

1 ZACHARY CROSNER (SBN 272295)

2 zach@crosnerlegal.com

JAMIE SERB (SBN 289601)

3 jamie@crosnerlegal.com

CHAD SAUNDERS (SBN 257810)

4 chad@crosnerlegal.com

CROSNER LEGAL, PC

5 9440 Santa Monica Blvd. Suite 301

Beverly Hills, CA 90210

6 Tel: (866) 276-7637

7 Fax: (310) 510-6429

8 Counsel for Plaintiff PATRICIA BENTON

9
10 **SUPERIOR COURT OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SACRAMENTO**

12
13 PATRICIA BENTON, an individual, on
14 behalf of herself and all others similarly
15 situated and aggrieved,

16 Plaintiff,

17 v.

18 NORTHERN CALIFORNIA
19 INALLIANCE, a California domestic non-
20 profit corporation; ANDREA CROOM, an
21 individual; and DOES 1 to 100, inclusive,

CASE NO. 34-2021-00293036

Assigned for All Purposes to:
Hon. Lauri A. Damrell
Dept. 28

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

[Filed concurrently with Notice of Motion and
Motion; Declarations of Chad Saunders, Patricia
Benton, and Taylor Mitzner; [Proposed] Order]

Date: September 15, 2023
Time: 9:00 a.m.
Dept.: 28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND/LITIGATION HISTORY	2
III.	THE PROPOSED SETTLEMENT TERMS	3
A.	Certification of the Settlement Class	4
B.	The Benefit Conferred on the Settlement Class	4
C.	Settlement Administration	5
D.	Release of Claims	6
E.	PAGA Claims and Notice to the LWDA	6
IV.	ARGUMENT	6
A.	The Proposed Settlement Merits Final Approval	7
1.	The Settlement Is the Product of Arm's-Length, Informed Negotiations	7
2.	The Class Reacted Favorably to the Settlement	8
3.	The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case Value, and Significant Litigation Risks	8
V.	PLAINTIFF'S ENHANCEMENT AWARD	13
VI.	SETTLEMENT ADMINISTRATION COSTS	14
VII.	ATTORNEY'S FEES AND COSTS	14
A.	The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved	14
B.	The Requested Fee Award Is Reasonable and Appropriate	15
C.	Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund	16
D.	A Lodestar Cross-Check Also Supports Class Counsel's Fee Request	17
E.	The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar cases	18
1.	The Results Achieved.	19
2.	Class Counsel Bore Considerable Risk.....	20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3.	The Skill Required and the Quality of Work.	20
4.	The Contingent Nature of the Fee and Risk Assumed	20
5.	Awards in Other Cases	21
F.	Class Counsel’s Costs and Expenses are Reasonable	22
VIII.	CONCLUSION	23

TABLE OF AUTHORITIES

Page(s)

Cases

<u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u> (2000) 85 Cal.App.4th 1135.....	12
<u>Amaral v. Cintas Corp. No. 2</u> (2008) 163 Cal.App.4th 1157.....	11
<u>In re: American Bank Note Holographics,</u> 127 F.Supp.2d 418 (S.D.N.Y. 2001).....	8
<u>Benton v. Telecom Network Specialists, Inc.</u> (2013) 220 Cal.App.4th 701.....	10
<u>Blum v. Stenson</u> (1984) 465 U.S. 886	15
<u>Boeing Co. v. Van Gernert</u> (1980) 444 U.S. 472	16
<u>Carrington v. Starbucks Corp.</u> (2018) 30 Cal.App.5th 504.....	11
<u>Cazares v. Saenz</u> (1989) 208 Cal.App.3d 279.....	21
<u>Class Plaintiffs v. City of Seattle</u> (9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953	6
<u>Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper</u> (1980) 445 U.S. 326, <u>rehg. den.</u> , 446 U.S. 947	14
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794.....	6, 7
<u>Evans v. Jeff D.</u> (1986) 475 U.S. 717	15
<u>Fleming v. Covidien</u> (C.D. Cal. 2011) 2011 U.S.	11
<u>Harris v. Marhoefer</u> (9th Cir. 1994) 24 F.3d 16.....	22
<u>Hensley v. Eckerhart</u> (1983) 461 U.S. 424	15

1	<u>Hernandez v. Restoration Hardware, Inc.</u>	
2	(2018) 4 Cal.5th 260.....	16
3	<u>Jennings v. Open Door Mktg. Inc.</u>	
4	(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356	12
5	<u>Ketchum v. Moses</u>	
6	(2001) 24 Cal.4th 1122.....	21
7	<u>Laffitte v. Robert Half Int’l., Inc.</u>	
8	(2016) 1 Cal.5th 480.....	16, 17, 19
9	<u>Lane v. Facebook, Inc.</u>	
10	(9th Cir. 2012) 696 F.3d 811	13
11	<u>Lealao v. Beneficial Cal., Inc.</u>	
12	(2000) 82 Cal.App.4th 19.....	14, 15
13	<u>Levy v. Toyota Motor Sales, U.S.A.</u>	
14	(1992) 4 Cal.App.4th 807.....	14
15	<u>Lubin v. The Wackenhut Corp.</u>	
16	(2016) 5 Cal.App.5th 942-943	9
17	<u>Mandujano v. Basic Vegetable Prods., Inc.,</u>	
18	541 F.2d 832 (9th Cir. 1976).....	8
19	<u>McKittrick v. Gardner</u>	
20	(4th Cir. 1967) 378 F.2d 872.....	21
21	<u>Naranjo v. Spectrum Security Services, Inc.</u>	
22	(2022) 13 Cal.5th 93. [Saunders Decl.].....	11
23	<u>In re Omnivision Techs., Inc.,</u>	
24	559 (N.D. Cal. 2008).....	19
25	<u>Paul, Johnson, Alston & Hunt v. Gaulty</u>	
26	(9th Cir. 1989 886 F.2d 268, 272).....	19
27	<u>Potter v. Pacific Coast Lumber Co.</u>	
28	(1951) 37 Cal.2d 592.....	6
	<u>Powers v. Eichen</u>	
	(9th Cir. 2000) 229 F.3d 1249.....	20
	<u>Rider v. County of San Diego</u>	
	(1992) 11 Cal.App.4th 1410.....	22
	<u>Serrano v. Priest</u>	
	(1977) 20 Cal.3d 25.....	16, 22

1	<u>Slavkov v. First Water Heater Partners I</u>	
2	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303	12
3	<u>Staton v. Boeing</u>	
4	(9th Cir. 2003) 327 F.3d 938.....	13
5	<u>In re Taco Bell Wage and Hour Actions</u>	
6	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557	11
7	<u>Van Bronkhorst v. Safeco Corp.</u>	
8	(9th Cir. 1976) 529 F.2d 943,950.....	6
9	<u>Van Kempen v. Matheson Tri-Gas, Inc.</u>	
10	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	11
11	<u>Vincent v. Hughes Air West, Inc.</u>	
12	(9th Cir. 1977) 557 F.2d 759	16
13	<u>In re Warner Communications Sec. Litig.</u>	
14	(S.D.N.Y. 1985) 618 F.Supp. 735	17, 21
15	<u>Wershba v. Apple Computer</u>	
16	(2001) 91 Cal.App.4th 224.....	6, 7, 12, 16
17	<u>White v. Experian Information Solutions, Inc.</u>	
18	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	13
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1	Statutes	
2	Cal. Rule of Court 3.769	6, 14
3	Labor Code § 203	11
4	Labor Code sections 203 and 226	11
5	Labor Code § 2699(e)(2).....	11
6	Labor Code section 2699(l)(2)	6
7		
8	Other Authorities	
9	Conte, <u>Attorney Fee Awards</u> (2d ed. 1993) § 104	17
10	Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for	
11	Judges (3d ed. 2010) at 20, available at http://	
12	www.fjc.gov/sites/default/files/2012/ClassGd3.pdf <u>Managing Class Action</u>	
13	<u>Litigation: A Pocket Guide for Judges</u> (3d ed. 2010)	13
14	H. Newberg & A. Conte, 4 <u>Newberg on Class Actions</u> (4th ed. 2002), § 11.41	6
15	Newberg, <u>Newberg on Class Actions</u> (3d ed.) § 14.03	17, 21
16		
17		
18		
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20		
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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Patricia Benton seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 234 individuals
4 who worked for defendant Northern California InAlliance and Andrea Croom (together “NCI” or
5 “Defendants”) as non-exempt employees in California during the period of January 16, 2020
6 through December 20, 2022. The proposed \$650,000 total settlement provides about \$375,550 in
7 cash payments to the Class, with an average award of about \$1,600, plus additional amounts
8 payable under PAGA. The remaining balance will cover a modest service award to Plaintiff,
9 settlement administration costs, civil penalties to the state, and reasonable attorney’s fees and
10 costs. The parties and their counsel finalized the settlement after extensive and difficult arms-
11 length negotiations overseen by an experienced and highly-regarded mediator. The Court
12 conditionally certified the Class and preliminarily approved the settlement on May 12, 2023. Since
13 then, the Court-approved notice form was mailed to the Class Members on June 27, 2023, and
14 they reacted very favorably to the settlement. As of the filing of this motion, there are no
15 objections, and no class member has requested exclusion.

16 Class Counsel secured an excellent settlement with Defendant after some two
17 years of investigation, litigation, and settlement negotiation and administration, all
18 without any compensation for services rendered or costs expended. The class notice duly
19 informed the class members that Class Counsel would request attorney’s fees not to
20 exceed 33.3% of the Gross Settlement Amount, along with reimbursement of no more
21 than \$10,000 for actual costs incurred litigating this matter. As of the filing of this
22 motion, *not one Class Member objected* to the proposed fee award. Consistent with the
23 Settlement and notice, Plaintiff now respectfully requests the Court award Class
24 Counsel's fees in the amount of \$216,450 and costs in the amount of \$10,000, as described
25 in the Declaration of Chad Saunders (“Saunders Decl.”) filed herewith. The requested
26 attorney’s fees are well within the range of reasonableness, especially considering the
27 complex and risky nature of this litigation, the contingent risk assumed, the two-plus year
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1 delay in payment and, when subjected to a lodestar crosscheck, results in a base lodestar
2 that is slightly higher than the actual fee request.

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

6 **II. BACKGROUND/LITIGATION HISTORY**

7 The details of the procedural and factual background of this matter were outlined in the
8 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about
9 February 23, 2023). To re-familiarize the Court with this litigation, Northern California InAlliance
10 ("NCI"), a non-profit organization, provides in-home care services in and around Northern California.
11 Plaintiff worked for NCI from approximately 2017 until May 20, 2020. She typically worked five days
12 per week at approximately 5.5 hours per day. Every other weekend, Plaintiff would be required to live
13 at the client's home and work a 48-hour shift. Plaintiff provided caretaking duties to NCI's clients, which
14 would also include household tasks, running errands, driving the client to appointments and taking the
15 client shopping. [Saunders Decl., ¶ 2.]

16 Plaintiff alleges a number of wage and hour violations by Defendants. First, she claims that
17 she and class members did not receive all wages due as NCI failed to pay the correct rate of pay to
18 Class Members when working overnight shifts. She also alleges meal period violations, arguing
19 NCI failed to provide legally compliant off-duty meal breaks because Class Members had to sign
20 on-duty meal period agreements even though the nature of the work exception is not applicable. She
21 also alleges NCI's failed to provide compliant off-duty rest breaks, and also did not provide accurate
22 wage statements by (1) listing cellphone reimbursements as "wages" subject to deductions for
23 payroll taxes, (2) failing to list the accurate total hours worked, and (3) failing to list meal and rest
24 break premiums when paid. [Saunders Decl., ¶ 3.]

25 Based on these allegations, on January 25, 2021, Plaintiff filed a class action complaint
26 against Defendants alleging claims for (1) minimum wages; (2) overtime wages; (3) meal period
27 violations; (4) rest break violations; (5) sick pay violations; (6) wage statement violations; (7)
28 waiting time penalties; (8) failure to maintain records; (9) unreimbursed business expenses; (10)

1 violation of the UCL; and (11) violation of the Private Attorneys General Act (“PAGA”) based on
2 the same alleged Labor Code violations. [Saunders Decl., ¶ 4.]

3 Defendants have at all times denied Plaintiff’s allegations and maintained their payroll
4 policies and procedures comply with California law, that they paid the class members all wages due,
5 including overtime wages. Defendants argued further that their meal and rest break policies are
6 fully-compliant, that they provided all employees with all required breaks on a fully compliant basis
7 (or paid the required premium wage), and that their waivers are valid. Defendants also strongly
8 contend the case cannot be maintained as any kind of class or representative action, arguing
9 determining the number of potential off the clock hours worked by each class member, or the
10 number of de facto meal period violations, etc., would result individualized issues predominating
11 and that a trial on a representative basis would be unmanageable. [Saunders Decl., ¶ 5.]

12 After Plaintiff filed his complaint, the Parties initiated discovery and also engaged in
13 numerous meet and confer discussions regarding discovery, potential law and motion, and potential
14 ADR. Ultimately, the Parties agreed to mediation and also agreed to an informal exchange of
15 information to facilitate meaningful settlement discussions. The Parties then retained Michael Loeb,
16 Esq., a respected neutral with experience mediating wage and hour class actions. In September 2022,
17 the Parties participated in a mediation with Mr. Loeb that resulted in this settlement. (Saunders
18 Decl., ¶¶ 6-7.) The Court preliminarily approved the settlement on May 12, 2023.

19 Class Notices were mailed to class members on June 27, 2023, and Class Members have
20 until August 11, 2023 to opt out or object to the proposed settlement. [Declaration of Taylor
21 Mitzner (“Mitzner Decl.”), ¶¶ 5, 8-10.]

22 **III. THE PROPOSED SETTLEMENT TERMS**

23 Under the settlement, NCI will pay \$650,000.00 into a common fund, the Gross Settlement
24 Amount or GSA. Attorney’s fees of up to \$216,450.00 (33.3% of the GSA), litigation costs of up to
25 \$10,000, settlement administration costs of no more than \$10,000, a service award to Plaintiff of no
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1 more than \$10,000, and \$30,000 for alleged civil penalties under PAGA,¹ all will be paid from the
2 GSA. The remainder of at least \$375,550 will be allocated pro rata among the Class Members based
3 on their total weeks worked during the Class Period. No portion of the GSA will revert to NCI.
4 [Saunders Decl., ¶ 8.]

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

6 The Court conditionally certified a settlement class including all persons employed by
7 Defendants in California and classified as non-exempt employees who worked for Defendants
8 during the Class Period of January 16, 2020, through December 20, 2022. The Settlement
9 Administrator ultimately mailed class notices to 234 individuals identified as members of the
10 Class. [Mitzner Decl., ¶ 5.] Nothing has changed to require reconsideration of the Court's
11 certification of the Settlement Class.

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

13 As noted, the settlement obligates NCI to pay \$650,000 to resolve the claims of the
14 Settlement Class, inclusive of attorney's fees and costs. Approximately \$375,550 from the GSA
15 will be distributed to the Participating Class Members, with additional amounts going to PAGA
16 Employees for their portion of the PAGA payment. This is a cash settlement that does not require
17 Participating Class Members to submit a claim form to receive their settlement share. Participating
18 Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty
19 percent of each settlement share will be allocated to wages and the remaining eighty percent will be
20 allocated to penalties and interest. NFS will pay any and all applicable employer-side payroll taxes
21 separately and in addition to the GSA. Subject to the Court's approval, any amounts not cashed,
22 will be forwarded to the State Controller's Unclaimed Property Fund. [Saunders Decl., ¶ 9.]

23 Each Participating Class Member will receive a share of the Net Settlement Amount based
24 on his or her total weeks worked for NFS in California during the Class Period while employed in
25 a non-exempt position. Thus, each Class Member's Individual Settlement Share will be calculated
26

27 ¹ Per PAGA, this will be allocated \$22,500 (75%) to the Labor & Workforce Development Agency, and the
28 remaining \$7,500 (25%) will go to the eligible Aggrieved Employees (as defined in the Settlement
Agreement)..

1 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium
2 wages for missed meal breaks, and potential statutory penalties under applicable law. These methods
3 are intended to ensure each Class Member receives a portion of the available settlement funds
4 corresponding to the relative value of his or her potential claims. The proposed allocation provides
5 a reasonable way to compensate Class Members based on the amount of time they worked for NFS
6 and the number of instances they missed a meal break, were not provided compensation in lieu of
7 such missed breaks, or lost wages due to the alleged regular rate miscalculation, etc. [Saunders
8 Decl., ¶10]

9 The average class payment will be over \$1,600, and the maximum class payment will be
10 about \$2,220. The average PAGA payment will be about \$32. [Mitzner, Decl., ¶¶ 13-14.]

11 **C. Settlement Administration**

12 Phoenix Settlement Administrators, as the Court-approved Settlement Administrator,
13 mailed the Notice Packet to the Class members after making all reasonable effort to ascertain
14 the best mailing address, including running each address through the National Change of
15 Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Mitzner
16 Decl., ¶¶ 3-6.] The Class Notice, previously approved by the Court, duly informed Class
17 Members of the settlement terms, including the estimated relief each Class Member will
18 receive, the amounts to be requested for attorney's fees and the class representative
19 enhancement awards, and the right to opt out of or object to the settlement. [Mitzner Decl., ¶
20 5; Exh. A.] Phoenix mailed 234 Notice Packets on June 27, 2023. [Mitzner Decl., ¶ 5.]
21 Ultimately, one Notice Packet was deemed undeliverable, representing a 99.5% success rate.
22 [Mitzner Decl., ¶ 7.] The response window for opting out of or objecting to the settlement
23 expired on August 11, 2023. [Mitzner Decl., ¶¶ 8-9.] As of the filing of this motion, Phoenix
24 has received zero requests for exclusion (for a 100% participation rate), and zero objections to
25 the settlement. No disputes have been submitted regarding the information used to calculate
26 class member settlement shares. [Mitzner Decl., ¶¶ 8-10.]

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1 **D. Release of Claims**

2 All Participating Class Members will release Defendants from all claims alleged in the
3 operative complaint, or that could have been brought based on the factual allegations in the operative
4 complaint, including PAGA claims, during the Class Period. The release is limited to the claims that
5 were actually pleaded or could have been pleaded based on the alleged facts in the operative
6 complaint. [Saunders Decl., ¶ 11.]

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

8 The Parties allocated \$30,000 from the settlement to civil penalties under PAGA, and
9 Plaintiff respectfully requests that the Court approve this amount as fair, reasonable and adequate.
10 Consistent with PAGA, \$22,500 from this amount will be paid to the LWDA as the state's share
11 of the civil penalties, and the remaining \$7,500 will be distributed to the 234_ individuals
12 eligible to receive a PAGA payment. [Mitzner Decl., ¶ 14.] As required by Labor Code section
13 2699(I)(2), Plaintiff gave notice of the settlement and the final approval hearing to the LWDA via
14 its online portal. [Saunders Decl., ¶ 12; Exh. 1.]

15 **IV. ARGUMENT**

16 The law favors settlement, particularly in class actions where substantial resources can
17 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
18 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
19 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
20 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
21 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
22 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
23 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer
24 (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud
25 or collusion, and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01;
26 Newberg, at §§ 11.22, *et seq.* Review is accomplished through a two-step process intended to
27 determine whether, under the totality of circumstances, the settlement is fair, reasonable and
28 adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

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

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

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

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

21 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
22 was reached following arm's-length negotiations presided over by Louis Marlin, Esq., a highly
23 respected and well-known mediator with extensive experience mediating wage and hour class
24 actions. [Saunders Decl., ¶ 7.] Moreover, Plaintiff and his counsel were well-informed about the
25 facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Chad Saunders have years of
26 litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-
27 qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
28 [Saunders Decl., ¶¶ 29-37.] Defendant likewise was represented by highly-qualified and

1 experienced defense counsel. Both sides advocated vigorously for their clients, and nothing
2 was "left on the table."

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

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

12 **3. The Settlement Is Fair and Reasonable Considering the Benefits** 13 **Conferred, the Case Value, and Significant Litigation Risks**

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

21 Prior to settlement, the parties engaged in extensive formal and informal discovery to
22 facilitate settlement discussions. As a result, Plaintiff reviewed payroll records, personnel
23 policies/handbooks, meal break policies, personnel files, and a random sampling of paystubs and
24 time records produced by NCI. Defendant provided documents and information reflecting the
25 estimated total number of workweeks and pay periods they worked, and average hourly pay rates,
26 among other relevant data. Plaintiff also had that information reviewed by a consulting expert to
27 assist with calculating potential violation rates and potential damages. Plaintiff's counsel is
28 confident they obtained sufficient information to enable them to understand the law and facts of this

1 case and make an informed decision regarding the proposed settlement and whether it is in the best
2 interests of the class. [Saunders Decl., ¶¶ 6, 13.]

3 Using that data, Plaintiff's experts estimated NCI's likely maximum exposure at
4 approximately \$2,352,000, including approximately \$130,000 for the unpaid wage claims, \$586,000
5 for the meal period claims, \$642,000 for the rest period claims, \$731,000 on the inaccurate wage
6 statement claims, and \$263,000 for failing to pay wages due on separation of employment.
7 [Saunders Decl., ¶ 14.] Plaintiff's counsel substantially discounted the value of these claims,
8 however, in light of the multiple and considerable risks posed by proceeding with the litigation, as
9 Defendant raised numerous defenses and vigorously defended against these claims.

10 On the unpaid wage issue, Plaintiff claims Defendants failed to pay Plaintiff and Class
11 Members the correct amount of wages on overnight shifts (i.e. staying at the client's house
12 overnight). Every other weekend, Plaintiff was required to remain at her client's home for a 48-hour
13 consecutive shift and was paid a lesser wage (\$13/hour instead of her regular \$14/hour), resulting
14 in an underpayment of both straight time and overtime wages. [Saunders Decl., ¶ 15.]

15 On the meal period violations, Plaintiff alleges and Class Members to sign on-duty meal
16 period agreements even though the nature of their duties did not meet the limited circumstances
17 where on duty meal breaks are allowed under California law. Lubin v. The Wackenhut Corp. (2016)
18 5 Cal.App.5th 942-943. Plaintiff alleges Defendants easily could have provided relief coverage to
19 permit Class Members to take off-duty meal and rest breaks, or simply paid the required premiums
20 for the on-duty meal breaks it required. In response, Defendant argued all written policies are fully
21 compliant and that it always provided the class membersemployees with the opportunity to take
22 their meal breaks and thus met the requirements imposed by California law. Per Defendant, if
23 individuals did not take a meal period, if a meal period was taken late in a shift, or lasted less than
24 the required 30 minutes, it was in violation of company policy and a multitude of individual inquiries
25 would be necessary to determine if the potential violation occurred due to an employee's personal
26 choice or for some other reason. Thus, per Defendants, class certification would be impossible on
27 this claim, and any trial under PAGA completely unmanageable. Defendant argued its on duty
28 waivers complied with California law given many of its clients require around the clock care, and

1 thus the waivers are valid and enforceable. Defendant also emphasized it paid thousand of dollars
2 in meal premiums for documented meal period violations. [Saunders Decl., ¶ 16.]

3 For the alleged rest period violations, Plaintiff alleged Defendants' policies fail to mention
4 rest breaks at all, let alone relieve Class Members of duties for a rest break in accordance with
5 California law, and that Defendants' failure to adopt a policy that authorizes and permits duty-free
6 rest breaks for every four hours or major fraction thereof is a certifiable issue. Benton v. Telecom
7 Network Specialists, Inc. (2013) 220 Cal.App.4th 701. Plaintiff further alleges numerous de facto
8 violations, as class members missed rest breaks due to work constraints and didn't receive the
9 mandated premium wage. [Saunders Decl., ¶ 17.]

10 On the other hand, as with meal breaks, Defendants argued the written policies complied
11 with California law and authorized and permitted employees to take all required rest breaks.
12 Defendant further contended that, since it is not required to maintain a record of rest periods, any
13 evidence of a failure to authorize rest periods and/or discouragement from taking rest periods would
14 be purely anecdotal and since individual issues would predominate and class certification would be
15 impossible. Defendants also may contend that it is only liable if Plaintiff can prove, on a shift-by-
16 shift basis, employees actually did not take a rest break. This arguably would make a proof of
17 damages more difficult since the number of instances a Class Member was denied a rest period
18 specifically due to the absence of a compliant policy, as opposed to some other reason, is impossible
19 to reliably quantify since employers are not required to maintain records of rest periods. Thus, it is
20 entirely possible a jury or the Court could decline to award any amounts for missed or non-compliant
21 rest periods. [Saunders Decl., ¶ 18.]

22 Plaintiff next alleges Defendants' wage statements state the incorrect total hours worked.
23 because overtime hours worked are broken down into two separate line items on the wage statements,
24 one showing the base hourly rate and the second showing the ½ hour premium. Both lines, however,
25 reflect the total number of overtime hours worked, which are then are included in the the tabulation of
26 total hours worked; in other words, the overtime hours are double counted. Further, NCI's wage
27 statements state that it deducts \$15 for expense reimbursement from each pay period, but which are not
28 deductions from the employee's paycheck at all but but non-taxable reimbursement that should not be

1 listed as a deduction. Naranjo v. Spectrum Security Services, Inc. (2022) 13 Cal.5th 93, 120. (“Section
2 226.7 requires an employer to pay ‘one additional hour of pay’ for each day in which a lawful break is
3 not provided. In that situation, both that additional credited hour of work and the corresponding premium
4 pay owed must be reported on the wage statement. Failure to do so deprives the employee of information
5 needed to evaluate whether the payment is correct, and in so doing results in injury under the terms of
6 the statute.”) [Saunders Decl., ¶ 19.]

7 The derivative claims under Labor Code sections 203 and 226 are derivative of the primary
8 unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional
9 risks posed by the need to take into account the discretionary nature of such awards and the “good
10 faith” and other defenses available to Defendants. Amaral v. Cintas Corp. No. 2 (2008) 163
11 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203
12 even though class prevailed on underlying claim for failure to pay living wages). Thus, these claims
13 also are subject to additional defenses. These considerations resulted Plaintiff applying in substantial
14 discounts to the value of these claims. [Saunders Decl., ¶ 20.]

15 As far as potential PAGA liability, the theoretical penalties totaled at least \$2.4 million
16 should Plaintiff prevail on all claims and establish the alleged minimum wage violations at issue.
17 [Saunders Decl., ¶ 21.] As with the class claims, Plaintiff discounted the potential PAGA penalties
18 for the multi-layered defenses proffered by Defendants on the merits, and further discounted these
19 claims since the Court possesses wide discretion to reduce such penalties even if Plaintiff ultimately
20 prevailed. Labor Code § 2699(e)(2); Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS
21 154590, *8-9 (court reduced the potential penalties by over 82% after a bench trial); Carrington v.
22 Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of
23 just \$5 per pay period, a 90% reduction, which decision was upheld on appeal); In re Taco Bell
24 Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties
25 denied after trial).

26 Accordingly, the Parties allocated \$30,000 to PAGA penalties, which amount is reasonable
27 and in line with comparable settlements in other class actions in California. Van Kempen v.
28 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final

1 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
2 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
3 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
4 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
5 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
6 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018)
7 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where
8 "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not
9 objected to the settlement").

10 Thus, Plaintiff and her counsel discounted the value of the class claims consistent with the
11 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
12 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
13 real and substantial risks – settlement on the proposed terms and without prolonged and costly
14 litigation was in the best interests of the class. The overall \$305,000 recovery represents a
15 significant percentage of Defendants' potential exposure, and is roughly 27-28% of the theoretical
16 maximum value of the class claims (\$650,000/\$2,352,000). Given Defendants' multi-layered
17 defenses and all other potential risks of continued litigation, a total recovery for the class of
18 \$650,000, which will result in average award of some \$1,600 per class member, plus additional
19 sums under PAGA, is a significant result well within the range of reasonableness considering all
20 potential outcomes, and it will provide direct monetary awards to all Class Members without further
21 delay. [Saunders Decl., ¶¶ 22-24.]

22 Importantly, the mere fact that a settlement does not provide the same recovery as might be
23 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
24 Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement
25 process...even if the relief afforded by the proposed settlement is substantially narrower than it
26 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
27 public interest may indeed be served by a voluntary settlement in which each side gives ground in
28 the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000)

1 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount to only a fraction of
2 the potential recovery does not, in and of itself, mean that the proposed settlement is grossly
3 inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal.
4 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
5 though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc.
6 (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
7 different from the question whether the settlement is perfect in the estimation of the reviewing
8 court”). Importantly as well, the proposed settlement is non-reversionary and will provide
9 immediate benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098;
10 c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed.
11 2010) at 20, available at [http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf). (reversionary
12 provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his
13 counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for
14 the Class.

15 **V. PLAINTIFF’S ENHANCEMENT AWARD**

16 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
17 \$10,000 for her service in bringing these claims on behalf of the Class. The request is reasonable
18 given the risks she undertook on behalf of the Class Members, and by contacting and retaining
19 counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent
20 Class Members, while shouldering the risk of being liable for Defendant’s litigation costs.
21 Plaintiff also exposed herself to unwanted notoriety related to filing a public lawsuit
22 (discoverable even through a simple google search) for the benefit of other employees, placing
23 himself at risk of discrimination by future prospective employers. As set forth in more detail in
24 her declaration filed herewith, among taking many other actions assisting in the successful
25 litigation of this case, Plaintiff provided substantial factual information and documents to
26 counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and
27 kept abreast of all significant developments. [Declaration of Patricia Benton, ¶¶ 2-9; Saunders
28 Decl., ¶ 25.] Accordingly, the requested enhancement payments to Plaintiff is appropriate and

1 justified as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting
2 cases awarding class representatives service and incentive payments ranging from \$2,000 to
3 \$25,000).

4 **VI. SETTLEMENT ADMINISTRATION COSTS**

5 The settlement provides for a payment to Phoenix for its services as the Settlement
6 Administrator. As set forth in the Declaration of Taylor Mitzner, Phoenix has performed and will
7 continue to perform its required duties through final distribution of the settlement funds and
8 incurred \$8,000 in fees and expenses. [Mitzner Decl., ¶ 16; Exh. B.] Plaintiff accordingly requests
9 the Court approve payment of \$8,000 to Phoenix from the GSA. [Saunders Decl., ¶ 26.]

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

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

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

24 As addressed in detail above, at the time the parties reached the tentative settlement
25 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
26 some or all the claims would not be certified for class treatment, as Defendants had strong
27 arguments that its compensation policies were legal and properly compensated the class
28 members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the

1 merits, it undoubtedly would have taken several years to realize any recovery while they
2 pursued class certification, trial, and an almost certain appeal. [Saunders Decl., ¶¶ 15-20.]

3 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to
4 obtain, and the settlement provides substantial cash payments to Class Members, with an
5 average award of over \$1,600, and with a maximum award of over \$2,200. Importantly as
6 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
7 filing of this motion, there are no objections and no opt outs to the settlement. [Mitzner Decl.,
8 ¶¶ 8-9.]

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

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

19 As part of the Settlement, NCI agreed not to object to an award of no more than 33.3%
20 of the GSA for attorney's fees, or \$216,450, and up to \$10,000 in reimbursement for litigation
21 costs and expenses. Such a fee is commensurate with what the market would provide for
22 similar services and the Court therefore can most certainly enforce the agreement. As
23 California's Court of Appeal has instructed:

24 Given the unique reliance of our legal system on private litigants to enforce
25 substantive provisions of law through class and derivative actions, attorneys
26 providing the essential enforcement services must be provided incentives roughly
27 comparable to those negotiated in the private bargaining that takes place in the
legal marketplace, as it will otherwise be economic for defendants to increase
injurious behavior.

28 Lealao, 82 Cal.App.4th at 47.

1 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
2 arms-length bargaining regarding relief to the Class was completed. [Saunders Decl.,
3 ¶ 27.] The requested fee and cost award was a product of these arms-length negotiations and
4 fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As
5 a result, the fee agreed to by the parties should be approved.

6 C. **Class Counsel's Fees are Justified When Calculated as a Percentage of the**
7 **Common Fund**

8 In approving fee applications, courts typically apply either a percentage-of-recovery
9 method or the lodestar method. Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489;
10 Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other
11 grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California
12 Supreme Court recently recognized the advantages and equities of calculating attorney's fees
13 using the percentage-of-the-common-fund method in another wage-and-hour case:

14 The recognized advantages of the percentage method-including relative ease of
15 calculation, alignment of incentives between counsel and the class, a better
16 approximation of market conditions in a contingency case, and the
17 encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation convince us the percentage method is a
valuable tool that should not be denied our trial courts.

18 Laffitte, 1 Cal.5th at 503 (citations omitted).

19 Indeed, both California and federal courts have long recognized an appropriate method
20 for determining the award of attorney's fees is based on a percentage of the total value of
21 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
22 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
23 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
24 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
25 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

26 In determining a reasonable common fund fee award, courts should also consider the
27 fact that fees serve as an economic incentive for lawyers to bring class action litigation to
28 achieve increased access to the judicial system for meritorious claims and to enhance

1 deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without
2 prosecution on a contingent basis and use of the class action mechanism, the courthouse door
3 would effectively be closed to most class members due to the relatively small size of their
4 individual claims in relation to the enormous time and cost associated with class action
5 litigation.

6 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
7 this action of no more than 33.3% of the GSA, and specifically \$216,450. The percentage
8 requested is justified for the reasons set forth further below, and comports with fee awards
9 calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements
10 shows that courts have historically awarded fees in the range of 20 to 50 percent, depending
11 upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y.
12 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range
13 from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14
14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund
15 in order to assure that the fees do not consume a disproportionate part of the recovery
16 obtained for the class, although somewhat larger percentages are not unprecedented.").

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

18 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
19 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
20 an objective measure of the work performed into the calculation of a reasonable attorney fee."
21 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 250.8 hours of time on this matter,
22 resulting in a modest and very reasonable lodestar of \$201,510.00.

23 As is fully detailed in the Saunders Declaration, Class Counsel's efforts included: (1)
24 extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal
25 research, research into similar claims and claims against other employers in the same industry, and
26 attempts to locate and contact other employees of the Defendant; (2) drafting a PAGA notice
27 letter; (3) drafting the initial complaint and related documents; (4) case management, including
28 communications with defense counsel, meeting and conferring/preparing case management

1 statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and
2 informal discovery needed for meaningful settlement discussions; (6) engaging in substantial
3 informal discovery, including propounding informal discovery “requests” and reviewing
4 documents and other information produced; (7) working with a consulting expert on the analysis
5 of Defendant’s production; (8) drafting a mediation brief and accompanying damages model after
6 review and analysis of defendant’s formal and informal discovery production; (9) attending an all-
7 day mediation; (10) negotiating and drafting the settlement agreement and related documents; (11)
8 drafting the motion for preliminary approval, and attending the hearing; (12) administration of the
9 settlement, including communications with the Settlement Administrator and settlement class
10 members; (13) drafting the motion for reconsideration as to the enhancement award, (14) final
11 approval and attorney’s fees, and attending the final approval hearing; and (15) extensive
12 communications with the Plaintiff regarding case status, case investigation and document review,
13 mediation, and settlement terms. Additionally, Class Counsel will incur additional time following
14 final approval to, inter alia, respond to class member inquiries, attend to distribution of settlement
15 funds, and on the compliance hearing. [Saunders Decl., ¶ 28, Exh. 2.]

16 In pursuing this matter, Class Counsel incurred total attorney’s fees of \$201,510.00,
17 and the lodestar is based on an eminently reasonable number of hours worked to litigate this
18 matter to a successful conclusion (250.8 attorney hours), and the requested attorney hourly rates
19 are reasonable and comport with hourly rates charged by other attorneys with similar experience in
20 this practice area in California. On a lodestar basis, the fee request of \$216,450 results in a
21 multiplier of 1.07, which is a modest enhancement entirely in line with California law.
22 [Saunders Decl., ¶¶ 28-42.] Indeed, California courts routinely approve multipliers in the in the
23 2-4 range to compensate for the time and risk of class action cases. Chavez v. Netflix, Inc.
24 (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier
25 of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher.");
26 City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of
27 2.34).) Class Counsel submits that the requested 1.07 multiplier effectively operates to show
28 that the percentage fee request is reasonable considering the challenges presented in this

1 contingency fee matter, and appropriately compensates Class Counsel for the contingent risk
2 assumed and delay in payment during the 2+ years counsel has been representing Plaintiff.
3 Thus, the multiplier results in a fee constituting a fair return on the contingency.

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

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

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

19 **1. The Results Achieved.**

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

1 a substantial percentage of the maximum value of the amount the Class might have obtained if
2 it had tried the case and recovered on all theories seeking recovery of wages and penalties.
3 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
4 recovery does not per se render the settlement inadequate or unfair." In re Omnivision Techs.,
5 Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

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

7 At the time of filing the complaint, Class Counsel recognized that they would have to
8 expend a substantial amount of time and advance significant costs to prosecute a statewide
9 class action suit with no guarantee of compensation or reimbursement, in the hope of
10 prevailing against a sophisticated company represented by first-rate attorneys. Despite
11 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
12 of class certification and the ability to prove class-wide and individual damages. In light of
13 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would
14 dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's
15 firm, not receiving any compensation for several years while simultaneously advancing
16 litigation costs posed considerable risk and difficulty. [Saunders Decl., ¶¶ 43-44.]

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

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

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

27 There is a substantial difference between the risk assumed by attorneys being paid
28 by the hour and attorneys working on a contingent fee basis. The attorney being paid by

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

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

17 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
18 the investment of unnecessary time in a case, and the adverse resolution of any one of several
19 difficult issues present in this matter could have doomed the entire effort. As discussed, the
20 attorney's fees in this case were not only contingent but fairly risky, and there was always a
21 distinct possibility Plaintiff's counsel would receive nothing for any number of reasons.
22 [Saunders Decl., ¶¶ 43-44.] Accordingly, the contingent nature of the fee and the financial
23 burdens on Class Counsel also support the fee requested.

24 5. Awards in Other Cases

25 As discussed, the attorney's fees requested by Class Counsel are within the range of
26 fees awarded in comparable cases, as California courts regularly approve class action fee
27 awards amounting to 1/3 of a common fund, as approved by the California Supreme Court in
28 Lafitte. Additionally, review of class action settlements over the past 10 years shows that the

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

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

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

23 As explained in the Saunders Declaration, Class Counsel incurred a total of
24 \$12,305.74 in expenses incurred in connection with this litigation. These expenses include
25 the amounts paid for court filing fees, service of process, expert fees, postage, and
26 mediation fees, all of which are costs normally billed to and paid by the client. These
27 costs were reasonably incurred in the prosecution of this matter, and were necessary for
28 the successful prosecution of the case. However, the Settlement Agreement caps the

1 amount of reimbursement for litigation costs at \$10,000 only and, accordingly, Plaintiff's
2 counsel requests reimbursement for costs in the amount of \$10,000. [Saunders Decl., ¶¶
3 45-46.]

4 **VIII. CONCLUSION**

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

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13 Dated: August 24, 2023

CROSNER LEGAL, P.C.

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16 Zachary M. Crosner
17 Jamie K. Serb
18 Chad Saunders
19 Attorneys for Plaintiff Patricia Benton
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