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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — SPRING STREET COURTHOUSE**

ZACHARY GURZENSKI, an individual, on
behalf of himself and all other similarly situated
non-exempt current and former employees,

Plaintiffs,

vs.

DELTA AIR LINES, INC., a Delaware
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No. 21STCV19287
[ASSIGNED FOR ALL PURPOSES TO
HON. ELIHU M. BERLE, DEPT. 6]

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, ATTORNEYS' FEES
AND COSTS, AND ENHANCEMENT
AWARDS; MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: October 6, 2023
Time: 9:00AM
Dept.: 6
Hon. Elihu M. Berle

Action Filed: May 20, 2021
Trial Date: None Set

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1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on October 6, 2023, at 9:00AM, or as soon thereafter as this
3 matter may be heard, in Department 6 of the above-captioned courthouse, located at Spring Street
4 Courthouse, 312 N. Spring Street, Los Angeles, CA 90012, Plaintiff Michael Garcia Juarez (“Plaintiff”),
5 will, and hereby does, move this Court for final approval of the Joint Stipulation of Class Action
6 Settlement and Representative Action Settlement and Release (“Settlement” and/or “Agreement”)
7 reached by the parties in the above-captioned litigation. Plaintiff moves the Court for entry of an order
8 and judgment providing for the following:

- 9 1. Granting final approval of the terms of the Settlement as fair, adequate, and reasonable to all parties
10 and to all Participating Class Members;
- 11 2. Certifying the Class for settlement purposes only;
- 12 3. Finding that the notice distributed to Class Members, pursuant to the Court’s Order Granting Plaintiff’s
13 Motion for Preliminary Approval of Class Action Settlement, dated June 9, 2023, constituted the best
14 notice practicable under the circumstances;
- 15 4. Approving payment of Individual Settlement Payments to Participating Class Members pursuant to the
16 terms of the Settlement;
- 17 6. Approving payment of a Class Representative Service Award to the named Plaintiff in the amount of
18 \$10,000.00;
- 19 7. Awarding Class Counsel attorney’s fees in the amount up to one-third of the Maximum Settlement
20 Amount for a maximum fee award of \$ 66,666.66, plus an award of actual costs and reimbursement of
21 reasonable litigation costs of \$17,525.20;
- 22 8. Approving payment of Settlement Administration Costs to Phoenix Settlement Administrators, Class
23 Action Settlement Administrators in the amount of \$11,500.00.

24 The motion will be based upon this Notice, the attached Memorandum of Points and Authorities,
25 the accompanying Declaration of Grant Joseph Savoy, Declaration of Plaintiff Michael Garcia Juarez,
26 Declaration of Taylor Mitzner Regarding Notice and Settlement Administration (Phoenix Settlement
27 Administrators), the Class Action Settlement Agreement, the complete files and records of this case, and
28 any other evidence or oral argument which may be considered by the Court at the time of the hearing.

1 Dated: August 8, 2023

SOLOUKI | SAVOY, LLP

2
3 /s/ Grant Joseph Savoy.
SHOHAM J. SOLOUKI, ESQ.
GRANT JOSEPH SAVOY, ESQ.
4 Attorneys for Plaintiff Zachary Gurzensky and
Those Similarly Situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This motion is brought by Plaintiff Zachary Gurzenski (“Plaintiff” and/or “Gurzenski”), in the
4 matter of *Garcia Juarez, et al. v. Maran, Inc., et al.* (Los Angeles Superior Court (“LASC”) Case No.
5 21STCV19287 (the “Action” or “Matter”)) in this wage and hour class action brought on behalf of all
6 current and former non-exempt California employees who worked for Defendant Delta Air Lines, Inc.
7 (“Defendant” and/or “Delta”) at any time from July 1, 2017 until June 8, 2023. The Action primarily
8 alleges that Defendant failed to reimburse Plaintiff and the class he seeks to represent for necessary
9 business expenditures incurred, in violation of Cal. Labor Code section 2802. Plaintiff and Defendant
10 (collectively, the “Parties”) entered into a JOINT STIPULATION OF CLASS ACTION AND
11 REPRESENTATIVE ACTION SETTLEMENT AND RELEASE (“Settlement” and/or “Agreement”),
12 which provides for a non-reversionary, Maximum Settlement Amount (“MSA”) of Two Hundred
13 Thousand Dollars (\$200,000.00). On June 9, 2023, the Court granted preliminary approval of the
14 Settlement. Plaintiff now seeks an order granting final approval of the Settlement, including an award of
15 attorney’s fees and costs.

16 The Settlement Class is composed of approximately 1,493 non-exempt employees of Defendant
17 Delta Air Lines, Inc., who worked for Defendant as an hourly Ramp Agents in Defendant’s Department
18 120 of its LAX facility (the “Class”), at any time from July 1, 2017 through June 8, 2023 (the “Class
19 Period”). A presumption of fairness exists because the Settlement was reached through extensive, arm’s-
20 length negotiations. Sufficient investigation and discovery allowed Class Counsel to act intelligently.
21 Class Counsel is experienced in similar wage and hour class litigation, there are no opt-outs, no workweek
22 disputes, and most importantly, no objections to the Settlement at the time of filing these papers.

23 The Settlement provides substantial benefits to Class Members. The estimated average Individual
24 Settlement Payment will be approximately \$44.76. Furthermore, the Settlement has been favorably
25 received by Class Members. Of the 1,493 Class Members, not a single individual objected to the terms of
26 the Settlement and no Class Members opted out of the settlement, at the time of filing these papers.

27 Plaintiff’s request in an amount not to exceed \$66,666.66 in attorney’s fees and reimbursement of
28 litigation costs in the amount of \$17,525.20, is reasonable. The amount of attorney’s fees, which amounts

1 to one third of the common fund, is well within the range generally sought and approved in class actions.
2 The amount of fees requested is also reasonable given Class Counsel's lodestar of \$182,625.00, based
3 upon 243.5 billable hours at hourly rates recently approved by this Honorable Court and the California
4 federal District Court, with no multiplier.

5 Because the Settlement is fair, adequate, and reasonable, and it is in the best interests of Class
6 Members, Plaintiff respectfully requests that the Court grant final approval and enter judgment.

7 **II. FACTUAL AND PROCEDURAL BACKGROUND**

8 **A. The Parties**

9 Defendant Delta engages in the business of airline travel and shipping, both nationally and
10 internationally. At the time of preliminary approval, there was an estimated One Thousand Three
11 Hundred Forty-Five (1,345) current and former employees Defendant who were eligible to participate in
12 the Settlement. As of the time of distribution of the Class Notice Packet and the submission of this
13 declaration, there are an estimated 1,493 current and former employees of Defendant eligible to participate
14 in the Settlement. (*Grant Savoy Declaration* ("Savoy Decl."), at ¶ 6.)

15 **B. The Operative Complaint**

16 The operative First Amended Complaint asserts Four (4) causes of action for: (1) Failure to
17 Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; (2) Failure to Pay All
18 Wages Due to Discharged and Quitting Employees; (3) Unfair and Unlawful Business Practices; and (4)
19 Penalties Pursuant to Private Attorneys General Act. ("FAC," "Complaint," or "Operative Complaint").
20 (*Savoy Decl.*, at ¶ 4, 5.) Plaintiff Gurzenski is a former non-exempt employee of Defendant Delta Air
21 Lines, Inc., a California Corporation ("Delta" or "Defendant"), who worked for Defendant as an hourly
22 Ramp Agents in Defendant's Department 120 of its LAX facility. Plaintiff asserts that he and the Class
23 Members were routinely required to purchase their own mandatory personal protective equipment,
24 mandatory safety equipment and tools, and personal cell phone data and minutes as a direct consequent of
25 the discharge of their employment duties.

26 **C. Discovery and Investigation**

27 Prior to the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by
28 Plaintiff, conducted legal research, and engaged in extensive formal and informal discovery. Prior to

1 mediation, the Parties met and conferred regarding the scope of discovery necessary for the Parties to
2 engage in a productive mediation. It was agreed that the Parties would exchange agreed upon documents
3 and class records/data prior to mediation. (*Savoy Decl.*, at ¶ 8.)

4 Pursuant to the Parties' pre-mediation agreement, Defendant Delta produced numerous documents
5 relating to its policies, practices, and procedures regarding its wage and hour practices, specifically as they
6 relate to the reimbursement of necessary business expenditures incurred by its employees during the Class
7 Period. As part of Defendant's production, Class Counsel represents it also reviewed class time records,
8 payroll records, and other information relating to the size and scope of the Class, as well as data
9 permitting Class Counsel to understand the number of workweeks and pay periods in the Class Period.
10 The Parties agree that the above-described investigation and evaluation, as well as the information
11 exchanged during the settlement negotiations, are more than sufficient to assess the merits of the
12 respective Parties' positions and to compromise the issues on a fair and equitable basis. (*Savoy Decl.*, at ¶
13 9.)

14 Through discovery and investigation, my office was able to identify multiple current and former
15 employees of Defendant that provided valuable information that allowed my office and our expert to
16 clarify any apparent discrepancies in the data provided by Defendant. (*Savoy Decl.*, at ¶ 10.)

17 For example, Delta provided vending machines at its LAX facility, wherein Class Members could
18 purchase, at their own expense without reimbursement, necessary and required personal protective
19 equipment to be used while working. This information gained directly from Plaintiff and his former co-
20 worker employees of Defendant was extremely important to the calculation of Class Damages, as the main
21 non-derivative cause of action asserted by Plaintiff on a class basis is for Failure to Indemnify Employees
22 for Necessary Expenditures Incurred in the Discharge of Duties, in violation of Cal. Labor Code section
23 2802. Absent information provided by Defendant regarding the amount of reimbursements paid to each
24 Class Member during the Class and PAGA periods, the only way to determine how much each Class
25 Member was required to spend on necessary business expenditures while employed by Defendant, as well
26 as how much, if any, they received in reimbursements, was via evidence provided directly by the class
27 members themselves. Without this information gained directly from Class Members, it would have been
28 impossible to calculate Class damages and penalties. This information could not have been gleaned from

1 the face of the payroll and timekeeping records themselves. (*Savoy Decl.*, at ¶ 11.)

2 Plaintiff's statistical experts analyzed this information, as well as data for approximately 20,000
3 unique workweeks, and Plaintiff's counsel evaluated the potential liability and damages for the Class
4 Members. Based upon this information, Plaintiff's counsel was able to act intelligently and effectively in
5 negotiating the proposed Settlement. (*Savoy Decl.*, at ¶ 12.)

6 My firm is informed and believes that the existence of an ascertainable class can be established
7 through Defendant's own records. (*Savoy Decl.*, at ¶ 12.)

8 **D. Settlement Negotiations**

9 The Settlement was reached following extensive negotiations during and after a private mediation
10 with professional mediator Steve Pearl, Esq. The settlement negotiations were at arm's length and,
11 although conducted in a professional manner, were adversarial. The parties went into the mediation
12 session willing to explore the potential for a settlement of the dispute, but each side was also prepared to
13 litigate its position through trial and appeal if a settlement had not been reached. (*Savoy Decl.* ¶¶ 13 - 15.)

14 During mediation, Plaintiff strongly asserted the validity of his arguments and his assessment that
15 this case could be worth a substantial amount of money. However, as the mediation progressed,
16 Defendant presented their arguments as to various issues, and it became apparent that many issues would
17 be highly disputed and could pose a risk to both parties in going forward with litigation. As a result, the
18 parties agreed to resolve this matter. (*Id.*)

19 Moreover, Mr. Pearl presided over the back and forth exchange of information, and helped guide
20 the parties towards what he believed, based on his experience, was a reasonable resolution given the
21 disputed issues of liability. (*Id.*)

22 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence
23 to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v.*
24 *Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust*
25 *Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.) Courts do not substitute their judgment for that of the
26 proponents, particularly where, as here, settlement has been reached with the participation of experienced
27 counsel familiar with the litigation. (*Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004)
28 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087, 1093; *Steinberg v. Carey*

(S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass’n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.)

E. The Settlement Class

“Settlement Class” or “Class” or “Class Members” all persons employed by Delta as non-exempt employees working in Department 120 at the Los Angeles International Airport (“LAX”) in California at any time from July 1, 2017, through June 8, 2023. The Class consists of 1,493 persons with an estimated 198,584 workweeks, and includes “PAGA Aggrieved Employees”, defined as all nonexempt Class Members in California employed at any time from March 16, 2020 through January 8, 2023.

F. Preliminary Approval

On June 8, 2023, the Court granted preliminary approval of the Settlement.

III. SETTLEMENT TERMS

In exchange for a release of claims against Defendant, as set forth in the Settlement, the payment terms of the Settlement are as follows:

1. The “Maximum Settlement Amount” or “MSA” refers to the maximum total payment Defendant shall be obligated to make in the amount of \$200,000.00 pursuant to this Settlement. The Maximum Settlement Amount shall include (a) attorneys’ fees of up to \$66,666.66, (b) Plaintiff’s reasonable litigation costs and expenses in the amount of \$17,525.20, (c) reasonable third party administration costs in an amount not to exceed \$11,500.00, (d) a PAGA Penalty Payment of \$25,000.00, of which \$18,750.00 will be paid to the Labor Workforce Development Agency, representing 75% of PAGA civil penalties, with the remaining 25%, \$6,250.00, to be distributed among the PAGA Aggrieved Employees (“Individual PAGA Payment Amount”), (e) a class representative Service Payment in the amount of \$10,000.00, and Net Settlement Amount as described in Paragraph 1.25 of the Settlement. Defendant’s share of any employer-payroll taxes attributed to Individual Payment Amounts shall be paid separately and in addition to the Maximum Settlement Amount, and shall be determined by the Settlement Administrator. (*Settlement*, sections 101(d).) Subject to Court approval, this amount shall be allocated as follows:

1 2. The “Net Settlement Amount” or “NSA” is the remaining portion of the Maximum Settlement
2 Amount after deduction of the court-approved attorneys’ fees and costs, including any attorney liens,
3 Settlement Administration Costs, the payment to the Labor Workforce Development Agency in the
4 amount of \$18,750.00 (representing 75% of the PAGA Penalty Payment), and the Class Representative’s
5 Service Payment. The Net Settlement Amount will be attributed to the portion of Individual Payment
6 Amounts and distributed to Settlement Class Members and the PAGA Aggrieved Employees, as described
7 in Sections IV.E and VI.A of the Settlement Agreement.

8 a. Subject to Court approval, the Settlement Administrator will pay an “Individual Payment
9 Amount” from the NSA to each Participating Class Member as follows:

10 i. Each Class Member’s Individual Payment Amount shall be paid from the NSA and based
11 on Class Members’ eligible employee service time for Covered Class Workweeks, as reflected on Delta’s
12 internal records. Individual Class Settlement Payments will be calculated as follows: the numerator shall
13 be the number of the Class Member’s individual Covered Class Workweeks; the denominator shall be the
14 total Covered Class Workweeks for all Class Members; this fraction shall be multiplied by the Net
15 Settlement Amount. (*Settlement*, paragraph 55.f.)

16 ii. If the Court approves a lesser amount of attorneys’ fees and litigation costs or the
17 Service Enhancement, than the amount sought by Plaintiff and Plaintiff’s Counsel, any amount disallowed
18 by the Court will be added to the Net Settlement Amount to be distributed in pro rata shares to the
19 Settlement Class Members. The Parties agree that the Settlement Agreement will remain binding with
20 such modification(s) as ordered by the Court, and its terms will be otherwise unchanged. This Settlement
21 is not conditioned upon the Court’s approval of Plaintiff’s Counsel’s petition for attorneys’ fees and
22 litigation costs or the amount of any Service Enhancement awards. Plaintiff’s Counsel agrees not to appeal
23 any reduction in the award of attorney’s fees, litigation costs, and/or the Service Enhancement awards.
24 (*Settlement*, paragraph 55.g.)

25 iii. Similarly, From the Maximum Settlement Amount, a payment of \$6,250 to be allocated
26 among PAGA Members based on PAGA Members’ eligible employee service time for Covered PAGA
27 Pay Periods, as reflected on Delta’ internal records (the PAGA Group Payment). Individual PAGA Group
28 Payments will be calculated as follows: the numerator shall be the number of the PAGA Member’s

1 individual Covered PAGA Pay Periods; the denominator shall be the total Covered PAGA Pay Periods for
2 all PAGA Members; this fraction shall be multiplied by the total PAGA Group Payment amount.

3 (*Settlement*, paragraph 55.e.)

4 b. Because the Class Settlement Payments and PAGA Group Payments are payment in
5 compromise and settlement of a claim for alleged penalties, interests, and other non-wage damages, these
6 payments will be treated as non-wage income with no tax withholdings to be made, and will be reported, if
7 required by applicable tax laws, by the Settlement Administrator on IRS Form 1099s to the respective
8 Settlement Class Members and applicable governmental authorities. The Settlement Administrator will
9 issue an IRS Form 1099 to Plaintiff's Counsel and applicable governmental authorities for the payment of
10 attorneys' fees and costs in the amount approved by the Court. Plaintiff and Plaintiff's Counsel each agree
11 to hold Delta harmless from and against any damage or penalty incurred by Delta as a result of any taxing
12 authority assessing any tax or penalty upon Delta as a consequence of any tax being due and unpaid on
13 each of their portions of the Maximum Settlement Amount.

14 (*Settlement*, paragraph 65.)

15 3. Settlement Class Members who are sent Class Settlement Payments and PAGA Members who
16 are sent PAGA Group Payments will have 180 calendar days after mailing by the Settlement
17 Administrator to cash settlement checks and will be so advised of such deadline. If such Settlement Class
18 Members and/or PAGA Members do not cash their checks within that period, those checks will become
19 void and a stop payment will be placed on the uncashed checks. Within thirty (30) days after the
20 expiration date of the settlement checks, the Settlement Administrator shall provide to Class Counsel and
21 Delta's Counsel a verification/declaration signed under penalty of perjury that it has mailed the settlement
22 checks to Settlement Class Members and/or PAGA Members, and if uncashed, that such amounts have
23 been sent to the California Controller's Unclaimed Property Fund in the name of the Settlement Class
24 Member and/or PAGA Member thereby leaving no "unpaid residue" subject to the requirements of
25 California Code of Civil Procedure Section 384, subd. (b). (*Settlement*, paragraph 85.)

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1 **IV. CLASS NOTICE HAS BEEN EFFECTUATED AND COMPORTS WITH CALIFORNIA**
2 **LAW AND DUE PROCESS**

3 To protect the rights of absent class members, the trial court must provide the best notice
4 practicable to class members. (*See Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v.*
5 *Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-175.) There is no requirement that all class members
6 receive actual notice, whether by mail or some other means; rather, “individual notice must be provided to
7 those class members who are identifiable through reasonable effort.” (*Eisen*, 417 U.S. at 175.)

8 The notice plan, as approved by the Court, has been fully implemented by the Settlement
9 Administrator, Phoenix; however, the time for filing responses (included objections, requests for
10 exclusion, and workweek disputes) does not run until September 6, 2023. On or about June 26, 2023,
11 Phoenix received from Defendant’s counsel data for 1,493 Class Members, including their contact and the
12 workweek information. (*Declaration of Taylor Mitzner* (“*Mitzner Decl.*”), at ¶ 3.) Phoenix updated the
13 mailing addresses utilizing the National Change of Address Database maintained by the U.S. Postal
14 Service. (*Id.* at ¶ 4.) On or about July 6, 2023, Phoenix mailed Notice Packets containing the Notice of
15 Class Action Settlement to all 1,493 Class Members, as well as emailed the same Notices to 1,433 Class
16 Members for which Defendant provided know email addresses for. (*Id.* at ¶ 5.) The Notice Packet advised
17 Class Members that they could take no action and become Settlement Class Members, opt-out of the
18 settlement, dispute their Workweeks or contact information, or submit an objection postmarked by the
19 Response Deadline of September 6, 2023.

20 As of August 8, 2023, zero (0) Notice Packets have been returned to Phoenix. (*Id.* at ¶ 6.) As of
21 August 8, 2023, Phoenix has received zero (0) valid Request for Exclusion from a Class Member opting
22 out of the Settlement. (*Id.* at ¶ 7.) As of August 8, 2023, Phoenix has received zero (0) objections to the
23 Settlement and zero (0) disputes regarding the payment information. (*Id.* at 8 and 9.) Since there will be
24 no residue from the fund, there will necessarily be no reapportioned settlement payments to Class
25 Members.

26 **V. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

27 The trial court has broad discretion to determine whether a proposed class action settlement is fair.
28 (*Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1138.) There is a presumption of fairness of a

1 class action settlement when: (1) the settlement is reached as a result of arm's length negotiations; (2)
2 there has been sufficient investigation and discovery; (3) counsel is experienced in similar litigation; and
3 (4) the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.)
4 Before approving a class action settlement, a trial court must develop an understanding "of the amount that
5 is in controversy and the realistic range of outcomes of the litigation." (*Kullar v. Foot Locker Retail, Inc.*
6 (2008) 168 Cal.App.4th 116, 120.) However, the parties need not provide an explicit statement of the
7 maximum amount plaintiffs could have potentially recovered. (*Munoz v. BCI Coca-Cola Bottling Co. of*
8 *Los Angeles* (2010) 186 Cal.App.4th 399, 409.)

9 **A. The Proposed Settlement Was Reached Through Arm's Length Bargaining**

10 The Settlement was reached following extensive negotiations during and after a private mediation
11 with professional mediator Steve Pearl, Esq. The settlement negotiations were at arm's length and,
12 although conducted in a professional manner, were adversarial. The parties went into the mediation
13 session willing to explore the potential for a settlement of the dispute, but each side was also prepared to
14 litigate its position through trial and appeal if a settlement had not been reached. (*Savoy Decl.* ¶¶ 13 - 26.)

15 During mediation, Plaintiff strongly asserted the validity of his arguments and his assessment that
16 this case could be worth a substantial amount of money. However, as the mediation progressed,
17 Defendant presented their arguments as to various issues, and it became apparent that many issues would
18 be highly disputed and could pose a risk to both parties in going forward with litigation. As a result, the
19 parties agreed to resolve this matter for a total of Two Hundred Thousand Dollars (\$200,000.00). (*Savoy*
20 *Decl.* ¶ 22.)

21 Moreover, Mr. Pearl presided over the back and forth exchange of information, and helped guide
22 the parties towards what he believed, based on his experience, was a reasonable resolution given the
23 disputed issues of liability.. (*Savoy Decl.* ¶ 23.)

24 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence
25 to the contrary is offered. (*Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447; *Mars Steel Corp. v.*
26 *Continental Illinois Nat'l Bank & Trust Co.* (7th Cir. 1987) 834 F.2d 677, 682; *In re Chicken Antitrust*
27 *Litig.* (N.D. Ga. 1980) 560 F. Supp. 957, 962.) Courts do not substitute their judgment for that of the
28 proponents, particularly where, as here, settlement has been reached with the participation of experienced

counsel familiar with the litigation. (*Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.* (C.D. Cal. 2004) 221 F.R.D. 523, 528; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087, 1093; *Steinberg v. Carey* (S.D.N.Y. 1979) 470 F. Supp. 471, 478; *In re Armored Car Antitrust Litig.* (N.D. Ga. 1979) 472 F. Supp. 1357, 1368; *Sommers v. Abraham Lincoln Federal Sav. & Loan Ass'n* (E.D. Pa. 1978) 79 F.R.D. 571, 580.)

B. Settlement Negotiations Were Conducted Based on Sufficient Investigation and Discovery

Prior to the Settlement, Plaintiff's counsel conducted an investigation into the claims alleged by Plaintiff, conducted legal research, and engaged in extensive formal and informal discovery. Prior to mediation, the Parties met and conferred regarding the scope of discovery necessary for the Parties to engage in a productive mediation. It was agreed that the Parties would exchange agreed upon documents and class records/data prior to mediation. (*Savoy Decl.*, at ¶ 8.)

Pursuant to the Parties' pre-mediation agreement, Defendant Delta produced numerous documents relating to its policies, practices, and procedures regarding its wage and hour practices, specifically as they relate to the reimbursement of necessary business expenditures incurred by its employees during the Class Period. As part of Defendant's production, Class Counsel represents it also reviewed class time records, payroll records, and other information relating to the size and scope of the Class, as well as data permitting Class Counsel to understand the number of workweeks and pay periods in the Class Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. (*Savoy Decl.*, at ¶ 9.)

Through discovery and investigation, my office was able to identify multiple current and former employees of Defendant that provided valuable information that allowed my office and our expert to clarify any apparent discrepancies in the data provided by Defendant. (*Savoy Decl.*, at ¶ 10.)

For example, Delta provided vending machines at its LAX facility, wherein Class Members could purchase, at their own expense without reimbursement, necessary and required personal protective equipment to be used while working. This information gained directly from Plaintiff and his former co-worker employees of Defendant was extremely important to the calculation of Class Damages, as the main non-derivative cause of action asserted by Plaintiff on a class basis is for Failure to Indemnify Employees

1 for Necessary Expenditures Incurred in the Discharge of Duties, in violation of Cal. Labor Code section
2 2802. Absent information provided by Defendant regarding the amount of reimbursements paid to each
3 Class Member during the Class and PAGA periods, the only way to determine how much each Class
4 Member was required to spend on necessary business expenditures while employed by Defendant, as well
5 as how much, if any, they received in reimbursements, was via evidence provided directly by the class
6 members themselves. Without this information gained directly from Class Members, it would have been
7 impossible to calculate Class damages and penalties. This information could not have been gleaned from
8 the face of the payroll and timekeeping records themselves. (*Savoy Decl.*, at ¶ 11.)

9 Plaintiff's statistical experts analyzed this information, as well as data for approximately 20,000
10 unique workweeks, and Plaintiff's counsel evaluated the potential liability and damages for the Class
11 Members. Based upon this information, Plaintiff's counsel was able to act intelligently and effectively in
12 negotiating the proposed Settlement. (*Savoy Decl.*, at ¶ 12.)

13 **C. None of the Class Members Have Objected to the Settlement**

14 The 1,493 Class Members' overwhelmingly positive response is indicative of the fairness of the
15 Settlement. To date, zero objections have been submitted to the Settlement Administrator, and 100% of
16 the Class Members are participating in the Settlement. (*Mitzner Decl.*, ¶ 6- 9.)

17 **D. Assessment of Amount in Controversy and Risks Associated with Proceeding**

18 **Class Action Settlement Amount is Fair, Just, and Reasonable**

19 Plaintiff and Plaintiff's counsel remain confident of the merits of Plaintiff's claims. Plaintiff and
20 Plaintiff's counsel considered several factors in reaching the decision to settle at this point in the litigation.
21 Plaintiff's counsel has calculated the maximum damages of the Class Members, excluding solely
22 derivative claims, to be approximately **\$518,465.85**, inclusive of interest, and believes this amount would
23 be the maximum damage potential should the case proceed to trial. (*Savoy Decl.*, at ¶ 16.)

24 Given the maximum potential damages, the settlement sum of Two Hundred Thousand Dollars
25 (\$200,000.00) is approximately Thirty-Nine Percent (39%) of the revised maximum damage exposure,
26 and is reasonable considering the substantial risks entailed by this case. My firm estimates a Sixty Percent
27 (60%) likelihood of obtaining and maintaining certification of Plaintiff's claims, which reduces the value
28 of these claims. My office further estimates that there is a Sixty Percent (60%) chance that Plaintiff will

1 prevail at trial on his individual and class claims, further reducing the value of the claims. Taking these
2 two risk factors into account, a more realistic damages recovery analysis brings values the instant action at
3 approximately \$186,647.71. The MSA is approximately One Hundred and Seven Percent (107%) of the
4 revised and reduced total damages exposure. The significant risk that this Court may deny class
5 certification is obviated by the Settlement. Moreover, continued litigation would very likely reduce and
6 substantially delay recovery by Class Members. In contrast, because of the proposed Settlement, Class
7 Members will receive timely relief and avoid the risk of an unfavorable judgment and avoids the
8 possibility of having all, or a portion, of the class and representative claims lost to dispositive motion,
9 which was not included as a factor in reaching the above reduced damages amount. (*Savoy Decl.*, at ¶
10 18.)

11 Defendant, on the other hand, strongly contends that its policies and practices do not violate any
12 laws and that it complied with all applicable laws. Specifically, Defendant maintains that Plaintiff's claims
13 that he and class members were not reimbursed for all necessary business expenditures is factually
14 incorrect. It is Defendant's position that there would be no liability for unpaid business expenditures, and
15 therefore, the derivative claims of waiting time penalties therefore also fail.

16 Additionally, Defendant contends that Plaintiff would not obtain class certification on his claims,
17 particularly because the claims would require an individualized inquiry. (*See Koval v. Pacific Bell*
18 *Telephone Co.*, 232 Cal. App. 4th 1050, 1062 (2014) (denying certification and holding that plaintiff's
19 failure to demonstrate that allegedly unlawful policies were consistently applied "create[d] a shifting
20 kaleidoscope of liability determinations that render this case unsuitable for class action treatment"); *Dailey*
21 *v. Sears, Roebuck & Co.*, 214 Cal. App. 4th 974, 1002 (2013) (denying class certification of meal period
22 and rest break claims of employees alleging that they did not regularly take uninterrupted meal and rest
23 breaks where there was no evidence of a uniform policy showing that the Company required the
24 employees to forego breaks).) In such an event, there would be no recovery for Class Members at all. A
25 discount was required at this stage of the litigation for settlement purposes based on these risk factors.
26 The significant risks that this Court may deny class certification or rule against Plaintiff on the merits are
27 obviated by the Settlement, as is any risk associated with trial. Moreover, continued litigation would very
28 likely reduce and substantially delay recovery by Class Members. In contrast, because of the proposed

1 Settlement, Class Members will receive timely relief and avoid the risk of an unfavorable judgment.

2 Furthermore, while Plaintiff is confident in the merits of the case, a legitimate controversy exists as
3 to each cause of action. It must be noted that the sole non-derivative and non-penalty cause of action is
4 for Failure to Indemnify, in violation of Labor Code section 2802, therefore, if Plaintiff's 2802 claim fails,
5 then the entirety of the case follows suit. The evidence presented in the Action to this point tended to
6 show that Defendant's reimbursement and indemnification policies were legally compliant and each Class
7 Member's necessary expenditures, if any, were varied. Plaintiff also recognizes that proving the amount
8 of wages due to each individual Class Member would be an expensive, time-consuming, and extremely
9 uncertain proposition. (*Savoy Decl.*, at ¶ 19.) Plaintiff also recognizes that proving the amount of
10 reimbursement compensation due to each individual Class Member would be an expensive, time-
11 consuming, and extremely uncertain proposition. (*Savoy Decl.*, at ¶ 20.)

12 With the current full participation of all 1,493 employees in the settlement, the Net Settlement
13 Amount, as calculated by the settlement administrator, is \$66,833.34. As such, each class member will
14 recover on average approximately \$44.76. The average adjusted per workweek recovery from the NSA is
15 approximately \$00.34. While this amounts, at first glance, appears smaller than the average wage and
16 hour settlement, it must be noted that this case involves only one (1) non-derivative cause of action, which
17 did not carry a significant amount of damages. When the limited nature of this Action and the limited
18 damages associated therewith are taken into account, this amount is not insignificant, especially because
19 most class members will never pursue their individual reimbursement claims. Moreover, the Class
20 Members are longer-term employees of Defendant, working on average 136 of the eligible workweeks and
21 will receive approximately \$46.76. Plaintiff will submit a final declaration from the settlement
22 administrator with exact minimum and maximum payments to class members after September 6, 2023, the
23 response deadline. (*Savoy Decl.*, at ¶ 26.)

24 In sum, when the risks of litigation, the uncertainties involved in achieving class certification, the
25 burdens of proof necessary to establish liability, and the probability of appeal of a favorable judgment are
26 balanced against the merits of Plaintiff's claims, it is my professional opinion that the Maximum
27 Settlement Amount is fair, adequate, and reasonable. (*Savoy Decl.*, at ¶ 21.)

28 ///

Settlement Amount Allocated to PAGA Claim Is Fair, Just, and Reasonable

The Parties have calculated the number of unique PAGA pay periods to be 32,191. At a 100% violation rate (i.e. one Labor Code violation per unique pay period), the Defendant's maximum PAGA penalty exposure is approximately \$3,219,100.00. As noted above, wage and hour violations, as set forth in Plaintiff's operative complaint, did not occur on a weekly basis. In fact, the most prevalent of the violations, personal protective equipment vending machine purchases were only made an approximate eighteen (18) times during the class period, which amounts to an approximately four and a half (4.5) violations per year, or an approximate nine percent (9%) violation rate (4.5 purchases per 50 weeks = 9%). When combined with the approximate two percent (2%) protective footwear violation rate (1 purchase per 50 weeks = 2%), the total actual estimated violation rate comes out to eleven percent (11%), assuming that there is no stacking or overlap between the vending machine purchase violations and the protective footwear violations. An overall eleven percent (11%) violation rate brings the total potential PAGA penalty exposure down to \$354,101.00. As noted above, Plaintiff estimates a sixty percent (60%) chance of beating a motion for summary judgment/adjudication on the underlying Labor Code causes of action, as well as a 60% chance of a favorable outcome at trial. This reduces Defendant's potential PAGA penalty exposure to approximately \$127,476.36. However, as explained below, this number must be greatly reduced when the facts and evidence presented during litigation and mediation are taken into account. Plaintiff asserts that the \$25,000.00 attributed to PAGA penalties, which is approximately Twenty Percent (specifically 19.61%) of the reduced/adjusted PAGA exposure, is more than fair, just, and reasonable. As with the above-described damages associated with the class action causes of action, Plaintiff will submit a final declaration from the settlement administrator with exact minimum and maximum payments to class members after September 6, 2023, the response deadline. (*Savoy Decl.*, 28.)

Through discovery and investigation, as well as further evidence presented at mediation, it became abundantly clear that the majority of all Labor Code violations occurred within the first three (3) years of the alleged class period, as Defendant began to provide all class members with "Zappos Voucher" for protective footwear on a yearly basis, at the beginning 2021, eliminating all damages related to protective footwear reimbursement claims from that point forward, the largest set of reimbursement damages for the Class. Additionally, Defendant's written policies regarding reimbursement for necessary expenditures for

1 the class period appear facially valid. Given the compliant policies, the PAGA Period beginning midway
2 through March of 2020, and the majority of the reimbursement damages for protective footwear
3 reimbursement occurred during the first few years of the Class Period, the amount allocated to PAGA
4 Penalties is adequate and appropriate. (*Savoy Decl.*, 29.)

5 Based on this information and information obtained from Plaintiff and other aggrieved employees,
6 Plaintiff was required to reduce alleged penalties associated with the sole cause of action for the PAGA
7 period. (*Savoy Decl.*, at ¶ 30.)

8 Due to the violation rate and trouble in proving the underlying reimbursement violations during the
9 applicable PAGA period, Plaintiff believes it is proper to attribute approximately Twelve and a Half
10 percent (12.5%) of the Gross Settlement Amount to PAGA penalties. Moreover, attributing a larger
11 portion of the settlement to non-PAGA penalties insures that a greater amount of the Net Settlement
12 Amount will go to the putative class. (*Savoy Decl.*, at ¶ 31.)

13 **VI. THE CLASS REPRESENTATIVE SERVICE AWARD IS REASONABLE**

14 Plaintiffs in class action lawsuits are eligible for reasonable service payments as compensation “for
15 the expense or risk they have incurred in conferring a benefit on other members of the class.” (*Munoz v.*
16 *BCI Coca-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App.4th 399, 412.) The Settlement
17 provides for a Class Representative Service Award not to exceed \$10,000.00 for Plaintiff. (*Settlement*,
18 paragraph 35.) The requested service payment is reasonable according to controlling and persuasive case
19 law. (*See Clark v. American Residential Services, LLC* (2009) 175 Cal.App.4th 785, 805-6.) The
20 payment is intended to recognize the substantial time and effort that Plaintiff expended on behalf of the
21 Class. (*Savoy Decl.* ¶¶ 32.) Throughout this litigation, Plaintiff cooperated with counsel and took actions
22 to protect the interests of the Class. (*Savoy Decl.* ¶ 33; *Declaration of Zachary Gurzenski* (“*Gurzenski*
23 *Decl.*”), paragraphs 5-8.) Plaintiff provided valuable information regarding potential witnesses,
24 Defendant’s meal period and rest period practices, Defendant’s reimbursement practices, and Defendant’s
25 failure to properly compensate for overtime hours. (*Id.*) Plaintiff kept informed of the developments in
26 the Action, informed counsel of information relevant to the Action, participated in decisions concerning
27 the Action, provided counsel with the names and contact information of potential witnesses, participate in
28 the preparation for and the taking of his full-day in-person deposition, and was an engaged participant

1 during the full-day mediation proceedings. (*Id.*) The information and documentation provided by
2 Plaintiff was instrumental in establishing the Labor Code Section 2802 violations alleged in the Action,
3 and the recovery provided for in the Settlement Agreement would have been impossible to obtain without
4 Plaintiff's active participation. (*Id.*)

5 Plaintiff faced many risks in bringing the lawsuits as class actions. (*Savoy Decl.* ¶ 34; *Gurzenski*
6 *Decl.*, ¶¶ 5-8.) Because of Plaintiff's efforts, approximately 1,493 Class Members will now have the
7 opportunity to participate in a settlement and to recover payment for wage violations they may have never
8 known about on their own or been willing to pursue on their own. (*Id.*) If each Class Member attempted
9 to pursue his or her legal remedies individually, each person would have been required to expend a
10 significant amount of his or her own monetary resources and time. (*Id.*) In sum, the Action would not
11 have been possible without the aid of Plaintiff, who put his own time and effort into the litigation,
12 sacrificed the value of his own individual claims, and placed himself at risk for the sake of the other Class
13 Members (*Id.*) The requested Class Representative Service Award of \$10,000.00 to Plaintiff is therefore
14 reasonable to compensate Plaintiff for his active participation in the Action. (*Id.*)

15 **VII. CLASS COUNSEL IS ENTITLED TO AN AWARD OF REASONABLE ATTORNEY'S**
16 **FEES AND COSTS**

17 The Settlement provides for attorney's fees and costs to Class Counsel in an amount up to one-
18 third (33 & 1/3%) of the Maximum Settlement Amount, for a maximum fee award of \$66,66.66, plus
19 actual litigation expenses not to exceed \$20,000.00 (actual costs amount to \$17,525.20). (*Settlement*,
20 paragraph 55(a).) Plaintiffs request attorney's fees pursuant to the "common fund theory" with a lodestar
21 cross-check. The requested fees are far below the range of fees generally sought and approved in common
22 fund class action cases and the fees are also reasonable based on Class Counsel's total lodestar. (*Savoy*
23 *Decl.*, ¶¶ 35.)

24 **A. The Requested Attorney's Fees Are Reasonable Under the Common Fund Theory**

25 The request for attorney's fees as a percentage of the Maximum Settlement Amount is supported
26 by the "common fund theory," where "one who expends attorney's fees in winning a suit which creates a
27 fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the
28 litigation costs." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 35.) The percentage is properly based upon the

1 gross settlement, rather than on the amount of claims made. (*Williams v. MGM-Pathe Communications*
2 *Co.* (9th Cir. 1997) 129 F.3d 1026, 1027.) The lodestar may be cross-checked against the percentage-of-
3 recovery method. (See *Laffitte v. Robert Half Int’l Inc.* (2016) 1 Cal. 5th 480, 506 (2016); *In re Consumer*
4 *Privacy Cases* (2009) 175 Cal.App.4th 545, 556-558.)

5 The purpose of the common fund/percentage approach is to “spread litigation costs proportionally
6 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent*
7 *v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) In *City and County of San Francisco v.*
8 *Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has
9 been applied “consistently in California when an action brought by one party creates a fund in which other
10 persons are entitled to share.” (*Id.* at 110.)

11 Several courts have expressed frustration with the alternative “lodestar” approach for deciding
12 fees, which usually involves wading through voluminous and often indecipherable time records. (See, e.g.,
13 *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F. Supp. 1373, 1375.) The recognized
14 advantages of the percentage of the fund method include “relative ease of calculation, alignment of
15 incentives between class counsel and the class, a better approximation of market conditions in a
16 contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
17 unnecessarily prolonging the litigation.” (*Laffitte*, 1 Cal.5th at 503.) Since *Serrano*, California appellate
18 courts routinely apply the percentage method to award attorney’s fees in common fund cases. (See, e.g.,
19 *Lafitte*, 1 Cal. 5th at 506; *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 558 (“It is not an
20 abuse of discretion to choose [the percentage] method over [the lodestar method] as long as the method
21 chosen is applied consistently using percentage figures that accurately reflect the marketplace.”); *Chavez*
22 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 63 (“[F]ees based on a percentage of the benefits are ...
23 appropriate in large class actions when the benefit per class member is relatively low”); *Annie Computer*
24 *Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1271 (“[A]ttorneys’ fees awarded under the common
25 fund doctrine are based on a ‘percentage-of-the-benefit’ analysis”); *Lealao v. Beneficial California, Inc.*
26 (2000) 82 Cal.App.4th 19, 27 (“Percentage fees have traditionally been allowed in ... common fund
27 cases”).)

1 The percentage of attorney's fees set forth in the Settlement Agreement, i.e. 33 1/3% of the
2 Maximum Settlement Amount, is reasonable. Historically, courts have awarded percentage fees in the
3 range of 20% to 50%, depending on the circumstances of the case. (*Newberg on Class Actions*, 4th Ed.
4 2002, § 14: 6.) Furthermore, California and federal courts have long recognized that a percentage of
5 recovery for attorney's fees is properly awarded on the basis of the total settlement fund. (*Boeing v. Van*
6 *Gemert* (1980) 444 U.S. 472, 480-481; see also *In re Consumer Privacy Cases*, 175 Cal.App.4th at 558
7 n.13 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is
8 used, fee awards in class actions average around one-third of the recovery") (emphasis added).)

9 Here, the Maximum Settlement Amount is \$200,000.00. The requested attorney's fees are one-
10 third (1/3) of that total, or \$66,666.66, which is the standard attorney fee requested per the common fund
11 theory. The requested fee percentage is less than that charged by Class Counsel for other employment
12 cases, which is 40%. Moreover, Class Counsel invested significant time and resources into this case, with
13 payment deferred to the end of the case and entirely contingent on the outcome. (*Savoy Decl.*, generally.)
14 It has been a long-recognized principle that an attorney merits a significantly larger fee when the
15 compensation is contingent, rather than being fixed on a time or contractual basis. (See *Vizcaino v.*
16 *Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048-51.) In the more than two years that this case has
17 been pending, Class Counsel has advanced all expenses and has not received any compensation or
18 reimbursement for efforts in prosecuting the action on behalf of Class Members. The significant outlay of
19 monetary and personnel resources has been completely at risk and wholly dependent upon obtaining a
20 substantial recovery for the Class. (*Id.*) Class Counsel should not be penalized with a lower fee for settling
21 the case prior to filing a motion for class certification, because the percentage of the fund method
22 "encourages early settlement, which avoids protracted litigation." (*Laffitte*, 1 Cal.5th at 490.) Thus, the
23 requested award of attorney's fees is reasonable under the percentage of the fund method.

24 **B. The Requested Attorney's Fees Are Reasonable Under the Lodestar Method**

25 Plaintiff's fee application is reasonable based on Class Counsel's lodestar. Under the lodestar
26 method, the court considers a compilation of the time spent and a reasonable hourly compensation of each
27 attorney to evaluate the reasonableness of the fee requested.
28

Here, Class Counsel's total lodestar is approximately \$182,625.00, which is based upon 243.5 hours of attorney time at customary hourly rates recently approved by this Honorable Court and the United States District Court, Central District (\$750.00 per hour). (*Savoy Decl.* ¶¶ 36-39.) Thus, Plaintiff's request for \$66,666.66 in attorney's fees, which is only approximately 37 percent of the actual lodestar, is reasonable under the lodestar method.

1. Class Counsel's Hours Are Reasonable

In determining whether the number of hours expended on the litigation was reasonable, the court must determine that "the time spent was reasonably necessary and that [] counsel made 'a good faith effort to exclude from the fee request hours that are excessive, redundant, or otherwise unnecessary.'" (*Jordan v. Multnomah County* (9th Cir. 1987) 815 F.2d 1258, 1263 n.8.) The court "should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112 (noting that "[l]awyers are not likely to spend unnecessary time on contingency fee cases in the hope of inflating their fees. The payoff is too uncertain, as to both the result and the amount of the fee.")). "Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records" (citations omitted). *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559; see also *Wershba*, 91 Cal.App.4th at 255 ("California permits fee awards in the absence of detailed time sheets"); *Laffitte*, 1 Cal.5th at 505 (trial court properly exercised its discretion to perform the lodestar cross-check "using counsel declarations summarizing overall time spent rather than demanding and scrutinizing daily time sheets in which the work performed was broken down by individual task").)

Here, Class Counsel has spent **243.5** hours litigating this case to bring it to resolution, not including the estimated dozens of hours preparing for and attending the final approval hearing and monitoring the administration of the settlement and distribution of funds to Participating Class Members. The efforts expended by Class Counsel to achieve this excellent result include, but are not limited to, the following: interviews with Plaintiffs and review of documents provided by Plaintiffs; preparation of multiple drafts of the class action complaint; filing of the class action complaint; meeting and conferring with Defendant's counsel to obtain relevant documents and information; communicating with Plaintiff and witnesses regularly regarding the status of the case; filing and winning a federal Motion to Remand the

1 Action to the above-captioned Court; propounding requests for production of documents on both a formal
2 and informal agreed upon basis; review and analysis of a substantial sampling of time records, payroll
3 records, and other employment records; preparing for and participating in Plaintiff's full-day in-person
4 deposition; working with an expert statistician to analyze the data sample; legal research regarding
5 Defendant's reimbursement practices and policies; preparing Plaintiff's mediation briefs; appearing at a
6 full-day mediation; appearing at multiple status conferences; participating in settlement discussions;
7 drafting, negotiation, and revision of the Settlement and Notice Packet; drafting the Motion for
8 Preliminary Approval and supporting papers; communicating with the Settlement Administrator and
9 monitoring the notice process; and drafting the Motion for Final Approval and supporting papers. (*Savoy*
10 *Decl.*, generally.) Class Counsel also bears the risk of taking whatever actions are necessary if Defendants
11 fail to pay. (*Savoy Decl.*, generally.) Thus, the Court should find that Class Counsel's hours were
12 necessary and reasonable to achieve the excellent result on behalf of the Class.

13 **2. Class Counsel's Hourly Rates Are Reasonable**

14 The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group,*
15 *Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) "[I]n assessing a reasonable hourly rate, the trial court is
16 allowed to consider the attorney's skill as reflected in the quality of work, as well as the attorney's
17 reputation and status." (*MBNA American Bank, N.A. v. Gorman* (2006) 147 Cal.App.4th 1, 3.) The trial
18 court may also "find hourly rates reasonable based on evidence of other courts approving similar rates."
19 (*Parkinson v. Hyundai Motor America* (C.D. Cal. 2010) 796 F.Supp.2d 1160, 1172.)

20 The current prevailing billing rates in the Southern California area range from \$275 to \$900 per
21 hour. Class Counsel are experienced litigators specializing in employment law, with a substantial wage
22 and hour class action practice. (*Savoy Decl.*, generally.) Several courts, including this Honorable Court,
23 and Central District Court of California, have approved Class Counsel's hourly rates in the amount of
24 \$750 per hour. Given the skill and experience of Class Counsel in this case, and the excellent result
25 achieved for the Class, the requested rates are reasonable. (*Savoy Decl.*, 39.)

26 **C. Class Counsel's Costs Are Reasonable**

27 The Settlement Agreement provides for reimbursement of Class Counsel's costs not to exceed
28 \$20,000.00. (*Settlement*, ¶ 1.20, 4.7.) Class Counsel seeks an award of actual costs incurred in the amount

1 of \$15,486.65, far below the “not to exceed” amount of \$25,000.00 bargained for by the Parties. (*Savoy*
2 *Decl.* paragraph 55(a).) Class Counsel were required to expend the funds prosecuting this case to a
3 successful resolution on, among other things, court filing fees, document service, mediation fees, the
4 services of statistical experts, court reporters and transcripts, postage, and copying. Because these costs are
5 reasonable and slightly below the capped “not to exceed” amount of \$20,000.00, which no Class Member
6 has objected to, Class Counsel respectfully request that the Court approve an award of costs in the amount
7 of \$17,525.20. (*Savoy Decl.*, ¶ 45 - 46.)

8 **D. Neither Defendants Nor the Class Members Oppose the Request for Fees and Costs**

9 Significantly, none of the Class Members objected to the requested award of fees and costs.
10 (*Mitzner Decl.*, ¶ 8.) Additionally, Defendants do not oppose the requested award of fees and costs.
11 (Settlement ¶ 4.9). The Court should grant final approval of the attorney’s fees and costs agreed upon by
12 the parties.

13 **VIII. THE REQUESTED SETTLEMENT ADMINISTRATION COSTS ARE REASONABLE**

14 The Settlement Administrator’s costs in the amount of \$11,500.00 are reasonable, given the tasks
15 performed and remaining to be performed. (*Mitzner Decl.*, generally.) Plaintiff respectfully requests that
16 the Court approve Settlement Administration Costs in the amount of \$11,500.00.

17 **IX. NOTICE TO LABOR AND WORKFORCE DEVELOPMENT AGENCY**

18 On or about August 8, 2023, my office caused a copy of Plaintiff’s Motion for Final Approval of
19 Joint Stipulation of Class Action and PAGA Settlement and the Settlement Agreement to be submitted to
20 the California Department of Industrial Relations, Labor and Workforce Development Agency via the
21 Department’s online portal and received a receipt of submission. A true and accurate copy of the Receipt
22 of Submission is attached to the Declaration of Grant Joseph Savoy as **Exhibit “A.”**

23 **X. CONCLUSION**

24 For the foregoing reasons, the proposed Settlement is fair, adequate, and reasonable, and represents
25 an excellent opportunity for Class Members to recover for allegedly illegal wage and hour practices.
26 Plaintiff respectfully requests that the Court grant final approval of the Settlement and enter the proposed
27 order and judgment.
28

1
2 Dated: August 8, 2023

SOLOUKI | SAVOY, LLP

3 /s/ Grant Joseph Savoy
4 SHOHAM J. SOLOUKI, ESQ.
5 GRANT JOSEPH SAVOY, ESQ.
6 *Attorneys for Plaintiff Michael Garcia Juarez*
7 *and Those Similarly Situated*
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