MICHAEL R. CROSNER (SBN 41294)
mike@crosnerlegal.com
ZACHARY M. CROSNER (SBN 272295)
zach@crosnerlegal.com
JAMIE K. SERB (SBN 289601)
jamie@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Tel: (310) 496-5818
Fax: (310) 510-6429

Attorneys for Plaintiffs and the Class

[Additional Counsel on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

MATTHEW CORREA, ALEXANDER HERNANDEZ, and JOHN MARTIN GARCIA, as individuals and on behalf of all others similarly situated, and as private attorney generals, Plaintiffs, vs. FEDEX SUPPLY CHAIN, INC., a Delaware corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. CIVDS2023369 **Assigned for All Purposes to:** **Hon. David Cohn** **Dept. S-26** **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 Zachary M. Crosner, Larry W. Lee, Simon L. Yang, William L. Marder; Matthew Correa, Alexander Hernandez, John Martin Garcia, and Taylor Mitzner; [Proposed] Order** Date: December 22, 2022 Time: 10:00 a.m. Dept.: S-26

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile (213) 488-6554

POLARIS LAW GROUP
William L. Marder (State Bar No. 170131)
bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile (831) 634-0333

Attorneys for Plaintiffs and the Class

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

I. INTRODUCTION 1

II. BACKGROUND 2

III. PROPOSED SETTLEMENT TERMS 4

A. Certification of the Settlement Class 4

B. The Benefit Conferred on the Settlement Class 5

C. Settlement Administration 6

D. Release of Claims 7

E. PAGA and Notice to the LWDA 7

IV. ARGUMENT 7

A. The Proposed Settlement Merits Final Approval 8

1. The Settlement Is the Product of Arm's-Length, Informed Negotiations 9

2. The Class Reacted Favorablv to the Settlement 9

3. The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case Value, and Significant Litigation Risks 10

V. PLAINTIFF'S ENHANCEMENT AWARDS 14

VI. SETTLEMENT ADMINISTRATION COSTS 14

VII. ATTORNEY'S FEES AND COSTS 15

A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved 15

B. The Requested Fee Award Is Reasonable and Appropriate 16

C. Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund 17

D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request 18

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. 20

1. The Results Achieved. 20

2. Class Counsel Bore Considerable Risk. 21

3. The Skill Required and the Quality of Work. 21

4. The Contingent Nature of the Fee and Risk Assumed. 22

5. Awards in Other Cases. 23

F. Class Counsels' Costs and Expenses are Reasonable. 23

VIII. CONCLUSION 23

TABLE OF AUTHORITIES

Page(s)

Cases

7-Eleven Owners for Fair Franchising v. Southland Corp.
(2000) 85 Cal.App.4th 1135 13

Amaral v. Cintas Corp. No. 2
(2008) 163 Cal.App.4th 1157. [Crosner Decl..] 11

In re: American Bank Note Holographics,
127 F.Supp.2d 418 (S.D.N.Y. 2001)...9

Augustus v. ABM Security Services, Inc.
(2016) 2 Cal.5th 257 11

Blum v. Stenson
(1984) 465 U.S. 886..16

Boeing Co. v. Van Gernert
(1980) 444 U.S. 472..17

Carrington v. Starbucks Corp.
(2018) 30 Cal.App.5th 504 12

Cazares v. Saenz
(1989) 208 Cal.App.3d 279 22

Class Plaintiffs v. City of Seattle
(9th Cir. 1992) 955 F.2d 1268, cert. denied, 506 U.S. 953...7

Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper
(1980) 445 U.S. 326, rehg. den. 446 U.S. 947..15

Dunk v. Ford Motor Co.
(1996) 48 Cal.App.4th 1794 8

Evans v. Jeff D.
(1986) 475 U.S. 717..16

Ferra v. Loews Hollywood Hotel, LLC
(2021) 11 Cal.5th 858 (2021)...10, 11

Fleming v. Covidien
(C.D. Cal. 2011) 2011 U.S..12

Harris v. Marhoefer
(9th Cir. 1994) 24 F.3d 16 23

Hensley v. Eckerhart
(1983) 461 U.S. 424 16

Hernandez v. Restoration Hardware, Inc.
(2018) 4 Cal.5th 260 17

Jennings v. Open Door Mktg. Inc.
(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356 12

Ketchum v. Moses
(2001) 24 Cal.4th 1122 22

Laffitte v. Robert Half Int'l., Inc.
(2016) 1 Cal.5th 480 ....17, 18, 20

Lane v. Facebook, Inc.
(9th Cir. 2012) 696 F.3d 811 13

Lealao v. Beneficial Cal., Inc.
(2000) 82 Cal.App.4th 19 ....15, 16

Levy v. Toyota Motor Sales, U.S.A.
(1992) 4 Cal.App.4th 807 15

Mandujano v. Basic Vegetable Prods., Inc.,
541 F.2d 832 (9th Cir. 1976) 9

McKittrick v. Gardner
(4th Cir. 1967) 378 F.2d 872 22

In re Omnivision Techs., Inc.,
559 (N.D. Cal. 2008)..................21

Paul, Johnson, Alston & Hunt v. Graulty
(9th Cir. 1989 886 F.2d 268, 272) 20

Potter v. Pacific Coast Lumber Co.
(1951) 37 Cal.2d 592 8

Powers v. Eichen
(9th Cir. 2000) 229 F.3d 1249 22

Rider v. County of San Diego
(1992) 11 Cal.App.4th 1410 23

Serrano v. Priest
(1977) 20 Cal.3d 25 ....17, 23

Slavkov v. First Water Heater Partners I
(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 12

In re Taco Bell Wage and Hour Actions
(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 12

Van Bronkhorst v. Safeco Corp.
(9th Cir. 1976) 529 F.2d 943,950 7

Van Kempen v. Matheson Tri-Gas, Inc.
(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182....................12

Vincent v. Hughes Air West, Inc.
(9th Cir. 1977) 557 F.2d 759 ....*17*

In re Warner Communications Sec. Litig.
(S.D.N.Y. 1985) 618 F.Supp. 735....................18

Wershba v. Apple Computer
(2001) 91 Cal.App.4th 224 ....8, 13, 17

White v. Experian Information Solutions, Inc.
(C.D. Cal. 2011) 803 F.Supp.2d 1086 13

RULE, CODES

Rule

Cal. Rule of Court § 3.769....................8, 15

Labor Code

Labor Code §§ 201-204, 246 2

Labor Code §§ 201, et seq. 11

Labor Code § 203....................11

Labor Code § 226....................2, 3

Labor Code §§ 226.7, 512....................2

Labor Code § 226.7....................3

Labor Code § 246....................3

Labor Code § 510....................3

Labor Code §§ 510, 1194, and 1194.2....................3

Labor Code §§ 2698, *et seq*. 2

Labor Code § 2699(f)....................12

Labor Code § 2699(*l*)(2) 7

OTHER AUTHORITIES

Conte, Attorney Fee Awards (2d ed. 1993) § 104 17

Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010), available at http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf 13

litigation. H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41 7

Newberg, Newberg on Class Actions (3d ed.) § 14.03 18

Bus. & Prof. Code §§ 17200, *et seq*. 2, 3

Diversity Law 9, 19

Polaris Law 9, 19

Unfair Competition Law 3

I. INTRODUCTION

Plaintiff and Class Representatives Matthew Correa, Alexander Hernandez, and John Martin Garcia seek final approval of a non-reversionary class action settlement resolving wage and hour claims on behalf of 1,248 individuals who worked for FedEx Supply Chain, Inc. ("FedEx" or "Defendant") as non-exempt employees in California during the class period, including; (a) the Sick Pay Class and Additional Hour Class, which include 661 and 585 individuals respectively who allege they received sick pay and/or break premium pay at the incorrect regular rate during the period of August 14, 2018 to May 9, 2022, and (b) the Moreno Valley Class of 359 individuals employed at FedEx's Moreno Valley facility during the period of July 1, 2019 to May 9, 2022, and who allege they lost time and pay as a result of being required to undergo extensive security checks "off the clock."

The proposed $1,400,000 total settlement provides about $797,500 in cash payments to the Class, with an average awards ranging from $805 to $932, depending on class membership. The remaining balance will cover a modest service awards to Plaintiffs, settlement administration costs, civil penalties to the state, and reasonable attorney's fees and costs. The parties and their counsel finalized the settlement after extensive and difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved the settlement on August 12, 2022. Since then, the Court-approved notice form was mailed to the Class Members on October 26, 2022, and they reacted very favorably to the settlement. No Class Members requested exclusion, and there are no objections.

Additionally, Class Counsel secured an excellent settlement with FedEx after some two of years of investigation, litigation, and settlement negotiation and administration, all without any compensation for services rendered or costs expended. The class notice duly informed the class members that Class Counsel would request attorney's fees not to exceed 35% of the Gross Settlement Amount, or $490,000, along with reimbursement of no more than $25,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not one Class Member objected* to the proposed fee award. Consistent with the Settlement and notice, Plaintiffs now respectfully request the Court award Class Counsel's fees in the amount of $490,000 and costs in the amount of $17,507.45, as described in the Declarations of Zachary M. Crosner ("Crosner Decl."), Simon L. Yang ("Yang Decl."), Larry W. Lee ("Lee Decl."), and William L. Marder ("Marder Decl."), filed herewith. The requested attorney's fees are well within the range of reasonableness, especially considering the complex and risky nature of this litigation, the contingent risk assumed, and the two-plus year delay in payment and, when subjected to a lodestar crosscheck, result in a base lodestar that is slightly higher than the actual fee request.

Accordingly, on behalf of themselves and the Settlement Class, Plaintiffs respectfully requests the Court grant this motion, give full and final approval to the settlement, grant Class Counsels' request for attorney's fees and costs, and enter judgment accordingly.

II. BACKGROUND

The details of the procedural and factual background of this matter were outlined in the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about July 21, 2022). To re-familiarize the Court with this litigation, Plaintiff Correa filed a class and PAGA representative action complaint in this Court against Defendant FedEx Supply Chain, Inc. asserting the following causes of action: (1) Violation of Lab. Code §§ 201-204, 246; (2) Violation of Lab. Code §§ 226.7, 512; (3) Violation of Lab. Code § 226; (4) Violation of Bus. & Prof. Code §§ 17200, *et seq*.; and (5) Violation of Lab. Code §§ 2698, *et seq*. Correa worked as a forklift driver for FedEx from December 2019 to October 2020 at its Rialto location. He alleges FedEx underpaid both sick pay and break premiums by failing to account for non-discretionary, non-hourly pay (such as shift differentials, incentive bonuses, etc.) and accordingly did not pay such wages at the "regular rate of compensation." He also alleged FedEx's underpayment of such wages resulted in wage statement violations and failure to pay wages on separation of employment. [Crosner Decl., ¶ 2.]

Subsequently, Plaintiffs Hernandez and Garcia filed a class action against FedEx in Riverside County Superior Court alleging claims for: (1) Recovery of Unpaid Minimum Wages and Liquidated Damages - Labor Code §§ 510, 1194, and 1194.2; (2) Recovery of Unpaid Overtime – Labor Code § 510; (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof – Labor Code § 226.7; (4) Failure to Provide Rest Periods or Compensation in Lieu Thereof – Labor Code § 226.7; (5) Failure to Pay Sick Time Benefits – Labor Code § 246; (6) Failure to Provide Accurate Wage Statements – Labor Code § 226; (7) Failure to Timely Pay Wages During Employment and Upon Separation of Employment; (8) Failure to Maintain Accurate Records; and (9) Violation of the Unfair Competition Law – Bus. & Prof. Code § 17200, et seq. [Crosner Decl., ¶ 3.]

Hernandez and Garcia worked in FedEx's Moreno Valley location that primarily handled the shipping of Phillips Sonicare electric toothbrushes. Due to the high value of the product, FedEx required employees at the Moreno Valley facility to submit to extensive security searches, requiring the removal of belts, shoes, emptying pockets, and passing through a metal detector, as well as thorough bag searches. Since they were not clocked in, Plaintiffs allege they lost several minutes of compensable time each shift both undergoing security checks and then waiting in line to clock in. Plaintiffs further allege the security checks rendered meal breaks non-compliant and prevented employees from leaving the premises, or even going outside, during rest breaks. [Crosner Decl., ¶ 4.]

FedEx has at all times denied Plaintiffs' collective allegations and maintained it properly paid all wages due for both sick pay and break premiums, that it paid employees at the Moreno Valley facility an extra 5 minutes per shift to account for security checks, and that its investigation suggests the security checks lasted considerably less than 5 minutes per day. FedEx also argued its time records reflect employees in Moreno Valley typically clocked meal periods lasting over 30 minutes even accounting for possible security checks. Additionally, FedEx strongly contends the case cannot be maintained as any kind of class or representative action, arguing that resolution of the security check issue would require resolution of innumerable individual issues and thus class certification would be improper and trial would be unmanageable. [Crosner Decl., ¶ 5.]

Since Plaintiffs filed their respective complaints, the Parties engaged in meet and confer discussions regarding discovery, potential law and motion, and the merits of the case, and ultimately agreed to attempt early global mediation. They then engaged in significant informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. The Parties then engaged Michael Loeb, a respected mediator with extensive wage and hour class action experience and, on February 9, 2022, participated in a full day mediation with Mr. Loeb that resulted in the proposed settlement. [Crosner Decl., ¶¶ 6-7.] This Court preliminarily approved the settlement on August 12, 2022.

Class Notices were mailed to class members on October 26, 2022, with a 45-day window (to December 12, 2022) for class members to opt out or object to the proposed settlement. [Declaration of Taylor Mitzner ("Mitzner Decl."), ¶ 12.]

III. PROPOSED SETTLEMENT TERMS

Under the settlement, FedEx will pay $1,400,000.00 into a common fund, the Gross Settlement Amount or GSA. Attorney's fees of up to 35% of the GSA ($490,000.00), litigation costs of up to $25,000 (only $17,507.45 is requested), enhancement awards of $10,000 each for the plaintiffs ($30,000 total), settlement administration costs of no more than $15,000, and a payment of $50,000 for PAGA penalties (of which $37,500 will go to the Labor & Workforce Development Agency for its share of the PAGA penalties and $12,500 will be distributed to eligible Class Members), all will be paid from the GSA. The remainder of approximately $797,542.55 will be allocated among the Participating Class Members based on their total weeks worked during relevant Class Periods. No portion of the GSA will revert to FedEx. [Crosner Decl., ¶ 8.]

A. Certification of the Settlement Class

The Court conditionally certified a settlement class defined to include (a) the Sick Pay Class consisting of all individuals who worked for FedEx as a non-exempt employee in California from August 14, 2018 to May 9, 2022 and received sick pay in the same week they earned non-discretionary incentives, shift differentials, or premium payments; (b) the Additional Hour Class consisting of all individuals who worked for FedEx as a non-exempt employee in California from August 14, 2018 to May 9, 2022 and received break premium pay in the same week they earned non-discretionary incentives, shift differentials, or premium payments; and (c) the Moreno Valley Class consisting all individuals employed by FedEx at the at the Moreno Valley warehouse from July 1, 2019, to May 9, 2022. The Settlement Administrator ultimately mailed class notices to 1,248 individuals identified as members of the Class. [Mitzner Decl., ¶ 6.] Nothing has changed to require reconsideration of the Court's certification of the Settlement Class.

B. <u>The Benefit Conferred on the Settlement Class</u>

As noted, the settlement obligates FedEx to pay $1,400,000 to resolve the Settlement Classes' claims, inclusive of attorney's fees and costs. Approximately $797,542.55 from the GSA will be distributed to the Participating Class Members, with an additional $12,500 distributed to those individuals eligible for a PAGA payment. This is a cash settlement that <u>does not</u> require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to penalties and interest. FedEx will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash his or her settlement check), plus interest, will be forwarded to the State Controller's Unclaimed Property Fund. [Crosner Decl., ¶ 9.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for FedEx in California during the applicable Class Period(s) while employed in a non-exempt position at the Moreno Valley location, and/or for those work weeks where a class member received sick pay or break premium pay at the incorrect rate. With respect to Overlapping Workweeks where a Moreno Valley Class Member would also qualify as a Sick Pay Class Member or Additional Hour Class Member, such workweeks will be weighted as 1.5 workweeks for purposes of calculating the Moreno Valley Class Member's Individual Settlement Share. Thus, each Class Member's Individual Settlement Share will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal breaks, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for FedEx at the Moreno Valley location and had their time and pay impacted by security checks, as well as the number of instances for all Class Members where they received either sick pay or break premium pay at the wrong hourly rate due to alleged regular rate miscalculations. [Crosner Decl., ¶ 10.]

For the Sick Pay Class, the average award is $812.82 and the maximum award is $1,848.39, based on $8.27 net per work week. For the Additional Hour Class, the average award is $805.31 and the maximum award is $1,848.39, based on $8.27 net per work week. For the Moreno Valley Class, the average award is $932.35 and the maximum award is $2,417.26, based on $8.29 net per work week, and Moreno Valley Class members who also are members of the other two classes receiving $12.41 per week (1.5x the base rate) for all work weeks with sick pay and/or additional non-hourly pay. The average PAGA award is about $10.02, based on $0.81 per pay period. [Mitzner Decl., ¶ 16.]

C. <u>Settlement Administration</u>

Phoenix Settlement Administrators, as the Court-approved Settlement Administrator, mailed the Notice Packet to the Class members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Mitzner Decl., ¶¶ 3-7.] The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms, including the estimated relief each Class Member will receive, the amounts to be requested for attorney's fees and the class representative enhancement awards, and the right to opt out of or object to the settlement. [Mitzner Decl., Exh. A.] Phoenix mailed 1,248 Notice Packets on October 26, 2022. [Mitzner Decl., ¶ 6.] Ultimately, 10 Notice Packets were deemed undeliverable, representing a 99.2% success rate. [Mitzner Decl., ¶ 8.] The 45-day response window for objecting to the settlement expires on December 12, 2022. [Mitzner Decl., ¶ 12.] As of the filing of this motion, Phoenix has received no requests for exclusion, and zero objections to the settlement. No disputes have been submitted regarding the information used to calculate class member settlement shares. [Mitzner Decl., ¶¶ 9-11.] Since the notice period has not yet closed, Plaintiffs will submit a supplemental declaration updating the Court on the status of administration prior to the December 22, 2022 hearing.[1]

D. Release of Claims

All Participating Class Members will be deemed to release FedEx from all claims alleged in the operative Second Amended Complaint ("SAC"), or that could have been brought based on the allegations in the SAC, including PAGA claims, for the class period of August 14, 2018 to May 9, 2022 for the Sick Pay and Additional Hour Classes, and July 1, 2019 to May 9, 2022 for the Moreno Valley Class. The releases are limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative SAC. [Crosner Decl., ¶ 11.]

E. PAGA and Notice to the LWDA

As noted, the Parties allocated $50,000 from the GSA to resolution of Plaintiffs' claims under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and adequate. Consistent with PAGA, $37,500 of this amount will be paid to the LWDA as the state's share of the civil penalties, and the remainder of $12,500 will be distributed to those Class Members eligible to receive a PAGA payment. As required by Labor Code section 2699(*l*)(2), Plaintiffs notified the LWDA of the settlement and the final approval hearing via its online portal. [Crosner Decl., ¶ 12; Exh. 1.]

IV. ARGUMENT

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v.

[1] Defendant did not timely provide the class list to Phoenix which delayed the mailing.

Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly compromised, the settlement of a class action requires court approval. Cal. Rule of Court 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq*. Review is accomplished through a two-step process intended to determine whether, under the totality of circumstances, the settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

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

A. The Proposed Settlement Merits Final Approval

The proposed settlement of this action warrants final approval under the standards summarized above. The settlement is fair, reasonable and adequate, and represents a favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by the class members, as there were no objections and zero class members have requested exclusion, for a 100% participation rate.

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

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by Michael Loeb, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Crosner Decl., ¶ 7.] Moreover, Plaintiffs and their counsel were well-informed about the facts and the law. [Crosner Decl., ¶ 6.] Plaintiffs' counsel Zachary M. Crosner, and Jamie Serb of Crosner Legal, P.C., Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C., and William L.Marder of Polaris Law Group, all have years of litigation experience, including litigating wage and hour class actions. Plaintiffs' counsel is well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Crosner Decl., ¶¶ 26-34; Yang Decl., ¶¶ 3-6; Lee Decl., ¶¶ 6-8; Marder Decl., ¶¶ 5-12.] Defendant FedEx likewise was represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients and nothing was "left on the table."

Plaintiffs' counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class.

2. The Class Reacted Favorablv to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and not a single class member has requested exclusion out of 1,248 settlement class members. [Mitzner Decl., ¶¶ 9-10.] As many courts recognize, class member reaction to the settlement is one of the most important factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy") (internal quotation marks omitted).

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

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

Prior to settlement, the parties engaged in extensive informal discovery to facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information regarding FedEx's payroll practices, pay stubs and time records for a sampling of class members, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown, work weeks, rates of pay, and other information used to formulate a damages model. Plaintiffs' counsel is confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Crosner Decl., ¶ 6.]

Using that data, Plaintiffs ran various calculations and estimated FedEx's likely maximum exposure on the class claims at approximately $9,536,500, including $1,536,500 on the meal break claims (with about $8,500 of that total for the regular rate miscalculation), $2,083,000 on the rest break claims, $1,607,000 on the wage statement claims, $2,834,000 on the waiting time penalty claims, $58,000 on the underpaid sick pay claims, and $1,418,000 on the security check "off the clock" claims. Plaintiffs' counsel substantially discounted the value of these claims, however, in light of the multiple and considerable risks posed by proceeding with the litigation. [Crosner Decl., ¶ 13.]

First, on the "regular rate" claims of the Sick Pay and Additional Hour Classes, FedEx emphasized that, despite the retroactive effect of <u>Ferra v. Loews Hollywood Hotel, LLC</u> (2021) 11 Cal.5th 858 (2021), the amount of potentially underpaid sick pay and premium pay is nominal, and thus the bulk of the claim is based on potential waiting time penalties under Labor Code sections 201, et seq. Given the previous split of authority, as discussed in Ferra, FedEx contends there was a good faith dispute as to the applicable legal issues that would mitigate if not eliminate liability for waiting time penalties, per cases such as Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157. [Crosner Decl., ¶ 14.]

Next, on the Moreno Valley Class claims arising out of the mandatory security checks, FedEx offered a number of defenses. First, FedEx argued strongly that it undertook time and motion studies and determined the security checks took a minimal amount of time and therefore the additional 5 minutes of pay provided amply compensated employees for the security checks. More specifically to meal breaks, FedEx also argued its time records showed employees at Moreno Valley typically received their full meal breaks, with an average of 31+ minutes per meal period. On the rest break issue, FedEx disputed Plaintiffs' argument that Moreno Valley Class Members were prevented from leaving the premises and therefore rest breaks were "on duty" under Augustus v. ABM Security Services, Inc. (2016) 2 Cal.5th 257. Finally, FedEx argued that even to the extent security checks or long lines to clock in impacted employee hours worked, a host of individualized inquiries would be necessary to determine the reasons underpinning each instance a class member spent more than 5 minutes undergoing security checks, etc., and accordingly class certification would be inappropriate. [Crosner Decl., ¶ 15.]

In addition to the wage statement and waiting time penalty claims of the Sick Pay and Additional Hour Classes, Plaintiffs also alleged derivative claims based on the security check/"off the clock" claims that will rise or fall along with that primary claim, in addition to being subject to "good faith" and other defenses available to Defendant. E.g., Amaral, 163 Cal.App.4th at 1203-04 (holding employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly, Plaintiffs discounted the derivative claims significantly in light of these multiple potential defenses. [Crosner Decl., ¶ 16.]

As far as potential PAGA liability, the theoretical penalties theoretically totaled $15 million or more should Plaintiffs prevail on all claims and establish violations of the multiple

Labor Code sections at issue for every single eligible pay period. [Crosner Decl., ¶ 17.] As with the class claims, Plaintiffs discounted the potential PAGA penalties for the multi-layered defenses proffered by Defendant on the merits, and further discounted these claims since the Court possesses wide discretion to reduce such penalties even if Plaintiffs ultimately prevailed. Lab. Code § 2699(f); Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXlS 154590, *8-9 (court reduced the potential penalties by over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just $5 per pay period, a 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

Accordingly, the Parties allocated $50,000 to PAGA penalties, which amount is reasonable and in line with comparable settlements in other class actions in California. Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement").

Thus, Defendant raised various defenses to each of Plaintiffs' claims, any one of which, if successful, could have derailed Plaintiffs' case. Accordingly, Plaintiffs faced risky issues going forward with this litigation, and given the need to secure class certification, try the case, and deal with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiffs and their counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiffs and their counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. [Crosner Decl., ¶¶ 18-20; Yang Decl., ¶ 2; Lee Decl., ¶ 4-5; Marder Decl., ¶¶ 2-4.]

The overall $1.4 million recovery represents a significant percentage of Defendant's potential exposure at roughly 15% of the maximum value of the class claims. Given these risks, a total recovery for the class of $1,400,000, which will result in average awards of some $800-925 per class member (depending on which class they're in), is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Crosner Decl., ¶¶ 18-20.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement is non-reversionary and will provide timely benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at http://

www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. PLAINTIFF'S ENHANCEMENT AWARDS

Pursuant to the terms of the settlement, Plaintiffs each seek a modest incentive award of $10,000 each for their service in bringing these claims on behalf of the Class. These requests are reasonable given the risks each undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing themselves at risk of discrimination by future prospective employers. As set forth in more detail in their declarations submitted herewith, among taking many other actions assisting in the successful litigation of this case, Plaintiffs provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Declaration of Alexander Hernandez, ¶¶ 2-9; Declaration of John Martin Garcia, ¶¶ 2-9; Declaration of Matthew Correa, ¶¶ 2-9; Crosner Decl., ¶ 21.] Finally, there are no class member objections submitted with respect to the amounts Plaintiffs propose to receive. [Mitzner Decl., ¶ 10.] Accordingly, the requested enhancement payments to Plaintiffs are appropriate and justified as part of the settlement.

VI. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Phoenix of no more than $15,000 for its services as the Settlement Administrator. As set forth in the Declaration of Taylor Mitzner, Phoenix has performed and will continue to perform its required duties through final distribution of the settlement funds, and incurred $14,950 in fees and expenses. [Mitzner Decl., ¶ 19.] Accordingly, Plaintiffs respectfully request the Court approve payment of $14,950 to Phoenix from the GSA. [Crosner Decl., ¶ 22.]

/////

VII. ATTORNEY'S FEES AND COSTS

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

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

As addressed in detail above, at the time the parties reached the tentative settlement success for Plaintiffs and the putative class was far from certain. Plaintiff faced a real risk that some or all the claims would not be certified for class treatment, as Defendant had strong arguments that its compensation policies were legal and properly compensated the class members. Even if Plaintiffs certified some or all of their claims and ultimately prevailed on the merits, it undoubtedly would have taken several years to realize any recovery while they pursued class certification, trial, and an almost certain appeal. [Crosner Decl., ¶¶ 13-20.]

Nonetheless, Plaintiffs succeeded and expeditiously obtained the relief they set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average awards of about $800-925 depending on class membership, and with a maximum award of about $2,400. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – as of the filing of this motion, there are no objections to the settlement and not one single individual has opted out. [Mitzner Decl., ¶¶ 9-10.]

B. The Requested Fee Award Is Reasonable and Appropriate

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

As part of the Settlement, FedEx agreed not to object to an award of no more than thirty five percent of the GSA for attorney's fees and up to $25,000 in reimbursement for litigation costs and expenses. Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly 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.

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

Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. [Crosner Decl., ¶ 23.] The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

/////

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

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

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

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

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

In determining a reasonable common fund fee award, courts should also consider the fact that fees serve as an economic incentive for lawyers to bring class action litigation to achieve increased access to the judicial system for meritorious claims and to enhance deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without prosecution on a contingent basis and use of the class action mechanism, the courthouse door would effectively be closed to most class members due to the relatively small size of their individual claims in relation to the enormous time and cost associated with class action litigation.

Here, Class Counsel seek a fee award for their successful prosecution and resolution of this action of no more than thirty five percent of the total amount recovered by the Class via the lawsuit, or $490,000. The percentage requested is justified for the reasons set forth further below, and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

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

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel collectively spent 613.05 hours of time on this matter, resulting in a reasonable lodestar of $491,092.50.

As is fully detailed in the Crosner, Lee, and Marder Declarations, Class Counsel's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiffs and the putative class, including legal research, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other FedEx employees; (2) drafting PAGA notice letters; (3) drafting the initial complaints and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) propounding initial written discovery, (6) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (7) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (8) drafting a mediation brief and accompanying damages model after review and analysis of defendant's informal discovery production; (9) attending an all-day mediation; (10) negotiating and drafting the settlement agreement and related documents; (11) drafting an amended complaint to effectuate the settlement; (12) drafting the motion for preliminary approval along with related amendments to the settlement documents as directed by the Court, and attending the hearing; (13) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (14) drafting the motion for final approval and motion for attorney's fees, and attending the final approval hearing; and (15) extensive communications with the Plaintiffs regarding case status, case investigation and document review, mediation, and settlement terms. Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on the compliance hearing. [Crosner Decl., ¶ 25, Exh. 2.]

In pursuing this matter, Class Counsel incurred total attorney's fees of 491,092.50, based on 613.05 attorney hours. More specifically Crosner Legal, P.C. incurred fees in the amount of $328,330.00, based on 407.85 hours, Diversity Law Group incurred fees of $134,187.50, based on 167.1 hours, and Polaris Law Group's fees were $28,575.00 for 38.1 hours. [Crosner Decl., ¶ 24; Lee Decl., ¶ 10; Yang Decl., ¶¶ 8; Marder Decl., ¶ 15.] The lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a successful conclusion (613) attorney hours, and the requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. [Crosner Decl., ¶¶ 26-38; Lee Decl., ¶¶ 7-10; Yang Decl., ¶¶ 3-8; Marder Decl., ¶¶ 14-15.] On a lodestar basis, the fee request of $490,000 results in a base lodestar that is slightly higher than the fees requested on percentage of the recovery basis. Class Counsel submits the lodestar crosscheck operates to show that the percentage fee request is reasonable considering the fees requested are lower than the actual value of the services rendered when valued via traditional hourly billing.

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.

What has now emerged in most fee award decisions is the recognition that fee determinations in both common fund and statutory fee situations are incapable of mathematical precision because of the intangible factors that must be resolved in the court's discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In determining an appropriate fee in a common fund case, a Court must decide, based on the unique posture of each case, what percentage of the common fund would most reasonably compensate Class Counsel given the nature of the litigation and the performance of counsel. 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).

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

1. The Results Achieved.

Class Counsel obtained an excellent result in this case for the Class Members. The Settlement provides real monetary benefits to the Class Members, and the Settlement is particularly advantageous to the Class Member because the proceeds will be distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable result. Considering many individual claims would be very modest and would not be cost-effective to pursue successfully, the Settlement provided them with fair compensation for their claims. Moreover, the absence of any objection to either the Settlement or the attorney's fee request bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated by the fact that not one class member opted out. Additionally, the settlement amounts roughly to 15% of the maximum value of the amount the Class might have obtained if it had tried the case and recovered on all theories seeking recovery of wages and expense reimbursement. "It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair." In re Omnivision Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

2. Class Counsel Bore Considerable Risk.

At the time of filing the complaint, Class Counsel recognized that they would have to expend a substantial amount of time and advance significant costs to prosecute a statewide class action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against a sophisticated company represented by first-rate attorneys. Despite their belief in the validity of Plaintiffs' claims, they also knew they faced substantial risks of class certification and the ability to prove class-wide and individual damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would dig in and attempt to bury their small firms in work. Given the small size of Class Counsels' respective firms, not receiving any compensation for several years while simultaneously advancing litigation costs posed considerable risk and difficulty. [Crosner Decl., ¶¶ 39-41.]

3. The Skill Required and the Quality of Work.

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

/////

/////

4. The Contingent Nature of the Fee and Risk Assumed

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

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

Here, the contingent fee practices of Plaintiffs' counsel simply do not accommodate the investment of unnecessary time in a case, and the adverse resolution of any one of several difficult issues present in this matter could have doomed the entire effort. As discussed, the attorney's fees in this case were not only contingent but fairly risky, and there was always a palpable chance Plaintiffs' counsel would receive nothing for any number of reasons. [Crosner Decl., ¶¶ 39-41.] Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel and Plaintiff also support the fee requested.

/////

/////

5. Awards in Other Cases

As discussed, the attorney's fees requested by Class Counsel are within the range of fees awarded in comparable cases, as cross-checked against the lodestar method in light of the contingent risk assumed, the delay in payment, the result achieved, and the overall quality of the representation.

F. Class Counsels' Costs and Expenses are Reasonable

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

As explained in the Crosner and Lee Declarations, Class Counsel incurred a total of $17,507.45 in expenses incurred in connection with this litigation, including $9,884.25 for Crosner Legal and $7,623.20 for Diversity Law Group. These expenses include the amounts paid for court filing fees, service of process, expert fees, Courtcall charges, and mediation fees, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter and it is respectfully requested that the Court authorized they be reimbursed in full. [Crosner Decl., ¶¶ 42-43; Lee Decl., ¶ 9.]

VIII. CONCLUSION

For all the foregoing reasons, Plaintiffs Matthew Correa, Alexander Hernandez, and John Martin Garcia respectfully request that the Court grant this motion and grant final approval of the proposed class action settlement and approve the payment of PAGA penalties to the State.

Plaintiffs further request the Court approve payment of the Settlement Administrator's fees and expenses, approve the requested class representative enhancement payments, approve the award of attorney's fees and costs as requested, and enter judgment in this action. Finally, Plaintiffs request the Court set a final compliance hearing for December 20, 2023, or a later date convenient for the Court.

Dated: November 28, 2022

CROSNER LEGAL, P.C.

____
Michael R. Crosner
Zachary M. Crosner
Jamie K. Serb
Attorneys for Plaintiffs Alexander Hernandez and John Martin Garcia