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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

EDITH RODRIGUEZ, et al., individually, and on behalf of others similarly situated,

Plaintiffs,

vs.

DYNAMIC AUTO IMAGES, INC., a corporation; et al., and DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2019-01092692-CU-OE-CXC

[Assigned for all Purposes to the Honorable William Claster, Dept. CX101]

CLASS ACTION

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR ORDER GRANTING FINAL APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES

Date: October 23, 2026
Time: 9:00 a.m.
Dept: CX101

Complaint Filed: August 26, 2019
Trial Date: None Set

TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on October 23, 2026 at 9:00 a.m. or as soon thereafter as the matter can be heard in Department CX101 of the above-entitled court located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiffs Edith Rodriguez, Jonathan Uribe, Rodolfo Rodriguez, David Hormaechea, and Sebastian Hormaechea, individually, and on behalf of others similarly situated, will, and hereby do, move this Court for entry of an order pursuant to Rules 3.766 and 3.769 of the California Rules of Court and Code of Civil Procedure section 382, as follows:

1. Granting final approval of the Joint Stipulation of Class Action and PAGA Settlement and Release ("Agreement" or "Settlement Agreement") between Plaintiffs and Defendants Dynamic Auto Images, Inc. and Dent Wizard International, LLC ("Settling Defendants") as fair, reasonable, and adequate to all Class Members;
2. Finally certifying the Class for settlement purposes only;
3. Finding that the Class Notice distributed to Class Members constitutes the best notice practicable under the circumstances;
4. Directing that Settlement Payments be paid to the Settlement Class Members and PAGA Payments be paid to the PAGA Members pursuant to the terms of the Settlement Agreement;
5. Approving the PAGA Penalties of $219,000, 75% of which will be paid to the California Labor and Workforce Development Agency and 25% of which will be disbursed among the PAGA Members;
6. Awarding Class Counsel, Matern Law Group, PC attorneys' fees of one-third ($2,433, 333.33) of the Gross Settlement Amount ($7,300,000) plus reimbursement of reasonable litigation costs of $110,646.19;
7. Approving the Class Representative Enhancement Awards of $10,000.00 to each Plaintiff for the time, effort, risks and relinquishment of rights they undertook in serving as Class Representatives;

8. Approving Settlement Administration Costs in the amount of $25,000.00 to CPT Group, Inc.; and

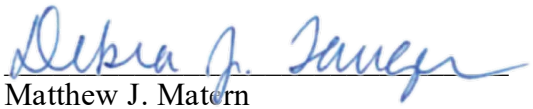
9. Entering a final disposition of the Action in its entirety.

The motion is based upon this Notice, the attached Memorandum of Points and Authorities, the Declarations of Matthew J. Matern, Debra J. Tauger and Laura Singh (of CPT Group, Inc.) and attached exhibits, the Declarations of Edith Rodriguez, Jonathan Uribe, Rodolfo Rodriguez, David Hormaechea, and Sebastian Hormaechea, the complete files and records of this case, and any further evidence that may be presented at the hearing.

DATED: October 1, 2026

Respectfully submitted,

MATERN LAW GROUP, PC

By: 

Matthew J. Matern
Debra J. Tauger
Mikael H. Stahle
Irina A. Kirnosova
Attorneys for Plaintiffs EDITH RODRIGUEZ, JONATHAN URIBE, RODOLFO RODRIGUEZ, DAVID HORMAECHEA, and SEBASTIAN HORMAECHEA, individually, and on behalf of others similarly situated

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On January 30, 2026, this Court preliminarily approved the Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement" or "Settlement Agreement") in this putative class and representative action brought by Plaintiffs Edith Rodriguez, Jonathan Uribe, Rodolfo Rodriguez, David Hormaechea, and Sebastian Hormaechea ("Plaintiffs") against Defendants Dynamic Auto Images, Inc. and Dent Wizard International, LLC ("Settling Defendants"). Plaintiffs now seek final approval of the Settlement.

The proposed Settlement creates a non-reversionary settlement fund of **$7,300,000.00** for **2,108** non-exempt, current and former hourly employees who were employed by Defendants in the State of California from August 26, 2015 through June 11, 2024, or the date of preliminary approval, whichever is earlier. The Settlement provides excellent individual Settlement Payments to the Settlement Class Members: **$9,273.95** (highest) and **$2,120.73** (average).

A presumption of fairness exists as the Settlement was reached through mediated, arm's-length negotiations, and after Plaintiffs' Counsel, Matern Law Group, PC ("MLG" or "Class Counsel"), who are experienced in wage and hour class litigation, conducted sufficient investigation, formal discovery and obtained class certification which enabled MLG and Plaintiffs to reach an informed decision. Significantly, there are ***no objections*** and only four exclusion requests. Thus, the proposed Settlement is fair, reasonable, and adequate and in the best interests of the Settlement Class Members.

Plaintiffs' request for one-third of the Gross Settlement Amount, i.e., **$2,433,333.33** in attorneys' fees and for reimbursement of litigation expenses of **$110,646.19** (far less than the $120,000 allocated under the Agreement) is also reasonable. The requested attorneys' fees are within the range generally sought and approved in class actions, and are reasonable based on the common fund method (1/3%) or on a lodestar cross-check (**$875,710.00**), times a modest **2.77** multiplier based on contingent risk.

Additionally, many courts have awarded MLG fees of one-third of the gross settlement amount in similar cases, have approved MLG's requested hourly rates for its attorneys and

paralegals and have applied a multiplier on a lodestar cross-check. Accordingly, Plaintiffs request that the Court grant final approval of the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties

Defendants are interrelated auto refurbishing companies owned by members of the Miller family. [07/28/23 Order Granting in Part Motion for Class Certification ("MCC Order").] Tom Miller owns Dynamic Auto Images, Inc. ("Dynamic"), his wife Eileen Miller owns Expert Automotive Reconditioning, Inc. ("Expert"), their daughter Tiffany Miller owns Prestige Auto Specialists, Inc., and their son Corey Miller owns Automotive Creations, Inc. [*Id.*] They provide products and services to approximately 50-55 auto dealerships, a body shop, and three collision centers in California. [*Id.*]

Plaintiff Edith Rodriguez worked for Dynamic as a driver at Huntington Beach Chrysler for several weeks in early 2019. [Declaration of Edith Rodriguez ("E. Rodriguez Decl." ¶ 3.] Plaintiff David Hormaechea worked for Expert as a detailer, porter, and driver at Kearney Penske for several months in 2020. [Declaration of David Hormaechea ("D. Hormaechea Decl.") ¶ 3.] Sebastian Hormaechea worked for Expert as a detailer, porter, and driver at Kearney Penske for several months in 2020. [Declaration of Sebastian Hormaechea ("S. Hormaechea Decl.") ¶ 3.] Jonathan Uribe worked for Expert as a car washer, detailer, and assistant manager at several dealerships in Ontario and Montclair from 2017 to 2019. [Declaration of Jonathan Uribe ("Uribe Decl.") ¶ 3.] Rodolfo Rodriguez worked for Defendants from approximately August 2018 to approximately April 2020 at a car washer and detailer. [Declaration of Rodolfo Rodriguez ("R. Rodriguez Decl.") ¶ 3.]

B. Settlement Negotiations

Settling Defendants and Class Counsel attended an all-day mediation session with the Honorable Rita Miller (Ret.) on March 13, 2024 but were unable to reach an agreement. [Declaration of Matthew J. Matern ("Matern Decl.") ¶ 18.] However, on March 18, 2024, Judge Miller made a mediator's proposal, which the Parties accepted. [*Id.*] The settlement discussions were conducted at arm's length and were professional but adversarial, and the Settlement is the

result of an informed and detailed analysis of Settling Defendants' potential liability of total exposure. [*Id.* at ¶ 19.] The Parties went into mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement was not reached. [*Id.*][1]

III. SUMMARY OF SETTLEMENT

A. The Class and the PAGA Members

For purposes of the Settlement only, the following Class has been certified:

> All current and former non-exempt employees of Defendants in the State of California from August 26, 2015 through June 11, 2024, or the date of preliminary approval, whichever is earlier.[2]

[Second Amendment to Settlement Agreement, ¶ 4.]

B. Settlement Terms

Under the Settlement, Class Members' claims will be settled for a GSA of $7,300,000, which is inclusive of the Net Settlement Amount ("NSA") for the Class Members, the Class Counsel Fees Payment and Litigation Expenses Payment, the named Plaintiffs' Enhancement Awards, the Settlement Administration Fees and Costs, the PAGA Payment and PAGA Member Allocation. [Settlement Agreement, ¶¶ 15, 18, 24.] No portion of the GSA will revert to Defendants. [*Id.,* ¶ 63.]

1. Allocation Of The GSA. The GSA will be allocated as follows:

a. Settlement Payments. Each Settlement Class Member shall receive a pro rata share of the NSA calculated according to the formula set forth in the Settlement Agreement. [Settlement Agreement ¶¶ 34, 38, 39, 51.g.i.]

///

[1] The Settlement Agreement and Amendments are collectively attached as Exhibit 1 to the Matern Decl.

[2] "Excluded from this definition are any persons who were employed by Dent Wizard International, LLC (formerly known as Dent Wizard International Corporation) and not employed by any of the other Defendants during the Class Period." [*Id.*]

b. PAGA Payment and PAGA Member Allocation. $219,000.00 is allocated to PAGA Penalties, 75% of which (i.e. $164,250.00) will be paid to the LWDA and 25% of which ($54,750.00) will be paid to the PAGA Members pursuant to the formula set forth in the Settlement Agreement. [*Id.* ¶¶ 22, 24-25, 51.e.i.,ii; Second Amendment to Settlement Agreement, ¶ 23.]

c. Administration Fees and Costs. The Settlement Administrator, CPT Group, Inc. ("CPT), shall receive $25,000.00, for administering the Settlement. [*Id.,* ¶ 51.c.; Declaration of Laura Singh ("Singh Decl.") ¶ 25.]

d. Class Representative Enhancement Awards. Plaintiffs request that the Court approve an Enhancement Award to each Plaintiff of up to $10,000.00 for their time and effort in bringing and prosecuting the Action, for the risks (potential reputation and financial harm), sacrifices (postponing the prosecution of their own Labor Code claims for the benefit of the Class and placing the Class's interests ahead of their own interests) and waiver of rights (providing a broader release than the other Class Members) they undertook. [Settlement Agreement ¶ 51.d.; Matern Decl. ¶¶ 29-32.]

e. Class Counsel Attorneys' Fees. MLG shall receive attorneys' fees of one-third of the GSA, i.e., $2,433,333.33. [Settlement Agreement ¶ 51.a.]

f. Class Counsel Attorneys' Costs. MLG shall receive no more than $120,000.00 for litigation expenses it reasonably incurred in prosecuting the Action. [*Id.,* ¶ 51.b.]

2. Funding Of The GSA. Settling Defendants shall fund the GSA by depositing the Funding Payments, i.e., the GSA plus employer-side payroll taxes to the into an account established by the Settlement Administrator within 45 days following the Effective Date as defined in the Settlement Agreement. [*Id.*, ¶¶ 10, 14, 61.]

3. Disbursements of Checks. The Administrator will mail all Settlement Payments, the PAGA Payment to the LWDA and PAGA Allocation Payments to the PAGA Members, the Administration Fees and Costs Payment, the Class Representative Enhancement Awards, the Class Counsel Attorneys' Fees Payment (by wire), and the Class Counsel Attorneys'

Costs Payment (by wire) within 14 days after the Funding Payments have been made. [*Id.* ¶¶ 15. 35. 61.b.-c., 68.i]

4. Uncashed Checks. All checks shall be voided 180 days after the date of mailing, if uncashed or cancelled by that date. [*Id.* ¶¶ 62-63.] If any Settlement checks are not cashed within that time, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member. [First Amendment to Settlement Agreement, ¶ 63.]

5. The Releases. Within 45 days after the Effective Date (as defined in ¶ 10 of the Settlement Agreement):

- All named Plaintiffs and all Settlement Class Members shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all Settled Claims against any and all Released Parties arising during the Class Period. [Settlement Agreement ¶ 48.]
- "Released Parties" means all Defendants, and each of them and their affiliated companies, parents, members, subsidiaries, related companies and business concerns, past and present, and each of them, as well as each of their insurers, partners, trustees, directors, shareholders, officers, agents, attorneys, servants and employees, past and present, and each of them. [First Amendment to Settlement Agreement ¶ 28.]
- "Settled Claims" means all causes of action and claims, charges, complaints, liens, demands, that were alleged in the Action or reasonably could have been alleged by Named Plaintiffs, and/or Class Members based on the allegations, the facts, statutory citation and/or legal theories contained in the operative complaint, including all of the following claims for relief: claims for missed or unpaid meal periods or rest periods; failure to pay all wages owed (including without limitation, failure to pay the regular rate of pay, overtime pay, double time pay, premium pay or otherwise properly calculate overtime, failure to pay for non-productive time, and/or off-the-clock claims); any claim for failure to properly pay all wages upon termination; any claim for failure to maintain required records; paystub claims; any claim for

failure to reimburse business expenses; waiting time penalties; and unfair competition claims based on the foregoing. [*Id.,* ¶ 31.]

- The release of the foregoing claims, extends to all theories of relief regardless of whether the claim is, was or could have been alleged as separate claims, causes of action, lawsuits or based on other theories of relief, whether under federal law, state law or common law (including, without limitation, as violations of the California Labor Code, the Wage Orders, applicable regulations, and California's Business and Professions Code section 17200). "Settled Claims" includes all types of relief available for the above-referenced claims, including, without limitation, any claims for damages, restitution, losses, penalties, fines, liens, attorneys' fees, costs, expenses, debts, interest, injunctive relief, declaratory relief, or liquidated damages. "Settled Claims" expressly excludes all claims for wrongful termination, unemployment insurance, disability, social security, and workers' compensation. [*Id.*]

- Each named Plaintiff is deemed to have generally released all claims against the Released Parties. [Settlement Agreement ¶ 50.]

- All named Plaintiffs and all PAGA Members shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all Settled PAGA Claims. The Settlement Agreement includes a release of all Settled PAGA Claims during the PAGA Period by PAGA Members employed at any time during the PAGA Period and by the LWDA. [*Id.* ¶ 49.]

6. Tax Allocation of Settlement Payments. Twenty-percent (20%) of each Settlement Payment will be allocated to wages and reported on an IRS form W-2 and eighty (80%) percent of each Settlement Payment will be allocated as penalties and interest and reported by each Settlement Class Member on an IRS Form 1099. [*Id.* ¶ 53.a.]

IV. CLASS NOTICE WAS EFFECTUATED AND COMPORTS WITH CALIFORNIA LAW AND DUE PROCESS

To protect the rights of absent Class Members, the trial court must provide the best notice practicable to Class Members. *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-812; *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-175. There is no requirement that all

Class Members receive actual notice, whether by mail or some other means. Rather, "individual notice must be provided to those class members who are identifiable through reasonable effort." *Id.* at 175.

The notice plan, as approved by the Court, has been implemented by CPT. [Singh Decl. ¶¶ 4-16.] On October 10, 2025, CPT received the Class data file from Settling Defendants' counsel containing Settlement Class Members' names, some but not all of their last known addresses, Social Security Numbers, and other information. [*Id.,* ¶ 4.] CPT mailed a Notice Packet on April 7, 2026 to 1,534 Class Members. Because 574 Class Members had incomplete addresses, CPT, with Class Counsel's guidance, made further attempts to find complete addresses for those Class Members and made subsequent mailings to 573 Class Members. [*Id.,* ¶¶ 5-13.] No address was found for one Class Member. [*Id.,* ¶ 13.] After 150 Notice Packets were returned from the Postal Service (and seven forwarded by the Postal Service), 120 Notice Packets were re-mailed to Class Members. [*Id.,* ¶ 15.] A total of 37 Class Notices remain undeliverable. [*Id.,* ¶ 16.] ***No objections were received*** and only four persons opted out of the Settlement. (*Id.,* ¶¶ 18-19.)

V. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

The Court should grant final approval because the Settlement is entitled to a presumption of fairness and the Settlement is fair, adequate and reasonable.

A. The Settlement Is Entitled To A Presumption Of Fairness

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 v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802. Because the proposed Settlement was reached through arm's-length negotiations, sufficient investigation and formal discovery allowed MLG to act intelligently, MLG is experienced in wage and hour class actions, and there are *no objections* to the Settlement, the proposed Settlement is presumed to be fair.

///

///

1. The Settlement Was Reached Through Arm's Length Bargaining.

The Settlement was reached following a full-day mediation and subsequent negotiations with an experienced mediator. [Matern Decl. ¶ 18.] The negotiations were at arm's length and, although conducted in a professional manner, were adversarial. [*Id.,* ¶ 19.] The Parties went into mediation willing to explore the potential for a settlement of the dispute, but each side was also prepared to litigate its position through trial and appeal if a settlement had not been reached. [*Id.*]

2. MLG Conducted Sufficient Investigation and Discovery.

Prior to reaching this settlement, MLG investigated the claims and defenses and conducted extensive formal written discovery. [Matern Decl. ¶¶ 11-15.] Defendants produced thousands of pages of Plaintiffs' personnel records, policy documents, time and pay period data and a class list. [*Id.,* ¶ 12.] MLG took depositions of Defendants' three personal most knowledgeable, prepared the Rodriguez Plaintiffs for, and defended them at deposition. [*Id.,* ¶ 13.] MLG retained a data analyst to analyze the time and payroll data and prepare a detailed damages and penalties model for the mediations and prepared him for, and defended him at his deposition. [*Id.,* ¶¶ 12-13.]

3. Plaintiffs Obtained Class Certification.

Plaintiffs largely prevailed on their Motion for Class Certification which was supported by numerous declarations (employees and experts) and deposition testimony. [Matern Decl. ¶ 16.] MLG worked with a third party administrator to send an opt-out *Belaire-West* notice to the putative class. [*Id.,* ¶ 16.] Based on all of this work – investigation, discovery and the Motion for Class Certification, Class Counsel was able to act intelligently and effectively in negotiating the proposed settlement. [*Id.,* ¶ 17.]

4. MLG Has Extensive Experience In Wage and Hour Class Actions.

The settlement negotiations were conducted by highly capable and experienced counsel. [Matern Decl. ¶¶ 41-47.] MLG has a strong record of vigorous and effective advocacy for its clients and is experienced in handling complex wage and hour class action litigation. [*Id*., ¶ 43 Matern Decl. ¶¶ 66-67 and Ex. 43.]

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5. No Objections Have Been Received and Only Four Class Members Opted Out.

Class Members' responses are indicative of the fairness of the settlement. *Dunk,* 48 Cal.App.4th at 1801 (In assessing the fairness of a class action settlement, the court should consider "the reaction of the class members to the proposed settlement.). To date, ***zero objections*** and only four exclusion requests have been received. [Singh Decl. ¶¶ 18-19.] The lack of objections and dearth of exclusions are strong indicators of the Settlement's fairness. *Couser v. Comenity Bank* (S.D.Cal., 2015) 125 F.Supp.3d 1034, 1044 ("The absence of a large number objectors supports the fairness, reasonableness, and adequacy of the settlement.").

B. <u>The Settlement Is Fair, Adequate, And Reasonable</u>

The trial court has "broad discretion to determine "whether a settlement [is] fair and reasonable." *Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389. In considering whether a settlement is reasonable, the court should consider relevant factors, which may include the strength of the plaintiff's case, the risk, expense, complexity, and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.

In order to approve a class action settlement, the court must satisfy itself that the class settlement is within the "ballpark" of reasonableness. *Id*. at 133. Before approving a class action settlement, a trial court must have an understanding "of the amount that is in controversy and the realistic range of outcomes of the litigation." *Id.* at 120. However, the parties need not provide an explicit statement of the maximum amount plaintiff could have potentially recovered. *Munoz v. BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399, 409.

While the maximum alleged potential exposure is over $45 million, Plaintiffs considered many factors in reaching the decision to settle, including the following: (1) proving the amount of wages due to each Class Member would be an expensive, time-consuming, and extremely

uncertain proposition; (2) proving liability on all claims at trial is highly uncertain; (3) maintaining class certification is not guaranteed because Defendants raised defenses to both class certification and the merits of Plaintiffs' claims; (d) the court could de-certify the class and/or find the trial unmanageable; (4) obtaining the cooperation of current employees would be difficult, given their likely reluctance to aid in the prosecution of a lawsuit against their employer and their likely willingness to assist Defendants; (5) continued litigation would very likely reduce and substantially delay recovery by Class Members; (6) an appeal will likely follow any trial on the merits, no matter which party prevails, which would extend the litigation approximately one to two years and cause Plaintiffs to incur thousands of dollars in trial and appellate costs and attorneys' fees with no certainty of success on appeal; and (7) the law is constantly evolving, creating uncertainty for employees. [Matern Decl. ¶¶ 20, 23.]

For example, the California Supreme Court recently decided *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1113-1114, addressing a question of state law previously raised by the United States Supreme in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 662-663, which opined on the standing of a PAGA representative whose individual claims were sent to arbitration.

Plaintiffs further considered the likelihood that a court would substantially reduce any award of civil penalties on the grounds that they were "unjust, arbitrary and oppressive, or confiscatory" pursuant to Labor Code section 2699(e)(2). [Matern Decl. ¶ 21.] See *Thurgood v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1136*; Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037 (finding that 97.5% reduction from the maximum penalty was fair and reasonable in light of the unsettled nature of the law); *Fleming v. Covidien* (C.D. Cal. Aug. 12, 2011) No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047, at *3-4 (reducing potential PAGA penalties by over 80%); *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1069 (applying reductions of 67% and 80% of the potential PAGA penalties at issue).

Additionally, a legitimate controversy exists as to each cause of action and other factors were taken into account. [Matern Decl. ¶¶ 24-25.] All of these risks are obviated by the

Settlement and the Class Members will receive timely relief and avoid the risk of an unfavorable judgment. [*Id.,* ¶ 23.] Considering the risks of continued litigation balanced against the merits of Plaintiffs' claims, the Settlement is within the "ballpark" of reasonableness, is in the best interests of the Settlement Class Members and is fair, adequate and reasonable. [*Id.,* ¶ 27.]

VI. THE PAGA SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE AND FULFILLS PAGA'S UNDERLYING PURPOSE TO BENEFIT THE PUBLIC

The PAGA statute specifically provides that "[t]he superior court shall review and approve any settlement of any civil action filed pursuant to this part." Lab. Code, § 2699, subd. (s)(2). Although the statute does provide the standard for evaluating a PAGA settlement, California's First District Court of Appeal held that the standard is "fair, adequate, and reasonable" as well as meaningful and consistent with the purposes of PAGA." *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 64, disapproved of on other grounds by *Turrieta v. Lyft, Inc.* (2024) 16 Cal.5th 664, 710. In ascertaining the fairness of a PAGA settlement, the trial court may consider many of the same factors used to evaluate the fairness of class action settlements, "including the strength of the plaintiff's case, the risk, the stage of the proceeding, the complexity and likely duration of further litigation, and the settlement amount." *Moniz,* 72 Cal.App.5th at 77.

The California Legislature enacted PAGA to "augment the limited enforcement capability of the [LWDA] by empowering employees to enforce the Labor Code as representatives of the Agency." *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 383, abrogated in part on other grounds by *Viking River Cruises,* 596 U.S. at 642. PAGA authorizes an employee to bring an action for "civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees." *Id.* at 360. An action under PAGA to recover civil penalties "is essentially a law enforcement action designed to protect the public and not benefit private parties." *Id.* at 381. Fundamentally, "a PAGA action is a statutory action in which the penalties available are measured by the number of Labor Code violations committed by the employer." *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 435. "As the state's proxy, an employee-plaintiff may obtain civil penalties

for violations committed against absent employees [citation], just as the state could if it brought an enforcement action directly." *Id.*

Under the general provisions of the PAGA scheme, 75 percent of the civil penalties recovered goes to the state, while the remaining amount is distributed to the aggrieved employees. Lab. Code, § 2699, subd. (i).[3] The PAGA action is one of the "primary mechanisms for enforcing the Labor Code." *Iskanian,* 59 Cal.4th at 383. As the state's proxy or agent, "the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies—namely, recovery of civil penalties that otherwise would have been assessed by and collected by the [LWDA]." *Id.* "[A]n aggrieved employee's action under [PAGA] functions as a substitute for an action brought by the government itself." *Id.* The goal of PAGA is to impose civil penalties for Labor Code violations "significant enough to deter violations." *Id.* at 379.

Here, the Settlement provides for civil penalties that meet the standard enunciated in *Moniz.* The PAGA claims will be settled for $219,000.00 which is consistent with PAGA's goal of deterring future violations, and providing a benefit to the public through enforcement of state labor laws. *Moniz,* 72 Cal.App.5th at 77. The Settlement provides a substantial benefit to the State of California, with the LWDA receiving $164,250.00 to assist with the enforcement of labor laws with the remainder ($54,750.00) shared among the PAGA Members. [Settlement Agreement, ¶ 51.e.i., ii.] The same factors discussed above with respect to settlement of the class claims apply with equal force to the PAGA settlement. Accordingly, the Settlement fulfills the underlying purpose of the statute and confers a substantial benefit on the public.

The PAGA Penalties allocation is *3.0* percent of the GSA. This percentage is not only in line with other PAGA settlements in hybrid cases, it actually *exceeds* the zero to two-percent range generally approved by courts. *Nordstrom Comm. Cases* (2010) 186 Cal.App.4th 576, 589 (no abuse of discretion in approving a settlement that allocated $0 to the PAGA claims, where the

[3] PAGA was amended in 2024 and with certain exceptions the amendments apply only to PAGA notices submitted on or after June 19, 2024. *Ford v. Silver F, Inc.* (2025) 110 Cal.App.5th 553, 561, fn.1. Among the amendments, PAGA now requires that 65 percent of the civil penalties be paid to the LWDA and 35 percent be paid to the aggrieved employees. Lab. Code, § 2699, subd. (m).

penalty claims were at issue and resolved as part of the overall settlement of the case); *Gilmore v. McMillan-Hendryx Incorporated* (E.D. Cal., Jan. 20, 2022, No. 1:20-CV-00483-HBK) 2022 WL 184004, at *4 (approving 2.3 percent PAGA allocation of total settlement amount); *Martinez v. Helzberg's Diamond Shops* (C.D. Cal., Apr. 12, 2021, No. EDCV201085PSGSHKX) 2021 WL 4730914, at *10 ("PAGA allocation represents approximately two percent of the $475,000 [settlement fund] which is in the range generally approved by courts."); *Wise v. Ulta Salon, Cosmetics & Fragrance, Inc.* (E.D. Cal., Mar. 27, 2020, No. 1:17-CV-00853-DAD-EPG) 2020 WL 1492672, at *5 (approving .02 percent in PAGA penalties); *Howell v. Advantage RN, LLC* (S.D. Cal., Oct. 1, 2020, No. 17-CV-883-JLS-BLM) 2020 WL 5847565, at *2 (approving $50,000 PAGA allocation out of $3.2 million settlement); *de Cabrera v. Swift Beef Co.* (C.D. Cal., Nov. 23, 2020, No. ED-CV-18-2551-PSG-Ex) 2020 WL 13585929, at *9 (PAGA allocation of 0.1 percent of gross settlement approved); *Alcala v. Meyer Logistics, Inc.* (C.D. Cal., June 17, 2019, No. CV177211PSGAGRX) 2019 WL 4452961, at *9 (finding PAGA allocation of 1.25 percent of the $400,000 settlement fund reasonable); *Erami v. JPMorgan Chase Bank* (C.D. Cal., Dec. 3, 2018, No. CV157728PSGPLAX) 2018 WL 11352374, at *6 (approving PAGA settlement which represents 0.9 percent of the total settlement amount). "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." *In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1042. [See also Matern Decl. ¶ 22.]

"There is no express or even baseline percentage of recovery required [because] [u]nder the express terms of the PAGA, a verdict value is not guaranteed even if the plaintiff prevails, as courts have discretion to lower the amount of penalties based on the circumstances of a particular case." *Gilmore,* 2022 WL 184004, at *2 (court "may award a lesser amount than the maximum civil penalty amount [when] to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."), citing Lab. Code, § 2699, subd. (e)(2). Thus, the PAGA portion of the Settlement comports with California law.

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VII. THE CLASS REPRESENTATIVE ENHANCEMENT AWARDS ARE REASONABLE

"It is established that named plaintiffs are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz,* 186 Cal.App.4th at 412. The award is intended to recognize "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804 (citing *Cook v. Niedert* (7th Cir.1998) 142 F.3d 1004, 1016); *Cellphone Fee Termination Cases,* 186 Cal.App.4th at 1393-1394 (service awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."). "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." *Clark,* 175 Cal.App.4th at 806.

Plaintiffs meet this test. The Settlement Agreement provides that each Plaintiff will receive a Class Representative Enhancement Award up to $10,000.00. [Settlement Agreement ¶ 51.d.] These payments recognize Plaintiffs' time, efforts, risks and relinquishment of rights they undertook in bringing and prosecuting the Action and for executing a general release. [Matern Decl. ¶¶ 29-34.]

Plaintiffs actively participated in and assisted with the Action, spending numerous hours of their time. [Matern Decl. ¶ 29; E. Rodriguez Decl. ¶¶ 4, 7 (40 hours); R. Rodriguez Decl. ¶¶ 4, 7 (40 hours); D. Hormaechea Decl. ¶¶ 4, 7 (25 hours); S. Hormaechea Decl. ¶¶ 4, 7 (25 hours); Uribe Decl. ¶¶ 4, 7 (25 hours). Plaintiffs undertook risks the other Class Members did not. [Matern Decl. ¶ 30 ; E. Rodriguez Decl. ¶¶ 5-6; R. Rodriguez Decl. ¶¶ 5-6; D. Hormaechea Decl. ¶¶ 5-6; S. Hormaechea Decl. ¶¶ 5-6 (25 hours); Uribe Decl. ¶¶ 5-6.] Plaintiffs faced the genuine risk that current or future employers may not hire them or current employers might retaliate against them because they lent their names to a lawsuit against a former employer. [*Id.*] Plaintiffs

could have been liable for Defendants' litigation costs if the case went to trial and they lost (in addition to having to pay their own costs). [*Id.*] Plaintiffs also put the interests of the Class ahead of their own interests by postponing the prosecution of their own individual claims for the Class's benefit, and giving up more rights than the other Class Members by signing a broader release. [Matern Decl. ¶¶ 30-32.]

Because of Plaintiff's efforts, a significant Settlement fund in the amount of $2,800,000 has been created for the benefit of **2,108** Settlement Class Members who will receive a substantial average payment of **$2,120.73** for alleged wage and hour violations they may have never known about on their own or been willing to pursue on their own. [Matern Decl. ¶ 33; Singh Decl. ¶¶ 4, 23.] If each Settlement Class Member pursued his or her legal remedies individually, they would have been required to expend a significant amount of his or her own monetary resources and time. [Matern Decl. ¶ 33.]

In sum, the Action would not have been possible without the aid of Plaintiffs, who put their own time and effort into them, sacrificed the value of their own individual claims, and placed themselves at risk for the sake of the other Settlement Class Members. [Matern Decl. ¶ 34.] The requested Service Payments are reasonable not only to compensate Plaintiffs for their participation in the action, but to incentivize other employees to bring similar actions that benefit the public interest. [*Id.*]

Lastly, the same reasons apply to PAGA settlements. An employee who goes out on a limb to bring an action to vindicate their fellow employees' rights should be recognized with a service award. They risk financial debt and professional reputational harm and give up more rights through a general release than the other PAGA Employees. They should be rewarded accordingly.

VIII. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

The Settlement provides for attorneys' fees to Class Counsel of up to one-third of the GSA, i.e., $2,433,333.33. [Settlement Agreement ¶ 51.a.] The requested fees are within the range of fees generally sought and approved in class actions. *Consumer Privacy Cases* (2009) 175

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Cal.App.4th 545, 557, fn. 13. They are reasonable under the common fund method or with a lodestar cross-check.

A. Plaintiffs Are The Prevailing Parties Entitled To Reasonable Attorneys' Fees And Costs.

Plaintiffs are the prevailing parties in the action because they obtained a "net monetary recovery" by entering into a stipulation to be paid money in exchange for the entry of a judgment. *See DeSaulles v. Comm. Hosp. of Monterey Peninsula* (2016) 62 Cal.4th 1140, 1158. MLG is entitled to recover reasonable attorneys' fees and costs under Labor Code section 2802(c) (unreimbursed business expenses) and Labor Code section 218.5. *Betancourt v. OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132, 140 (wage statement claim and waiting time penalties claim "were claims for nonpayment of wages" entitling employee to attorneys' fees under Labor Code section 218.5.)

MLG is also entitled to a fee award under Code of Civil Procedure section 1021.5. An award of attorney's fees is proper under section 1021.5 if (1) plaintiff's action "has resulted in the enforcement of an important right affecting the public interest," (2) "a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons," and (3) "the necessity and financial burden of private enforcement are such as to make the award appropriate." *Press v. Lucky Stores* (1983) 34 Cal.3d 311, 317-318. The fundamental objective of the statute is "to encourage suits enforcing public policies by providing substantial attorneys' fees to successful litigants in such cases." *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565.

Here, the Action resulted in the enforcement of an important right affecting the public interest, as Plaintiffs sought to enforce employees' rights to recover for unreimbursed and necessary business expenditures and for failure to timely pay final wages. *ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 285 ("California law requires employers to fully reimburse employees for expenses actually and necessarily incurred in the discharge of their

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duties"); *McLean v. State of California* (2016) 1 Cal.5th 615, 619 ("If an employee is discharged, 'the wages earned and unpaid at the time of discharge are due and payable immediately.'").

Finally, the necessity and financial burden of private enforcement render a fee award appropriate. Without the incentive of an attorneys' fee award, Plaintiffs could not have afforded to hire counsel to pursue this action, as the cost of litigating this matter far outweighs Plaintiffs' potential recovery. [Matern Decl. ¶ 54.] *Ryan v. California Interscholastic Federation* (2001) 94 Cal.App.4th 1033, 1044 ("As to the necessity and financial burden of private enforcement, an award is appropriate where the cost of the legal victory transcends the claimants' personal interest; in other words, where the burden of pursuing the litigation is out of proportion to the plaintiff's individual stake in the matter."). Thus, an award of reasonable attorneys' fees under section 1021.5 is also appropriate.

B. The Requested Attorneys' Fees Are Reasonable Under The Common Fund Method.

A request for attorneys' fees as a percentage of the GSA is supported by the common fund theory, where "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs." *Serrano v. Priest* (1977) 20 Cal.3d 25, 35 (quoting *Quinn v. State of California* (1975) 15 Cal.3d 162, 167); *Laffitte v. Robert Half Int'l, Inc*. (2016) 1 Cal.5th 480, 503 (trial court "may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created"). The percentage is properly based upon the gross settlement, rather than on the amount of claims made. *Williams v. MGM-Pathe Communications Co*. (9th Cir. 1997) 129 F.3d 1026, 1027.

The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Vincent v. Schwartz Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. In *Quinn,* 15 Cal.3d 162, the California Supreme Court stated: "one who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may require those passive

beneficiaries to bear a fair share of the litigation costs. *Id.* at 167. Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied "consistently in California when an action brought by one party creates a fund in which other persons are entitled to share." *Id*. at 110 (fn. omitted.).

The Supreme Court of California sanctioned use of the common fund where an objection was raised to a one-third percentage based recovery in a $19 million employment class action lawsuit:

> [W]hen an attorney fee is awarded out of the common fund preserved or recovered by means of litigation [citation], the award is not per se unreasonable merely because it is calculated as a percentage of the common fund.

Laffitte, 1 Cal.5th at 486. The Court further held that "trial courts retain the ***discretion to forego a lodestar cross-check*** and use other means to evaluate the reasonableness of a requested percentage fee." *Id*. at 506 (emphasis added). Indeed, several courts have expressed frustration with the alternative "lodestar" approach for deciding fees, which usually involves wading through voluminous and often indecipherable time records. *See, e.g., In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375. The percentage approach is preferable to the lodestar because: (1) it provides predictability to class counsel and Class Members; (2) encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial records. *Id.* at 1378-1379.

In fact, "[a] task force commissioned by the Third Circuit concluded that the lodestar approach" had numerous deficiencies in that it "(1) increases the workload of an already overtaxed judicial system, (2) is insufficiently objective and produces results that are far from homogenous, (3) creates a sense of mathematical precision that is unwarranted in terms of the realities of the practice of law, (4) is subject to manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the Claimants or of an overall dollar amount, (5) encourages lawyers to expend excessive hours, and engage in

duplicative and unjustified work, (6) creates a disincentive for the early settlement of cases, (7) deprives trial courts of flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered, (8) works to the particular disadvantage of the public interest bar, and (9) results in confusion and lack of predictability." *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 28 (citations and quotation marks omitted). The Third Circuit concluded that "the lodestar technique is a cumbersome, enervating, and often surrealistic process of preparing and evaluating fee petitions that now plagues the Bench and Bar and recommended a return to the percentage of the recovery fee formula in cases involving a settlement fund." *Id.* at 28.

The percentage of attorneys' fees provided for in the Settlement Agreement, one-third of the GSA or common fund, is reasonable based on the facts and the law. [Settlement Agreement ¶ 51.a.] California and federal courts have long recognized that a percentage of recovery for attorneys' fees is properly awarded on the basis of the total value. *Boeing v. Van Gemert* (1980) 444 U.S. 472, 480-481; *see also Consumer Privacy Cases,* 175 Cal.App.4th at 558, fn. 13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").[4] Numerous courts have awarded MLG attorneys' fees of one-third percent based on the common fund theory. [Matern Decl. ¶ 36.] Also, the requested fee percentage is less than that which MLG charges in other employment cases. [Matern Decl. ¶ 35.] Therefore, Plaintiffs request that the Court approve the requested attorney fee award based on the common fund theory.

C. <u>The Request Attorneys' Fees Are Also Reasonable Under The Lodestar Method Times A Modest Multiplier</u>.

Plaintiffs' fee request is also reasonable based on the lodestar method. Under that method, the court considers a compilation of the time spent and a reasonable hourly compensation of each

[4] Attorney fee applications in California class actions based upon a percentage of the common fund also have substantial support in the Ninth Circuit Court of Appeals and other federal courts. *See, e.g., Paul, Johnson, Alston & Hunt v. Graulty* (9th Cir. 1989) 886 F.2d 268, 272; *Camden I Condominium Ass'n v. Dunkle* (11th Cir. 1991) 946 F.2d 768, 774; *Swedish Hosp. Corp. v. Shalala* (D.C. Cir. 1993) 1 F.3d 1261, 1271.

attorney to evaluate the reasonableness of the fee requested. *Ramos v. Countrywide Home Loans, Inc*. (2000) 82 Cal.App.4th 615, 622. The hours spent and the reasonable hourly compensation are computed to arrive at a "lodestar" figure which the court may then augment or diminish by taking into account various "multiplier" factors. *Id.* at 622-623 (citing *Serrano,* 20 Cal.3d at 48-49). *Lealao* holds that if a court sets fees under a lodestar, the Court should consider what counsel would have earned on the free market, which is determined by a percentage of the common fund. *Lealao,* 82 Cal.App.4th at 49-50. Thus, even if the Court awards fees under the lodestar method, the fees should be adjusted by a multiplier to reflect the percentage of the fund.

MLG'S current lodestar is roughly **$855,460.00** – based on approximately **1,079.5** hours of attorney and paralegals' time at their current hourly rates. [Matern Decl. ¶¶ 37-50.] Application of a **2.77** multiplier to the lodestar is reasonable and appropriate given the contingent risk nature of the litigation. [*Id.,* ¶ 54-65.]

1. MLG's hours are reasonable.

MLG will have devoted a total of approximately **1,099.5** hours on the Action, including future expected work. [Matern Decl. ¶ 38.] The Court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." *Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 (noting that "[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.").

During the more than seven and one-half years that Plaintiffs have pursued the Action, MLG expended a significant amount of time investigating and litigating the Action, including obtaining class certification, to achieve the commendable outcome on behalf of the Class. [Matern Decl. ¶¶ 11-17, 38.] Thus, the Court should find that MLG's hours were reasonable and necessary to achieve the excellent result on behalf of the Class.

2. MLG's hourly rates are reasonable.

The reasonable hourly rate is that prevailing in the community for similar work. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095; *Bihun v. AT&T Information Systems, Inc*.

(1993) 13 Cal.App.4th 976, 997 ("In setting the hourly fee the court was entitled to consider 'fees customarily charged by that attorney and others in the community for similar work.' "), disapproved on another ground in *Lakin v. Watkins Associated Industries* (1993) 6 Cal.4th 644, 664. "[I]n assessing a reasonable hourly rate, the trial court is allowed to consider the attorneys' skill as reflected in the quality of work, as well as the attorneys' reputation and status." *MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3. The trial court may also "find hourly rates reasonable based on evidence of other courts approving similar rates." *Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.

MLG's rates are within the prevailing rate of attorneys with comparable experience and qualifications practicing employment law in Orange County. [Matern Decl. ¶¶ 49-50.] MLG employs experienced litigators who specialize in employment law, with a substantial wage and hour class action practice. [*Id.*, ¶¶ 41-47.] Numerous courts have approved MLG's hourly rates. [*Id.,* ¶ 53.] MLG's rates are even lower than defense counsel who practice employment law in Southern California. [*Id.,* ¶¶ 51-52 and Exs. 2-3.] Given MLG's attorneys and paralegals' background, skills and experience, its hourly rates are reasonable. [Matern Decl. ¶¶ 41-49.]

3. Application of a positive multiplier is appropriate.

The lodestar amount may be increased by applying a multiplier. *Serrano*, 20 Cal.3d at 49; *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407. In California, "[m]ultipliers can range from two to four or even higher" and are routinely applied in the range requested by Class Counsel. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254, disapproved on another ground in *Hernandez Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 273-274, fn. 4 ; *see also Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (upholding 2.5 multiplier); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051 (approving a 3.65 multiplier); *Van Vranken v. Atlantic Richfield Co*. (N.D. Cal. 1995) 901 F. Supp. 294, 298-299 (approving multiplier of 3.6). Some of the factors a trial court considers when determining whether to apply a multiplier are: (1) the contingent nature of the fee award; (2) any delay in receipt of payment; (3) the result obtained by the litigation; (4) the extent to which the nature of the litigation

precluded other employment by the attorneys; (5) the skill displayed by counsel; (6) the quality of the representation; and (7) the novelty and difficulty of the issues involved. *Serrano*, 20 Cal.3d at 49.

"[A]ny one factor may justify an enhancement." *Krumme v. Mercury Ins. Co.* (2004) 123 Cal.App.4th 924, 947. A multiplier may be based on contingent risk *alone. Sonoma Land Trust v. Thompson* (2021) 63 Cal.App.5th 978, 988 ("In our view, the contingent risk factor alone was sufficient to justify the fee enhancement."); *Krumme,* 123 Cal.App.4th at 947 (a multiplier may be justified solely on the contingent risk factor).

In *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133, the California Supreme Court held that fee enhancement in contingency cases is necessary to (1) fully compensate counsel for the "loan" of legal services in light of the inherent high risk of "default" posed by losing the case, and (2) encourage competent counsel to take on fee award cases. The court noted, "[a] lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." *Id.* at 1133 (citations omitted); *see also Greene v. Dillingham Construction N.A., Inc.* (2002) 101 Cal.App.4th 418, 426 (trial court erred by refusing to consider contingent risk as a factor in the decision to apply a multiplier).

Here, Plaintiffs request application of a modest **2.77** multiplier based on contingent risk. [Matern Decl. ¶¶ 54-65.] MLG has been representing Plaintiffs for what is now more than seven and one-half years, while never receiving any compensation, and expending significant time and resources which could have been directed towards other cases. [*Id.,* ¶ 57.] In agreeing to take this case on a contingent fee basis, MLG assumed considerable risk given the uncertain outcome of putative wage and hour class actions. [*Id*., ¶¶ 48, 56-63.] The proof of MLG's skill in this area of the law lies in the fact that the Class Members are satisfied with the Settlement; out of 2,108 Class Members, there are *zero* objections and only four opt-outs. [Singh Decl. ¶¶ 18-19.]

As the results demonstrate in other cases that MLG lost or recovered less than expected – such as where class certification was denied, defendants filed for bankruptcy, unpredictable

juries, surprise witnesses, unfavorable evidentiary rulings – the risks presented in this case were significant. [Matern Decl. ¶¶ 58-62.] As the California Supreme Court recognized in *Ketchum*, if a multiplier is not awarded to class counsel on the cases that are successfully settled, counsel's fees are essentially being cut because the lodestar in and of itself does not account for contingent risk. *Ketchum*, 24 Cal.4th at 1132-1133.

MLG also bears the risk of taking whatever actions are necessary if a defendant fails to pay. [Matern Decl. ¶ 63.] While that possibility may not apply in this case, multipliers "are intended to compensate for the *risk of loss* generally in contingency cases *as a class*." *Ketchum,* 24 Cal.4th at 1133 (first italics added, second italics original).

Based on the contingent risk factor and the other factors, MLG deserves a multiplier of 2.77 to ensure that its attorneys receive substantial and full compensation, like defense counsel does from fee-paying clients.

IX. CLASS COUNSEL'S ATTORNEYS' COSTS ARE REASONABLE

The Settlement Agreement provides for reimbursement of litigation costs not to exceed $120,000.00. [Settlement Agreement ¶ 51.b.] MLG's actual litigation expenses are significantly lower: **$110,646.19**. [Matern Decl. ¶ 67 and Ex. 4.] The costs include, inter alia, fees for court filings, mediation, expert services, and court reporters, and future costs for the filing fee for this motion and the court reporter's fee for the hearing on this motion. [*Id*.] The costs are the type of expenses that are normally billed to paying clients and are reimbursable because they were reasonable and necessary to prosecute the Action and were incurred for the benefit of the Class. [Matern Decl. ¶ 67.] The Court should approve the Class Counsel Attorneys' Costs.

X. THE SETTLEMENT ADMINISTRATION COSTS SHOULD BE APPROVED

The Stipulation provides for Administration Costs up to $25,000 to be deducted from the GSA. [Settlement Agreement ¶ 51.c.] In light of the size of the Class and CPT's myriad responsibilities, the maximum amount is reasonable and should be approved. [Matern Decl. ¶ 68; Singh Decl. ¶ 5.]

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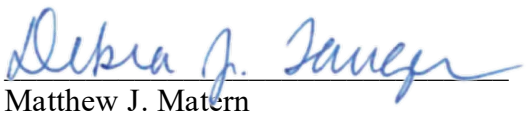
XI. CONCLUSION

Based on the foregoing arguments and authorities, Plaintiffs respectfully request that the Court grant final approval of the Settlement and enter judgment.

DATED: October 1, 2026

Respectfully submitted,

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