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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARIA MICHEL, on behalf of herself and all
others similarly situated and aggrieved,

Plaintiff,

v.

VALLEY THRIFT STORE, INC., a
California
corporation; and DOES 1-20, inclusive

Defendants

JORGE SANCHEZ, JORGE QUINTANA,
JAIRO TABORDA, NERY MENDOZA,
RAFAEL VERDUZCO, JULIO
ROSENDO, FRANCISCO GONZALEZ,
MARCO JACOBO, and MANUEL
FIGUEROA, on
behalf of themselves and all others similarly
situated and aggrieved,

Plaintiffs,

v.

M & M MANAGEMENT COMPANY, a
California corporation, VALLEY THRIFT
STORE, INC., a California corporation;
JOSEPH MARK ELLISON, an individual,
and DOES 1-50,

Defendants.

Case No. 20STCV25886
Consolidated with Case No.: 21STCV00925

Assigned for All Purposes to:
Hon. David S. Cunningham
Dept. SSC-11

**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,
Vache Thomassian, Christopher Adams, and
Lindsay Kline; [Proposed] Order]

Date: February 28, 2023
Time: 9:00 a.m.
Dept.: SSC-11

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1 **I. INTRODUCTION**

2 Plaintiffs and Class Representatives Maria Michel, Jorge Sanchez, Jorge Quintana, Jairo
3 Taborda, Nery Mendoza, Rafael Verduzco, Julio Rosendo, Francisco Gonzalez, Marco Jacobo, and
4 Manuel Figueroa seek final approval of a non-reversionary class action settlement resolving
5 wage and hour claims on behalf of 2,544 individuals who worked for defendants Valley Thrift
6 Store, LLC, M&M Thrift Management Company, LLC, Community Thrift Store, LLC, and Joseph
7 Mark Ellison (collectively “Defendants”) as non-exempt employees in California during the class
8 period of July 8, 2016 through February 8, 2022. The proposed \$2,380,000 total settlement
9 provides approximately \$1,438,333 in cash payments to the Class, with an average award of
10 about \$565, plus additional amounts payable under PAGA. The remaining balance will cover
11 modest service awards to Plaintiffs, settlement administration costs, civil penalties to the state,
12 and reasonable attorney’s fees and costs. The parties and their counsel finalized the settlement
13 after extensive and difficult arms-length negotiations overseen by an experienced and highly-
14 regarded mediator. The Court conditionally certified the Class and preliminarily approved
15 the settlement on October 18, 2022. Since then, the Court-approved notice form was mailed to
16 the Class Members on November 10, 2022, and they reacted very favorably to the settlement.
17 As of the filing of this motion, only one¹ class member opted out of the settlement, and there
18 are no objections.

19 Further, Class Counsel secured an excellent settlement with Defendants after some
20 two plus years of investigation, litigation, and settlement negotiation and administration,
21 all without any compensation for services rendered or costs expended. The class notice
22 duly informed the class members that Class Counsel would request attorney’s fees not to
23 exceed 1/3 of the Gross Settlement Amount, or \$793,333.33, along with reimbursement
24 of no more than \$25,000 for actual costs incurred litigating this matter. As of the filing
25 of this motion, *not one Class Member objected* to the proposed fee award. Consistent
26

27 ¹ The individual that opted out is Patricia Michel, who filed her own class action, *Patricia Michel v. M&M Thrift*
28 *Management Company, LLC, et al.*, LASC Case No. 22STCV23755 (“*Patricia Michel Action*”) alleging the same
causes of action alleged in this instant action. On August 25, 2022, the Court issued an order deeming the *Patricia*
Michel Action as related to this instant action and all actions are currently pending in this Court.

1 with the Settlement and notice, Plaintiffs now respectfully request the Court award Class
2 Counsel's fees in the amount of \$793,333.33 and costs in the amount of \$18,133.83, as
3 described in the Declarations of Zachary M. Crosner ("Crosner Decl."), Vache
4 Thomassian ("Thomassian Decl."), and Christopher Adams ("Adams Decl."), filed
5 herewith. The requested attorney's fees are well within the range of reasonableness,
6 especially considering the complex and risky nature of this litigation, the contingent risk
7 assumed, and the two-plus year delay in payment and, when subjected to a lodestar
8 crosscheck, results in a fee request that represents a very reasonable 1.34 enhancement to
9 the base lodestar.

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

13 **II. BACKGROUND**

14 The details of the procedural and factual background of this matter were outlined in
15 the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about
16 June 6, 2022). To re-familiarize the Court with this litigation, Defendants own, operate, and
17 manage for-profit thrift stores. In California, Defendants have four retail stores located in
18 Azusa, Covina, Escondido, and Valley Glen. Plaintiff Michel was employed as a non-exempt
19 employee (specifically, a "hanger") from approximately December 2012 through November
20 2019. As a hanger, Michel's job duties consisted of receiving carts of clothes, folding them,
21 and then hanging them for purchase by customers. All other Plaintiffs were employed non-exempt
22 drivers whose job duties consisted of driving Defendants' trucks to donation sites, picking up
23 donations, and returning to Defendants' store to unload donations. [Crosner Decl., ¶ 2.]

24 On July 8, 2020, Plaintiff Michel filed her class action and PAGA representative complaint
25 ("*Michel Action*") on behalf of herself and other similarly situated non-exempt employees, which
26 was later amended on February 9, 2021 and again on March 11, 2021. The operative Second
27 Amended Complaint ("SAC") alleges claims for overtime wages, waiting time penalties, unfair
28 business practices, suitable seating, and penalties under PAGA. On January 11, 2021, Plaintiffs

1 Sanchez, Quintana, Taborda, Mendoza, Verduzco, Rosendo, Gonzalez, Jacobo and Figueroa filed
2 a class action complaint (“*Sanchez Action*”) on behalf of themselves and all others similarly
3 situated non-exempt employees, which was later amended on March 25, 2021 to add a claim
4 under PAGA. The operative First Amended Complaint (“FAC”) alleges claims for minimum and
5 overtime wages, meal and rest break violations, reimbursement of business expenses,
6 inaccurate wage statements, waiting time penalties, sick time, unfair competition, and penalties
7 under PAGA. [Crosner Decl., ¶ 3.]

8 The Parties then engaged in several meet and confer discussions regarding discovery,
9 potential law and motion, and the merits of the case, and ultimately agreed to attempt early global
10 mediation. They then engaged in significant informal discovery to facilitate an exchange of
11 information necessary to engage in a meaningful mediation. The Parties then engaged Lisa
12 Klerman, Esq., a respected mediator with extensive wage and hour class action experience and, in
13 January 2022, participated in a full day mediation with Ms. Klerman that resulted in the proposed
14 settlement. [Crosner Decl., ¶ 4.] On March 29, 2022, by stipulation of the Parties, the Court
15 consolidated both cases for purposes of settlement only, and the Court preliminarily approved the
16 settlement on October 18, 2022.

17 Class notices were mailed to most class members on November 10, 2022, with a 45-
18 day window (to December 26, 2022) for class members to opt out of the proposed settlement,
19 or submit an objection. Five class members inadvertently were omitted from the original
20 class list, and were mailed their notices on December 28, 2022, with February 11, 2023 as the
21 response deadline. [Declaration of Lindsay Kline (“Kline Decl.”), ¶¶ 8, 10-12.]

22 **III. THE PROPOSED SETTLEMENT TERMS**

23 Under the settlement, Defendants will pay \$2,380,000 into a common fund, the Gross
24 Settlement Amount (“GSA”). Attorney’s fees of up to \$793,333.33 (one-third of the GSA), litigation
25 costs of up to \$25,000 (only \$18,133.83 is requested), settlement administration costs of \$20,000,
26 and a service award to each Plaintiff of no more than \$5,000 (\$50,000 total), and \$60,000.00 for
27 PAGA civil penalties (of which \$45,000 will go to the California Labor & Workforce Development
28 Agency (“LWDA”) for the State’s share of civil penalties and \$15,000 will go to eligible PAGA

Members), will all be paid from the GSA. The remainder of around \$1,438,333 will be allocated pro rata to the Participating Class Members based on their weeks worked during the Class Period. No portion of the GSA will revert to Defendants. [Crosner Decl., ¶ 5.]

A. Certification of the Settlement Class

The Court conditionally certified a settlement class defined to include all individuals who worked for Defendants as a non-exempt employee in California during the Class Period, which runs from July 8, 2016 through February 8, 2022. The Settlement Administrator ultimately mailed class notices to 2,544 individuals identified as members of the Class. [Kline Decl., ¶¶ 8, 10-11.] Nothing has changed to require reconsideration of the Court's certification of the Settlement Class.

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates Defendants to pay \$2,380,000 to resolve the Participating Class Members' claims, inclusive of attorney's fees and costs. At least \$1,438,333 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that does not 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 non-wage premiums, penalties, and interest, which allocation is consistent with Defendants' potential liability as discussed below. Defendants 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 their settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. [Crosner Decl., ¶ 6.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked in California as a non-exempt employee during the Class Period. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, and potential statutory penalties under applicable law. These methods

1 are intended to ensure each Class Member receives a settlement award corresponding to the
2 relative value of their potential claims. The proposed allocation provides a reasonable way to
3 compensate Class Members based on the amount of time they worked for Defendants and the
4 amount unpaid wages, etc. [Crosner Decl., ¶ 7.]

5 The average award to the Participating Class Members will be approximately \$565 with a
6 maximum award of almost \$4,500, while the average PAGA award will be about \$9.40. [Kline
7 Decl., ¶ 18.]

8 **C. Settlement Administration**

9 Simpluris, Inc., as the Court-approved Settlement Administrator, mailed the Notice
10 Packet to the Class members after making all reasonable effort to ascertain the best mailing
11 address, including running each address through the National Change of Address database and
12 "skip-tracing" any Notice Packets returned as undeliverable. [Kline Decl., ¶¶ 4-7.] The Class
13 Notice, previously approved by the Court, duly informed Class Members of the settlement
14 terms, including the estimated relief each Class Member will receive, the amounts to be
15 requested for attorney's fees and the class representative enhancement awards, and the right
16 to opt out of or object to the settlement. [Kline Decl., Exh. A.] Simpluris mailed 2,539 Notice
17 Packets on November 10, 2022. [Kline Decl., ¶ 8.] On December 9, 2022, Simpluris was
18 informed that five (5) Class Members were inadvertently omitted from the original class list and,
19 on December 28, 2022, Simpluris mailed the Class Notice to the Omitted Class Members. [Kline
20 Decl., ¶¶ 10-11.] Ultimately, 27 Notice Packets were deemed undeliverable, representing a
21 98.9% success rate. [Kline Decl., ¶ 9.] The 45-day response window for objecting to the
22 settlement expired on December 26, 2022 for the initial mailing, and will expire on February
23 11, 2023 for the second mailing. [Kline Decl., ¶ 12.] As of the filing of this motion, Simpluris
24 received one valid request for exclusion (one late exclusion was deemed invalid), for a 99.99%
25 participation rate, and zero objections to the settlement. [Kline Decl., ¶¶ 13-14.] No disputes
26 have been submitted regarding the information used to calculate class member settlement
27 shares. [Kline Decl., ¶ 15.]

28 ///

1 **D. Release of Claims**

2 All Participating Class Members will release Defendants from all claims alleged in the
3 operative complaint, or that could have been brought based on the factual allegations in the
4 operative complaint during the Class Period. The release is limited to the claims that were actually
5 pled or could have been pled based on the alleged facts in the SAC in the *Michel* Action or the
6 FAC in the *Sanchez* Action. [Crosner Decl., ¶ 8.]

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

8 As noted, the Parties allocated \$60,000 from the GSA to resolution of Plaintiffs' claims
9 under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and
10 adequate. Consistent with PAGA, \$45,000 of this amount will be paid to the LWDA as the
11 state's share of the civil penalties, and the remainder of \$15,000 will be distributed to the
12 1,597 individuals eligible to receive a PAGA payment. [Kline Decl., ¶ 18.] As required by
13 Labor Code section 2699(l)(2), Plaintiffs notified the LWDA of the settlement and the final
14 approval hearing via its online portal. [Crosner Decl., ¶ 9; Exh. 1.]

15 **IV. ARGUMENT**

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

1 Cal.App.4th at 245.

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

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

17 The proposed settlement of this action warrants final approval under the standards
18 summarized above. The settlement is fair, reasonable and adequate, and represents a
19 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly
20 approved by the class members, as there were no objections and only one class member
21 requested exclusion, for a 99.99% participation rate.

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

23 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
24 was reached following arm's-length negotiations presided over by Lisa Klerman, Esq., a highly
25 respected and well-known mediator with extensive experience mediating wage and hour class
26 actions. [Crosner Decl., ¶ 4.] Moreover, Plaintiffs and their counsel were well-informed about
27 the facts and the law, and counsel Zachary M. Crosner, Jamie Serb, Christopher Adams, Vache
28 Thomassian all have years of litigation experience, including litigating wage and hour class actions.

1 Plaintiffs' counsel is well-qualified to evaluate the risks and benefits of pursuing further litigation
2 or settling the matter. [Crosner Decl., ¶¶ 26-35; Adams Decl., ¶¶ 4-11; Thomassian Decl., ¶¶ 3-6.]
3 Defendants likewise were represented by highly-qualified and experienced defense counsel.
4 Both sides advocated vigorously for their clients and nothing was "left on the table."

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

6 The settlement was well-received by the class. As of the filing of this motion, no
7 objections have been filed, and only two class members requested exclusion out of 2,544
8 settlement class members. [Kline Decl., ¶¶ 13-14.] As many courts recognize, class member
9 reaction to the settlement is one of the most important factors to consider in determining if final
10 approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir.
11 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001)
12 ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant
13 factor to be weighed in considering its adequacy") (internal quotation marks omitted).

14 **3. The Settlement Is Fair and Reasonable Considering the Benefits** 15 **Conferred, the Case Value, and Significant Litigation Risks**

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

23 Prior to settlement, the parties engaged in informal discovery to facilitate settlement
24 discussions. Thus, Plaintiffs reviewed documents and information regarding Defendants' payroll
25 practices, a random sampling of pay stubs and time records from class members, applicable
26 compensation plans, meal and rest break policies, etc., and information from Defendants regarding
27 class size and breakdown, work weeks/pay periods, rates of pay, and other information used to
28 formulate a damages model. Plaintiffs then had that information analyzed by a consulting expert to

1 assist in determining potential violation rates and other data used to formulate a damages model.
2 Plaintiffs' counsel are confident they obtained sufficient information to understand the law and facts
3 of this case and make an informed decision regarding the proposed settlement and whether it is fair
4 and reasonable. [Crosner Decl., ¶¶ 4, 10.]

5 Using that data, Plaintiffs ran various calculations and estimated Defendants' theoretical
6 maximum exposure on the class claims at about \$21.885 million. More specifically, the
7 theoretical maximum includes approximately \$297,000 on the unpaid overtime claims, \$352,000
8 on the meal break claims, \$9,572,000 on the rest break claims, approximately \$3,412,000 on the
9 wage statement claims, approximately \$7,405,000 on the waiting time penalty claims, and
10 approximately \$847,000 on the expense reimbursement claims. Plaintiffs' counsel substantially
11 discounted the value of these claims, however, in light of the multiple and considerable risks
12 posed by proceeding with the litigation, as Defendants raised numerous defenses and vigorously
13 defended against these claims. [Crosner Decl., ¶ 11.]

14 Plaintiffs first contend Defendants failed to pay all overtime wages at the regular rate
15 of pay, alleging Defendants failed to incorporate non-discretionary bonuses paid during the
16 same pay periods that overtime wages were earned, in violation of Alvarado v. Dart Container
17 Corp. (2018) 4 Cal.5th 542. Furthermore, Plaintiffs contend that Defendants underpaid sick leave
18 and vacation wages because Defendants failed to incorporate non-discretionary bonuses into
19 the calculation of the regular rate of pay during the pay periods where sick leave and vacation
20 wages were paid. [Crosner Decl., ¶ 12.]

21 Plaintiffs also contend Defendants failed to provide legally compliant meal and rest
22 breaks. Specifically, Plaintiffs contend Defendants failed to provide second meal breaks and third
23 rest breaks to Class Members in qualifying shifts over 10 hours. Plaintiffs claim this violates Labor
24 Code sections 512, 226.7, and the applicable IWC Wage Orders, as well as Brinker Restaurant
25 Corp. v. Superior Court (2012) 53 Cal.4th 1004 and Augustus v. ABM Security Servs., Inc.
26 (2016) 2 Cal.5th 257, for failure to provide meal and rest periods and within the applicable time
27 frames. Furthermore, Plaintiffs contend Defendants unlawfully rounded meal period time
28 punches, resulting in shortened meal breaks to appear compliant. [Crosner Decl., ¶ 13.]

1 Defendants deny Plaintiffs' contentions, claiming they made meal and rest breaks
2 available to Class Members in compliance with California law. Defendants contend their meal
3 and rest break policies are lawful and that Class Members were frequently reminded via training,
4 supervisors, and by posted signage in English and Spanish that they were required to take all
5 meal and rest breaks. Defendants also contend that time records and signed declarations
6 demonstrate that Class Members took duty-free, timely meal and rest breaks. Defendants further
7 had other safeguards in place to ensure that employees were provided all meal breaks. For
8 example, production employees who worked in the backroom utilized a bell schedule while floor
9 sales associates utilized written schedules reminding employees of times for breaks. Defendants
10 further argue that under Brinker, they are not required to police their employees to ensure meal
11 and rest breaks are taken, but are only obligated to make them available to employees, which they
12 did. Defendants contend their meal and rest break policies and practices comported with the
13 flexibility the Brinker court held was integral to California's meal and rest period requirements.
14 Defendants further argue that they authorized fifteen-minute rest breaks, instead of only the
15 legally required ten minutes. Finally, Defendants argue that Plaintiffs' meal and rest break
16 claims are not susceptible to common proof, as the claims would require individualized inquiry,
17 including whether there was an unlawful companywide policy, whether employees had the
18 opportunity to take meal and rest periods, whether they voluntarily chose to forego their meal and
19 rest periods, and whether Defendants ever prevented them from taking meal and rest periods.
20 Accordingly, Defendants contend these claims are vulnerable to a ruling that class treatment is not
21 appropriate. [Crosner Decl., ¶ 14.]

22 Plaintiffs also argue Defendants failed to provide off-duty rest periods to Plaintiffs and
23 the Class Members as required under Brinker, Augustus, and IWC Wage Order 5 by requiring
24 employees to remain on premises during rest periods. Specifically, while Defendants' policies
25 explicitly state that employees may leave the premises for meal periods, they omit such language for
26 rest periods. Plaintiffs assert that this evidences a policy of prohibiting employees from leaving
27 the premises during rest periods in violation of California law. Defendants argue that it does not
28 and has not had any policy that tells California employees they cannot leave the premises during

1 rest periods, whether express or implied. Defendants argue that its policies do not require
2 employees to remain on the premises during breaks premises during rest periods. Defendants
3 contend that they have declarations from employees at all four locations confirming that
4 employees were allowed to, and did in fact, leave the premises during rest periods to smoke, go to
5 their cars, or grab food from a food truck. Defendants further argue that to the extent that
6 employees did not leave the premises during their rest periods, it was employees' personal
7 voluntary choice to remain in the store. [Crosner Decl., ¶ 15.]

8 Plaintiffs also alleged Defendants failed to reimburse them for personal use of their cell
9 phones. Plaintiffs contend that drivers used their cellphones to communicate with Defendants and
10 GPS guidance to locate the addresses where they needed to pick up donations. Plaintiffs further
11 contend that, as of April 2020, all employees were required to provide their own face masks to
12 prevent the spread of Covid-19 while working for Defendants. Plaintiffs argue that these face masks
13 were akin to personal protective equipment, were required to perform their jobs, and should have
14 been supplied by Defendants. Defendants argue that Plaintiffs will be unable to demonstrate any
15 business use of personal cellphones was necessary, given that Defendants supplied drivers
16 with Garmins and TomToms and there was no need for drivers to use their cellphones, as
17 they were required, per company policy, to use company issued Garmins and TomToms to
18 communicate with dispatch and for GPS guidance. With regards to personal protective equipment,
19 Defendants contend that employees were not working during the pandemic for several months
20 due to mandated store closures and that when the stores reopened, employees were provided
21 face masks and sanitizer by Defendants. [Crosner Decl., ¶ 16.]

22 The claims for penalties under Labor Code sections 203 and 226 are derivative of the
23 underlying claims, and accordingly are subject to the same risks and uncertainties as the primary
24 meal and rest break violations and unpaid wage violations, plus additional risks posed by the need
25 to take into account the discretionary nature of such awards and the "good faith" and other
26 defenses available to Defendants. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157,
27 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though class
28 prevailed on underlying claim for failure to pay living wages). Thus, while these claims largely

1 are derivative of the unpaid wage claim, they also are subject to additional defenses and
2 accordingly Plaintiffs likewise applied a significant risk discount. [Crosner Decl., ¶ 17.]

3 As far as potential PAGA liability, the theoretical penalties theoretically totaled around \$7
4 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code
5 sections at issue for every single eligible pay period. [Crosner Decl., ¶ 18.] As with the class
6 claims, Plaintiffs discounted the potential PAGA penalties for the multi-layered defenses proffered
7 by Defendants on the merits, and further discounted these claims since the Court possesses wide
8 discretion to reduce such penalties even if Plaintiffs ultimately prevailed. Labor Code §
9 2699(d)(2); Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court
10 reduced the potential penalties by over 82% after a bench trial); Carrington v. Starbucks Corp.
11 (2018) 30 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just \$5 per pay
12 period, a 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and Hour
13 Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).
14 Accordingly, the Parties allocated \$10,000 to PAGA penalties, which amount is reasonable and in
15 line with comparable settlements in other class actions in California. Van Kempen v. Matheson
16 Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of
17 \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v.
18 First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a
19 \$7,500 PAGA payment reasonable when measured against the overall settlement of \$345,000 and
20 the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement). Additionally, the
21 LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to
22 weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist.
23 LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs
24 [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the
25 settlement").

26 Thus, Defendants raised various defenses to each of Plaintiffs' claims, any one of which, if
27 successful, could have derailed Plaintiff's case. Accordingly, Plaintiffs faced risky issues going
28 forward with this litigation, and given the need to secure class certification, try the case, and deal

1 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiffs
2 and their counsel discounted the value of the class claims consistent with the risks discussed
3 above, and carefully weighed the likelihood of the class receiving substantially greater benefit if
4 the litigation continued. Plaintiffs and counsel concluded – in light of these very real and
5 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
6 was in the best interests of the class. [Crosner Decl., ¶¶ 19-20.]

7 The overall recovery represents a significant percentage of Defendants’ potential exposure
8 and, given the risks addressed above, a total recovery for the class of \$2,380,000 which will result
9 in average awards of some \$565 per Class Member, is a significant result well within the range of
10 reasonableness considering all potential outcomes, and it will provide direct monetary awards to
11 all Class Members without further delay. [Crosner Decl., ¶ 21.]

12 Importantly, the mere fact that a settlement does not provide the same recovery as might be
13 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
14 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
15 settlement process...even if the relief afforded by the proposed settlement is substantially
16 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
17 settlement because the public interest may indeed be served by a voluntary settlement in which
18 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir.
19 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
20 different from the question whether the settlement is perfect in the estimation of the reviewing
21 court”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
22 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential recovery
23 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
24 disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d
25 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented
26 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement
27 is non-reversionary and will provide timely benefits to the Class Members without a claims
28 process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action

1 Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
2 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
3 claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is
4 within the “range of reasonableness,” and is fair and adequate for the Class.

5 **V. PLAINTIFFS’ ENHANCEMENT AWARDS**

6 Pursuant to the terms of the settlement, each Plaintiff seeks a modest enhancement
7 payment of \$5,000 for their service in bringing these claims on behalf of the Class. These requests
8 are reasonable given the risks they undertook on behalf of the Class Members. By contacting and
9 retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the
10 absent Class Members, while shouldering the risk of being liable for Defendants’ litigation costs.
11 Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit
12 (discoverable even through a simple google search) for the benefit of other employees, placing
13 themselves at risk of discrimination by future prospective employers. As set forth in more detail in
14 their respective declarations submitted with the preliminary approval motion, among taking many
15 other actions assisting in the successful litigation of this case, each Plaintiff provided substantial
16 factual information and documents to counsel, attended numerous meetings/phone conferences
17 with counsel to discuss the case, and kept abreast of all significant developments. Finally, there
18 are no class member objections submitted with respect to the amounts Plaintiffs propose to
19 receive. [Kline Decl., ¶ 14.] Accordingly, the requested enhancement payment to Plaintiffs are
20 appropriate and justified as part of the settlement. [Crosner Decl., ¶ 22.]

21 **VI. SETTLEMENT ADMINISTRATION COSTS**

22 The settlement provides for a payment to Simpluris of no more than \$20,000 for its
23 services as the Settlement Administrator. As set forth in the Declaration of Lindsay Kline,
24 Simpluris has performed and will continue to perform its required duties through final distribution
25 of the settlement funds, and incurred \$20,000.00 in fees and expenses. [Kline Decl., ¶9.]
26 Accordingly, Plaintiffs respectfully request the Court approve payment of \$20,000 to Simpluris
27 from the GSA. [Crosner Decl., ¶ 23.]

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

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

4 This Court has discretion over the amount of attorneys' fees awarded and court
5 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
6 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
7 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
8 marketplace for cases involving significant contingent risk, such as this one. Deposit
9 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
10 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
11 private bargaining, if it were truly possible, might have reached" in determining a reasonable
12 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
13 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
14 justified by the work performed, the benefits obtained, and the contingent risk assumed.

15 As addressed in detail above, at the time the parties reached the tentative settlement
16 success for Plaintiffs and the putative class was far from certain. Plaintiffs faced a real risk
17 that some or all the claims would not be certified for class treatment, as Defendants had
18 strong arguments that their compensation policies were legal and properly compensated the
19 class members. Even if Plaintiffs certified some or all of the claims and ultimately prevailed
20 on the merits, it undoubtedly would have taken several years to realize any recovery while
21 they pursued class certification, trial, and an almost certain appeal. [Crosner Decl., ¶¶ 12-20.]

22 Nonetheless, Plaintiffs succeeded and expeditiously obtained the relief they set out to
23 obtain, and the settlement provides substantial cash payments to Class Members, with an
24 average award of about \$565, and with a maximum award of nearly \$4,500. Importantly as
25 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
26 filing of this motion, there are no objections to the settlement and only one individual opted
27 out. [Kline Decl., ¶¶ 13-14, 18.]

28 ///

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

2 The United States Supreme Court has ruled the parties to a class action properly may
3 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
4 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
5 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
6 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
7 should not result in a second major litigation. Ideally, of course, litigants will settle the
8 amount of a fee." The United States Supreme Court has reemphasized this policy and further
9 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
10 (1984) 465 U.S. 886, 902 n.19.

11 As part of the Settlement, Defendants agreed not to object to an award of no more than
12 1/3 of the GSA for attorney's fees, or \$793,333.33, and up to \$25,000 in reimbursement for
13 litigation costs and expenses. Such a fee is commensurate with what the market would
14 provide for similar services and the Court therefore can most certainly enforce the agreement.
15 As California's Court of Appeal has instructed:

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

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

21 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
22 arms-length bargaining regarding relief to the Class was completed. [Crosner Decl., ¶ 24.]
23 The requested fee and cost award was a product of these arms-length negotiations and fairly
24 reflects the marketplace value of the services rendered by Class Counsel in this case. As a
25 result, the fee agreed to by the parties should be approved.

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27 ///

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

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

9 The recognized advantages of the percentage method-including relative ease of
10 calculation, alignment of incentives between counsel and the class, a better
11 approximation of market conditions in a contingency case, and the encouragement it
12 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.

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

14 Indeed, both California and federal courts have long recognized an appropriate method
15 for determining the award of attorney's fees is based on a percentage of the total value of
16 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
17 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
18 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
19 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
20 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

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

1 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
2 this action of no more than 1/3 of the total amount recovered by the Class via the lawsuit, or
3 \$793,333.33. The percentage requested is justified for the reasons set forth further below,
4 and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review
5 of class action settlements shows that courts have historically awarded fees in the range of 20
6 to 50 percent, depending upon the circumstances of the case. In re Warner Communications
7 Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in
8 common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d
9 ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award
10 from a common fund in order to assure that the fees do not consume a disproportionate part of
11 the recovery obtained for the class, although somewhat larger percentages are not
12 unprecedented.").

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

14 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
15 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
16 an objective measure of the work performed into the calculation of a reasonable attorney fee."
17 Laffitte, 1 Cal.5th at 504. Here, Class Counsel collectively spent 792.0 hours of time on this
18 matter, resulting in a reasonable total lodestar of \$593,260.00.

19 As is fully detailed in the Crosner and Adams Declarations, Class Counsel's efforts
20 included, inter alia: (1) extensive pre-lawsuit investigation of the claims of Plaintiffs and the
21 putative class, including legal research, research into similar claims and claims against other
22 employers in the same industry, and attempts to locate and contact other employees of Defendants;
23 (2) drafting PAGA notice letters; (3) drafting initial complaints and related documents drafting
24 first and second amended complaints; (4) case management, including communications with
25 defense counsel, meeting and conferring/preparing case management statements, addressing
26 consolidation of the two cases, etc.; (5) propounding initial written discovery, (6) lengthy
27 discussions with defense counsel regarding settlement/mediation and informal discovery needed
28 for meaningful settlement discussions; (7) engaging in substantial informal discovery, including

1 propounding informal discovery “requests,” reviewing documents and other information
2 produced, and working with their consulting expert on liability and damages analysis; (8) drafting
3 a mediation brief and accompanying damages model after review and analysis of Defendants’
4 informal discovery production; (9) attending an all-day mediation; (10) negotiating and drafting
5 the settlement agreement and related documents; (11) drafting an amended complaint to effectuate
6 the settlement; (12) drafting the motion for preliminary approval, and attending the hearing; (13)
7 administration of the settlement, including communications with the Settlement Administrator and
8 settlement class members; (14) drafting the motion for final approval and motion for attorney’s
9 fees, and attending the final approval hearing; and (15) extensive communications with the
10 Plaintiffs regarding case status, case investigation and document review, mediation, and settlement
11 terms. Additionally, Class Counsel will incur additional time following final approval to, inter
12 alia, respond to class member inquiries, work with the Settlement Administrator on the
13 distribution of settlement funds, and on the compliance hearing. [Crosner Decl., ¶ 25, Exh. 2;
14 Adams Decl., ¶¶ 13-15; Thomassian Decl., ¶¶ 7-8.]

15 In pursuing this matter, Class Counsel incurred total attorney’s fees of \$593,260.00,
16 based on 792.0 attorney hours, broken down as follows: \$335,540.00 for Crosner Legal, and
17 \$257,720.00 for KJT Law/Adams Employment Counsel. The overall lodestar is based on an
18 reasonable number of hours worked to litigate these matters to a successful conclusion (792.0)
19 attorney hours, and the requested attorney hourly rates likewise are reasonable and comport with
20 hourly rates charged by other attorneys with similar experience in this practice area in California.
21 [Crosner Decl., ¶¶ 26-39; Adams Decl., ¶¶ 4-11, 15-18; Thomassian Decl., ¶¶ 4-6, 9-11.]

22 On a lodestar basis, the fee request of \$793,333.330 results in a multiplier of 1.34,
23 which is a modest enhancement entirely in line with California law. Indeed, California courts
24 routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of
25 class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorney's
26 fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255
27 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders
28 (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34). Class Counsel submits that the

1 requested 1.34 multiplier effectively operates to show that the percentage fee request is
2 reasonable considering the challenges presented in this contingency fee matter, and
3 appropriately compensates Class Counsel for the contingent risk assumed and delay in
4 payment during the 2+ years they have represented Plaintiffs. Thus, the multiplier results in a
5 fee constituting a fair return on the contingency.

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

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

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

21 **1. The Results Achieved.**

22 Class Counsel obtained an excellent result in this case for the Class Members. The
23 Settlement provides real monetary benefits to the Class Members, and the Settlement is
24 particularly advantageous to the Class Members because the proceeds will be distributed
25 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
26 Considering many individual claims would be very modest and would not be cost-effective to
27 pursue individually, the Settlement provided them with fair compensation for their claims.
28 Moreover, the absence of any objection to either the Settlement or the attorney's fee request

1 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
2 by the fact that only one² class member opted out. Additionally, the settlement amounts to a
3 substantial percentage of the maximum value of the amount the Class might have obtained if
4 it had tried the case and recovered on all theories seeking recovery of wages and penalties.
5 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
6 recovery does not per se render the settlement inadequate or unfair." In re Omnivision Techs.,
7 Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

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

9 At the time of filing the complaint, Class Counsel recognized that they would have to
10 expend a substantial amount of time and advance significant costs to prosecute a statewide
11 class action suit with no guarantee of compensation or reimbursement, in the hope of
12 prevailing against a sophisticated company represented by first-rate attorneys. Despite
13 their belief in the validity of Plaintiffs' claims, they also knew they faced substantial risks
14 of class certification and the ability to prove class-wide and individual damages. In light of
15 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendants
16 would dig in and attempt to bury their small firms in work. Given the small size of Class
17 Counsels' respective firms, not receiving any compensation for several years while
18 simultaneously advancing litigation costs posed considerable risk and difficulty. [Crosner
19 Decl., ¶¶ 40-42.]

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

21 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
22 experience. The issues presented in this case required more than just a general appreciation of
23 wage and hour law and class action procedure. This Settlement was possible only because
24 counsel persuaded Defendants that Plaintiffs and the putative class had a realistic chance
25 of prevailing on their claims despite Defendants' contrary arguments, and that the case
26 would be pursued through class certification and trial if necessary. In successfully
27

28 ² See Fn. 1

1 navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a risky
2 and difficult case.

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

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

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

22 Here, the contingent fee practices of Plaintiffs' counsel simply do not accommodate
23 the investment of unnecessary time in a case, and the adverse resolution of any one of several
24 difficult issues present in this matter could have doomed the entire effort. As discussed, the
25 attorney's fees in this case were not only contingent but fairly risky, and there was always a
26 palpable chance Plaintiffs' counsel would receive nothing for any number of reasons.
27 [Crosner Decl., ¶¶ 40-42.] Accordingly, the contingent nature of the fee and the financial
28 burdens on Class Counsel and Plaintiffs also support the fee requested.

1 **5. Awards in Other Cases**

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

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

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

27 As explained in the Crosner and Thomassian Declarations, Class Counsel incurred
28 a total of \$18,133.83 in costs and expenses in connection with this litigation. These

1 expenses include the amounts paid for court filing fees, service of process, expert fees,
2 postage, Case Anywhere charges, and mediation fees, all of which are costs normally
3 billed to and paid by the client. These costs were reasonably incurred in the prosecution
4 of this matter and it is respectfully requested that the Court authorize they be reimbursed
5 in full. [Crosner Decl., ¶¶ 43-44; Thomassian Decl., Exh. A.]

6 **VII. CONCLUSION**

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

14
15 Dated: February 2, 2023

CROSNER LEGAL, P.C.

16
17 By: _____


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Zach Crosner
Jamie Serb
Attorneys for Plaintiffs