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himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

JUAN ALCARAZ, an Individual, on behalf
of himself and all others similarly situated

Plaintiffs,

v.

IRHYTHM TECHNOLOGIES, INC., a
Delaware corporation; and DOES 1 through
100, Inclusive

Defendants.

CASE NO. 30-2021-01177810-CU-OE-CXC

[Assigned to the Honorable Randall J. Sherman in
Department CX105 for all purposes]

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT AND
AWARD FOR ATTORNEYS' FEES, COSTS,
AND CLASS REPRESENTATIVE INCENTIVE
AWARD**

[Filed And served concurrently with Declaration of
Bruce Kokozyan, Esq. in Support of Plaintiffs'
Motion for Final Approval of Class Action and
PAGA Settlement and Award for Attorneys' fees,
costs, and class representative incentive award]

Date: March 8, 2024
Time: 10:00 a.m.
Dept: CX105

Action Filed: January 8, 2021
Trial Date: June 05, 2023 [vacated]

TO THE COURT AND ALL PARTIES:

PLEASE TAKE NOTICE that, on March 8, 2024 at 10:00 am, in Department CX105 of the above-captioned Court, located at 700 W. Civic Center Dr., Santa Ana, CA 92701, the Honorable Randall J. Sherman presiding, Plaintiff Juan Alcaraz, on behalf of himself and all others similarly situated, will, and hereby does, move this Court to:

- (1) Finally approve the Settlement;
- (2) Finally approve certification of the Settlement Class;
- (3) Award attorney fees in the amount of \$136,902.26;
- (4) Award litigation expenses in the amount of \$10,963.35;
- (5) Award Plaintiff Juan Alcaraz a Class Representative Incentive Award in the amount of \$5,000; and
- (6) Award Settlement Administrator Simpluris, Inc. administration expenses in the amount of \$9,771.86.

This Motion is based upon: (1) this Notice of Motion and Motion; 2) the Declaration of Bruce Kokozyan; (3) Joint Stipulation and Settlement of Class Action and Private Attorneys General Act Claims; and the Amendment to Joint Stipulation of Class Action Settlement and Second Amendment to Joint Stipulation of Class Action Settlement (hereinafter collectively the “Stipulation”/ “Settlement Agreement”); (4) the records, pleadings, and papers filed in this action; and (5) such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

Respectfully submitted,

Dated: February 9, 2024

KOKOZIAN LAW FIRM, APC



Bruce Kokozyan, Esq.
Attorneys for Plaintiff

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. PROCEDURAL HISTORY OF THE CASE	1
III. ACTUAL SETTLEMENT VALUE.....	2
A. Individual Settlement Payments	2
B. Attorneys' Fees and Costs	2
C. Class Representative Incentive Award	3
D. PAGA Payment.....	3
IV. PRELIMINARY APPROVAL	3
V. FINAL SETTLEMENT APPROVAL IS APPROPRIATE AS THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE	3
A. Public Policy Favors Settlement of Class Actions.....	3
B. The Settlement Is Entitled To A Presumption Of Fairness.....	4
C. The Settlement Was Reached Through Arm's Length Negotiations After Sufficient Discovery And Investigation Had Been Completed To Warrant Settlement.	5
D. Class Counsel Is Experienced And Endorses The Settlement	6
E. There are Zero (0) Objections to the Settlement and only (1) Opt Out to the Settlement.....	6
VI. THE AWARD OF ATTORNEYS' FEES AS REQUESTED IS APPROPRIATE WHEN A COMMON FUND HAS BEEN CREATED FOR THE BENEFIT OF THE CLASS	7
A. The Amount Requested Is Reasonable As A Percentage Of The "Common Fund"	8
(1) The Present Case Is A "True" Common Fund	8
(2) The Amount Requested Here Is Less or Similar to Amounts that Have Been Repeatedly Approved By Other Courts In Wage And Hour Class Actions And Similar Cases	8
VII. AN AWARD OF ATTORNEYS' FEES AS REQUESTED IS ALSO REASONABLE UNDER THE LODESTAR METHOD	10
A. Class Counsel's Hourly Rate	12
B. Class Counsel's Hours Spent On The Case	13
VIII. THE COURT SHOULD APPROVE THE REIMBURSEMENT OF COSTS	14
IX. THE CLASS REPRESENTATIVE ENHANCEMENT FEE IS REASONABLE	14
X. CONCLUSION	15

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Albion Pacific Property Resources v. Seligman,

329 F. Supp. 2d 1163, 1170-71 (N.D. Cal. 2004) 11

Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) 9

Boyd v. Bechtel Corp., 485 F.Supp.610, 616-17 (N.D. Cal. 1979) 5

In re Corrugated Container Antitrust Litig., (5th Cir. 1981) 659 F.2d 1322, 1325) 3-4

Ellis v. Naval Air Rework Facility

87 F.R.D.15, 18 (N.D Cal, 1980), affid, 661 F.2d 939 (9th Cir. 1981)..... 5

Fisher Bros. v. Cambridge-Lee Industries, Inc. 630 F.Supp.482, 488 (E.D. Pa. 1985)..... 6

Glass v. UBS Financial Services, Inc., 2007 WL 221862, *16 (N.D. Cal. 2007) 8

Kyriazi v. Western Elec. Co., 527 F.Supp.18 (D.N.J. 1981) 14

League of Martin v. City of Milwaukee, 588 F.Supp.1004, 1024 (E.D. Wis. 1984)..... 14

Lopez v. Youngblood, (E.D. Cal. Sep. 2, 2011, No. 07-0474-DLB) 2011 WL 1048356910-11

Matter of Continental Illinois Securities Litigation (7th Cir.1992) 962 F.2d 566, 571.)..... 15

New York Gaslight Club, Inc. v. Carey

447 U.S. 54, 62, 100 S. Ct. 2024, 2030, 64 L. Ed. 2d 723 (1980) 13

Officers for Justice v. Civil Serv. Comm’n

688 F.2d 615, 624, 625, 630 (9th Cir. 1982).....3, 4-5

Re Lo Re v. Chase Manhattan Corp.

1979 U.S. Dist. LEXIS 12210, 19 FEP Cas. (BNA) 1366 (SDNY 1979) 14

Rodriguez v. West Publishing Corp. 563 F.3d 948, 958 (9th Cir. 2009)..... 14

Sproul v. Astrue, 2013 WL 394056, *2 (S.D. Cal. Jan. 30, 2013) 11

Stanton v. Boeing, 327 F.3d 938, 967, 971 (9th Cir. 2003)9-10

Vincent v. Hughes Air West, Inc., 557 F.2d 759, 769 (9th Cir. 1977)..... 9

In re Warner Communications Sec. Litig.,

618 F.Supp. 735, 741 (S.D.N.Y. 1985), affid., 198 F.2d 35 (2d Cir. 1986) 5

1	<u>Wininger v. SI Mgmt. L.P.</u> 301 F. 3d 1115 (9 th Cir. 2002).....	10
2	CALIFORNIA STATE CASES	
3	<u>Bell v. American Title Ins. Co.</u> (1991) 226 Cal.App.3d 1589, 1607-1608.....	3
4	<u>Clark v. American Residential Services LLC</u>	
5	(2009) 175 Cal.App.4 th 785, 804, 96 Cal.Rptr.3d 785, 801	15
6	<u>Consumer Cause, Inc. v. Mrs. Gooch’s Natural Food Markets, Inc.</u>	
7	(2005) 127 Cal.App.4 th 387, 397	7
8	<u>Dunk v. Ford Motor Company</u> (1996) 48 Cal.App.4 th 1794, 1801, 1802.....	4, 5
9	<u>Flannery v. California Highway Patrol</u> (1998) 61 Cal.App.4 th 629, 632.....	12
10	<u>Laffitte v. Robert Half International Inc.</u> (2016) 1 Cal.5th 480	8, 10
11	<u>Lealao v. Beneficial Calif., Inc.</u>	
12	(2000) 82 Cal.App.4 th 19, 26, 27, 40, 46, 47-48, 49-51, 52, 53	7, 8, 11
13	<u>Malibu Outrigger Bd. of Governors v. Superior Court</u>	
14	(1980) 103 Cal.App.3d 434, 438, 573, 578-579	4
15	<u>Mallick v. Superior Court</u> (1979) 89 Cal.App.3d 434	4-5
16	<u>Martino v. Denevi</u> (1986) 182 Cal.App.3d 553, 559	13
17	<u>PLCM Group, Inc. v. Drexler</u> (2000) 22 Cal.4 th 1084, 1095	12
18	<u>Rebney v. Wells Fargo Bank</u> (1990) 220 Cal.App.3d 1117, 1135.....	4
19	<u>Serrano v. Priest</u> (1977) 20 Cal.3d 25, 34, 48.....	9
20	<u>Serrano v. Unruh</u> , (1982) 32 Cal.3d 621, 639.....	13-14
21	<u>Wershba v. Apple Computer, Inc.</u> (2001) 91 Cal.App.4th 224, 234-35, 250	4

22

23 **CALIFORNIA STATE STATUTES**

24	California <u>Rules of Court</u> § 3.769	3
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I. INTRODUCTION

Class Counsel has achieved an excellent result in this litigation, embodied in the Joint Stipulation and Settlement of Class Action and Private Attorneys General Act Claims (herein after “Stipulation”/ “Settlement Agreement”). The proposed Settlement provides substantial benefits to the Class and is the product of aggressive litigation of Class Counsel to obtain the best possible result for the Class Members. 100% of the money will be paid out as there is no reversion to Defendant. There are zero (0) objections to the settlement. There is only one (1) opt out to the settlement. A truly outstanding result. 99.8% of the class will participate. This will result in an average payment to Class Members of approximately of \$421.18 with the highest payments to Class Members of approximately \$2,190.36 (Declaration of Bulthuis” ¶11, **Exhibit 1** to the declaration of Bruce Kokozyan. (“Kokozyan Decl.”).

II. PROCEDURAL HISTORY OF THE CASE

On January 8, 2021 the Complaint herein was filed by Plaintiff Juan Alcaraz (“Plaintiff”) as a representative action against Defendant for any and all penalties pursuant to the California Labor Code and/or the Private Attorneys General Act of 2004 arising out of the alleged claims for failure to pay overtime wages, failure to pay minimum wages, failure to pay overtime at the legal overtime pay rate, failure to provide meal periods, failure to authorize and permit rest periods, improper wages statements, failure to timely pay wages to former employees. Thereafter, on March 29, 2022 a First Amended Complaint was filed to add violations of the Labor Code on a Class Wide basis. The named Class Representative Juan Alcaraz seeks to represent all members of the class conditionally certified for settlement purposes only during the applicable Class Period, consisting of all current and former employees of Defendant iRhythm Technologies, Inc. who were employed in California as nonexempt hourly paid employees during the class period. The “Class Period” is January 08, 2017 to October 31, 2023. It shall be an opt-out class.

The Parties conducted significant investigation of the facts and law during the prosecution of this Action. Counsel for the Parties have investigated the law as applied to the facts discovered regarding the alleged claims of the Class Members and potential defenses thereto, and the damages claimed by

Class Members. Plaintiff’s Counsel and the Class Representative have litigated this matter for over a year, including extensive pre-litigation investigation and discovery, survey of class members, the production of documents by Defendant, including Defendant’s employee handbooks, policies and procedures regarding the payment of wages, time keeping, overtime, meal and rest periods and the production of detailed voluminous class-wide payroll and time punch data, numerous conferences between representatives of the Parties and a full day-long mediation with David Phillips, Esq., on March 4, 2022, an experienced mediator of PAGA and wage-and-hour class actions. The parties were able to fully resolve the matter, subject to Court approval, with the execution of the Joint Stipulation and Settlement of Class Action and Private Attorneys General Act Claims. Thereafter, the parties, per the Court’s Order executed an Amendment to Joint Stipulation of Class Action Settlement and Second Amendment to Joint Stipulation of Class Action Settlement (hereinafter collectively the “Stipulation”/ “Settlement Agreement”). This Court preliminarily approved the settlement on October 31, 2023.

III. ACTUAL SETTLEMENT VALUE

The non-reversionary settlement the parties agreed to \$320,000.00 with no claim form requirement, no residual to revert to the Defendant and Defendant to pay its share of taxes in addition to the settlement. In addition, an escalation clause was negotiated in the Settlement Agreement. It was originally contemplated that there would be no more than 399 class members during the class period. Since the number of class members increased by more than 10% to a total of 552 class members, the escalation clause was triggered for the amount of increase over the 10% buffer, and as such the Gross Fund Value increased by 28.34% to \$410,706.77, in accordance with Section II.16 of the Settlement Agreement. [Decl. Bulthuis” ¶6, Exhibit 1 of Kokozyan Decl.]

The total settlement is divided as follows:

A. Individual Settlement Payments:

The average Participating Settlement Class Member settlement is estimated to be approximately \$421.18 and the highest payments to Class Members of approximately \$2,190.36. [Decl. Bulthuis” ¶11, Exhibit 1 of Kokozyan Decl.]

B. Attorneys’ Fees and Costs:

Attorneys' Fees: \$136,902.26 (one-third of the Gross Fund Value of \$410,706.77) and actual costs of \$10,963.35 as verified by Class Counsel. (Kokozian Decl., **Exhibit 2**, Itemization of Costs] and approved by the Court and the costs for claims administration of \$9,771.86. [Decl. Bulthuis" ¶15, Exhibit 1 of Kokozian Decl.]

C. Class Representative Incentive Award

\$5,000 for Class Representative Juan Alcaraz (Declaration of Juan Alcaraz ("Alcaraz Decl. ¶¶ 6-8)(**Exhibit 5** to Kokozian Decl.).

D. PAGA Payment- \$16,000 total, with a (\$12,000 payment to the LWDA and \$4,000 to PAGA members).

IV. PRELIMINARY APPROVAL

On October 31, 2023, this Court granted Preliminary Approval of this settlement, conditionally certified the Class for settlement purposes only, approved the Notice of Class Action Settlement and related forms, appointed the Class Representative, designated Class Counsel, confirmed Simplurisas the Settlement Administrator, and set timelines for the claims and settlement procedure.

V. FINAL SETTLEMENT APPROVAL IS APPROPRIATE AS THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

A. Public Policy Favors Settlement of Class Actions

California Rule of Court 3.769 (a) states that "a settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after a hearing." Courts have repeatedly found that California has an overriding public interest in settling and quieting litigation, particularly in class action cases. *Bell v. American Title Ins. Co.* (1991) 226 Cal.App.3d 1589, 1607-1608; see also *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ["[V]oluntary conciliation and settlement are the preferred means of dispute resolution. This is especially true in complex class action litigation . . ."]. The resolution of complex cases by settlement contributes greatly to the efficient utilization of scarce judicial resources and promotes the swift implementation of justice, for a "just result is often no more than an arbitrary point between

1 competing notions of reasonableness.” *In re Corrugated Container Antitrust Litig*, (5th Cir. 1981) 659
2 F.2d 1322, 1325.

3 In approving a proposed settlement, the Court must determine whether the class settlement is
4 fair, reasonable and adequate. *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The Court
5 has broad discretion in making this determination. *Id.* However, the purpose of the final approval
6 hearing is not to allow others to rework a settlement that is the result of long, complex and hard-fought
7 negotiations. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 246, overruled on other
8 grounds [“The proposed settlement is not to be judged against a hypothetical or speculative measure of
9 what might have been achieved had plaintiffs prevailed at trial.”]; *Rebney v. Wells Fargo Bank* (1990)
10 220 Cal.App.3d 1117, 1135, overruled on other grounds [class action settlement must stand or fall as a
11 whole]; *Officers for Justice*, 688 F.2d at 630.

12 In practical terms, the settlement of a class action follows three parts: 1) Preliminary approval of
13 the proposed settlement; 2) Notice to Class Members, and 3) a Final Approval hearing or “Fairness
14 Hearing” at which evidence and argument may be heard on the fairness, adequacy and reasonableness of
15 the settlement. The Court has given preliminary approval of the settlement, Notice has been sent to all
16 Class Members, and the claims procedure has been completed.

17 As set forth below, this settlement is fair, reasonable and adequate.

18 **B. The Settlement Is Entitled To A Presumption Of Fairness**

19 A presumption of fairness exists where: 1) The settlement is reached through arm’s length
20 bargaining; 2) Investigation and discovery are sufficient to allow counsel and the Court to act
21 intelligently; 3) Counsel is experienced in similar litigation; and 4) the percentage of objectors is small.
22 *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at 1802.

23 To prevent fraud, collusion or unfairness to the Class, the settlement or dismissal of a class
24 action requires Court approval. *Malibu Outrigger Bd. of Governors v. Super. Ct.* (1980) 103
25 Cal.App.3d 573, 578-579. The purpose of the requirement is to protect those Class Members, including
26 the named Plaintiffs, whose rights may not have been given due regard by the negotiating parties.
27 *Officers for Justice*, *supra*, 688 F.2d at 624. The trial court has broad powers to determine whether a

1 proposed settlement in a class action is fair. *Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434. At the Final
2 Approval Hearing, the Court should consider the relevant factors, such as the strength of the Plaintiff's
3 case, the risk, expenses, complexity and likely duration of further litigation, the risk of maintaining
4 class action status through trial, the amount offered in settlement, the extent of discovery completed
5 and the stage of the proceedings, the experience and views of counsel, the presence of a governmental
6 participant and the reaction of the Class Members to the proposed settlement. *Officers for Justice*,
7 *supra*, 688 F.2d at 624. "This list is not exhaustive and should be tailored to each case. Due regard
8 should be given to what is otherwise a private consensual agreement between the parties." *Dunk v.*
9 *Ford Motor Co.*, *supra*, 48 Cal.App.4th at 1801.

10 **C. The Settlement Was Reached Through Arm's Length Negotiations After Sufficient**
11 **Discovery And Investigation Had Been Completed To Warrant Settlement.**

12 The stage of the proceedings and the amount of discovery completed is an important factor
13 Courts consider in determining the fairness, reasonableness, and adequacy of a settlement. *In re*
14 *Warner Communications Sec. Litig.*, 618 F.Supp. 735, 741 (S.D.N.Y. 1985), *affid.*, 198 F.2d 35 (2d
15 Cir. 1986); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *affid.*, 661 F.2d 939
16 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 616-17 (N.D. Cal. 1979). Plaintiffs' counsel
17 conducted meaningful informal discovery. The litigation reached a stage where "the parties certainly
18 have a clear view of the strengths and weaknesses of their cases." *Warner*, *supra*, 618 F.Supp. at 745;
19 *Ellis*, *supra*, 87 F.R.D. at 18; *Boyd*, *supra*, 485 F.Supp. at 616-17. The settlement reached is the
20 product of tremendous effort, and great expense by the Parties and Class Counsel. Further, the
21 settlement was reached through arm's length negotiations as exemplified by the litigation.

22 Plaintiff's Counsel and the Class Representative have litigated this matter for over a year,
23 including extensive pre-litigation investigation and discovery, survey of class members, the production
24 of documents by Defendant, including Defendant's employee handbooks, policies and procedures
25 regarding the payment of wages, time keeping, overtime, meal and rest periods and the production of
26 detailed voluminous class-wide payroll and time punch data, numerous conferences between
27 representatives of the Parties and a full day-long mediation with David Phillips, Esq., on March 4, 2022,

1 an experienced mediator of PAGA and wage-and-hour class actions. The parties were able to fully
2 resolve the matter, subject to Court approval, with the execution of the Joint Stipulation and Settlement
3 of Class Action and Private Attorneys General Act Claims. Thereafter, the parties, per the Court's
4 Order executed an Amendment to Joint Stipulation of Class Action Settlement and Second Amendment
5 to Joint Stipulation of Class Action Settlement (hereinafter collectively the "Stipulation"/ "Settlement
6 Agreement"). The parties agreed to the settlement for \$320,000 with no claim form requirement, no
7 residual to revert to Defendant and Defendant to pay its share of employer side taxes in addition to the
8 settlement amount. In addition, an escalation clause was negotiated in the Settlement Agreement and
9 thus Gross Fund Value increase to \$410,706.77.

10 The settlement amount is, of course, a compromise figure. Plaintiff considered the risks that the
11 class would be certified, risks related to proof of the claims, and the strengths and weaknesses of
12 Defendant's other defenses. Plaintiff considered the possibility that if a settlement were reached after
13 additional years of litigation, the great expenses and attorneys' fees of litigation would reduce the
14 amount of funds available to the class for settlement. Furthermore, Plaintiff considered the time delay
15 and financial repercussions of trial and the possibility of an appeal by Defendant.

16 **D. Class Counsel Is Experienced And Endorses The Settlement**

17 Experienced counsel, operating at arm's length, have weighed all of the foregoing factors and
18 endorse the proposed settlement. As the Courts have explained, the view of the attorneys actively
19 conducting the litigation, is "entitled to significant weight." *Fisher Bros. v.. Cambridge-Lee Industries,*
20 *Inc.*, 630 F.Supp. 482, 488 (E.D. Pa. 1985); see also *Ellis*, supra, 87 F.R.D. at 18; *Boyd*, supra, 485
21 F.Supp. at 616-17.

22 Class Counsel has experience in class actions and employment litigation, and specifically in
23 wage and hour class actions. (Kokozian decl. ¶¶ 2-10). Class Counsel is very experienced and qualified
24 to evaluate the Class claims and viability of the defenses. *Id.* The recovery for each Class Member is
25 substantial, given the risks inherent in litigation and the defenses asserted. This settlement is fair,
26 adequate and reasonable and in the best interests of the Class. *Id.*

27 **E. There are Zero (0) Objections to the Settlement and only (1) Opt Out to the Settlement.**

1 The reaction of Class Members to this settlement has been overwhelmingly positive. There are
2 zero (0) objections to the settlement and there is only (1) opt-out. [Decl. Bulthuis” ¶¶13,14, Exhibit 1
3 of Kokozyan Decl.] Class members have resoundingly approved the Settlement. This is a testament to
4 the fairness, reasonableness and adequacy of this settlement.

5
6 **VI. THE AWARD OF ATTORNEYS’ FEES AS REQUESTED IS APPROPRIATE WHEN A**
7 **COMMON FUND HAS BEEN CREATED FOR THE BENEFIT OF THE CLASS**

8 Class Counsels’ application for an award of attorneys’ fees in an amount of one-third of the Gross
9 Fund Value created is reasonable and fair. Here, a common fund of \$410,706.77 was created. The requested
10 fee falls on the average end of the Ninth Circuit’s historical benchmark for attorneys’ fees of 25% to 50% of a
11 common fund and is fair compensation for undertaking complex, risky, expensive, and time-consuming
12 litigation on a contingent basis.

13 The Common Fund Doctrine is predicated on the principle of preventing unjust enrichment. When a
14 litigant’s efforts create or preserve a fund from which others derive benefits, the court may spread litigation
15 costs proportionally among all the beneficiaries to compensate those who created the fund. Further, the Rutter
16 Group California Practice Guide: Civil Trials and Evidence acknowledges the applicability of the common
17 fund doctrine and describes it as follows: “Where the lawsuit results in the recovery of a fund or property
18 benefitting others as well as the plaintiff (e.g., a class action), the court has inherent equitable power to order
19 Plaintiff’s attorney’s fees paid out of the common fund or property.” [See *Serrano*, supra, 20 Cal.3d at 35.]
20 Such ‘fee spreading’ assures that all those benefited by the litigation pay their fair share of obtaining the
21 recovery. *Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 26. “Percentage fees have traditionally
22 been allowed in such common fund cases.” *Id.* at 27.

23 In a case affirming the denial of fees to a successful objector to a class action settlement, *Consumer*
24 *Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, discussed the common
25 fund doctrine developed by the U.S. Supreme Court: “The common fund doctrine, frequently applied in class
26 actions when the efforts of the attorney for the named class representatives produce monetary benefits for the
27 entire class, to allow a party preserving or recovering a fund for the benefit of others in addition to himself, to

1 recover his costs, including his attorneys’ fees, from the fund or property itself or directly from the other parties
2 enjoying the benefit.” (*Id.* at 397.)

3 **A. The Amount Requested Is Reasonable As A Percentage Of The “Common Fund”**

4 The California Supreme Court reaffirmed in *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th
5 480 that, in wage and hour class actions, class counsel may be awarded a percentage of the recovery based on a
6 “common fund.” *Id.* Furthermore the California Supreme Court recognized in *Laffitte* that a fee award based on
7 a percentage of the recovery in a common fund is proper as the award serves to spread the attorneys’ fees
8 amongst all beneficiaries of the fund, aligns the incentives between plaintiffs’ counsel and the class, is a better
9 approximation of the market conditions in a contingency case, and encourages class counsel to seek an early
10 settlement and avoid unnecessarily prolonging litigation. *Id.* As stated by the Supreme Court in *Laffitte* at 503:

11 We join the overwhelming majority of federal and state courts in holding that when class action
12 litigation establishes a monetary fund for the benefit of the class members, and the trial court in its
13 equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a
14 reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages
15 of the percentage method-including relative ease of calculation, alignment of incentives between
16 counsel and the class, a better approximation of market conditions in a contingency case, and the
17 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
18 litigation...”

19 Also, Courts have recognized that fair and efficient settlement, especially in complex class litigation, is
20 always to be encouraged. *Glass v. UBS Financial Services, Inc.*, 2007 WL 221862, *16 (N.D. Cal. 2007)
21 (“Class counsel’s prompt resolution of this case deserves to be fully rewarded”).

22 **(1) The Present Case Is A “True” Common Fund.**

23 There will be no reversion under the terms of the settlement agreement. (Kokozian Decl. ¶ 11)
24 Therefore, the present case is a “true” common fund from which Plaintiff’s counsel may be entitled to a
25 percentage of the recovery. *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480.

26 **(2) The Amount Requested Here Is Less or Similar to Amounts that Have Been Repeatedly**
27 **Approved By Other Courts In Wage And Hour Class Actions And Similar Cases.**

28 A common fund is most appropriate where the common benefit to the class can be quantified. *Lealao v.*
Beneficial California, Inc. (2000) 82 Cal.App.4th 19. 50-51. California trial courts have repeatedly authorized
attorney’s fees as a percentage of a common fund up to 45% percent. *Cristman v. Good Guys, Inc.* (San Diego
Super. Ct. 2007) Case No. GIS21939 [33 1/3 fee award plus costs] [*Cannon, J.; BCI Overtime Cases*, (San

1 Bernardino Super. Ct. 2007) J.C.C.P. 4280 [33 1/3 % fee award plus costs] [Gunn, J.] *Menchyk v. Beverages &*
2 *More, Inc.* (Alameda County Super. Ct. 2006) Case No. RG 05196918 [33 1/3% fee award plus costs
3 [McKibben, J.]; *O'Hara, et al. v Factory 2-U Stores, Inc.* (Alameda County Super. Ct. 2002) No. 834123-5 [33
4 1/3% fee award plus costs] [Sabraw, J.]; *Davis v. The Money Store, Inc.* (Sacramento Super. Ct. 2000) No.
5 99AS01716 [33 1/3 % fee award] *Azbug v Kerkorian*, (Los Angeles Super. Ct. 1990) CA-000981 [45% fee
6 award plus costs]; *Haitz v. Meyer, et. al.* (Alameda Super. Ct. 1990) Case No 572968-3 [45% fee award].

7 Class Counsel here is requesting one-third of the common fund for attorney's fees. Here, the
8 requested fees are reasonable and the results achieved for the Class Members are excellent. Class
9 Counsel respectfully requests that the Court enter an Order to that effect. Class Counsel seeks a fee
10 award calculated as a percentage of the total value of settlement, for the successful prosecution and
11 resolution of this action. California state and federal courts have recognized that an appropriate method
12 for determining award of attorneys' fees is based on a percentage of the total value of benefits to Class
13 Members by the settlement, not the amount claimed. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34;
14 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Vincent v. Hughes Air West, Inc.* 557 F.2d 759,
15 769 (9th Cir. 1977). The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and
16 to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does
17 not bear the entire burden alone." *Id.* at 769.

18 Under the "common fund" doctrine, "a litigant or a lawyer who recovers a common fund for the
19 benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund
20 as a whole." *Boeing*, supra, 444 U.S. at 478. The Supreme Court explained:

21 The doctrine rests on the perception that persons who obtain the benefit of a lawsuit without
22 contributing to its cost are unjustly enriched at the successful litigant's expense. Jurisdiction
23 over the fund involved in the litigation allows a court to prevent this inequity by assessing
attorney's fees against the entire fund, thus spreading fees proportionately among those
benefited by the suit. (*Id.* [citation omitted].)

24 Thus, the common fund doctrine ensures that each member of the class contributes
25 proportionately to the payment of attorneys' fees recovered from monetary payments that the prevailing
26 party recovered in the lawsuit. "Put another way, in common fund cases, a variant of the usual rule
27 applies and the winning party pays his or her own attorneys' fees; in fee-shifting cases, the usual rule is

1 rejected and the losing party covers the bill.” *Stanton v. Boeing*, 327 F.3d 938 (9th Cir. 2003) at 967,
2 citing *Wininger v. SI Mgmt. L.P.* 301 F.3d 1115 (9th Cir. 2002). In a typical “common fund” case, the
3 defendant pays the entire lump sum settlement and has no further interest in the amount of the fee
4 award, as any reduction in the fee award reverts to the class members. *Stanton*, supra, 327 F.3d at 971.

5 California cases, including the recent California Supreme Court ruling in *Laffitte*, supra, have
6 affirmed the continued validity of percentage fee awards in class action cases. Under these principles, a
7 percentage of the common fund fee award is properly based on the Gross Fund Value created of
8 \$410,706.77.

9 For Class Counsel, the fees here were wholly contingent in nature and the case presented far
10 more risk than the usual contingent fee case. There was the prospect of the enormous cost inherent in
11 class action litigation, as well as a long battle with a corporate Defendant. That prospect has previously
12 become reality, in both trial courts and the Court of Appeals in other wage and hour Class litigation.
13 Class Counsel risked not only their time but also money to ensure the successful litigation of this
14 action on behalf of all Class Members.

15 **VII. AN AWARD OF ATTORNEYS’ FEES AS REQUESTED IS ALSO REASONABLE**
16 **UNDER THE LODESTAR METHOD**

17 The California Supreme Court in *Laffitte* made clear that a lodestar cross-check is not required.
18 *Laffitte*, 1 Cal.5th at 506, though court’s have the discretion to apply one. Plaintiffs submit that a cross-
19 check is not necessary in this case; however, even if the Court were to employ one, the cross-check
20 supports the requested fees here. Further, if the Court chooses to perform a lodestar analysis, case law
21 is clear the Court is not required to “closely scrutinize each claimed attorney hour, but...instead...
22 ‘focus on the general question of whether the fee award appropriately reflected the degree of time and
23 effort expended by the attorneys’” *Id.* at 505 .

24 The Ninth Circuit has commented that the utility of the lodestar cross-check is limited. *Vizcaino*,
25 290 F.3d at 1050 (“The lodestar method is merely a cross-check on the reasonableness of a percentage
26 figure, and it is widely recognized that the lodestar method creates incentives for counsel to expend
27 more hours than may be necessary on litigating a case so as to recover a reasonable fee, since the

lodestar method does not reward early settlement.”). See *Lopez v. Youngblood* (E.D. Cal. Sep. 2, 2011, No. 07-0474-DLB) 2011 WL 10483569 (“A lodestar cross-check is not required in this circuit, and in a case such as this, is not a useful reference point”); Moreover, it is well recognized that the lodestar cross-check can reward unnecessary overbilling, inflation of timekeeping records, and inefficient litigation. See, *Albion Pac. Prop. Res., LLC v. Seligman*, 329 F. Supp. 2d 1163, 1170-71 (N.D. Cal. 2004) *Sproul v. Astrue*, 2013 WL 394056, *2 (S.D. Cal. Jan. 30, 2013) (“Courts are loathe to penalize experienced counsel for efficient representation under contingency agreements...”).

Under either theory of awarding fees, the case that should govern the court’s decision is *Lealao*, supra, 82 Cal.App.4th 19 (2000). *Lealao* stands for the proposition that court-awarded attorneys’ fees should approximate what counsel could get on the free market for the same services. *Id.* at 50.

Here, Class Counsel earned the requested fee under either the lodestar or common fund theory. At least 209.9 attorney hours have already been expended by Class Counsel (Kokozian Decl. **Exhibit 3**) and at least 10 to 20 additional attorney hours will be expended to finalize the matter. As such, Class Counsel will spend approximately at minimum 219.9 [209.9 hours already expended on this matter plus an additional minimum 10 hours] hours on this case through final resolution. The issue in this motion is not why the court should award a fee to commensurate with **one-third of the common fund**, but why the court should not award such a fee. The settlement comes after productive litigation. These facts, as well as others discussed below, warrant approval of the requested fee.

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. The base amount is then adjusted in light of various factors. (*Serrano*, supra, 20 Cal.3d at 48). ‘To summarize Plaintiffs’ lodestar request, Class counsel’s time summary shows that they have worked at least 209.9 attorney hours on this case and at least 10 additional attorney hours will be expended to finalize the matter. As such, Class Counsel will spend approximately no less than a total of 219.9 attorney hours on this case through final resolution. Class Counsel requests the Court find the requested hourly rate of \$1100 per hour for Bruce Kokozian as fair and reasonable. At the requested rate, this results in a total lodestar

amount is \$241,890 ([209.9 hrs. plus 10 hours] x \$1100 per hour). In addition, Plaintiff's counsel is entitled to a multiplier due to the contingency nature of the case, the delay of payment of fees for over three years, and the outlay of costs amongst other factors. However, in this instance a multiplier is not necessary as the lodestar amount (\$241,890) is higher the percentage of common fund (\$136,902.26) requested .

A. CLASS COUNSEL'S HOURLY RATE-

Counsel requests an hourly rate of \$1100 per hour for Bruce Kokozyan. Class Counsels' extensive education, experience, progressive Court approvals of hourly rates, and the history of approved hourly rates demonstrate that this hourly rate is reasonable. (Kokozyan Decl. ¶¶ 19-26).

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095. The court may consider other factors when determining a reasonable hourly rate, e.g., the attorney's skill and experience, the nature of the work performed, the relevant area of expertise and the attorney's customary billing rates. *Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 632. One difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. As a practical matter, few if any consumers pay attorneys' fees on an hourly basis for such extensive litigation, and thus retainer agreements in such cases are based on a contingency fee relationship. Although there is no customary billing rate, the nature of class action work should be strongly considered by the court (Kokozyan Decl. ¶¶ 22, 24, 25).

A survey conducted by The National Law Journal for the year 2010 provides a sample of a billing rate for California lawyers. The billing survey used 2010 rates and, thus understates current prevailing market rates given the increase in rates over the past 14 years. Nonetheless, even this 2010 data confirms that partners at quality law firms regularly charge the amount Plaintiff counsel seeks in this case. In that survey, multiple California firms provided their hourly billing rates. Of those firms, 24 firms regularly charge in excess of \$700.00 per hour for their partners. In fact, a majority of the firms charge as high as \$800.00, \$900.00, and up to over \$1000.00 per hour. These firms are located in

1 Orange, Los Angeles, San Francisco, and San Diego Counties, the types of firms that Plaintiffs'
2 counsel regularly opposes in these class action cases. The only difference is that these defense
3 attorneys are paid on a monthly basis and do not have to advance any costs on a case. To the contrary,
4 Plaintiffs' counsel is only paid if they win, which in this case will result in payment over three years
5 after the case was originally filed. (Kokozian Decl. ¶ 22).

6 Further, Plaintiff also attaches a Los Angeles Daily Journal Article dated August 10, 2012, which
7 provides the average partner billing rate in Los Angeles, over 10 years ago in 2012 was \$797 per hour.
8 (Kokozian Decl., **Exhibit 4**).

9 These rates indicate that the requested hourly rates by Class counsel are reasonable in the case-
10 at-hand in view of Class Counsel's experience, the result achieved in this case and the contingent nature
11 of the fees in class action cases. Class Counsel's skill and experience justify the requested rate. Class
12 Counsel's firm practices litigation and trial work with a focus on representing employees in employment
13 matters including class action cases (Kokozian Decl. ¶¶ 19-26).

14 In sum, Class Counsel is an attorney who commands a high hourly rate. Class counsel has had
15 success in wage hour class actions, is held in high regard by the legal community, and practices in a
16 niche area. This case required attorneys with great skills and financial backing as it involved a highly
17 specialized area of employment law that requires skilled and experienced attorneys. To obtain such an
18 attorney on the free market, a client must pay appropriate compensation. Therefore, Class Counsel's
19 requested rate is fair and reasonable. (Kokozian Decl. ¶¶ 19-26)

20 **B. CLASS COUNSEL'S HOURS SPENT ON THE CASE**

21 The courts are quite liberal in the evidence required to prove an attorney's hours. Detailed time
22 records are *not* required. An attorney's testimony alone may suffice: "Testimony of an attorney as to the
23 number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even
24 in the absence of detailed time records." *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.

25 Reasonable hours include, in addition to time spent during litigation, the time spent before the action is
26 filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial
27 pleadings. *New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62. Further, the fee award should include

1 fees incurred to establish and defend the attorneys' fee claim. *Serrano v. Unruh* (1982) 32 Cal.3d 621, 639.
2 Class Counsel has submitted their time records. (Kokozian Decl., **Exhibit 3.**)

3 **VIII. THE COURT SHOULD APPROVE THE REIMBURSEMENT OF COSTS**

4 The request for reimbursement of costs is fair and reasonable. Class Counsel's total costs are
5 \$10,963.55 ("Exhibit 2 to Kokozian Decl.); less than the original estimate of costs of \$15,000.
6 Likewise, the Settlement Administrator's total costs are \$9,771.86, less than the original estimate of
7 \$12,000. [Decl. Bulthuis" ¶15, Exhibit 1 of Kokozian Decl.] The costs are all litigation related costs and
8 should be approved.

9 **IX. THE CLASS REPRESENTATIVE INCENTIVE FEE IS REASONABLE**

10 The named Plaintiff has requested an Incentive Award in the amount of \$5,000. This request is
11 based on Plaintiff's contribution to the class, risks incurred, stigma, loss of benefits, execution of a
12 general release and all other factors presented to the Court. (Alcaraz Decl. ¶¶ 3-8 **Exhibit 5** to
13 Kokozian Decl.).

14 Courts routinely approve settlements containing such enhancements. *In League of Martin v.*
15 *City of Milwaukee*, 588 F.Supp. 1004 (E.D. Wis. 1984), the court held that the proposal settlement
16 properly granted the named Plaintiff individual relief. It is "not uncommon for Class Members...to
17 receive special treatment in settlement...[The Plaintiff]...had been instrument in prosecuting this
18 lawsuit since the date it was filed." *Id.* at 1024. In *Kyriazi v. Western Elec. Co.*, 527 F.Supp. 18 (D.N.J.
19 1981), a named Plaintiff in a Title VII class action was awarded individual relief of back-pay and
20 interest, reinstatement, punitive damages and counsel fees. In *Re Lo Re v. Chase Manhattan Corp.*,
21 1979 U.S. Dist. LEXIS 12210, 19 FEP Cas. (BNA) 1366 (SDNY 1979), the court approved payment
22 of \$229,000 out of a \$1,579,000 settlement fund to the named Plaintiffs for their individual claims.
23 One of the factors considered by the court in determining that such payments were fair was the fact
24 that none of the absent Class Members objected to the enhancements. The court held that this fact
25 showed that the Class Members were not offended by these enhancements. *Id.* at 17.

26 "Incentive awards are fairly typical in class action cases." (*Rodriguez v. West Publishing Corp.*
27 (9th Cir.2009) 563 F.3d 948, 958, citing 4 Newberg on Class Actions (4th ed. 2002) § 11:38, p.
28 81; Eisenberg & Miller, Incentive Awards to Class Action Plaintiffs: An Empirical Study (2006)
53 UCLA L.Rev. 1303.) "Since without a named plaintiff there can be no class action, such

1 compensation as may be necessary to induce him to participate in the suit could be thought the
2 equivalent of the lawyers' nonlegal but essential case specific expenses, such as long distance
3 phone calls, which are reimbursable.” (*Clark v. American Residential Services LLC* (2009) 175
4 Cal.App.4th 785, 804, fn. omitted, citing *Matter of Continental Illinois Securities Litigation* (7th
5 Cir. 1992) 962 F.2d 566, 571.) These awards "are discretionary, [citation], and are intended to
6 compensate class representatives for work done on behalf of the class, to make up for financial
7 or reputational risk undertaken in bringing the action, and, sometimes, to recognize their
8 willingness to act as a private attorney general." (*Rodriguez*, 563 F.3d 948 at pp. 958–958.)

9 **X. CONCLUSION**

10 Plaintiff respectfully requests that the Court grant final approval of the class action settlement
11 and award the requested attorney’s fees and costs.

12 Dated: February 9, 2024

KOKOZIAN LAW FIRM, APC

13 By: 
14 _____
15 Bruce Kokozyan, Esq.
16 Attorneys for Plaintiff