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

AARON ROMERO on behalf of
himself, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

VITRO FLAT GLASS, LLC; and
DOES 1-100,

Defendants.

Case No. BCV-21-101357

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

Date: June 14, 2022
Time: 8:30 a.m.
Judge: Hon. Bernard C. Barmann, Jr.
Division: H

Complaint Filed: June 15, 2021
Trial Date: None Set

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1 **I. INTRODUCTION**

2 This motion seeks final approval of a non-reversionary \$1,200,000 proposed wage and hour
3 class action settlement reached by Plaintiff Aaron Romero (hereinafter “Plaintiff” or “Mr. Romero”)
4 and Defendant Vitro Flat Glass, LLC (hereinafter “Defendant” or “Vitro”) (hereinafter Plaintiff and
5 Defendant are collectively referred to as the “Parties”). The settlement is on behalf of Plaintiff and a
6 Class comprised of all hourly, non-exempt employees of Defendant in California at any time between
7 October 5, 2016, to August 29, 2021.¹ This motion also seeks an order entering judgment.

8 The settlement seeks relief for 328 Class Members and will provide Class Members who did
9 not request to be excluded from the settlement (“Participating Class Members”) with an average
10 estimated payment of \$2,098.36, with the highest estimated award being \$7,177.32.²

11 On March 24, 2022, Phoenix Settlement Administrators (“Phoenix” or the “Settlement
12 Administrator”) mailed the Class Notice to all 328 Class Members. Class Members had 45 days to
13 respond to the Class Notices (this is referred to as the “Response Deadline”), including requests for
14 exclusion from the settlement. The Response Deadline was May 9, 2022. As of the Response Deadline,
15 the Settlement Administrator did not receive any disputes regarding the number of workweeks that
16 Class Members were credited to have worked.³ The Settlement Administrator also did not receive any
17 objections from Class Members.⁴ The Settlement Administrator did not receive any requests for
18 exclusion from Class Members.⁵

19 This matter required 468 hours of attorney time from class counsel Mara Law Firm, PC (“Class
20 Counsel”). This litigation involved investigations into the claims asserted, significant discovery, the
21 production of documents from Defendant, the informal exchange of information prior to mediation, a
22 full day of mediation, and evaluation of continuing litigation.

23 As will be demonstrated herein, the attorneys’ fee request of \$420,000 (“Attorney Fee
24

25 ¹ Exhibit 5 at ¶ 5, Page 1 and ¶ 10, Page 2.

26 ² Declaration of Jarrod Salinas Regarding Notice and Settlement Administration (“Salinas Dec.”) ¶
11.

27 ³ Salinas Dec. ¶ 10.

28 ⁴ *Id.* ¶ 9.

⁵ *Id.* ¶ 8.

1 Award”), which represents one third of the Gross Settlement Amount (“GSA”), is fully supported
2 using the percentage fee method. The Attorney Fee Award is also supported under the lodestar cross-
3 check method. Plaintiff further moves for reimbursement of litigation costs and expenses in the amount
4 of \$17,492.36 (“Cost Award”), originally estimated not to exceed \$20,000, for costs incurred in
5 litigating this matter.

6 Plaintiff also moves for final approval of the payment in the amount of \$10,000 to Plaintiff
7 (this payment is referred to as the “Class Representative Enhancement Payment”) to compensate him
8 for his vital role in representing the Class Members and spearheading the case to seek actual and
9 substantial monetary relief for the Class.

10 Additionally, Plaintiff moves for final approval of \$7,995, originally estimated not to exceed
11 \$10,000, to the Settlement Administrator for the costs and fees of administering settlement
12 (“Administration Costs”).⁶

13 The requested Attorney Fee Award, Cost Award, Class Representative Enhancement Payment,
14 and Administration Costs were fully disclosed to the Class Members when the Class Notice was
15 mailed to them. Most importantly, to date, the settlement and all of its terms have received support
16 from Class Members, as not a single Class Member has objected to the settlement or requested to be
17 excluded from the settlement. With an average and high payout to Settlement Class Members of
18 \$2,098.36 and \$7,177.32, respectively, the settlement is fair, adequate, and reasonable. The Parties,
19 therefore, respectfully request that the Court consider the Class Members’ endorsement of the
20 settlement, grant final approval of the settlement, and approve the Attorney Fee Award, Cost Award,
21 Class Representative Enhancement Payment, Administration Costs, and LWDA payment in the
22 amounts as preliminarily approved of by this Court and disclosed to the Class Members, and enter
23 final judgment as requested herein.

24 As demonstrated below, Class Counsel is convinced that the proposed settlement is in the best
25 interests of the Class based on the negotiations and a detailed knowledge of the issues present in this
26 matter. The length and risks of trial and perils of litigation that affect the value of the claims were all
27 carefully weighed by Class Counsel. In addition, the affirmative defenses asserted by Defendant,
28

⁶ *Id.* ¶ 12.

1 Defendant's contentions that Class Members were compensated for all wages due and provided lawful
2 meal and rest breaks, the uncertainty of class certification, the difficulties of complex litigation, the
3 lengthy process of establishing specific damages, and various possible delays and appeals were all
4 carefully considered by Class Counsel in arriving at the proposed settlement.

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

6 Vitro is a glass manufacturer. To conduct its business, Vitro employs unionized hourly, non-
7 exempt production, shipping, and inventory employees to work at its California plant.

8 On September 28, 2020, Plaintiff provided notice to the Labor and Workforce Development
9 Agency ("LWDA") in accordance with the Private Attorneys General Act of 2004 ("PAGA").
10 Thereafter, on June 15, 2021, Plaintiff filed this Action, alleging claims under the PAGA. Plaintiff's
11 PAGA Complaint alleged that Vitro violated the PAGA due to its: (1) failure to pay all straight time
12 wages; (2) failure to pay all overtime wages; (3) failure to provide meal periods; (4) failure to authorize
13 and permit rest periods; (5) knowing and intentional failure to comply with itemized employee wage
14 statement provisions; (6) failure to pay all wages at the time of termination of employment; (7) failure
15 to adopt a compliant sick pay/paid time off policy; and (8) violation of California's Unfair Competition
16 Law. (Declaration of David Mara, Esq. in Support of Plaintiff's Motion for Preliminary Approval
17 ("Mara Dec.") ¶ 9).

18 Plaintiff filed a class action complaint against Defendant on October 5, 2020 on behalf of
19 himself and those similarly situated. On November 6, 2020, Defendant removed the matter to the
20 United States District Court for the Eastern District of California, Case No. 1:20-cv-01573-JLT-SAB,
21 on the basis of the Federal Class Action Fairness Act. The claims brought in Plaintiff's class action
22 case are for the same underlying conduct upon which Plaintiff bases his allegations in his PAGA
23 action. (Mara Dec. ¶ 10).

24 On June 29, 2021, the Parties participated in a full-day global mediation of both of Plaintiff's
25 cases with respected wage and hour mediator, Mark Rudy, Esq., and the Parties were able to reach the
26 agreement which forms the basis of this settlement. The settlement seeks to resolve the claims alleged
27 in both Plaintiff's PAGA and class actions. On September 8, 2021, Plaintiff filed an Amended
28 Complaint adding his class action claims into his PAGA action. Plaintiff's Amended Complaint

1 alleges claims for: (1) violations of PAGA; (2) failure to pay all straight time wages; (3) failure to pay
2 all overtime wages; (4) failure to provide meal periods; (5) failure to authorize and permit rest periods;
3 (6) knowing and intentional failure to comply with itemized employee wage statement provisions; (7)
4 failure to pay all wages at the time of termination of employment; (8) failure to adopt a compliant sick
5 pay/paid time off policy; and (9) violation of California's Unfair Competition Law. Plaintiff's case
6 pending in the Eastern District of California (the "Federal Action") is currently stayed while the Parties
7 seek settlement approval in this Court. (Mara Dec. ¶¶ 12-13).

8 **a. Discovery and Investigation**

9 After filing, the Parties engaged in extensive informal discovery, and Plaintiff conducted
10 further investigation into the claims. As part of discovery, Defendant produced numerous documents
11 and policies including, but not limited to, wage and hour policies – including meal and rest period
12 policies – that covered putative Class Members, Plaintiff's time and pay records, and a sampling of
13 time and pay records for putative Class Members. (Mara Dec. ¶ 11).

14 **b. The Parties Agreed to Attend Mediation**

15 The Parties attended an all-day mediation with respected wage and hour mediator Mark Rudy
16 on June 29, 2021. This mediation was successful. The Parties then met and conferred over all the terms
17 of the settlement and finalized their agreement in the Parties' Agreement. The Parties seek preliminary
18 approval of the Agreement in the instant motion. (Mara Dec. ¶ 12; *see also* Exhibit 1 attached thereto).

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

20 **a. Deductions from the Settlement**

21 The Parties have agreed, subject to and contingent upon the Court's approval, that this action
22 be settled for the non-reversionary total sum of \$1,200,000 ("Gross Settlement Amount" or "GSA"),
23 which includes: (1) attorneys' fees of up to \$420,000 (35% of the GSA) to compensate Class Counsel
24 for work already performed and all work remaining to be performed in documenting the settlement,
25 administering the settlement, and securing Court approval; (2) litigation costs in the amount of
26 \$17,492.36 (originally estimated not to exceed \$20,000); (3) a Class Representative Enhancement
27 Payment to the named class representative, Aaron Romero, in the amount of \$10,000 in consideration
28 for prosecuting this class action, serving as Class Representative, work performed in pursuing this

1 case and assisting Class Counsel, and risks undertaken for the payment of attorneys' fees and costs in
2 the event he had been unsuccessful in the matter; (4) claims administration fees and expenses to
3 Phoenix, in the amount of \$7,995 (originally estimated not to exceed \$10,000); and (5) payment to
4 LWDA of \$56,250 (which is 75% of the \$75,000 allocated to Plaintiff's claims under the PAGA).

5 After all Court-approved deductions from the GSA, it is estimated that \$688,262.64 ("Net
6 Settlement Amount" or "NSA"), less employee taxes on the "wage portion" of the settlement payment,
7 will be distributed to Participating Class Members.⁷ Subject to the terms and conditions of the
8 settlement, each Class Member will receive a proportionate share of the Net Settlement Amount that
9 is equal to (1) the number of Workweeks during which the Class Member worked for Defendant in
10 California in an hourly, non-exempt position, based on the Class Data provided by Defendant, divided
11 by (2) the total number of Workweeks worked by all Participating Class Members based on the same
12 Class Data, which is then multiplied by the Net Settlement Amount. One day worked in a given week
13 during the Class Period will be credited as a Workweek for purposes of this calculation. Therefore,
14 the value of each Class Member's Individual Settlement Share ties directly to the amount of
15 Workweeks that the Class Member worked during the Class Period. (Exhibit 5 at Section III ¶ 58(A)(i),
16 page 9). Under no circumstances will any portion of the \$1,200,000 settlement revert to Defendant,
17 and 100% of the NSA will be paid out to Participating Class Members. In addition, Defendant's share
18 of taxes will be paid in addition to and outside of the GSA. (Exhibit 5 at Section I ¶ 19, page 3).

19 The individual settlement payments will be divided into a "wage portion" to compensate
20 Participating Class Members for alleged unpaid wages and a "non-wage portion" to compensate
21 Participating Class Members for alleged interest and penalties. The wage portion will make up one-
22 third of each Participating Class Members' Individual Settlement Share, and the non-wage portion
23 will make up two-thirds of each Participating Class Members' Individual Settlement Share. (See
24 Exhibit 5 at Section III ¶ 58(B), pages 9-10).

25 **b. Release of Claims**

26 The claims that Plaintiff and other Participating Class Members are releasing in exchange for
27

28 ⁷ Participating Class Members are Class Members who do not submit a valid and timely request to
exclude themselves from this Settlement. (Exhibit 5 at Section I ¶ 32, page 5).

1 an Individual Settlement Share payment are based on the facts and claims asserted in the case. In
2 exchange for an Individual Settlement Share, Plaintiff and Participating Class Members will release
3 and discharge the Released Parties⁸ from any and all claims, debts, liabilities, demands, obligations,
4 penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever
5 kind or nature, whether known or unknown, contingent or accrued, that are alleged, or that reasonably
6 could have arisen out of the same facts alleged in the Federal Action and this Action, against Defendant
7 (including any and all unnamed Does). The Released Claims include, but are not limited to: (1) Failure
8 to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal
9 Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 9- 2001(11); Cal. Code Regs., tit. 8 § 11090);
10 (4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 9-
11 2001(12); Cal. Code Regs. tit. 8 § 11090); (5) Knowing and Intentional Failure to Comply with
12 Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175); (6) Failure to Pay
13 All Wages Due at the Time of Termination of Employment (Lab. Code §§ 201-203); (7) Failure to
14 Adopt a Compliant Sick Pay/Paid Time Off Policy (Lab. Code §§ 233, 234, 246); (8) Violation of
15 Unfair Competition Law (Bus. & Prof. Code § 17200, *et seq.*); and (9) Violations of the Private
16 Attorneys General Act, Labor Code §2699, *et seq.* ("PAGA"). (Exhibit 5 at Section I ¶ 35, page 5).
17 The released claims are for the time period of October 5, 2016, to August 29, 2021. (Exhibit 5 at
18 Section I ¶ 36, page 5). In addition, Plaintiff agrees to a general release of all of his claims against
19 Defendant. (Exhibit 5 at Section III ¶ 63, pages 19-20).

20 **c. The Class Members Support the Settlement – No Objections or Requests for**
21 **Exclusion Have Been Received to Date – and 100% of the Settlement Funds Will**
22 **Be Paid Out**

23 On March 7, 2022, Defendant provided the Settlement Administrator with an electronic
24 database, which listed the following information for each Class Member: (1) first and last name; (2)
25 last known mailing address; (3) last known telephone number; (4) last known email address; (5) social
26 security number; (6) hire and termination dates; and (7) the total number of Workweeks during which

27 ⁸ The Released Parties are Defendant and each and every past, present and/or future, direct and/or
28 indirect, parent, subsidiary, associated, affiliated, and successor entities, and the owners, employees,
officers, directors, attorneys, contractors, consultants, shareholders, representatives, agents, insurance
companies, administrators, and assigns, of each, and each of them, and any individual or entity which
could be jointly liable with any of the foregoing. (Exhibit 1 at Section I ¶ 37, page 5).

1 the Class Member performed actual work during the Class Period. Thereafter, the Settlement
2 Administrator conducted a skip trace for the addresses of all formerly employed Class Members. (*See*
3 *Salinas Dec.* ¶¶ 3-4).

4 On March 24, 2022, the Settlement Administrator mailed via first-class regular U.S. Mail the
5 Class Notice in English and Spanish to all identified Class Members using the address information
6 provided by Defendant and the results of the skip trace performed. (*See Salinas Dec.* ¶ 5). After
7 mailing, 18 Class Notices were returned to the Settlement Administrator as undeliverable. All 18 Class
8 Notices were returned with a forwarding address. The Settlement Administrator remailed all 18 Class
9 Notices. In addition, 5 Class Notices were requested by Counsel or the Class Member to be remailed.
10 No Class Notices are considered undeliverable. (*See Salinas Dec.* ¶ 6).

11 Class Members had until May 9, 2022 to respond to the settlement. The settlement has received
12 overwhelming support from the Class Members. Not a single Class Member submitted an objection
13 to the settlement or requested to be excluded from it. (*See Salinas Dec.* ¶¶ 7-8). No Class Member
14 submitted a dispute. (*See Salinas Dec.* ¶ 10). Therefore, all 328 Class Members are participating in the
15 settlement, meaning 100% of the Class Members are Participating Class Members.

16 **d. Distribution of Funds**

17 Defendant shall wire to the Settlement Administrator the Gross Settlement Amount no later
18 than forty-five (45) calendar days of the Effective Final Settlement Date.⁹ (Exhibit 5 at Section I ¶ 23,
19 page 3). Therefore, if final approval is granted on June 14, 2022, Defendant will have until July 29,
20 2022 to fund the settlement.

21 Seven (7) calendar days after Defendant funds the Gross Settlement Amount, the Settlement
22 Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class
23 Members; (2) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs,
24 as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class
25

26 ⁹ The effective date of this Settlement will be the earlier occurring of the following: (A) The date the
27 Court enters the Judgment granting final approval of the settlement, if there are no objectors at the
28 time of final approval; (B) The date all of the objectors withdraw an objection after the court enters
the judgment granting final approval of the settlement; (C) The date any appeals process initiated by
an objector at final approval finally terminates with no change in the Court's judgment granting final
approval of the settlement. (Exhibit 5 at Section I ¶ 18, page 3).

1 Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and
2 (5) the PAGA Payment to the LWDA and Participating Class Members, as approved by the Court.
3 (Exhibit 5 at Section I ¶ 17, pages 2-3). Therefore, if the settlement is funded on July 29, 2022, checks
4 will be mailed to Participating Class Members by August 5, 2022.

5 Participating Class Members must cash or deposit their Individual Settlement Share checks
6 within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks
7 are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement
8 Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited
9 in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check
10 if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-
11 day period after mailing the reminder notice, the Settlement Administrator will, within two hundred
12 (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the
13 Individual Settlement Share checks returned as undeliverable and funds associated with those
14 Individual Settlement Share checks remaining un-cashed shall be transmitted by the Settlement
15 Administrator to a cy pres beneficiary. The cy pres beneficiary selected by the Parties is Legal Aid at
16 Work. (Exhibit 5 at Section III ¶ 61(M), page 19).

17 Legal Aid at Work offers free clinics and helplines that provide free direct, individualized
18 help in person or by phone for people across California. Legal Aid at Work also offers know-your-
19 rights trainings, fact sheets, and numerous do-it-yourself guides and toolkits, and other information
20 and resources online and in person. Legal Aid at Work's litigation efforts enforce and strengthen the
21 civil and employment rights of low-wage workers in California and across the country. Legal Aid at
22 Work also drafts and promotes laws, regulations, and policies to strengthen civil and workplace rights
23 at the local, state, and federal level.

24 **IV. ARGUMENT**

25 **a. The Settlement is Fair, Reasonable, and Adequate and Satisfies the Standard for 26 Final Approval**

27 California Rule of Court 3.769 requires court approval for class action settlements. Cal. R. Ct.
28 3.769(g). California courts favor settlement. *Stambaugh v. Superior Court* (1976) 62 Cal. App. 3d 231,
236, *Potter v. Pacific Coast Lumber Co. of Cal.* (1951) 37 Cal. 2d 592, 602 (“[T]he law wisely favors

1 settlements”). Accordingly, the Court must give “[due] regard to what is otherwise a private
2 consensual agreement between the parties.” *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App.
3 4th 224, 245.

4 In deciding whether to approve a class settlement, a court evaluates whether the proposed
5 settlement is “fair, adequate, and reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794,
6 1801 (citing *Officers for Justice v. Civil Serv. Comm’n of City & Cnty. of S.F.* (9th Cir. 1982) 688 F.2d
7 615, 625); *Cho v. Seagate Tech. Holdings, Inc.* (2009) 177 Cal. App. 4th 734, 742 43. A court enjoys
8 broad discretion in making this fairness determination. *Dunk*, 48 Cal. App. 4th at 1801. However, “a
9 presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining;
10 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
11 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Dunk*, 48
12 Cal. App. 4th at 1802; accord *Wershba*, 91 Cal. App. 4th at 245. In addition, a court should consider
13 additional relevant factors, including the strength of the plaintiffs’ case compared to the settlement
14 amount; the risk, expenses, complexity, and likely duration of further litigation; and the fair treatment
15 of class members in relation to each other. *Dunk*, 48 Cal. App. 4th at 1802; see also *In re Microsoft I-*
16 *V Cases* (2006) 135 Cal. App. 4th 706, 723; see also *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.
17 Supp. 610, 617.

18 At the time of preliminary approval, the Court was provided with sufficient information to
19 satisfy three of the four *Dunk* factors, leaving the fourth factor, the number of objectors, unknown
20 until after the Class had an opportunity to respond to the settlement.¹⁰ Subject only to the Class’
21 reaction to the settlement, the Court preliminarily presumed the settlement was fair, adequate and
22 reasonable. To date, not a single objection to the settlement has been submitted by any Class Member
23 to the Settlement Administrator. Thus, the settlement is entitled to the presumption that it is fair and
24 in all other respects proper, and the Court should grant final approval.

25 ///

27 ¹⁰ See Memorandum of Points and Authorities in Support of Preliminary Approval, pages 14-25. In
28 addition to the *Dunk* factors, Class Counsel also detailed the other factors such as the strengths of
Plaintiff’s case, risks and costs of further litigation, as well as the reasonableness of the GSA amount
in light of *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116.

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

2 **i. The Court Should Approve the Requested Fees**

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

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

19 “The ultimate goal . . . is the award of a ‘reasonable’ fee to compensate counsel for their efforts,
20 irrespective of the method of calculation.” *Consumer Privacy Cases* (2009) 175 Cal.App.4th 545,
21 557-58 (quoting *Apple Computer, Inc. v. Superior Court, supra*, 126 Cal.App.4th at 1270). It is not
22 an abuse of discretion to choose one method over another as long as the method chosen is applied
23 consistently using percentage figures and/or rates that accurately reflect the marketplace. In cases
24 where class members present claims against a settlement amount and the settlement agreement
25 provides that the defendant agrees to paying the attorneys a percentage of the same, use of that
26 percentage method is appropriate. *Lealao, supra*, 82 Cal.App.4th at 32.

27 Historically, courts have awarded fees as high as fifty percent (50%) of the settlement,
28 depending on the circumstances of the case. Conte & Newberg, *Newberg on Class Actions* (4th Ed.,

2002) § 14.03; *see also In re Ampicillin Antitrust Litig.* (D.D.C. 1981) 526 F.Supp. 494 (awarding attorneys' fees in the amount of 45% of the settlement amount of \$7.3 million); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement amount as attorneys' fees). California courts routinely approve class action attorneys' fees awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20–40% range of contingency fee in marketplace was appropriate in class actions).

In short, Class Counsel's fee request of \$420,000, which represents 35% of the GSA, is in line with awards in similar cases in California and nationwide and demonstrates that Class Counsel's fee request is consistent with market rates and is reasonable.

ii. The Requested Fee Award is Fair and Reasonable, Calculated as a Percentage of the Settlement Amount

Class Counsel applies for an award of attorneys' fees in the sum of \$420,000 (35% of the GSA) and litigation costs of \$17,492.36. (Mara Dec. ¶ 14, Exhibit 1). California state and federal courts have recognized that an appropriate method for determining an award of attorneys' fees is based on a percentage of the total value of benefits made available to Class Members by the settlement, also known as the "common fund" method. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (*Serrano III*); *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.¹¹ Where the amount of a settlement is a "certain easily calculable sum of money," California courts may calculate attorneys' fees as a reasonable percentage of the settlement. Weil & Brown, *California Practice Guide, Civil Procedure Before Trial*, Chapter 14, § 14:145; *Dunk, supra*, 48 Cal.App.4th at 1808. The percentage-of-the-benefit approach is preferred in class and representative actions because "it better approximates the workings of the marketplace than the lodestar approach." *Lealao, supra*, 82 Cal.App.4th at 49. 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, supra*, 557 F.2d at 769.

In *Quinn v. State of California* (1995) 15 Cal.3d 162, 167, the Court stated: "[O]ne who expends attorneys' fees in winning a suit which creates a fund from which others derive benefits may

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

1 require those passive beneficiaries to bear a fair share of the litigation costs.” Similarly, in *City and*
2 *County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110, the California Supreme Court
3 recognized that the percentage-of-the-benefit approach has been applied “consistently in California
4 when an action brought by one party creates a fund in which other persons are entitled to share.” The
5 reasons for applying this equitable doctrine include: “...fairness to the successful litigant, who might
6 otherwise receive no benefit because his recovery might be consumed by the expenses; correlative
7 prevention of an unfair advantage to the others who are entitled to share in the fund and who should
8 bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant,
9 who will be more willing to undertake and diligently prosecute proper litigation for the protection or
10 recovery of the fund if he is assured that he will be properly and directly compensated should his
11 efforts be successful.” *Id.*

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

20 When the lawsuit was originally filed, the prospect of a long, drawn-out battle with a defendant
21 represented by experienced counsel was almost a certainty. By taking on this “battle” on a contingency
22 basis, Class Counsel risked substantial economic loss if the results were not successful. This
23 substantial risk is the reason that the courts approve the use of the percentage method when a
24 settlement is obtained by the efforts of class counsel. *See Vizcaino v. Microsoft* (9th Cir. 2002) 290
25 F.3d 1043, 1048-49 (quotations omitted) (discussing the risks of engaging in litigation without
26 certainty of compensation).

27 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement Amount
28 of \$1,200,000. An award of attorneys’ fees is to be calculated as a percentage of the total value of
benefits made available to the Class Members under the settlement. In light of Class Counsel’s
prosecution and resolution of the case, the requested attorneys’ fees are appropriate and reasonable.

Compensating class counsel in class litigation on a percentage basis makes good sense because: (1) it is consistent with the private marketplace where contingent fee attorneys are customarily compensated on such a basis; (2) it aligns the interests of class counsel and absent class members in achieving the maximum possible resolution of the case; and (3) it encourages the most efficient and expeditious resolution of the litigation by providing an incentive for early, yet reasonable, settlement. The requested attorneys' fees in this matter satisfies all of those factors and should be approved on a percentage basis.

Further, Class Counsel has obtained a substantial recovery on behalf of Plaintiff and the Class. Thus, the requested Attorney Fee Award is appropriate.

iii. A Lodestar Cross-Check with a Modest Multiplier 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) 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]here is no ... rule limiting the factors that may justify an exercise of judicial discretion to [adjust the] lodestar").

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

1 multiple factors, including: the time and labor required; the skill requisite to perform the legal services
2 properly; the preclusion of other employment by the attorney due to the acceptance of the case; the
3 contingent nature of the fee; the amount involved and results obtained; the experience, reputation, and
4 ability of the attorney; and awards in similar cases. *Cates v. Chiang* (2013) 213 Cal. App. 4th 791,
5 822.

6 Class Counsel has worked 468 hours to date on this case and has calculated the lodestar fee on
7 those hours at \$330,200 at rates reflecting those currently earned in the marketplace. (Mara Dec. ¶¶
8 22, 25; Exhibit 1, Summary of Time and Costs). All of the work and tasks performed by Class Counsel
9 were reasonable and necessary to the prosecution of this case and are reflected in the result achieved.
10 (Mara Dec. ¶ 16).

11 This was a highly contested matter which required a significant amount of time and labor.
12 Class Counsel had to investigate and analyze documents and data for Plaintiff and a sampling of Class
13 Members. The litigation also required a considerable amount of time interviewing class members
14 about their experiences. (Mara Decl. ¶ 18).

15 In addition, as part of the above investigation and analysis, Plaintiff had to marshal the
16 evidence in a manner in which it could be adjudicated on a class-wide basis. So often, lawyers
17 unskilled in the class action aspect of wage and hour cases do not pay attention to or put the work into
18 how the evidence must be presented for class-wide adjudication. Strong class-wide cases perish in the
19 hands of inexperienced counsel because the case has not been worked up to succeed at certification.
20 Class Counsel here has considerable experience in class litigation and, from the beginning of the case,
21 is marshalling the evidence with a sharp focus on class-wide proof needed for the matter to get
22 certified. This case was no different. Throughout the matter, as evidence was being gathered through
23 documents and witness interviews, Class Counsel was reducing the data to a “living class certification
24 motion.” This filtering of voluminous evidence into class-wide proof while keeping an eye on the
25 merits of the litigation required a considerable amount of attorney time and skill. (Mara Decl. ¶ 19).

26 Most importantly, all services were performed by Class Counsel on a contingent basis. Both
27 California and federal courts recognize that attorneys should be compensated for taking on such
28 contingent risks and provided with financial incentives to enforce important rights and protections like

1 those at issue in this case. See, e.g., *Vizcaino*, 290 F.3d at 1051; *Ketchum*, 24 Cal.4th at 1132-33. Here,
2 Class Counsel bore the risk that, in spite of all of their efforts and skill employed, there may be no
3 recovery. (Mara Dec. ¶ 19).

4 Class Counsel respectfully requests a fee of \$420,000, which, based on the total attorney hours
5 expended and rates, would require a modest 1.28 multiplier to raise the generated fees of \$330,200 to
6 the requested amount. Far greater multipliers have been awarded in similar cases, and the total amount
7 of fees sought by Class Counsel is also reasonable compared to fees awarded in like cases. Courts
8 routinely enhance lodestar amounts based on multipliers that “range from 2 to 4 or even higher.”¹²
9 Thus, consideration of the lodestar method as a cross-check to the percentage figure sought strongly
10 supports the reasonableness of the requested fee award. Class Counsel moves for and respectfully
11 requests that the Court grant attorneys’ fees in the amount of \$420,000.

12 **1. The Fees Requested Represent a Reasonable Hourly Rate of**
13 **Compensation in Light of Class Counsel’s Efforts and Experience**

14 Class Counsel’s hourly rates are between \$600 and \$800 and are in line with rates typically
15 approved in wage and hour class action litigation and which rates have been approved by courts in
16 California in the Los Angeles, Sacramento, San Francisco, Alameda, Orange and San Diego County
17 Superior Courts. (Mara Dec. ¶ 21; Exhibit 2, Westlaw Court Express’s Legal Billing Report, Volume
18 14, Number 3, California Region for December 2012; Exhibit 3, 2014 Declaration of Richard M. Pearl
19 in *Hohnbaum v. Brinker Restaurant Corp.* SDSC GIC834348; Exhibit 4, 2012 National Law Journal
Survey of Hourly Billing Rates for Partners and Associates).

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

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

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

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

15 **2. Class Counsel's Total Hours are Reasonable**

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

23 Class Counsel has expended a total of 468 hours on this case. The work performed by Class
24 Counsel in order to achieve a settlement that will provide valuable consideration to the Class,
25 averaging a \$2,098.36 settlement payment per Class Member, with the highest estimated award being
26 \$7,177.32, is outlined by Class Counsel in the declaration submitted herewith. (Mara Dec. ¶¶ 22, 25).
27 Class Counsel have been actively involved in this case, prior to the commencement of this action and
28 all the way up to the present, and Class Counsel's dedication to providing representation in the case
has precluded other employment. Here, Class Counsel's many tasks, in summary form, included the

1 following: pre-filing investigation and legal research; communicating with the Class Representative;
2 interviewing and meeting with Class Members; researching and investigating California's ever-
3 evolving wage and hour laws regarding compensation, overtime, meal and rest periods, itemized wage
4 statements, waiting time penalties, and California's Unfair Competition Law; conducting investigation
5 into Defendant's pay-structures, policies for its non-exempt employees; drafting and filing pleadings;
6 making appearances at Court proceedings; engaging in numerous conferences with Defense Counsel
7 regarding a variety of issues throughout the litigation and settlement negotiations; analyzing records
8 produced by Defendant; drafting the mediation brief and performing mediation damages and exposure
9 models; preparing for and attending mediation; drafting, negotiating, and revising the settlement
10 agreement and the Class Notice; drafting preliminary approval papers; working with the Settlement
11 Administrator on the Class Notice process; reviewing, revising, and proofing Class Notice papers from
12 the Settlement Administrator; reviewing weekly status reports from the Settlement Administrator
13 regarding Class participation; reviewing and editing the Settlement Administrator's declaration;
14 drafting final approval papers, and preparing for and appearing at the Final Approval Hearing. (Mara
15 Dec. ¶¶ 22, 25).

16 Class Counsel bore the risk that, despite all of their efforts and skills employed, there may be
17 no recovery. All of the work performed was reasonable and necessary to the prosecution of this case.
18 The work performed was particularly justified, in light of the result achieved which provides Class
19 Members with an average payment of 2,098.36 and a high payment of \$7,177.32.

20 c. Costs of Litigation

21 Class Counsel seeks reimbursement of the litigation costs and expenses of \$17,492.36. (Mara
22 Dec. ¶ 27, Exhibit 1). These costs were all reasonable and necessary to the prosecution of this case
23 and the results achieved and are fair and reasonable.

24 V. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS REASONABLE

25 Class Counsel seeks approval of the Class Representative Enhancement Payment to the named
26 Plaintiff in the sum of \$10,000, which represents 0.8% of the \$1,200,000 settlement. It should be noted
27 that when the Class Notices were mailed and published, the Class was informed that the Class
28 Representative would apply for this payment and, to date, no Class Members have objected.

There are also other factors supporting the request that Plaintiff receive \$10,000. The requested

1 Class Representative Enhancement Payment is also reasonable in light of the benefits Plaintiff has
2 conferred upon the entire Class, resulting in payments averaging \$2,098.36 and highest payment of
3 \$7,177.32. The requested enhancement is appropriate and reasonable based upon Plaintiff's time and
4 effort expended on this case, the risks he faced, and the outcome of this case. Plaintiff has submitted
5 a declaration detailing the efforts and time he expended on behalf of the Class in order to advance this
6 case to its successful conclusion. There is no question that this case would not have reached the same
7 result but for Plaintiff's involvement and input at all stages of the litigation.

8 Courts routinely approve service payments, or incentive awards, to compensate named
9 plaintiffs for the services they provide and the risks they incur during class litigation. See *In re*
10 *Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380, 1393; *see also Bell v. Farmers Ins.*
11 *Exch.* (2004) 115 Cal. App. 4th 715, 725-26 (upholding service payments to class representatives);
12 Manual § 21.62 n.971 (noting that service payments are warranted); *Cook v. Niedert*, 142 F.3d 1004,
13 1015 (7th Cir. 1998); *Roberts v. Texaco*, 979 F. Supp. 185 (S.D.N.Y. 1997) ("present or past employee
14 whose present position or employment credentials or recommendation may be at risk by reason of
15 having prosecuted the suit, who therefore lends his or her name and efforts to the prosecution of
16 litigation at some personal peril, a substantial enhancement award is justified"); *Thornton v. East*
17 *Texas Motor Freight*, 497 F.2d 416, 420 (6th Cir. 1974) ("We also think there is something to be said
18 for rewarding those drivers who protect and help to bring rights to a group of employees who have
19 been the victims of discrimination.").

20 There are few individuals that are willing to act as class representative and provide the work,
21 diligence, and willingness to assume a substantial financial risk should Defendant have prevailed in
22 this case. Plaintiff risked a potential judgment against him for attorneys' fees and costs if this matter
23 had not been successfully concluded. Case law holds that a losing party is liable for the prevailing
24 party's costs, *Early v. Superior Court*, 79 Cal.App.4th 1420, 1433 (2000), and in some wage and hour
25 actions, pursuant to California Labor Code § 218.5, for attorneys' fees as well. Though the fee
26 agreement provides that Class Counsel would pay such costs, Plaintiff would nevertheless have had a
27 cost bill entered against him leaving him potentially liable in the unexpected possibility that Class
28 Counsel did not meet their obligation to cover those costs.

Additionally, it is common knowledge that the modern-day work force is quite mobile, with

1 employees holding several jobs in a career during their lifetime. It is also true that prospective
2 employers in this computer, high-tech age “Google” and/or do extensive background checks and have
3 access to court databases to see if applicants have ever filed a lawsuit or have ever been sued. Here,
4 Plaintiff stepped forward to pursue not only his own rights but also, those of the similarly situated
5 individuals, all of whom will now receive settlement payments due to the initiation of this action. Such
6 conduct will not be lost on a prospective employer who has to choose between an applicant who has
7 never sued an employer and one who has done so.

8 Based on the foregoing, the \$10,000 enhancement payment to the named Class Representative
9 is fair, appropriate, and justified in light of the work performed pursuing this case and assisting Class
10 Counsel in this action, risks undertaken for payment of fees and costs if this case had not been
11 successfully concluded, potential detriment to future employment opportunities, and the benefits
12 gained for all Participating Class Members.

13 **VI. THE ADMINISTRATION COSTS ARE REASONABLE**

14 The Court-approved Settlement Administrator was responsible for formatting, printing, and
15 mailing and emailing the Class Notices. The Settlement Administrator was responsible for responding
16 to Class Member inquiries, providing weekly status reports, answering questions from counsel for the
17 Parties, and providing a declaration to document its duties and responsibilities under the settlement.
18 Plaintiff now requests that the Court finally approve the Administration Costs in the amount of \$7,995
19 to Phoenix for services rendered and to be rendered for the notice and settlement administration
20 process. (Salinas Dec. ¶ 12).

21 Following the grant of final approval, the Settlement Administrator’s duties will continue in
22 order to calculate and mail the individual Settlement Payments to Participating Class Members,
23 perform tax reporting obligations, disburse other payments as ordered by the Court, and perform such
24 other duties as set forth in the Class Action Settlement Agreement. Administration Costs in the amount
25 of \$7,995 to Phoenix for services rendered and to be rendered are fair and reasonable and should be
26 granted.

27 ///

28 ///

1 **VII. CONCLUSION**

2 Based on the foregoing, Plaintiff respectfully requests the Court grant final approval of the
3 \$1,200,000 non-reversionary fund settlement and award: Class Counsel attorneys' fees in the sum of
4 \$420,000 and litigation expenses of \$17,492.36; a Class Representative Enhancement Payment in the
5 sum of \$10,000 to Plaintiff; Administration Costs in the amount of \$7,995 to Phoenix; and a payment
6 to the LWDA in the amount of \$56,250 (which is 75% of \$75,000 allocated to Plaintiff's claims under
7 PAGA). Plaintiff further requests the Court enter final judgment in this matter which would resolve
8 and extinguish all claims released by the Settlement Agreement, against Defendant and the Released
9 Parties, as those terms are defined in and by the terms of the Settlement Agreement.

10 Dated: May 20, 2022

MARA LAW FIRM, PC

11
12 
13 David Mara, Esq.
14 Jill Vecchi, Esq.

Representing Plaintiff AARON ROMERO