellent settlement with Defendant after some two
17 years of investigation, litigation, and settlement negotiation and administration, all
18 without any compensation for services rendered or costs expended. The class notice duly
19 informed the class members that Class Counsel would request attorney’s fees not to
20 exceed 1/3 of the Gross Settlement Amount, along with reimbursement of no more than
21 \$20,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not*
22 *one Class Member objected* to the proposed fee award. Consistent with the Settlement
23 and notice, Plaintiff now respectfully requests the Court award Class Counsel's fees in the
24 amount of \$78,333.33 and costs in the amount of \$15,854.94, as described in the
25 Declaration of Nikki Trenner (“Trenner Decl.”) filed herewith. The requested attorney’s
26 fees are well within the range of reasonableness, especially considering the complex and
27 risky nature of this litigation, the contingent risk assumed, the three-plus year delay in
28

1 payment and, when subjected to a lodestar crosscheck, result in a base lodestar that is
2 slightly higher than the actual fee request.

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

6 **II. BACKGROUND/LITIGATION HISTORY**

7 The details of the procedural and factual background of this matter were outlined in
8 the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about
9 October 19, 2022). To re-familiarize the Court with this litigation, NFS offers facility
10 management services to commercial locations, schools, transportation facilities, and government
11 facilities, including Veteran's Administration buildings, throughout California. Plaintiff Jennifer
12 Combest was employed by NFS as a non-exempt porter from May 2018 to September 2021. She
13 contends: (1) that she and other employees of NFS were not paid all overtime wages as they were
14 paid at the regular straight time rate for overtime hours, (2) that she and other employees did not
15 receive compliant meal and rest periods, as breaks frequently were provided late, cut short, and/or
16 interrupted, and that NFS restricted how employees could use their break time and thus did not
17 fully relinquish employer control, (3) that she and other employees did not receive compliant wage
18 statements because the wage statements, inter alia, double counted certain "hours worked" and
19 thus did not accurately reflect hours worked and the number of hours worked at different hourly
20 rates, (4) and that she and other former employees did not receive all wages due on separation of
21 employment. (Trenner Decl., ¶ 2.)

22 Based on these allegations, on January 25, 2021, Plaintiff filed a complaint against NFS
23 alleging class claims for failure to pay wages, including overtime wages, meal and rest break
24 violations, inaccurate wage statements, waiting time penalties, and unfair competition. Plaintiff later
25 amended her complaint to also seek civil penalties under PAGA based on the same alleged Labor
26 Code violations. (Trenner Decl., ¶ 3.)

27 After Plaintiff filed her complaint, the Parties initiated discovery and also engaged in
28 numerous meet and confer discussions regarding discovery, potential law and motion, and potential

1 ADR. Ultimately, the Parties agreed to an early mediation and also agreed to an informal exchange
2 of information to facilitate meaningful settlement discussions. Consequently, prior to the mediation,
3 Defendant provided Plaintiff with extensive informal discovery, including Plaintiff's personnel,
4 time, and payroll records, time and payroll records for a randomly selected sampling of Class
5 Members, wage statement exemplars, Defendant's employee handbooks, including Defendant's
6 policies and procedures regarding the payment of wages, the provision of meal and rest breaks,
7 timekeeping policies (including recording hours), issuance of wage statements, and termination
8 wages, as well as information regarding the number of putative Class Members who are current and
9 former employees, the number of PAGA Members, the number of workweeks throughout the Class
10 Period, and the number of pay periods throughout the PAGA Period. From this information, Plaintiff
11 was able to analyze Defendant's liability for the claims asserted in this case and, with the assistance
12 of Plaintiff's experts at Berger Consulting Group, the potential exposure and damages. (Trenner
13 Decl., ¶¶ 4-5.)

14 The Parties then retained Steve Rottman, Esq., a well-respected neutral with extensive
15 experience mediating wage and hour class actions. In May 2022, the Parties participated in a full-
16 day mediation with Mr. Rottman that resulted in this settlement. (Trenner Decl., ¶ 6.) The Court
17 preliminarily approved the settlement on February 1, 2023.

18 Class Notices were mailed to class members on March 24, 2023, and Class Members
19 have until June 8, 2023 to opt out or object to the proposed settlement. [Declaration of
20 Jennifer Beliveau ("Beliveau Decl."), ¶ 6.]

21 **III. THE PROPOSED SETTLEMENT TERMS**

22 Under the settlement, NFS will pay \$250,000.00 into a common fund, the Gross Settlement
23 Amount or GSA. Attorney's fees of up to 1/3 of the GSA (only \$78,333.33 is requested),
24 litigation costs of up to \$20,000 (only \$15,854.94 is requested), an enhancement award of
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1 \$10,000¹ for the plaintiff, settlement administration costs of \$7,365,² and a payment of \$15,000
2 for PAGA civil penalties (of which \$11,250 (75%) will go to the Labor & Workforce
3 Development Agency for its share of the PAGA penalties and \$3,750 (25%) will be paid to PAGA
4 Employees³), all will be paid from the GSA. The remainder of approximately \$123,447 will be
5 allocated to the Participating Class Members based on their total weeks worked during the Class
6 Period. No portion of the GSA will revert to NFS. [Trenner Decl., ¶ 7.]

7 **A. Certification of the Settlement Class**

8 The Court conditionally certified a settlement class including all current and former non-
9 exempt employees of NFS in California during the Class Period, which runs January 25, 2017 to
10 August 22, 2022. The Settlement Administrator ultimately mailed class notices to 97
11 individuals identified as members of the Class. [Beliveau Decl., ¶ 6.] Nothing has changed
12 to require reconsideration of the Court’s certification of the Settlement Class.

13 **B. The Benefit Conferred on the Settlement Class**

14 As noted, the settlement obligates NFS to pay \$250,000 to resolve the claims of the
15 Settlement Class, inclusive of attorney’s fees and costs. Approximately \$123,447 from the GSA
16 will be distributed to the Participating Class Members, with additional amounts going to PAGA
17 Employees for their portion of the PAGA payment. This is a cash settlement that does not require
18 Participating Class Members to submit a claim form to receive their settlement share.
19 Participating Class Members will receive their settlement checks automatically via First Class
20 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
21 eighty percent will be allocated to penalties and interest. NFS will pay any and all applicable
22 employer-side payroll taxes separately and in addition to the GSA. Subject to the Court’s
23 approval, any amounts not cashed, will be forwarded to the State Controller’s Unclaimed Property

24 _____
25 ¹ On May 11, 2023, the Court entered its Order on Plaintiff’s motion for reconsideration regarding the amount of her
26 enhancement, wherein the Court approved Class Counsel’s proposal to reduce the amount of attorney’s fees awarded
27 by \$5,000 such that additional monies are available for an enhancement award as provided for in the Settlement
28 Agreement. [Trenner Decl., ¶ 7.]

² As explained the Beliveau Declaration, the Settlement Administrator is requesting an increase in the amount of
administration costs due to the need to file additional tax returns for 2024 on the Qualified Settlement Fund. [Beliveau
Decl., ¶ 16.]

³ “PAGA Employees” means all current and former non-exempt employees of Defendant from August 14, 2018
through September 22, 2022 (the “PAGA Period”).

1 Fund. [Trenner Decl., ¶ 8.]

2 Each Participating Class Member will receive a share of the Net Settlement Amount based
3 on his or her total weeks worked for NFS in California during the Class Period while employed in
4 a non-exempt position. Thus, each Class Member's Individual Settlement Share will be calculated
5 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium
6 wages for missed meal breaks, and potential statutory penalties under applicable law. These
7 methods are intended to ensure each Class Member receives a portion of the available settlement
8 funds corresponding to the relative value of his or her potential claims. The proposed allocation
9 provides a reasonable way to compensate Class Members based on the amount of time they
10 worked for NFS and the number of instances they missed a meal break, were not provided
11 compensation in lieu of such missed breaks, or lost wages due to the alleged regular rate
12 miscalculation, etc. [Trenner Decl., ¶ 9.]

13 The average class payment will be about \$1,272, and the maximum class payment will be
14 nearly \$5,400. The average PAGA payment will be about \$38.66. [Beliveau, Decl., ¶¶ 14-15.]

15 **C. Settlement Administration**

16 Simpluris, Inc., as the Court-approved Settlement Administrator, mailed the Notice
17 Packet to the Class members after making all reasonable effort to ascertain the best mailing
18 address, including running each address through the National Change of Address database
19 and "skip-tracing" any Notice Packets returned as undeliverable. [Beliveau Decl., ¶¶ 3-7.]
20 The Class Notice, previously approved by the Court, duly informed Class Members of the
21 settlement terms, including the estimated relief each Class Member will receive, the amounts
22 to be requested for attorney's fees and the class representative enhancement awards, and the
23 right to opt out of or object to the settlement. [Beliveau Decl., Exh. A.] Simpluris mailed 97
24 Notice Packets on March 24, 2023. [Beliveau Decl., ¶ 6.] Ultimately, zero Notice Packets
25 were deemed undeliverable, representing a 100% success rate. [Beliveau Decl., ¶ 7.] The
26 response window for opting out of or objecting to the settlement will expire on June 8, 2023.⁴

27 _____
28 ⁴ The Settlement Administrator will submit a supplemental declaration updating the Court on the class member responses prior to the hearing.

1 [Beliveau Decl., ¶¶ 6.] As of the filing of this motion, Simpluris has received zero requests
2 for exclusion (for a 100% participation rate), and zero objections to the settlement. No
3 disputes have been submitted regarding the information used to calculate class member
4 settlement shares. [Beliveau Decl., ¶¶ 10-12.]

5 **D. Release of Claims**

6 All Participating Class Members will release Defendant from all claims alleged in the
7 operative complaint, or that could have been brought based on the factual allegations in the
8 operative complaint, including PAGA claims, during the Class Period. The release is limited to the
9 claims that were actually pleaded or could have been pleaded based on the alleged facts in the
10 operative complaint. [Trenner Decl., ¶ 10.]

11 **E. PAGA Claims and Notice to the LWDA**

12 The Parties allocated \$15,000 from the settlement to civil penalties under PAGA, and
13 Plaintiff respectfully requests that the Court approve this amount as fair, reasonable and adequate.
14 Consistent with PAGA, \$11,250 from this amount will be paid to the LWDA as the state's share
15 of the civil penalties, and the remaining \$3,750 will be distributed to the 97 individuals eligible
16 to receive a PAGA payment. [Beliveau Decl., ¶ 15.] As required by Labor Code section
17 2699(I)(2), Plaintiff gave notice of the settlement and the final approval hearing to the LWDA via
18 its online portal. [Trenner Decl., ¶ 11; Exh. 1.]

19 **IV. ARGUMENT**

20 The law favors settlement, particularly in class actions where substantial resources can
21 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
22 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
23 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
24 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
25 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
26 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
27 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
28 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect

1 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
2 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
3 two-step process intended to determine whether, under the totality of circumstances, the
4 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
5 Cal.App.4th at 245.

6 On a motion for final approval, the trial court is charged with determining whether, in
7 light of the total circumstances of the action and the response of the class members to the
8 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
9 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
10 determination and may consider a number of relevant factors, including: the strength of
11 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
12 further litigation; the amount offered in settlement; the extent of discovery and stage of the
13 proceedings; the experience and opinion of counsel; and the reaction of class members to the
14 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
15 courts generally apply a presumption of fairness to a proposed class action settlement when:
16 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
17 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
18 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;
19 Wershba, 91 Cal.App.4th at 245.

20 **A. The Proposed Settlement Merits Final Approval**

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

25 **1. The Settlement Is the Product of Arm's-Length, Informed Negotiations**

26 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
27 was reached following arm's-length negotiations presided over by Steve Rottman, Esq., a
28 highly respected and well-known mediator with extensive experience mediating wage and hour

1 class actions. [Trenner Decl., ¶ 6.] Moreover, Plaintiff and her counsel were well-informed about
2 the facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Nikki Trenner have years
3 of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are
4 well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
5 [Trenner Decl., ¶¶ 26-32.] Defendant likewise was represented by highly-qualified and
6 experienced defense counsel. Both sides advocated vigorously for their clients, and nothing
7 was "left on the table."

8 **2. The Class Reacted Favorably to the Settlement**

9 The settlement was well-received by the class. As of the filing of this motion, no
10 objections have been filed, and zero Class Members requested exclusion. [Beliveau Decl., ¶ 10-
11 11.] As many courts recognize, class member reaction to the settlement is one of the most important
12 factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable
13 Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics,
14 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the class to the
15 settlement is perhaps the most significant factor to be weighed in considering its adequacy")
16 (internal quotation marks omitted).

17 **3. The Settlement Is Fair and Reasonable Considering the Benefits** 18 **Conferred, the Case Value, and Significant Litigation Risks**

19 The proposed settlement involves a substantial sum of money that, when distributed,
20 will confer meaningful monetary benefits on the Class Members. As described above, each
21 individual award will be based on an allocation consistent with the nature of the claims asserted
22 and will fairly and equitably allocate the available funds in relation to the degree of damage
23 each Class member incurred. While Class members who worked for only a short period of time
24 will receive relatively small sums, those with longer tenures and who worked more hours and
25 shifts throughout the class period will receive appropriately larger awards.

26 Prior to settlement, the parties engaged in extensive formal and informal discovery to
27 facilitate settlement discussions. As a result, Plaintiff reviewed payroll records, personnel
28 policies/handbooks, meal break policies, personnel files, and a random sampling of paystubs and

1 time records produced by NFS. Defendant provided documents and information reflecting the
2 estimated total number of workweeks and pay periods they worked, and average hourly pay rates,
3 among other relevant data. Plaintiff also had that information reviewed by a consulting expert to
4 assist with calculating potential violation rates and potential damages. Plaintiff's counsel is
5 confident they obtained sufficient information to enable them to understand the law and facts of this
6 case and make an informed decision regarding the proposed settlement and whether it is in the best
7 interests of the class. [Trenner Decl., ¶¶ 5, 12.]

8 Using that data, Plaintiff ran various calculations and estimated NFS's likely maximum
9 exposure on the class claims at approximately **\$1,017,000**, including **\$189,385** on the unpaid
10 overtime claims, **\$191,976** on the meal break claims, **\$324,326** on the rest break claims, **\$137,750**
11 on the wage statement claims, and **\$173,676** on the waiting time penalty claims. However, in light
12 of the multiple and considerable risks posed by proceeding with the litigation, Plaintiff and
13 Plaintiff's counsel substantially discounted the value of these claims. [Trenner Decl., ¶ 13.]

14 First, Plaintiff contends Defendant failed to provide legally compliant meal and rest
15 breaks. Specifically, as to meal breaks, Plaintiff contends his analysis of the time and payroll
16 records produced by NFS reveals 53% of all shifts contained a unique meal period violation (i.e.,
17 late, short, or missed). Plaintiff also contends NFS fails to provide duty-free rest periods to Class
18 Members by failing to relinquish control over how Class Members utilize their rest period time by
19 prohibiting Class Members from leaving the premises during rest periods and further that NFS
20 supervisors instructed Plaintiff and Class Members to remain at their worksites and respond to any
21 incoming calls, and they further were prohibited by company policy from using social media
22 while on work time and otherwise subject to policies imposing employer control on the Class
23 Members during their break time. [Trenner Decl., ¶ 14.]

24 Defendant denies Plaintiff's contentions, claiming they made meal and rest breaks available
25 to Class Members in compliance with California law. Defendant contends its meal and rest break
26 policies are lawful and that Class Members were frequently reminded they were required to take all
27 meal and rest breaks. Defendant also contends that time records demonstrate that Class Members
28 took duty-free, timely meal and rest breaks. Defendant also contends its meal and rest break policies

1 and practices comported with the flexibility the Brinker court held was integral to California’s meal
2 and rest period requirements. Finally, Defendant argues that Plaintiff’s meal and rest break claims
3 are not susceptible to common proof, as the claims would require individualized inquiry, including
4 whether there was an unlawful companywide policy, whether employees had the opportunity to take
5 meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and
6 whether Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant
7 contends these claims are vulnerable to a ruling that class treatment is not appropriate. (Trenner
8 Decl., ¶ 15.)

9 Plaintiff further contends Defendant failed to pay all overtime wages. Instead, NFS has a
10 policy and practice of paying a straight hourly rate for all hours worked in excess of eight hours in
11 a workday and forty in a workweek. As a result, NFS failed to pay Plaintiff and the Class Members
12 overtime for all hours they worked in violation of Labor Code § 510. Defendant contends
13 it paid class members all wages due, including overtime wages, as required under applicable law.
14 Without taking into consideration any of Defendant’s defenses to certification or on the merits,
15 Plaintiff’s expert calculated Defendant’s maximum exposure for this claim (Trenner Decl., ¶ 16.)

16 On the inaccurate wage statement claims under Labor Code section 226, Plaintiff contends
17 NFS’s wage statements violate Section 226 on their face by failing to correctly state the total hours
18 worked during each pay period. NFS’s wage statements list two separate hourly rates of pay: “CA
19 Regular” and “CA Benefit” and then state Class Members’ total hours worked for the pay period
20 were listed twice under both “CA Regular” and “CA Benefit,” and thereby double count employee
21 hours worked. As a result of the above alleged violations, Plaintiff also alleges NFS failed to timely
22 pay all wages that were due and owing upon separation of employment. Should the primary claims
23 fail, Plaintiff’s claim for waiting time penalties would also fail. Defendant also contends they
24 would not be liable for waiting time penalties because a “good faith dispute” exists over the payment
25 of past wages. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding
26 employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed
27 on the merits on the underlying claim for failing to pay living wages). Accordingly, Plaintiff
28 discounted these claims in light of these multiple potential defenses. [Trenner Decl., ¶ 17.]

1 As far as potential PAGA liability, the theoretical penalties totaled around \$700,000 if
2 Plaintiff should prevail on all claims and establish violations of the multiple Labor Code sections
3 at issue for every single eligible pay period. [Trenner Decl., ¶ 18.] As with the class claims,
4 Plaintiff discounted the potential PAGA penalties for the multi-layered defenses proffered by
5 Defendant on the merits, and further discounted these claims since the Court possesses wide
6 discretion to reduce such penalties to as little as nothing even if Plaintiff ultimately prevailed. Lab.
7 Code § 2699(e)(2); Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9
8 (court reduced the potential penalties by over 82% after a bench trial); Carrington v. Starbucks
9 Corp. (2018) 30 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just \$5
10 per pay period, a 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and
11 Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after
12 trial). Accordingly, the Parties allocated \$15,000 to PAGA penalties, which amount is reasonable
13 and in line with comparable settlements in other class actions in California. Van Kempen v.
14 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
15 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
16 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
17 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
18 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
19 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
20 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
21 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
22 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
23 not objected to the settlement").

24 Thus, Defendant raised various defenses to each of Plaintiff's claims, any one of which, if
25 successful, could have decimated Plaintiff's case. Overall, Plaintiff faced risky issues going
26 forward with this litigation, and given the need to secure class certification, try the case, and deal
27 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff's
28 counsel discounted the value of the class claims consistent with the risks discussed above, and

1 carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation
2 continued. Plaintiff and counsel concluded – in light of these very real and substantial risks –
3 settlement on the proposed terms and without prolonged and costly litigation was in the best
4 interests of the class. The overall \$250,000 recovery represents around 25% of Defendant’s
5 potential exposure and given these risks addressed above, a total recovery for the class of
6 \$250,000, with an average award of about \$1,267, is a fair result within the range of
7 reasonableness considering all potential outcomes. [Trenner Decl., ¶¶ 19-21.]

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

28 /////

1 **V. PLAINTIFF'S ENHANCEMENT AWARD**

2 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
3 \$10,000 for her service in bringing these claims on behalf of the Class. As the Court will recall,
4 at preliminary approval the Court indicated it likely would approve an award of no more than
5 \$5,000; however, after Plaintiff filed a motion for reconsideration, the Court approved Class
6 Counsel's proposal that Class Counsel will seek a reduced fee award in order make additional
7 funds from the GSA available for Plaintiff's enhancement such that she is eligible to receive the
8 full amount of \$10,000 as provided for in the Settlement Agreement. [Trenner Decl., ¶ 22.]

9 In any event, Plaintiff respectfully submits the request is reasonable given the risks she
10 undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these
11 claims, Plaintiff helped make this settlement possible for the absent Class Members, while
12 shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed
13 herself to unwanted notoriety related to filing a public lawsuit (discoverable even through a
14 simple google search) for the benefit of other employees, placing himself at risk of
15 discrimination by future prospective employers. As set forth in more detail in her declaration
16 submitted with the preliminary approval motion, among taking many other actions assisting in
17 the successful litigation of this case, Plaintiff provided substantial factual information and
18 documents to counsel, attended numerous meetings/phone conferences with counsel to discuss
19 the case, sat through a contentious and lengthy deposition, and kept abreast of all significant
20 developments. [Declaration of Jennifer Combest, ¶¶ 2-20; Trenner Decl., ¶ 22.]

21 Accordingly, the requested enhancement payments to Plaintiff is appropriate and
22 justified as part of the settlement. Nelson v. Avon 5 Prod., Inc. (N.D. Cal. Feb. 24, 2017)
23 2017 WL 733145, at *7 (approving incentive award of \$10,000 where plaintiff "appeared
24 for an all-day deposition, searched for documentation relating to the class action, reviewed
25 documents and settlement papers, attended the mediation and subsequent negotiations, and
26 aided Class Counsel with negotiation efforts."); Staton v. Boeing (9th Cir. 2003) 327 F.3d
27 938, 977 (collecting cases awarding class representatives service and incentive payments ranging
28 from \$2,000 to \$25,000).

1 **VI. SETTLEMENT ADMINISTRATION COSTS**

2 The settlement provides for a payment to Simpluris for its services as the Settlement
3 Administrator. As set forth in the Declaration of Jennifer Beliveau, Simpluris has performed and
4 will continue to perform its required duties through final distribution of the settlement funds and
5 will incur \$7,365 in fees and expenses. [Beliveau Decl., ¶ 16.] As explained in the Beliveau
6 Declaration, the administration costs have increased from \$5,000 to \$7,365 due to the need to file
7 additional tax returns for 2024 for the Qualified Settlement Fund. As provided in the Settlement
8 Agreement at Section 3.2.3, Plaintiff respectfully submits this constitutes the required good cause
9 necessary for the Court to approve an increase in the allowed administration costs. Plaintiff
10 accordingly requests the Court approve payment of \$7,365 to Simpluris from the GSA. [Trenner
11 Decl., ¶ 23.]

12 **VII. ATTORNEY'S FEES AND COSTS**

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

15 This Court has discretion over the amount of attorneys' fees awarded and court
16 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
17 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
18 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
19 marketplace for cases involving significant contingent risk, such as this one. Deposit
20 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
21 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
22 private bargaining, if it were truly possible, might have reached" in determining a reasonable
23 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
24 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
25 justified by the work performed, the benefits obtained, and the contingent risk assumed.

26 As addressed in detail above, at the time the parties reached the tentative settlement
27 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
28 some or all the claims would not be certified for class treatment, as Defendants had strong

1 arguments that its compensation policies were legal and properly compensated the class
2 members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the
3 merits, it undoubtedly would have taken several years to realize any recovery while they
4 pursued class certification, trial, and an almost certain appeal. [Trenner Decl., ¶¶ 14-21.]

5 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to
6 obtain, and the settlement provides substantial cash payments to Class Members, with an
7 average award of about \$1,272, and with a maximum award of almost \$5,400. Importantly as
8 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
9 filing of this motion, there are no objections and no opt outs to the settlement. [Beliveau
10 Decl., ¶¶ 10-12.]

11 **B. The Requested Fee Award Is Reasonable and Appropriate**

12 The United States Supreme Court has ruled the parties to a class action properly may
13 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
14 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
15 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
16 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
17 should not result in a second major litigation. Ideally, of course, litigants will settle the
18 amount of a fee." The United States Supreme Court has reemphasized this policy and further
19 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
20 (1984) 465 U.S. 886, 902 n.19.

21 As part of the Settlement, NFS agreed not to object to an award of no more than 1/3 of
22 the GSA for attorney's fees, or \$83,333.33, and up to \$20,000 in reimbursement for litigation
23 costs and expenses, although as discussed Class Counsel seeks an award of \$78,333.33 only
24 in order provide for a larger class representative enhancement, and further seeks only
25 \$15,854.94 in costs. Such a fee is commensurate with what the market would provide for
26 similar services and the Court therefore can most certainly enforce the agreement. As
27 California's Court of Appeal has instructed:
28

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., ¶ 24.] 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

1 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
2 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

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

11 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
12 this action of no more than 1/3 of the GSA, and specifically \$78,333.33, . The percentage
13 requested is justified for the reasons set forth further below, and comports with fee awards
14 calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements
15 shows that courts have historically awarded fees in the range of 20 to 50 percent, depending
16 upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y.
17 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range
18 from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14
19 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund
20 in order to assure that the fees do not consume a disproportionate part of the recovery
21 obtained for the class, although somewhat larger percentages are not unprecedented.").

22 **D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request**

23 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
24 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
25 an objective measure of the work performed into the calculation of a reasonable attorney fee."
26 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 142.3 hours of time on this matter,
27 resulting in a modest and very reasonable lodestar of \$103,180.00.

1 As is fully detailed in the Trenner Declaration, Class Counsel's efforts included: (1)
2 extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal
3 research, research into similar claims and claims against other employers in the same industry, and
4 attempts to locate and contact other employees of the Defendant; (2) drafting a PAGA notice
5 letter; (3) drafting the initial complaint and related documents; (4) case management, including
6 communications with defense counsel, meeting and conferring/preparing case management
7 statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and
8 informal discovery needed for meaningful settlement discussions; (6) engaging in substantial
9 informal discovery, including propounding informal discovery "requests" and reviewing
10 documents and other information produced; (7) working with a consulting expert on the analysis
11 of Defendant's production; (8) drafting a mediation brief and accompanying damages model after
12 review and analysis of defendant's formal and informal discovery production; (9) attending an all-
13 day mediation; (10) negotiating and drafting the settlement agreement and related documents; (11)
14 drafting the motion for preliminary approval, and attending the hearing; (12) administration of the
15 settlement, including communications with the Settlement Administrator and settlement class
16 members; (13) drafting the motion for reconsideration as to the enhancement award, (14) final
17 approval and attorney's fees, and attending the final approval hearing; and (15) extensive
18 communications with the Plaintiff regarding case status, case investigation and document review,
19 mediation, and settlement terms. Additionally, Class Counsel will incur additional time following
20 final approval to, inter alia, respond to class member inquiries, work with the Settlement
21 Administrator on the distribution of settlement funds, and on the compliance hearing. [Trenner
22 Decl., ¶ 25, Exh. 2.]

23 In pursuing this matter, Class Counsel incurred total attorney's fees of \$103,180.00,
24 the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to
25 a successful conclusion (142.3) attorney hours, and the requested attorney hourly rates are
26 reasonable and comport with hourly rates charged by other attorneys with similar experience in
27 this practice area in California. [Trenner Decl., ¶¶ 26-37.] On a lodestar basis, the fee request of
28 \$78,333.33 results in a base lodestar that is higher than the fees requested on a percentage of

1 the recovery basis, and accordingly there is no request for a lodestar multiplier. In fact, the
2 lodestar crosscheck effectively operates to show that the percentage fee request is reasonable
3 since it is smaller than the actual value of the services rendered when valued via traditional
4 hourly billing.

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

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

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

21 **1. The Results Achieved.**

22 Class Counsel obtained an excellent result in this case for the Class Members. The
23 Settlement provides real monetary benefits to the Class Members, and the Settlement is
24 particularly advantageous to the Class Member because the proceeds will be distributed
25 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
26 Considering many individual claims would be very modest and would not be cost-effective to
27 pursue successfully, the Settlement provided them with fair compensation for their claims.
28 Moreover, the absence of any objection to either the Settlement or the attorney's fee request

1 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
2 by the fact that not only one class member opted out. Additionally, the settlement amounts to
3 a substantial percentage of the maximum value of the amount the Class might have obtained if
4 it had tried the case and recovered on all theories seeking recovery of wages and penalties.

5 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
6 recovery does not per se render the settlement inadequate or unfair." In re Omnivision Techs.,
7 Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

8 **2. Class Counsel Bore Considerable Risk.**

9 At the time of filing the complaint, Class Counsel recognized that they would have to
10 expend a substantial amount of time and advance significant costs to prosecute a statewide
11 class action suit with no guarantee of compensation or reimbursement, in the hope of
12 prevailing against a sophisticated company represented by first-rate attorneys. Despite
13 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
14 of class certification and the ability to prove class-wide and individual damages. In light of
15 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would
16 dig in and attempt to bury their small firms in work. Given the small size of Class Counsel's
17 respective firms, not receiving any compensation for several years while simultaneously
18 advancing litigation costs posed considerable risk and difficulty. [Trenner Decl., ¶¶ 38-39.]

19 **3. The Skill Required and the Quality of Work.**

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

28 /////

1 **4. The Contingent Nature of the Fee and Risk Assumed**

2 There is a substantial difference between the risk assumed by attorneys being paid
3 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
4 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
5 1256. The attorney working on a contingent basis can only log hours while working
6 without pay towards a result that will hopefully entitle him to a market fee considering
7 the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee
8 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this
9 risk in this all or nothing contingent fee case wherein the necessity and financial burden
10 of private enforcement makes the requested award appropriate.

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

20 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
21 the investment of unnecessary time in a case, and the adverse resolution of any one of several
22 difficult issues present in this matter could have doomed the entire effort. As discussed, the
23 attorney's fees in this case were not only contingent but fairly risky, and there was always a
24 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
25 [Trenner Decl., ¶¶ 38-39.] Accordingly, the contingent nature of the fee and the financial
26 burdens on Class Counsel and Plaintiff also support the fee requested.

27 /////

28 /////

1 **5. Awards in Other Cases**

2 As discussed, the attorney's fees requested by Class Counsel are within the range of
3 fees awarded in comparable cases, as California courts regularly approve class action fee
4 awards amounting to 1/3 of a common fund. Additionally, review of class action settlements
5 over the past 10 years shows that the courts have historically awarded fees in the range of 20
6 to 50 percent, depending upon the circumstances of the case. In re Warner Communications
7 Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in
8 common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d
9 ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award
10 from a common fund in order to assure that the fees do not consume a disproportionate part of
11 the recovery obtained for the class, although somewhat larger percentages are not
12 unprecedented."). Class Counsel's requested fees equal to slightly less than 33.3% of the gross
13 amount recovered on behalf of the class and are well within the range of reasonableness under
14 either the percentage of the recovery or the lodestar method in light of the contingent risk
15 assumed, the delay in payment, the result achieved, and the overall quality of the
16 representation.

17 **F. Class Counsel's Costs and Expenses are Reasonable**

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

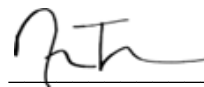
1 As explained in the Trenner Declaration, Class Counsel incurred a total of
2 \$15,854.94 in expenses incurred in connection with this litigation. These expenses include
3 the amounts paid for court filing fees, service of process, expert fees, postage, and
4 mediation fees, all of which are costs normally billed to and paid by the client. These
5 costs were reasonably incurred in the prosecution of this matter. These costs were
6 necessary for the successful prosecution of the case and are in reasonable in amount, and
7 Class Counsel accordingly requests they be reimbursed in full. [Trenner Decl., ¶¶ 40-41.]

8 **VIII. CONCLUSION**

9 For all the foregoing reasons, Plaintiff Jennifer Combest respectfully requests that the
10 Court grant this motion and grant final approval of the proposed class action settlement and
11 approve the payment of PAGA penalties to the State. Plaintiff further requests the Court approve
12 payment of the Settlement Administrator's fees and expenses, approve the requested class
13 representative enhancement payment, approve the award of attorney's fees and costs as requested,
14 and enter judgment in this action. Finally, Plaintiff request the Court set a final compliance
15 hearing for June 20, 2024, or a later date convenient for the Court.

16
17 Dated: May 22, 2023

CROSNER LEGAL, P.C.

18
19 

Zachary Crosner

Nikki Trenner

Attorneys for Plaintiff JENNIFER COMBEST