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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

KENBRON FRYER on behalf of himself,
all others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

TRANSFORCE, INC. and DOES 1-100,

Defendants.

Case No. RG20071048

[Consolidated with Case No. HG20075197]

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, ATTORNEYS' FEES,
COSTS, CLASS REPRESENTATIVE
PAYMENT, AND ENTERING OF FINAL
JUDGMENT**

Date: August 9, 2022
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1 **I. INTRODUCTION**

2 This motion seeks final approval of a non-reversionary \$725,000 proposed wage and hour
3 class action settlement by Plaintiff Kendron Fryer (hereinafter “Plaintiff”) on behalf of himself
4 and all current and former truck drivers who performed services for Defendant Transforce, Inc.
5 (hereinafter “Defendant” or “Transforce”) (hereinafter, Plaintiff and Defendant are collectively
6 referred to as the “Parties”) at any time between August 14, 2016, through September 1, 2021
7 (“Class Period”). To date, there is a 100% participation rate amongst Class Members—that is,
8 there were no requests for exclusion, no objections, and no disputes. The proposed settlement is
9 projected to pay an average estimated payment of \$291.81 per Class Member, with a high payment
10 of \$2,349.76.¹

11 This case required 389 hours of attorney time from Class Counsel and sought relief for
12 1,383 individuals. This litigation involved investigations with Class Members throughout
13 California, extensive discovery, the production of thousands of documents by Defendant, and a
14 full day of mediation.

15 Plaintiff moves for final approval of attorneys’ fees in the amount of \$241,666.66, which
16 represents 33 1/3% of the Gross Settlement Amount (“GSA”). As will be demonstrated herein,
17 Plaintiff’s attorney fee request is supported using the percentage fee method and the lodestar
18 method. Second, Plaintiff moves for final approval of litigation costs in the amount of \$16,812.09
19 incurred in litigating this matter. Third, Plaintiff moves for final approval of the Class
20 Representative Payment in the amount of \$7,500 to compensate the Class Representative for a
21 general release of his claims against Defendant, and for the time he spent on and the risks absorbed
22 in undertaking this case. Plaintiff played a vital role in representing the other individuals in this
23 case and spearheading the lawsuits to seek monetary relief for them. Fourth, Plaintiff moves for
24 final approval of payment of \$15,450 to the Settlement Administrator, Phoenix Settlement
25 Administrators (“Phoenix”) for the costs and fees of administering settlement. Fifth, Plaintiff
26 moves for final approval of payment to the Labor and Workforce Development Agency
27 (“LWDA”) under the Private Attorneys’ General Act (“PAGA”) in the amount of \$30,000 (75%

28

¹ Declaration of Kevin Lee (“Lee Dec.”) ¶ 13.

of \$40,000 allocated to PAGA penalties).

The requested amounts of attorneys' fees, litigation costs, class representative payment, settlement administration costs, and PAGA payment were fully disclosed to the Class Members when the Class Notice was mailed to them on May 4, 2022.² **Most importantly, the Settlement and all its terms received universal support from Class Members as there no were objections, no disputes, and no requests for exclusion.**³ The Court is therefore respectfully requested to honor the Class Members' endorsement of the settlement and grant final approval of the settlement, attorneys' fees, litigation costs, class representative payment, costs of settlement administration, and payment to the LWDA pursuant to PAGA in the amounts as preliminarily approved by this Court, as fully disclosed to the Class Members, and as requested herein.

II. BACKGROUND, INVESTIGATION, DISCOVERY

Transforce is a staffing agency that provides its customers with truck drivers to perform hauling services for the customer's business. Transforce has locations in Los Angeles, Oakland, Rancho Cucamonga, and Stockton. Plaintiff is a former non-exempt, hourly driver of Transforce.

Plaintiff filed his class action complaint in the Alameda County Superior Court on August 14, 2020, against Defendant entitled *Kenbron Fryer v. Transforce, Inc.*, Alameda Superior Court, Case No. RG20071048 ("Class Action"). The complaint alleges the following causes of action against Defendant: (1) Failure to pay all straight time wages; (2) Failure to pay all overtime wages; (3) Failure to provide meal periods; (4) Failure to authorize and permit rest periods; (5) Knowing and intentional failure to comply with itemized employee wage statement provisions; (6) Failure to pay all wages due at the time of termination of employment; (7) Failure to adopt a complaint sick pay policy; and (8) Violation of Unfair Competition Law. Declaration of David Mara, Esq. ("Mara Dec.") ¶ 10.

On July 9, 2020, in compliance with Labor Code § 2699.3(a)(1), Plaintiff submitted written notice via online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant, claiming that he and others were subject to Labor Code violations as a result

² Lee Dec. ¶ 5, Ex. A

³ Lee Dec. ¶¶ 8-10.

1 of Defendant's policies and practices. Plaintiff then filed his PAGA action against Defendant on
2 September 16, 2020, entitled *Kenbron Fryer v. Transforce, Inc.*, Alameda Superior Court, Case
3 No. HG20075197 ("PAGA Action"). He alleged causes of action seeking civil penalties under
4 PAGA for: (1) Failure to Pay for All Time Worked; (3) Failure to Pay Overtime; (3) Failure to
5 Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Failure to Pay All
6 Wages Due at Termination; (6) Failure to Provide Itemized Wage Statements; (7) Failure to Pay
7 All Wages Owed Twice Per Month; and (8) Failure to adopt a compliant sick pay policy. The Class
8 Action and PAGA Action have been consolidated for settlement purposes. Mara Dec ¶ 11.

9 Defendant denies the allegations of the action in their entirety, denies any liability or
10 wrongdoing of any kind associated with the claims alleged in this action, and further denies that,
11 for any purpose other than settling this action, this matter is appropriate for class treatment.
12 Defendant further contends that it has complied with all applicable California laws, the California
13 Labor Code, the applicable California Wage Order(s), and the Unfair Competition Law. Defendant
14 finally contends that, if this matter were to be litigated further, it would have strong defenses to
15 oppose class certification and succeed on the merits of Plaintiff's causes of action. Mara Dec. ¶
16 12.

17 **a. Discovery and Investigation**

18 After filing, the Parties engaged in extensive discovery. This discovery led to Defendant
19 producing over three thousand (3,000) documents. These documents included, but were not limited
20 to, the employee handbook that was in place during the relevant time period, time records and the
21 corresponding wage statements for Plaintiff and an approximately 15% sampling of these time
22 records and wage statements for Class Members, documents provided to Class Members at
23 orientation, and Plaintiff's personnel file. The employee handbook produced by Defendant details
24 its wage and hours policies that covered Class Members during the relevant time period. Mara
25 Dec. ¶ 13.

26 **b. The Parties' Staunchly Conflicting Positions**

27 The gravamen of Plaintiff's claims is that Defendant failed to provide duty-free meal
28 periods and rest breaks to Class Members in violation of *Labor Code* sections 512 and 226.7, Wage

1 Orders, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, and *Augustus v. ABM*
2 *Security Services, Inc.* (2016) 2 Cal.5th 257, and failed to pay Class Members for all hours worked
3 as defined in Wage Order 9-2001. This proposed Settlement was only possible following
4 significant discovery and evaluation of Defendant's relevant policies, procedures, and records,
5 which permitted Plaintiff's Counsel to engage in a comprehensive analysis of liability and potential
6 damages to prepare for the mediation and class certification. Mara Dec. ¶ 14.

7 Defendant vigorously denies Plaintiff's contentions, claiming that all meal and rest breaks
8 were provided in compliance with California law and that Class Members were paid for all time
9 worked. Specifically, Defendant contends that Plaintiff's and Class Members Claims for meal and
10 rest periods are preempted by Federal law. Second, Defendant argues that the policies Plaintiff
11 relies upon in claiming that Class Members did not receive compliant meal and rest periods do not
12 even apply during meal and rest periods at all. Therefore, without a common written policy to
13 support his allegations, Defendant contends Plaintiffs face a difficult burden of proof at
14 certification to show his claims are common to all putative Class Members. Further, Defendant
15 contends that beyond the limited accusations of Plaintiffs, there is no evidence that Defendant had
16 a policy that resulted in any purported failure to be paid for all hours worked. As such, Defendant
17 contends that the Court would have to ask each and every single Class Member if they were paid
18 appropriately, devolving into individualized issues that would be unsuitable for class certification.
19 Mara Dec. ¶ 15.

20 As evidenced above, the Parties took staunchly conflicting positions with respect to
21 Plaintiffs' claims.

22 **c. The Parties Attended Mediation Which Led to Settlement**

23 The Parties agreed to participate in an all-day mediation with wage and hour mediator
24 Michael Dickstein. The mediation took place on April 6, 2021 but was unsuccessful. The Parties
25 continued their negotiations after mediation with the help of Mr. Dickstein. After extensive
26 settlement negotiations, the Parties were able to reach an agreement on the key terms of a
27 settlement. The Parties then met and conferred regarding all the terms of the settlement and
28 finalized their agreement in the Joint Stipulation and Settlement Agreement that the Parties now

1 seek to finally approve. Mara Dec. ¶ 16; **Exhibit 5**.

2 **III. THE PROPOSED SETTLEMENT AND THE CLASS MEMBERS' RESPONSE**

3 **a. Terms of the Proposed Settlement**

4 The Parties agreed (subject to and contingent upon the Court's approval) that this action
5 be settled and compromised for the non-reversionary total sum of \$725,000 ("Gross Settlement
6 Amount" or "GSA") which includes, subject to Court approval: (a) attorneys' fees of up to
7 \$241,666.66 (33 1/3% of the GSA) to compensate Class Counsel for work already performed and
8 all work remaining to be performed in documenting the settlement, administrating the settlement
9 and securing Court approval; (b) litigation costs of \$16,812.09 (originally estimated not to exceed
10 \$25,000); (c) Class Representative Payment to the named class representative, Kendron Fryer, in
11 a sum not to exceed \$7,500 in consideration for a general release of his claims against Defendant
12 and for initiating and prosecuting this Class Action, serving as Class Representative, work
13 performed, and risks undertaken for the payment of Defendant's attorneys' fees and costs in the
14 event he had been unsuccessful in either matter; (d) claims administration fees and expenses to
15 Phoenix, in the amount of \$15,450 (originally estimated not to exceed \$20,000); and (e) the
16 \$40,000 allocated to Plaintiff's claims under the PAGA. Mara Dec. ¶ 17.

17 After all Court-approved deductions from the GSA, it is estimated that \$403,571.25, ("Net
18 Settlement Amount" or "NSA"), less all applicable employee taxes, will be distributed to Class
19 Members – with an average estimated payment of \$291.81 per Class Member, and a high payment
20 of \$2,349.76. One hundred percent (100%) of the NSA will be paid to the Class Members, less
21 taxes. Subject to the terms and conditions of the settlement, the NSA will be allocated among
22 Settlement Class Members according to each Settlement Class Member's workweeks during the
23 Class Period as a *pro rata* portion of the total combined workweeks of all the Settlement Class
24 Members during the Class Period as derived from Defendant's records.

25 Furthermore, the Settlement allocates \$40,000 in consideration for the settlement of
26 Plaintiff's PAGA claims, which is to be distributed separately from the NSA. Settlement Class
27 Members who performed work for Defendant from July 9, 2019, one year prior to the submission
28 of the written notice of Labor Code violations to the LWDA pursuant to Labor Code § 2699.3(a)(1),

1 through September 1, 2021 (“PAGA Period”) are also deemed “Aggrieved Employees” and able
2 to recover their share of the civil penalties under the settlement. 75% of this \$40,000, or \$30,000,
3 will be paid to the LWDA, while the remaining 25%, or \$10,000, will be distributed to the
4 Aggrieved Employees – with an average estimated payment of \$11.55 per Aggrieved Employee,
5 and a high payment of \$39.83. These payments will also be made according to each Aggrieved
6 Employee’s workweeks during the PAGA Period as a *pro rata* portion of the total combined
7 workweeks of all the Settlement Class Members during the PAGA Period. One day worked in a
8 given week will be credited as a workweek for purposes of this calculation.

9 **Under no circumstances will any portion of the \$725,000 settlement revert to**
10 **Defendant.** Mara Dec. ¶ 18.

11 **b. Released Claims**

12 In exchange for an individual settlement payment, Plaintiff and Class Members will release
13 the following claims:

14 Class Members who do not opt out of the settlement will release all claims made or
15 that could have been made against the Releasees based on the facts and circumstances
16 alleged in the Complaints, including claims under California Labor Code sections 201-
17 204, 205.5, 218, 218.5, 222-224, 226, 226.7, 233-234, 246, 246.5, 510, 512, 515, 558,
18 1174-1175, 1194-1197.1, 1199, California Code of Regulations, Title 8, Sections
11090, 11040, and 11070, the federal Fair Labor Standards Act, California Business
and Professions Code section 17200, *et seq.*, California Wage Order No. 9-2001; and
any claim for attorneys’ fees and costs related to the above-referenced released claims.

19 Mara Dec., **Exhibit 5** at § I (37). Furthermore, the LWDA and Plaintiff will release PAGA Claims
20 including, for the entire PAGA Period, all claims belonging to the State of California, the LWDA,
21 and Plaintiff (as representative of the State of California, the LWDA, and the general public) under
22 the California Private Attorney General Act (“PAGA”), Cal. Lab. Code § 2698, *et seq.* to the extent
23 such claims are predicated on a Released Class Claim. Mara Dec., **Exhibit 5** at § I (38).

24 **c. The Class Members Overwhelmingly Support the Settlement – No Objections,**
25 **No Opt-Outs, and 100% of the Settlement Payment Will Be Paid to the Class**

26 On April 7, 2022, the Court granted preliminary approval, conditionally certified the Class,
27 appointed Phoenix to act as the Settlement Administrator, approved the notice to be sent to the
28 Class, and directed that the notice be mailed to the Class by First Class U.S. Mail. On April 20,
2022, Phoenix received the class data file from Counsel for Defendant, which contained the name,

1 social security number, last known mailing address, employment dates, and the total number of
2 applicable workweeks worked for each Settlement Class Member. Lee Dec. ¶ 3. On May 4, 2022,
3 Phoenix conducted a National Change of Address (“NCOA”) search in an attempt to update the
4 class list of addresses as accurately as possible. *Id.* at ¶ 4. A search of this database provides
5 updated addresses for any individual who has moved in the previous four (4) years and notified
6 the U.S. Postal Service of their change of address. *Id.* On June 17, 2021, the Notice was mailed,
7 via U.S First Class Mail, to all 102 individuals contained in the Class List. *Id.* at ¶ 5.

8 Eighty-One (81) Notices were returned to Phoenix by the Post Office. Lee Dec. ¶ 6.
9 Phoenix performed a computerized skip trace on the returned Notices that did not have a
10 forwarding address, in an effort to obtain an updated address for purpose of re-mailing the Notice.
11 *Id.* All Eighty-One (81) Notices were re-mailed as a result of a skip trace or through a forwarding
12 address. *Id.* Three (3) Notices have been deemed undeliverable, since they were again returned by
13 the post office after a second remailing. *Id.* at ¶ 7.

14 In sum, the settlement was received with overwhelming support from the Class Members.
15 Specifically, there were no objections, disputes, and no requests for exclusion submitted by Class
16 Members. Lee Dec. ¶¶ 8-10. This means all 1,383 Class Members, or 100%, will receive a
17 settlement payment. *Id.* at ¶ 11.

18 **IV. ARGUMENT**

19 **a. The Settlement is Fair, Reasonable, and Adequate and Satisfies the Standard 20 for Final Approval**

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

27 In deciding whether to approve a class settlement, a court evaluates whether the proposed
28 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th
1794, 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.* (9th Cir. 1982))

688 F.2d 615, 625); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742 43. A court enjoys broad discretion to make its fairness determination. *Dunk*, 48 Cal. App. 4th at 1801.

However, “a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*, 48 Cal. App. 4th at 1802; *accord Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider additional relevant factors, including the strength of the plaintiff’s case compared to the settlement amount; the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802.

At the time of preliminary approval, the Court was provided with sufficient information to satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown until after the Class had an opportunity to respond to the Settlement as explained in the Class Notice.⁴ Subject only to the Class’ reaction to the Settlement, the Court preliminarily presumed the Settlement was fair, adequate and reasonable. Following dissemination of the Class Notice, and adequate time provided to the Class to return an objection to the Settlement, no class members objected to the Settlement. Lee Dec. ¶ 9. Thus, the proposed settlement is entitled to the presumption that it is fair and in all other respects proper and should be finally approved.

b. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff’s Case and the Risks and Costs of Further Litigation

i. Federal Preemption

This bulk of this case hinges on whether Plaintiff’s and Class Members’ claims for Defendant’s failure to provide compliant meal and rest periods under California law are preempted by federal law. On December 28, 2018, the Federal Motor Carrier Safety Administration (“FMCSA”) issued an opinion (“the FMCSA Opinion”) determining that the California meal and rest break provisions are more stringent than the Agency’s hours of service regulations, that they

⁴ See Memorandum of Points and Authorities in Support of Preliminary Approval, filed on January 24, 2022. 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. *Id.*

1 have no safety benefits that extend beyond those already provided by the Federal Motor Carrier
2 Safety Regulations, that they are incompatible with the Federal hours of service regulations, and
3 that they cause an unreasonable burden on interstate commerce. Thus, California meal and rest
4 break laws for property-carrying commercial motor vehicle drivers covered by the FMCSA's
5 hours of service regulations, therefore, are preempted under 49 U.S.C. 31141(c).

6 Plaintiff argues that Defendant is still liable for violating California law for a large amount
7 of the Class Period prior to December 28, 2018, as the FMCSA Opinion would only apply
8 prospectively. Federal agency decisions and orders, like FMCSA's December 21, 2018, Decision,
9 are "subject to the presumption of prospectivity that attends true exercises of legislative authority."
10 *Gutierrez-Brizuela v. Lynch* (10th Cir. 2016) 834 F.3d 1142, 1144, citing *De Niz Robles v. Lynch*
11 (10th Cir. 2015) 803 F.3d 1165. Consistent with this, as the United Supreme Court found over
12 thirty years ago, administrative rules and orders are not retroactively applied *unless* "*the power to*
13 *promulgate retroactive rules...is conveyed by Congress in express terms.*" *Bowen v. Georgetown*
14 *University Hospital* (1988) 488 U.S. 204, 208. The *Bowen* Court explained:

16 It is axiomatic that an administrative agency's power to promulgate legislative
17 regulations is limited to the authority delegated by Congress...Retroactivity is not
18 favored in the law. Thus, congressional enactments and administrative rules will
19 not be construed to have retroactive effect unless their language requires this result.
20 By the same principle, ***a statutory grant of legislative rulemaking authority will***
21 ***not, as a general matter, be understood to encompass the power to promulgate***
22 ***retroactive rules unless that power is conveyed by Congress in express terms.***
23 ***Even where some substantial justification for retroactive rulemaking is***
24 ***presented, courts should be reluctant to find such authority absent an express***
25 ***statutory grant.***

26 *Id.* (emphasis added).

27 Plaintiff argues that the FMCSA Opinion is subject to the presumption of prospectivity and
28 because the statutory grant of authority (49 U.S.C. 31141) does not *expressly* permit it to issue
retroactive preemptive determinations, it cannot be applied retroactively. Section 31141 simply
grants the Agency authority to issue preemption determinations and does not state that its
determinations will apply retroactively. Subsection (a) of section 31141 reads: "Preemption after

1 decision. A state may not enforce a State law or regulation on commercial motor vehicle safety
2 that the Secretary of Transportation decides under this section may not be enforced.” There is no
3 *express* congressional permission granted the Agency in section 31141 to issue preemption
4 determinations retroactively and therefore no basis to find Plaintiff’s meal and rest break claims –
5 which arose exclusively during the time when the Agency did not find for preemption - impacted
6 by the determination. Mara Dec. ¶ 19.

7 Defendant contends that the FMCSA Opinion is fully enforceable and extinguishes
8 Plaintiff’s and the Class Members’ claims for meal and rest period violations in their entirety (not
9 only for purported violations after the opinion was issued), as the truck drivers who are included
10 in the class are the individuals encompassed by this binding federal precedent. Defendant can point
11 to numerous state and federal decisions enforcing the FMCSA opinion and granting summary
12 judgment as to meal and rest period claims for truck drivers subject to the Federal Hours of Service
13 requirements, to which Plaintiff and Class Members were indisputably beholden. Specifically, in
14 cases like *Ayala v. U.S Xpress Enterprises, Inc.*, 2019 U.S. Dist. LEXIS 77089, 2019 WL 1986760,
15 at *3 (C.D. Cal. May 2, 2019), courts have applied the FMCSA opinion to enter summary judgment
16 on claims like those made here, finding both that "retroactivity" was not at issue because the courts
17 lack authority to enforce the preempted laws, and that any challenge to the opinion must be brought
18 in United States Courts of Appeal. Numerous decisions that have been issued after *Ayala* have
19 reached the same conclusion. *See Robinson v. Chefs' Warehouse, Inc.*, No. 15-CV-05421-RS, 2019
20 WL 4278926, at *4 (N.D. Cal. Sept. 10, 2019) (finding the reasoning of *Ayala* persuasive and
21 holding the court had no authority to enforce the preempted law at all, including retroactively);
22 *Henry v. Cent. Freight Lines, Inc.*, No. 2:16-CV-00280-JAM (EFB), 2019 U.S. Dist. LEXIS
23 99594, 2019 WL 2465330, at *4 (E.D. Cal. June 13, 2019) (granting summary judgment to all
24 California meal and rest break claims as preempted); *Connell v. Heartland Express*, No. 2:19-CV-
25 09584-RGK-JC, 2020 U.S. Dist. LEXIS 29235, at *8 (C.D. Cal. Feb. 6, 2020) (“[T]his Court
26 concurs with the line of cases that have found that the FMCSA order applies retroactively by
27 necessity because the FMCSA order forecloses present enforcement of the preempted laws.”).
28

1 Mara Dec. ¶ 20.

2 Plaintiff believes his meal and rest period claims are the strongest claims in this case, not
3 only in the evidence they have obtained, but also in terms of obtaining class certification and
4 Defendant's potential exposure. Therefore, Plaintiff's arguments, as outlined below, are only
5 relevant if the Court were to find that the FMCSA opinion does not apply retroactively. Because
6 of this, Plaintiff had to take into consideration the possibility that Defendant's position could
7 prevail and had to discount their damage exposure significantly. Mara Dec. ¶ 21.

8 **ii. Meal and Rest Period Claims**

9 Plaintiff contends, and Defendant denies, that Defendant failed to relieve Class Members
10 of all duties during their meal and rest periods. An employer satisfies the obligation to provide
11 meal periods "if it relieves its employees of all duty, relinquishes control over their activities and
12 permits them a reasonable opportunity to take an uninterrupted 30-minute break, and does not
13 impede or discourage them from doing so." *Brinker v. Superior Court* (2012) 53 Cal. 4th 1004,
14 1040. In *Augustus v. ABM Security Serv., Inc.* (2016) 2 Cal.5th 257, the California Supreme Court
15 ruled employers have the same duty with respect to providing rest periods as they do for meal
16 periods. *Augustus, supra*, 2 Cal.5th 257, 265 (affirming "that during meal periods, employers must
17 'relieve the employee of all duty and relinquish any employer control over the employee and how
18 he or she spends the time.'").

19 Defendant's employee handbook contained written policies in its employee handbook that
20 dictated what Class Members were and were not permitted to do throughout their workday. For
21 example, the policies in Defendant's handbook forbid Class Members from transporting
22 passengers or leaving their vehicles unattended. Furthermore, the handbook provided that drivers
23 were forbidden from "leaving work or work premises without authorization," with progressive
24 disciplinary measures imposed for violations of this policy. Leaving work or work premises
25 resulted in a potential discharge pending investigation for merely a single violation of the policy.
26 Plaintiff argues Defendant cannot reasonably claim that these policies did not apply during meal
27 and rest periods because it failed to provide Class anything in writing saying that these limitations
28

1 did **not** apply during meal or rest periods. Defendant is not permitted to interfere with an
2 employee's incontrovertible right to duty-free meal and rest periods, as mandated under *Brinker*
3 and *Augustus*. Mara Dec. ¶ 22.

4 Defendant contends that these policies do not apply during meal and rest periods, Class
5 Members are not under Defendant's control and command during lunches breaks, and that drivers
6 are provided with duty-free lunches and breaks that Class Members can use to do whatever they
7 choose. Defendant informs Class Members that they are to take duty-free meal and rest breaks
8 wherever they choose and that they do not need to stay with the truck during these times. Further,
9 Defendant argues that the Court would need to ask each and every Class Member whether they
10 thought these policies applied during meal and rest periods, causing individual issues to
11 predominate and rendering a trial for all Class Members inherently unmanageable. Based on the
12 foregoing, Defendant contends that Plaintiff's meal and rest break claims cannot be certified and
13 will not succeed on the merits. Mara Dec. ¶ 23.

14 **iii. Unpaid Wages**

15 In addition, Plaintiff contends that Defendant failed to pay all wages owed to Class
16 Members for the same reasons just discussed with the meal and rest period claims. Under
17 California law, employees must be paid for all "hours worked," as that phrase is defined in the
18 Industrial Welfare Commission Wage Orders and interpreted by California law. Hours worked is
19 defined in Wage Order 9-2001 – the Wage Order that governs the driver class members in this
20 case – as "the time during which an employee is subject to the control of an employer, and includes
21 the time the employee is suffered or permitted to work, whether or not required to do so." Wage
22 Order 9-2001, Subd. 2(K); *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th
23 833. Based upon the uniform policies outlined above, Plaintiff asserts that the unpaid time spent
24 on meal periods is compensable hours worked. Therefore, Plaintiff contends that Class Members
25 are owed wages for the time they spend on unpaid meal periods. Mara Dec. ¶ 24.

26 Defendant contends that these policies do not apply during meal periods. Defendant asserts
27 that drivers are informed that their meal periods must be duty-free and are told that they are able
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1 to use meal period time for their own purposes. Defendant argues that Plaintiff would have to ask
2 each driver what they thought the policy meant and whether they felt that they had any employer
3 controls placed on them during meal periods. Because each driver would have to testify as to their
4 understanding of the policy, individual issues would predominate and any trial would
5 unmanageable. Defendant contends that it would be able to obtain numerous declarations from
6 drivers, that it would present to the Court at class certification, as well as the summary judgment
7 and/or trial phase, which refute Plaintiff's position. Mara Dec. ¶ 25.

8 **iv. Wage Statement and Waiting Time Penalty Claims**

9 Plaintiff also pursued claims for failure to provide accurate itemized wage statements and
10 waiting time penalty claims. These claims are derivative of Plaintiff's unpaid wages claims. Should
11 Plaintiff's unpaid wages claims fail, these claims would also fail. Mara Dec. ¶ 26.

12 In addition, Defendant contends that even if Plaintiff were successful in his unpaid wages
13 claims, he would have to prove Defendant "willfully" failed to pay Class Members appropriate
14 wages due upon separation of employment. "A willful failure to pay wages within the meaning of
15 Labor Code Section 203 occurs when an employer intentionally fails to pay wages to an employee
16 when those wages are due. However, a good faith dispute that any wages are due will preclude
17 imposition of waiting time penalties under Section 203." Cal. Code Regs. Tit. 8 § 13520. "A 'good
18 faith dispute' that any wages are due occurs when an employer presents a defense, based in law or
19 fact, which would preclude any recovery on the part of the employee. The fact that a defense is
20 ultimately unsuccessful will not preclude a finding that a good faith dispute did exist." *Id.*
21 Defendant contends that any failure to pay wages due at the separate of employment was not
22 willful. Defendant argues that it would not be liable for waiting time penalties because a "good
23 faith dispute" exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral*
24 *v. Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201. Mara Dec. ¶ 27.

25 Defendant also argues that Plaintiff's unpaid wage claims cannot form the basis of his wage
26 statement claim. Defendant relies on the case *Maldonado v. Epsilon Plastics, Inc.* (2018) 22
27 Cal.App.5th 1308, for the position that employees do not suffer injury under California Labor
28

Code § 226(a) so long as the wage statements correctly reflected the hours worked and the pay received even if the pay is later determined to be inaccurate. Mara Dec. ¶ 28.

Although Plaintiff is confident in the strengths of his claims and believes this case is suitable for certification on the claimed basis that there are company-wide policies that Plaintiff contends violate California law and uniformly affect the Class Members, Defendant's counterarguments raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to certification of wage and hour claims.⁵ In light of Defendant's defenses, supporting evidence, and position that the action is not suitable for class treatment, the settlement amount of \$725,000 — with an average settlement share estimated at \$291.81, with a high payment of \$2,349.76 — Plaintiff and her counsel believe this is a reasonable and fair settlement. Mara Dec. ¶ 29.

V. THE COURT SHOULD APPROVE THE REQUESTED FEES AND COSTS

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

Class Counsel applies for an award of attorneys' fees in the sum of \$241,666.66 (which is 33 1/3% of the MSA), and litigation costs of \$16,812.09 (originally estimated not to exceed \$25,000). Mara Dec. ¶ 30. California courts have recognized an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits to Class Members by the settlement, also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano III*) 34 ("when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney's fees

⁵ See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal. App. 4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal. App. 4th 1422 (affirming denial of certification).

1 out of the fund.”); *Serrano v. Unruh*, 32 Cal.3d 621, 627 (1982) (in awarding a fee from the
2 common fund obtained for the benefit of all parties, the trial court acts within its equitable power
3 to prevent the other parties’ unjust enrichment.); *Rawlings v. Prudential-Bache Properties, Inc.*, 9
4 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund method for calculating attorney’s fees
5 more accurately reflects the results achieved for the putative class than the lodestar method and
6 “establishes reasonable expectations on the part of plaintiffs’ attorneys as to their expected
7 recovery; and it encourages early settlement, which avoids protracted litigation.”); *In re Rite Aid*
8 *Corp. Securities Litigation*, 396 F.3d 294, 300 (3d Cir. 2005) (“The percentage-of-recovery
9 method is generally favored in common fund cases because it allows courts to award fees from the
10 fund ‘in a manner that rewards counsel for success and penalizes it for failure.’”).

11 The purpose of the common fund/percentage approach is to “spread litigation costs
12 proportionally among all the beneficiaries so that the active beneficiary does not bear the entire
13 burden alone.” *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. In *Quinn v.*
14 *State of California* (1995) 15 Cal.3d 162, 167, the Court stated: “[O]ne who expends attorneys’
15 fees in winning a suit which creates a fund from which others derive benefits may require those
16 passive beneficiaries to bear a fair share of the litigation costs.” Similarly, in *City and County of*
17 *San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court recognized that
18 the common fund doctrine has been applied “consistently in California when an action brought by
19 one party creates a fund in which other persons are entitled to share.” The reasons for applying the
20 common fund doctrine include: “...fairness to the successful litigant, who might otherwise receive
21 no benefit because his recovery might be consumed by the expenses; correlative prevention of an
22 unfair advantage to the others who are entitled to share in the fund and who should bear their share
23 of the burden of its recovery; encouragement of the attorney for the successful litigant, who will
24 be more willing to undertake and diligently prosecute proper litigation for the protection or
25 recovery of the fund if he is assured that he will be properly and directly compensated should his
26 efforts be successful.” *Id.*

27 Indeed, the California Supreme Court confirmed in *Laffitte v. Robert Half Int’l, Inc.* that
28 using the percentage method has many advantages:

1 The recognized advantages of the percentage method - including relative ease of
2 calculation, alignment of incentives between counsel and the class, a better
3 approximation of market conditions in a contingency case, and the encouragement
4 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.

5 *Id.* at 503 (internal citation omitted).⁶ Because there is a defined and traceable benefit to the Class,
6 the Court can base an award of attorneys’ fees using a ‘common fund’ approach.

7 **b. The Requested Attorneys’ Fee and Cost Award is Within the Range of Fees**
8 **Approved in Comparable Common Fund Cases**

9 Several studies of class action fee awards have found that the median common fund fee
10 award is approximately one-third of the total settlement fund.⁷ The requested fee falls in the mid-
11 range of percentage class fee awards, which generally range from 20% to 50% of a common fund,
12 and it constitutes fair compensation for undertaking complex, risky, expensive, and time-
13 consuming litigation on a contingent basis and compensates Class Counsel for their efforts, as well
14 as the result achieved for the benefit of the Class. Numerous state and federal courts in California
15 routinely approve fee requests equal to or greater than 33% of the common fund. Indeed, courts
16 have found that an award of 33% of the common fund represents the “benchmark” in California.⁸
17 In short, Plaintiff’s counsels’ fee request of \$241,666.66 (33 1/3% of the GSA) is in line with

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19 ⁶ *Laffitte* also held trial courts have discretion to assess reasonableness of fee awards with tools
20 such as the lodestar cross-check, although they need not do so. *Laffitte*, 1 Cal.5th at 506 (“We hold
21 further that trial courts have discretion to conduct a lodestar cross-check on a percentage fee . . .
they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the
reasonableness of a requested percentage fee”).

22 ⁷ *See, e.g., Chavez v. Netflix, Inc.* (2008) 162 Cal. App. 4th 43, 66, n.11 (numerous studies have
23 shown that “fee awards in class actions average around one-third of the recovery.”); Reagan W.
24 Silber and Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class*
25 *Counsel’s Response*, 17 Rev. Litig. 525, 546 ; T. Willging, L. Hooper and R. Niemic, *Empirical*
Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee
26 *on Civil Rules*, 90 (1996) (finding that attorneys’ fees in class litigation “were generally in the
27 traditional range of approximately one-third of the total settlement”).

28 ⁸ *Smith v. CRST Van Expedited, Inc.* (S.D. Cal. Jan. 14, 2013) 10-CV-1116- IEG WMC, 2013 WL
163293, *5 (“These percentages compare favorably with both California (33%) and federal (25%)
benchmarks.”); *Dennis v. Kellogg Co.* (S.D. Cal. Nov. 14, 2013) 09-CV-1786-L WMC, 2013 WL
6055326, at *7 (“This percentage compares favorably with both California (33%) and federal
(25%) benchmarks and the requested fee compares well with a lodestar cross-check as well.”).

awards in similar cases in California and nationwide and demonstrates that Plaintiff's counsels' fee request is consistent with market rates and is reasonable.

c. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Class Counsel's fee request is reasonable when calculated using the lodestar method. Under the lodestar method, a base fee amount is calculated from a compilation of time reasonably spent on the case and the reasonable hourly compensation of the attorney. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 48. The court then enhances this lodestar figure by a "multiplier" to account for a range of factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of success achieved. *Id.*, at 49; see also *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-36; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096; *Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 834, ("[t] there is no ... rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar").

As of the date of filing this Motion for Final Approval, Plaintiff's counsel has worked a total of 389 hours on this case and calculated the base lodestar at \$265,925 at rates reflecting those currently earned in the marketplace. Mara Decl. ¶¶ 30-31, 33-34, 36-37; **Exhibit 1**. All of the work and tasks performed by Plaintiff's counsel were reasonable and necessary to the prosecution of this case. Mara Decl. ¶¶ 30-31, 33-34, 36-37. As Class Counsel's lodestar fee is in excess of their fee request, a multiplier on their lodestar fee is not sought herein. Mara Dec. ¶ 38. In fact, the requested fee results in a so-called "negative multiplier" which suggests the percentage of the fund amount is reasonable and fair. See *Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F.Supp.2d 848, 854; *In re Portal Software, Inc. Securities Litigation* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 88886, 2007 WL 4171201, at *16.

d. Class Counsel's Hourly Rates Are Reasonable

Plaintiffs' counsels' hourly rates are between \$550 and \$800 and are in line with rates typically approved in wage and hour class action litigation and which rates have been approved by Courts in California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County Superior Courts.⁹ A reasonable hourly rate is the prevailing rate charged by

⁹ Mara Dec. ¶¶ 31, 34, 37; **Ex. 2** Westlaw Court Express's Legal Billing Report, Volume 14, Number 3, California Region for December 2012; **Ex. 3**, 2014 Declaration of Richard M. Pearl in

attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc v. Drexler* (2000) 22 Cal. 4th 1084, 1095. When determining a reasonable hourly rate, courts may consider factors such as skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal. App. 4th 629, 632.

Plaintiff's counsels' skill and experience support their hourly rates. Their practice is limited exclusively to litigation, focusing on the representation of employees in wage and hour and consumer class action matters. Mara Decl. ¶¶ 1-9, 32, 35. As prominent attorneys in the field of wage and hour class action litigation, Plaintiffs' counsel continually monitors the prevailing market rates charged by both defense and plaintiff law firms and set the billing rates of their attorneys and paralegals to be consistent with the prevailing market rates in the private sector for attorneys and staff of comparable skill, qualifications and experience. Other wage and hour attorneys working as class counsel before California courts charge comparable if not higher rates.¹⁰ Therefore, as they are in line with those of the relevant community, Class Counsels' hourly rates are reasonable.

e. Class Counsels' Total Hours are Reasonable

In determining a lodestar fee, reasonable hours include, in addition to time spent during litigation, the time spent before the action was filed, including time spent interviewing clients, investigating the facts and the law, and preparing the initial pleadings. *See New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. The fee award should include fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Priest* (1982) 32 Cal.3d 621, 639.

To date, Plaintiffs' Counsel has expended a total of 389 hours litigating this case. The work performed to achieve a settlement that will provide valuable consideration to the Class, averaging an estimated payment of \$291.81¹¹, is summarized by Class Counsel in the declarations submitted

Hohnbaum v. Brinker Restaurant Corp. SDSC GIC834348; **Ex. 4**, 2012 National Law Journal Survey of Hourly Billing Rates for Partners and Associates.

¹⁰ Mara Dec. ¶¶ 31, 34, 37, **Ex. 2**, Westlaw Court Express's Legal Billing Report, Volume 14, Number 3, California Region for December 2012; **Ex. 3**, 2014 Declaration of Richard M. Pearl in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; **Ex. 4**, 2012 National Law Journal Survey of Hourly Billing Rates for Partners and Associates).

¹¹ See Lee Dec. ¶ 13.

herewith. Mara Dec. ¶¶ 30-31, 33-34, 36-37; **Ex. 1.** Counsel's many tasks, in summary form, included the following: pre-filing investigation and legal research; communicating with the class representatives; interviewing and meeting with putative Class Members; research and investigation of California's ever evolving wage and hour laws; investigation into Defendant's pay-structures and policies for its hourly employees; drafting and filing pleadings; drafting and filing notice to the LWDA; numerous conferences with Defendant's counsel regarding a variety of issues throughout the litigation, mediation and settlement process; numerous interoffice discussions about litigation strategy and theories of liability; appearing at hearings; review and analyze documents produced by Defendant, create exhibits for use in the case; review case file for mediation; numerous discussions with expert retained to analyze time and wage records; draft mediation brief and exposure analysis; interoffice discussions about mediation and mediation brief; prepare for and attend mediation; extensive post-mediation settlement negotiations; review and revise memorandum of understanding; draft and revise long form settlement agreement; draft motion for preliminary approval and supporting documents, communicate with the settlement administrator throughout the administration process, and draft motion for final approval and supporting documents. All tasks and work performed were reasonable and necessary to the prosecution of this case. The work performed was justified in light of the result achieved. Mara Dec. ¶¶ 30-31, 33-34, 36-37.

f. Costs of Litigation

Class Counsel seeks reimbursement of the litigation costs and expenses of \$16,812.09 (originally estimated not to exceed \$25,000). These costs were all reasonable and necessary to the prosecution of this case and the results achieved and are fair, and reasonable. Mara Dec. ¶ 39, **Ex. 1.**

VI. THE CLASS REPRESENTATIVE PAYMENT IS REASONABLE

In addition, Plaintiff agreed to a general release of his claims against Defendant in exchange for the \$7,500 Class Representative Payment. Courts routinely approve service payments, or incentive awards, to compensate a named plaintiff for the services he or she provides and the risks he or she incurs during class litigation. *See In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393; *see also Bell v. Farmers Ins. Exch.* (2004) 11 Cal.App.4th

1 715, 725-26 (upholding services payments to class representatives); *Munoz v. BCI Coca-Cola*
2 *Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 412 (upholding incentive awards to
3 plaintiffs that, when added to their individual recoveries, amounted to more than twice as much as
4 the average payment to class members). Courts have regularly and routinely granted approval of
5 settlements containing such enhancements. *See, e.g., Staton v. Boeing*, 327 F.3d 938, 977 (9th Cir.
6 2003).¹² In Class Counsel's experience, the typical enhancement award in wage and hour class
7 action settlements ranges from \$5,000 to \$75,000. Very commonly there is more than one class
8 representative who receives an award in the above range. Mara Dec. ¶ 40.

9 The requested payment is appropriate and reasonable and unopposed by Defendant. This
10 payment is made, in part, in exchange for Plaintiff providing Defendant with a general release of
11 his claims. This general release is far greater than the release signed by class members. In addition,
12 in to support of the enhancement request, Plaintiff submitted a declaration detailing the efforts he
13 expended on behalf of the class in order to advance this case to its successful conclusion. *See*
14 *generally* Declaration of Kendron Fryer. There is no question that this case would not have reached
15 the same result but for Plaintiff's involvement and input at all stages of the litigation.

16 As representative for the absent class members, Plaintiff risked a potential judgment taken
17 against him for attorneys' fees and costs if this matter had not been successfully concluded. *See*
18 *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000) (losing party is liable for the prevailing
19 party's costs); California Labor Code § 218.5 (prevailing party is entitled to attorneys' fees).
20 Plaintiff risked having a cost bill entered against him leaving him ultimately liable for potentially
21 hundreds of thousands of dollars in the unexpected possibility that Plaintiffs' counsel did not meet
22 their obligation to cover those costs.

23 Unfortunately, there have been several judgments entered against class representatives, e.g.

24
25 ¹² *See, e.g., Cook v. Niedert*, 142 F.3d 1004, 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp.
26 185 (S.D.N.Y. 1997) ("present or past employee whose present position or employment credentials
27 or recommendation may be at risk by reason of having prosecuted the suit, who therefore lends his
28 or her name and efforts to the prosecution of litigation at some personal peril, a substantial
enhancement award is justified"); *Thornton v. East Texas Motor Freight*, 497 F.2d 416, 420 (6th
Cir. 1974) ("We also think there is something to be said for rewarding those drivers who protect
and help to bring rights to a group of employees who have been the victims of discrimination.").

1 *Koehl v. Verio, Inc.* 142 Cal.App.4th 1313, 1328 (2006) (a wage and hour class action where
2 Defendant prevailed at trial, the named Plaintiffs were held liable, jointly and severally for the
3 Defendant's attorneys' fees); *Whiteway v. Fedex Kinkos Office & Print Services, Inc.*, 2007 U.S.
4 Dist. LEXIS 95398 (N.D. Cal. 2007) (a wage and hour misclassification case lost on summary
5 judgment, after the case was certified, the named Plaintiff was assessed costs in the sum of
6 \$56,788.). The risk of payment of Defendant's costs, in itself alone, is a sufficient basis for an
7 award of the requested enhancement sum. Few individuals are willing to take this risk, and it is
8 clear that the appointed Class Representative here championed a cause on behalf of others with
9 potentially huge monetary risks.

10 Additionally, it is common knowledge that the modern-day work force is quite mobile,
11 with employees holding several jobs in a career during their lifetime. It is also true that prospective
12 employers in this computer, high-tech age "Google" and/or do extensive background checks and
13 have access to Court databases to see if applicants have ever filed a lawsuit or have ever been sued.
14 Here, Plaintiff litigated against Defendant for a substantial sum of money by their courage to step
15 forward to vindicate not only his own rights but also, those of the similarly situated individuals,
16 all of whom will now receive substantial payments due to the initiation of this action. Such conduct
17 will not be lost on a prospective employer who has to choose between an applicant who has never
18 sued an employer and one who has done so. The requested payment far from compensates Plaintiff
19 for opportunities he may lose in the future because of the exercise of a Constitutional right to
20 petition the courts for redress of a grievance.

21 The payment request is modest for the work performed, risks undertaken for payment of
22 fees and costs if this case had not been successfully concluded, stigma on future employment
23 opportunities, and the benefits all members of the class as well as all current and future class
24 members will enjoy as a result of Plaintiff's efforts. Thus, the Court should approve the request.

25 **VII. THE ADMINISTRATION COSTS ARE REASONABLE**

26 The Parties agreed to hire Phoenix as the Administrator, and the Court approved this
27 choice. The Administrator was responsible for formatting, printing and mailing the Notice. It was
28 also responsible for updating addresses and re-mailing Notices returned as undeliverable,

1 responding to Class Member inquiries, answering questions from Counsel for the Parties, and
2 providing a declaration to document its duties and responsibilities under the settlement. Plaintiff
3 now requests that the Court finally approve the \$15,450 (estimated not to exceed \$20,000) fee to
4 Phoenix for services rendered and to be rendered. Lee Dec. ¶ 16.

5 Following the grant of final approval, the Administrator's duties will continue in order to
6 calculate and mail the Individual Settlement Payment checks to Class Members, perform tax
7 reporting obligations, disburse other payments as ordered by the Court, and perform such other
8 duties as set forth in the Settlement Agreement. Phoenix's fee of \$15,450 for services rendered
9 and to be rendered is fair and reasonable and should be granted.

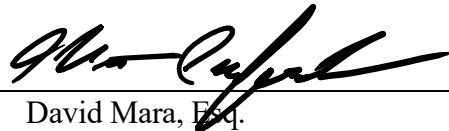
10 **VIII. CONCLUSION**

11 Based on the foregoing, Class Counsel respectfully requests the Court grant final approval
12 of the Class Action Settlement, award Class Counsel's attorneys' fees in the sum of \$241,666.66
13 and litigation costs of \$16,812.09, award to the named Plaintiff the class representative payment
14 in the sum of \$7,500, award Phoenix \$15,450 for settlement administration services, and approve
15 of a payment to the LWDA in the amount of \$30,000.

16 Respectfully submitted,

17 Dated: July 18, 2022

MARA LAW FIRM, PC

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20 David Mara, Esq.
21 Matthew Crawford, Esq.
22 Attorneys for Plaintiff
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