

1 ZACHARY M. CROSNER (SBN 272295)
zach@crosnerlegal.com

2 JAMIE K. SERB (SBN 289601)
jamie@crosnerlegal.com

3 SEPIDEH ARDESTANI (SBN 274259)
sepideh@crosnerlegal.com

4 **CROSNER LEGAL, PC**

5 9440 Santa Monica Blvd. Suite 301

6 Beverly Hills, CA 90210

7 Tel: (310) 496-5818

8 Fax: (310) 510-6429

9 Counsel for Plaintiff BENNY STEINFELD

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 BENNY STEINFELD, as an individual and
13 on behalf of all others similarly situated and
14 aggrieved,

15 Plaintiff,

16 v.

17 RELIANCE HOME SERVICES, INC., a
18 California corporation; RON S. ESHEL, an
19 individual; and DOES 1-50, inclusive,

20 Defendants.

Case No.: 21STCV18559

Assigned for All Purposes to:
Hon. Yvette Palazuelos
Dept. SSC-9

21 **MEMORANDUM OF POINTS AND**
22 **AUTHORITIES IN SUPPORT OF MOTION**
23 **FOR FINAL APPROVAL OF CLASS**
24 **ACTION SETTLEMENT**

[Filed concurrently with Notice of Motion and
Motion; Declarations of Sepideh Ardestani and
Nicole Bench; [Proposed] Order]

Date: September 21, 2023

Time: 10:00 a.m.

Dept. SSC-9

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

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND/LITIGATION HISTORY 2

III. STHE PROPOSED SETTLEMENT TERMS3

 A. Certification of the Settlement Class.....3

 B. The Benefit Conferred on the Settlement Class 3

 C. Settlement Administration.....4

 D. Release of Claims 5

 E. PAGA Claims and Notice to the LWDA 6

IV. ARGUMENT 6

 A. The Proposed Settlement Merits Final Approval 7

 1. The Settlement Is the Product of Arm's-Length, Informed Negotiations 7

 2. The Class Reacted Favorably to the Settlement..... 7

 3. The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case Value,
 and Significant Litigation Risks 8

V. PLAINTIFF’S ENHANCEMENT AWARD12

VI. SETTLEMENT ADMINISTRATION COSTS13

VII. ATTORNEY’S FEES AND COSTS13

 A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved.....13

 B. The Requested Fee Award Is Reasonable and Appropriate14

///

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

C. Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund	15
D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request	16
E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar Cases.	18
1. The Results Achieved	18
2. Class Counsel Bore Considerable Risk	19
3. The Skill Required and the Quality of Work	19
4. The Contingent Nature of the Fee and Risk Assumed	19
5. Awards in Other Cases	20
F. Class Counsel's Costs and Expenses are Reasonable	21
VII. CONCLUSION	22

TABLE OF AUTHORITIES

Page(s)

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i> (2000) 85 Cal.App.4th 1135.....	11
<u>Alvarado v. Dart Container Corp.</u> (2018) 4 Cal.5th 542. (Ardestani Decl.).....	9
<u>Amaral v. Cintas Corp. No. 2</u> (2008) 163 Cal.App.4th 1157.....	10
<u>In re: American Bank Note Holographics,</u> 127 F.Supp.2d 418 (S.D.N.Y. 2001).....	8
<u>Augustus v. ABM Security Serv., Inc.</u> (2016) 2 Cal.5th 257.....	9
<u>Blum v. Stenson</u> (1984) 465 U.S. 886	14
<u>Boeing Co. v. Van Gernert</u> (1980) 444 U.S. 472	15
<u>Brinker Restaurant Corp. v. Superior Court</u> (2012) 53 Cal.4th 1004.....	9
<u>Carrington v. Starbucks Corp.</u> (2018) 30 Cal.App.5th 504.....	10
<u>Cazares v. Saenz</u> (1989) 208 Cal.App.3d 279	20
<u>Class Plaintiffs v. City of Seattle</u> (9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953	6
<u>Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper</u> (1980) 445 U.S. 326, <u>rehg. den.</u> 446 U.S. 947	13
<u>Donahue v. AMN Services, LLC</u> (2021) 11 Cal.5th 58. (Ardestani Decl.).....	9
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794.....	6, 7
<u>Evans v. Jeff D.</u> (1986) 475 U.S. 717	14

1	<u>Harris v. Marhoefer</u>	
2	(9th Cir. 1994) 24 F.3d 16	21
3	<u>Hensley v. Eckerhart</u>	
4	(1983) 461 U.S. 424	14
5	<u>Hernandez v. Restoration Hardware, Inc.</u>	
6	(2018) 4 Cal.5th 260.....	15
7	<u>Jennings v. Open Door Mktg. Inc.</u>	
8	(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356	11
9	<u>Ketchum v. Moses</u>	
10	(2001) 24 Cal.4th 1122.....	20
11	<u>Laffitte v. Robert Half Int’l., Inc.</u>	
12	(2016) 1 Cal.5th 480.....	15, 16, 18
13	<i>Lane v. Facebook, Inc.</i>	
14	(9th Cir. 2012) 696 F.3d 811	12
15	<u>Lealao v. Beneficial Cal., Inc.</u>	
16	(2000) 82 Cal.App.4th 19	13, 14
17	<u>Levy v. Toyota Motor Sales, U.S.A.</u>	
18	(1992) 4 Cal.App.4th 807.....	13
19	<u>Mandujano v. Basic Vegetable Prods., Inc.,</u>	
20	541 F.2d 832 (9th Cir. 1976).....	8
21	<u>McKittrick v. Gardner</u>	
22	(4th Cir. 1967) 378 F.2d 872	20
23	<u>In re Omnivision Techs., Inc.,</u>	
24	559 (N.D. Cal. 2008).....	19
25	<u>Paul, Johnson, Alston & Hunt v. Gaulty</u>	
26	(9th Cir. 1989 886 F.2d 268, 272).....	18
27	<u>Potter v. Pacific Coast Lumber Co.</u>	
28	(1951) 37 Cal.2d 592.....	6
	<u>Powers v. Eichen</u>	
	(9th Cir. 2000) 229 F.3d 1249	19, 20
	<u>Rider v. County of San Diego</u>	
	(1992) 11 Cal.App.4th 1410.....	21
	<u>Serrano v. Priest</u>	
	(1977) 20 Cal.3d 25.....	15, 21

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

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

Statutes

Cal. Rule of Court 3.769 6, 13

Cal. Code Regs. Tit. 8 § 13520 10

Labor Code sections 10

Labor Code sections 512, 226.7 9

Labor Code § 2699(e)(2)..... 10

Labor Code section 2699(l)(2) 6

Other Authorities

Conte, Attorney Fee Awards (2d ed. 1993) § 104 16

Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* (3d ed. 2010) 12

H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41 6

Newberg, Newberg on Class Actions (3d ed.) § 14.03 16, 21

1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Benny Steinfield seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 168 individuals
4 who worked for defendant Reliance Home Servcies, Inc. Bay Cities Heating and Air Conditioning
5 (together “RHS”) in the State of California as all current and former hourly non-exempt
6 employees who worked as Dispatchers/CSR; Install Coordinators; Installer; Plumbing Service
7 Techs; and Sales Techs for any of the Defendants in California at any time between May 17, 2017
8 and August 1, 2022. The proposed \$305,000 total settlement provides about \$133,700 in cash
9 payments to the Class, with an average award of about \$795, plus additional amounts payable
10 under PAGA. The remaining balance will cover a modest service award to Plaintiff, settlement
11 administration costs, civil penalties to the state, and reasonable attorney’s fees and costs. The
12 parties and their counsel finalized the settlement after extensive and difficult arms-length
13 negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally
14 certified the Class and preliminarily approved the settlement on May 2, 2023. Since then, the
15 Court-approved notice form was mailed to the Class Members on May 24, 2023, and they reacted
16 very favorably to the settlement. As of the filing of this motion, there are no objections, and no
17 class member has requested exclusion.

18 Class Counsel secured an excellent settlement with Defendant after some two
19 years of investigation, litigation, and settlement negotiation and administration, all
20 without any compensation for services rendered or costs expended. The class notice duly
21 informed the class members that Class Counsel would request attorney’s fees not to
22 exceed 1/3 of the Gross Settlement Amount, along with reimbursement of no more than
23 \$15,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not*
24 *one Class Member objected* to the proposed fee award. Consistent with the Settlement
25 and notice, Plaintiff now respectfully requests the Court award Class Counsel's fees in the
26 amount of \$101,666.67 and costs in the amount of \$12,083.06, as described in the
27 Declaration of Sepideh Ardestani (“Ardestani Decl.”) filed herewith. The requested
28 attorney’s fees are well within the range of reasonableness, especially considering the

1 complex and risky nature of this litigation, the contingent risk assumed, the three-plus
2 year delay in payment and, when subjected to a lodestar crosscheck, results in a base
3 lodestar that is slightly higher than the actual fee request.

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

7 **II. BACKGROUND/LITIGATION HISTORY**

8 The details of the procedural and factual background of this matter were outlined in the
9 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about
10 September 16, 2022). To re-familiarize the Court with this litigation, Defendants RHS are
11 plumbing and HVAC contractors providing services in Southern California, and operated as joint
12 employers of Plaintiff and the Class Members. Defendant Eshel is the CEO of both Reliance and
13 Bay Cities. Plaintiff worked for RHS as an HVAC technician for approximately 20 years, from 1999
14 to 2020. (Ardestani Decl., ¶ 2.)

15 Plaintiff contends the Class Members were not paid all minimum or overtime wages, not
16 provided with legally compliant meal and rest periods, did not receive compliant wage statements,
17 and did not receive all wages due on separation of employment. On May 17, 2021, Plaintiff filed a
18 class action and PAGA complaint against Defendant Reliance and Eshel, and added Bay Cities as
19 a "Doe" defendant in July 2022.. The operative Complaint alleges claims for minimum and overtime
20 wages, meal and rest break violations, inaccurate wage statements, waiting time penalties, unfair
21 competition, and penalties under PAGA. (Ardestani Decl., ¶ 3.)

22 After Plaintiff filed his complaint, the Parties initiated discovery and also engaged in
23 numerous meet and confer discussions regarding discovery, potential law and motion, and potential
24 ADR. Ultimately, the Parties agreed to mediation and also agreed to an informal exchange of
25 information to facilitate meaningful settlement discussions. The Parties then retained Louis Marlin,
26 Esq., a well-respected neutral with extensive experience mediating wage and hour class actions. In
27 May 2022, the Parties participated in a full-day mediation with Mr. Marlin that resulted in this
28

1 settlement. (Ardestani Decl., ¶¶ 4-5.) The Court preliminarily approved the settlement on May 2,
2 2023.

3 Class Notices were mailed to class members on March 24, 2023, and Class Members
4 have until July 14, 2023 to opt out or object to the proposed settlement. [Declaration of Nicole
5 Bench (“Bench Decl.”), ¶¶ 8, 12-13.]

6 **III. THE PROPOSED SETTLEMENT TERMS**

7 Under the settlement, RHS will pay \$305,000.00 into a common fund, the Gross Settlement
8 Amount or GSA. Attorney’s fees of up to 1/3 of the GSA (\$101,666.67), litigation costs of up to
9 \$15,000 (only \$12,083.06 is requested), an enhancement award of \$10,000 for the plaintiff,
10 settlement administration costs of \$7,550, and a payment of \$40,000 for PAGA civil penalties (of
11 which \$30,000 (75%) will go to the Labor & Workforce Development Agency for its share of the
12 PAGA penalties and \$10,000 (25%) will be paid to PAGA Employees¹), all will be paid from the
13 GSA. The remainder of approximately \$133,700 will be allocated to the Participating Class
14 Members based on their total weeks worked during the Class Period. No portion of the GSA will
15 revert to RHS. [Ardestani Decl., ¶ 6.]

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

17 The Court conditionally certified a settlement class including all all current and former
18 hourly non-exempt employees who worked as Dispatchers/CSR; Install Coordinators; Installer;
19 Plumbing Service Techs; and Sales Techs for any of the Defendants in California at any time
20 between May 17, 2017 and August 1, 2022. The Settlement Administrator ultimately mailed
21 class notices to 168 individuals identified as members of the Class. [Bench Decl., ¶ 6.]
22 Nothing has changed to require reconsideration of the Court’s certification of the
23 Settlement Class.

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

25 As noted, the settlement obligates RHS to pay \$305,000 to resolve the claims of the
26 Settlement Class, inclusive of attorney’s fees and costs. Approximately \$133,700 from the GSA
27

28 ¹ “PAGA Employees” means all current and former non-exempt employees of Defendant from August 14, 2018 through September 22, 2022 (the “PAGA Period”).

1 will be distributed to the Participating Class Members, with additional amounts going to PAGA
2 Employees for their portion of the PAGA payment. This is a cash settlement that does not require
3 Participating Class Members to submit a claim form to receive their settlement share. Participating
4 Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty
5 percent of each settlement share will be allocated to wages and the remaining eighty percent will be
6 allocated to penalties and interest. NFS will pay any and all applicable employer-side payroll taxes
7 separately and in addition to the GSA. Subject to the Court's approval, any amounts not cashed,
8 will be forwarded to the State Controller's Unclaimed Property Fund. [Ardestani Decl., ¶ 7.]

9 Each Participating Class Member will receive a share of the Net Settlement Amount based
10 on his or her total weeks worked for NFS in California during the Class Period while employed in
11 a non-exempt position. Thus, each Class Member's Individual Settlement Share will be calculated
12 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium
13 wages for missed meal breaks, and potential statutory penalties under applicable law. These methods
14 are intended to ensure each Class Member receives a portion of the available settlement funds
15 corresponding to the relative value of his or her potential claims. The proposed allocation provides
16 a reasonable way to compensate Class Members based on the amount of time they worked for NFS
17 and the number of instances they missed a meal break, were not provided compensation in lieu of
18 such missed breaks, or lost wages due to the alleged regular rate miscalculation, etc. [Ardestani
19 Decl., ¶ 8.]

20 The average class payment will be about \$795, and the maximum class payment will be
21 about \$2,250. The average PAGA payment will be about \$61. [Bench, Decl., ¶ 16.]

22 **C. Settlement Administration**

23 ILYM Group, Inc., as the Court-approved Settlement Administrator, mailed the Notice
24 Packet to the Class members after making all reasonable effort to ascertain the best mailing
25 address, including running each address through the National Change of Address database and
26 "skip-tracing" any Notice Packets returned as undeliverable. [Bench Decl., ¶¶ 3-9.] The Class
27 Notice, previously approved by the Court, duly informed Class Members of the settlement
28 terms, including the estimated relief each Class Member will receive, the amounts to be

1 requested for attorney's fees and the class representative enhancement awards, and the right to
2 opt out of or object to the settlement. [Bench Decl., ¶ 8; Exh. A.] ILYM mailed 168 Notice
3 Packets on May 30, 2023. [Bench Decl., ¶ 8.] Ultimately, four Notice Packets were deemed
4 undeliverable, representing a 97.6% success rate. [Bench Decl., ¶ 11.] The response window
5 for opting out of or objecting to the settlement expired on July 14, 2023.² [Bench Decl., ¶¶ 12-
6 13.] As of the filing of this motion, ILYM has received zero requests for exclusion (for a 100%
7 participation rate), and zero objections to the settlement. No disputes have been submitted
8 regarding the information used to calculate class member settlement shares. [Bench Decl., ¶¶
9 12-14.]

10 Importantly, the Notice as distributed to the Class Members unfortunately has the incorrect
11 date for final approval hearing. The Court's Order Granting Preliminary Approval set the final
12 approval hearing for September 21, 2023, at 10:00 a.m. The actual Notice, however, states the final
13 approval hearing is November 9, 2023 at 8:30 a.m., which is the date and time for a non-appearance
14 case review per the Court's docket. The error was not discovered until well after the close of the
15 notice period, as the final approval papers were being drafted. Nevertheless Plaintiff timely filed the
16 final approval papers in anticipation of proceeding on September 21, 2023 and file-endorsed copies
17 of the Notice of Motion and moving papers promptly posted on the case website at
18 www.RHSclassactionsettlement.com as soon as they are filed with the Court, and a supplemental
19 declaration will be filed confirming they were posted. [Ardestani Decl., ¶ 9.]

20 **D. Release of Claims**

21 All Participating Class Members will release Defendant from all claims alleged in the
22 operative complaint, or that could have been brought based on the factual allegations in the operative
23 complaint, including PAGA claims, during the Class Period. The release is limited to the claims that
24 were actually pleaded or could have been pleaded based on the alleged facts in the operative
25 complaint. [Ardestani Decl., ¶ 10.]

26 ////

27 ////

28 _____
² Extended to July 28, 2023 for remailed notices.

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

2 The Parties allocated \$40,000 from the settlement to civil penalties under PAGA, and
3 Plaintiff respectfully requests that the Court approve this amount as fair, reasonable and adequate.
4 Consistent with PAGA, \$30,000 from this amount will be paid to the LWDA as the state's share
5 of the civil penalties, and the remaining \$10,000 will be distributed to the 164 individuals
6 eligible to receive a PAGA payment. [Bench Decl., ¶¶ 15-16.] As required by Labor Code
7 section 2699(l)(2), Plaintiff gave notice of the settlement and the final approval hearing to the
8 LWDA via its online portal. [Ardestani Decl., ¶ 11; Exh. 1.]

9 **IV. ARGUMENT**

10 The law favors settlement, particularly in class actions where substantial resources can
11 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
12 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
13 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
14 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
15 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
16 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
17 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer
18 (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud
19 or collusion, and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01;
20 Newberg, at §§ 11.22, *et seq.* Review is accomplished through a two-step process intended to
21 determine whether, under the totality of circumstances, the settlement is fair, reasonable and
22 adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

23 On a motion for final approval, the trial court is charged with determining whether, in
24 light of the total circumstances of the action and the response of the class members to the
25 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
26 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
27 determination and may consider a number of relevant factors, including: the strength of
28 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of

1 further litigation; the amount offered in settlement; the extent of discovery and stage of the
2 proceedings; the experience and opinion of counsel; and the reaction of class members to the
3 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
4 courts generally apply a presumption of fairness to a proposed class action settlement when:
5 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
6 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
7 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;
8 Wershba, 91 Cal.App.4th at 245.

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

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

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

15 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
16 was reached following arm's-length negotiations presided over by Louis Marlin, Esq., a highly
17 respected and well-known mediator with extensive experience mediating wage and hour class
18 actions. [Ardestani Decl., ¶ 5.] Moreover, Plaintiff and his counsel were well-informed about the
19 facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Sepideh Ardestani have years
20 of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are
21 well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
22 [Ardestani Decl., ¶¶ 26-34.] Defendant likewise was represented by highly-qualified and
23 experienced defense counsel. Both sides advocated vigorously for their clients, and nothing
24 was "left on the table."

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

26 The settlement was well-received by the class. As of the filing of this motion, no
27 objections have been filed, and zero Class Members requested exclusion. [Bench Decl., ¶¶ 12-13.]
28 As many courts recognize, class member reaction to the settlement is one of the most important

1 factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable
2 Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics,
3 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (“It is well-settled that the reaction of the class to the
4 settlement is perhaps the most significant factor to be weighed in considering its adequacy”)
5 (internal quotation marks omitted).

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

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

15 Prior to settlement, the parties engaged in extensive formal and informal discovery to
16 facilitate settlement discussions. As a result, Plaintiff reviewed payroll records, personnel
17 policies/handbooks, meal break policies, personnel files, and a random sampling of paystubs and
18 time records produced by RHS. Defendant provided documents and information reflecting the
19 estimated total number of workweeks and pay periods they worked, and average hourly pay rates,
20 among other relevant data. Plaintiff also had that information reviewed by a consulting expert to
21 assist with calculating potential violation rates and potential damages. Plaintiff’s counsel is
22 confident they obtained sufficient information to enable them to understand the law and facts of this
23 case and make an informed decision regarding the proposed settlement and whether it is in the best
24 interests of the class. [Ardestani Decl., ¶¶ 4, 12.]

25 Plaintiff contends Defendants failed to provide legally compliant meal and rest breaks.
26 Specifically, Plaintiff contends the volume of work Defendants imposed made it difficult if not
27 impossible for the class members to take all required meal and breaks, and further made it difficult
28 to take breaks on a fully compliant basis even when they were able to take one at all. Plaintiff claims

1 this violates Labor Code sections 512, 226.7, and the applicable IWC Wage Orders, as well as
2 Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004 and Augustus v. ABM Security
3 Serv., Inc. (2016) 2 Cal.5th 257 for failure to provide meal and rest periods and within the applicable
4 time frames. Furthermore, Plaintiff contends Defendants unlawfully rounded meal period time
5 punches, resulting in shortened meal breaks to appear compliant, in violation of Donahue v. AMN
6 Services, LLC (2021) 11 Cal.5th 58. (Ardestani Decl., ¶ 13.)

7 Defendants deny Plaintiff's contentions, claiming they made meal and rest breaks available
8 to Class Members in compliance with California law. Defendants contend their meal and rest break
9 policies are lawful and that Class Members were frequently reminded via training and supervisors,
10 that they were required to take all meal and rest breaks. Defendants also contend that time records
11 and signed declarations demonstrate that Class Members took duty-free, timely meal and rest breaks.
12 Defendants contend their meal and rest break policies and practices comported with the flexibility
13 the *Brinker* court held was integral to California's meal and rest period requirements. Finally,
14 Defendants argued that Plaintiff's meal and rest break claims are not susceptible to common proof,
15 as the claims would require individualized inquiry, including whether there was an unlawful
16 companywide policy, whether employees had the opportunity to take meal and rest periods, whether
17 they voluntarily chose to forego their meal and rest periods, and whether Defendants ever prevented
18 them from taking meal and rest periods. Accordingly, Defendants contend these claims are
19 vulnerable to a ruling that class treatment is not appropriate. (Ardestani Decl. ¶ .) Without taking
20 into consideration any of Defendants' defenses to certification or on the merits, Plaintiff calculated
21 Defendants' exposure for the meal and rest break claims as \$1,379,400 and \$324,326 respectively.
22 (Ardestani Decl., ¶¶ 13-15.)

23 Plaintiff also asserts Defendants' rounding of time entries deprived employees of earned
24 wages and, coupled with the allegations that Class Members performed off the clock work prior to
25 their shifts, give rise to unpaid minimum wages. Plaintiff further contends Defendants failed to pay
26 all overtime wages at the regular rate of pay, as Defendants failed to incorporate non-discretionary
27 bonuses paid during the same pay periods that overtime wages were earned, in violation of Alvarado
28 v. Dart Container Corp. (2018) 4 Cal.5th 542. (Ardestani Decl., ¶ 16.) Without taking into

1 consideration any of Defendants’ defenses to certification or on the merits, Plaintiff’s expert
2 calculated Defendants’ maximum exposure for this claim as \$482,600 on the off the clock/rounding
3 claim and about \$1,000 on the regular rate claim. (Ardestani Decl., ¶ 13.)

4 Plaintiff’s claims for inaccurate wage statements and waiting time penalties are derivative
5 of the unpaid wage claims. Should those claims fail, Plaintiff’s claim for inaccurate wage statements
6 and waiting time penalties would also fail. Defendants also contend they would not be liable for
7 waiting time penalties because a “good faith dispute” exists over the payment of past wages. Cal.
8 Code Regs. Tit. 8 § 13520; Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201.
9 Further, Defendants contend Plaintiff would have to prove that Defendants “willfully” failed to pay
10 Class Members appropriate wages due upon separation of employment. Defendants contend that
11 any failure to pay wages upon separation was not willful. (Ardestani Decl., ¶ 46.) Without taking
12 into consideration any of Defendants’ defenses to certification or on the merits, Plaintiff calculated
13 Defendants’ maximum exposure for wage statement penalties as \$516,450 and waiting time
14 penalties as \$378,970. (Ardestani Decl., ¶¶ 13, 17.)

15 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$2.3 million
16 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at
17 issue. (Ardestani Decl., ¶ 18.) As with the class claims, Plaintiff discounted the potential PAGA
18 penalties based on Defendants’ various defenses on the merits and also accounted for the Court’s
19 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code §
20 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties
21 of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage
22 and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied
23 after trial). Accordingly, the Parties allocated \$40,000 to PAGA penalties.

24 Plaintiff submits this amount is reasonable under the circumstances and in line with
25 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
26 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
27 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
28 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303

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

8 Thus, Plaintiff and his counsel discounted the value of the class claims consistent with the
9 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
10 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
11 real and substantial risks – settlement on the proposed terms and without prolonged and costly
12 litigation was in the best interests of the class. The overall \$305,000 recovery represents a
13 significant percentage of Defendants' potential exposure, and is roughly 11% of the theoretical
14 maximum value of the class claims (\$305,000/\$2,757,450). Given Defendants' multi-layered
15 defenses and all other potential risks of continued litigation, a total recovery for the class of
16 \$305,000, which will result in average award of some \$795 per class member, plus additional sums
17 under PAGA, is a significant result well within the range of reasonableness considering all potential
18 outcomes, and it will provide direct monetary awards to all Class Members without further delay.
19 [Ardestani Decl., ¶¶ 19-21.]

20 Importantly, the mere fact that a settlement does not provide the same recovery as might be
21 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
22 *Wershba*, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement
23 process...even if the relief afforded by the proposed settlement is substantially narrower than it
24 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
25 public interest may indeed be served by a voluntary settlement in which each side gives ground in
26 the interest of avoiding litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.*
27 (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a
28 fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is

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

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

14 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
15 \$10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable
16 given the risks he undertook on behalf of the Class Members, and by contacting and retaining
17 counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent
18 Class Members, while shouldering the risk of being liable for Defendant’s litigation costs.
19 Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit
20 (discoverable even through a simple google search) for the benefit of other employees, placing
21 himself at risk of discrimination by future prospective employers. As set forth in more detail in
22 his declaration submitted with the preliminary approval motion, among taking many other
23 actions assisting in the successful litigation of this case, Plaintiff provided substantial factual
24 information and documents to counsel, attended numerous meetings/phone conferences with
25 counsel to discuss the case, and kept abreast of all significant developments. [Declaration of
26 Benny Steinfield, ¶¶ 2-9; Ardestani Decl., ¶ 22.] Accordingly, the requested enhancement
27 payments to Plaintiff is appropriate and justified as part of the settlement. *Staton v. Boeing* (9th
28 Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and

1 incentive payments ranging from \$2,000 to \$25,000).

2 **VI. SETTLEMENT ADMINISTRATION COSTS**

3 The settlement provides for a payment to ILYM for its services as the Settlement
4 Administrator. As set forth in the Declaration of Nicole Bench, ILYM has performed and will
5 continue to perform its required duties through final distribution of the settlement funds and
6 incurred \$7,550 in fees and expenses. [Bench Decl., ¶ 16.] Plaintiff accordingly requests the Court
7 approve payment of \$7,550 to ILYM from the GSA. [Ardestani Decl., ¶ 23.]

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

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

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

22 As addressed in detail above, at the time the parties reached the tentative settlement
23 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
24 some or all the claims would not be certified for class treatment, as Defendants had strong
25 arguments that its compensation policies were legal and properly compensated the class
26 members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the
27 merits, it undoubtedly would have taken several years to realize any recovery while they
28 pursued class certification, trial, and an almost certain appeal. [Ardestani Decl., ¶¶ 14-21.]

1 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to
2 obtain, and the settlement provides substantial cash payments to Class Members, with an
3 average award of about \$795, and with a maximum award of over \$2,250. Importantly as
4 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
5 filing of this motion, there are no objections and no opt outs to the settlement. [Bench Decl.,
6 ¶¶ 12-13.]

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

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

17 As part of the Settlement, RHS agreed not to object to an award of no more than 1/3 of
18 the GSA for attorney's fees, or \$101,666.67, and up to \$20,000 in reimbursement for
19 litigation costs and expenses, although as discussed Class Counsel seeks an award of
20 \$101,666.67 only in order provide for a larger class representative enhancement, and further
21 seeks only \$12,083.06 in costs. Such a fee is commensurate with what the market would
22 provide for similar services and the Court therefore can most certainly enforce the agreement.
23 As California's Court of Appeal has instructed:

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

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

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

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

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

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

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

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

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

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

6 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
7 this action of no more than 1/3 of the GSA, and specifically \$101,666.67. The percentage
8 requested is justified for the reasons set forth further below, and comports with fee awards
9 calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements
10 shows that courts have historically awarded fees in the range of 20 to 50 percent, depending
11 upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y.
12 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range
13 from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14
14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund
15 in order to assure that the fees do not consume a disproportionate part of the recovery
16 obtained for the class, although somewhat larger percentages are not unprecedented.").

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

18 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
19 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
20 an objective measure of the work performed into the calculation of a reasonable attorney fee."
21 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 141.8 hours of time on this matter,
22 resulting in a modest and very reasonable lodestar of \$101,760.00.

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

1 statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and
2 informal discovery needed for meaningful settlement discussions; (6) engaging in substantial
3 informal discovery, including propounding informal discovery “requests” and reviewing
4 documents and other information produced; (7) working with a consulting expert on the analysis
5 of Defendant’s production; (8) drafting a mediation brief and accompanying damages model after
6 review and analysis of defendant’s formal and informal discovery production; (9) attending an all-
7 day mediation; (10) negotiating and drafting the settlement agreement and related documents; (11)
8 drafting the motion for preliminary approval, and attending the hearing; (12) administration of the
9 settlement, including communications with the Settlement Administrator and settlement class
10 members; (13) drafting the motion for reconsideration as to the enhancement award, (14) final
11 approval and attorney’s fees, and attending the final approval hearing; and (15) extensive
12 communications with the Plaintiff regarding case status, case investigation and document review,
13 mediation, and settlement terms. Additionally, Class Counsel will incur additional time following
14 final approval to, inter alia, respond to class member inquiries, work with the Settlement
15 Administrator on the distribution of settlement funds, and on the compliance hearing. [Ardestani
16 Decl., ¶ 25, Exh. 2.]

17 In pursuing this matter, Class Counsel incurred total attorney’s fees of \$101,760.00,
18 and the lodestar is based on an eminently reasonable number of hours worked to litigate this
19 matter to a successful conclusion (141.8) attorney hours, and the requested attorney hourly rates
20 are reasonable and comport with hourly rates charged by other attorneys with similar experience in
21 this practice area in California. [Ardestani Decl., ¶¶ 26-39.] On a lodestar basis, the fee request
22 of \$101,666.67 results in a base lodestar that is slightly higher than the fees requested on a
23 percentage of the recovery basis, and accordingly there is no request for a lodestar multiplier.
24 In fact, the lodestar crosscheck effectively operates to show that the percentage fee request is
25 reasonable since it is smaller than the actual value of the services rendered when valued via
26 traditional hourly billing.

27 /////
28

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

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

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

17 **1. The Results Achieved.**

18 Class Counsel obtained an excellent result in this case for the Class Members. The
19 Settlement provides real monetary benefits to the Class Members, and the Settlement is
20 particularly advantageous to the Class Member because the proceeds will be distributed
21 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
22 Considering many individual claims would be very modest and would not be cost-effective to
23 pursue successfully, the Settlement provided them with fair compensation for their claims.
24 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
25 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
26 by the fact that not only one class member opted out. Additionally, the settlement amounts to
27 a substantial percentage of the maximum value of the amount the Class might have obtained if
28 it had tried the case and recovered on all theories seeking recovery of wages and penalties.
 "It is well-settled law that a cash settlement amounting to only a fraction of the potential

1 recovery does not per se render the settlement inadequate or unfair." In re Omnivision Techs.,
2 Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

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

4 At the time of filing the complaint, Class Counsel recognized that they would have to
5 expend a substantial amount of time and advance significant costs to prosecute a statewide
6 class action suit with no guarantee of compensation or reimbursement, in the hope of
7 prevailing against a sophisticated company represented by first-rate attorneys. Despite
8 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
9 of class certification and the ability to prove class-wide and individual damages. In light of
10 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would
11 dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's
12 firm, not receiving any compensation for several years while simultaneously advancing
13 litigation costs posed considerable risk and difficulty. [Ardestani Decl., ¶¶ 40-41.]

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

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

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

24 There is a substantial difference between the risk assumed by attorneys being paid
25 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
26 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
27 1256. The attorney working on a contingent basis can only log hours while working
28 without pay towards a result that will hopefully entitle him to a market fee considering

1 the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee
2 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this
3 risk in this all or nothing contingent fee case wherein the necessity and financial burden
4 of private enforcement makes the requested award appropriate.

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

14 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
15 the investment of unnecessary time in a case, and the adverse resolution of any one of several
16 difficult issues present in this matter could have doomed the entire effort. As discussed, the
17 attorney's fees in this case were not only contingent but fairly risky, and there was always a
18 distinct possibility Plaintiff's counsel would receive nothing for any number of reasons.
19 [Ardestani Decl., ¶¶ 40-41.] Accordingly, the contingent nature of the fee and the financial
20 burdens on Class Counsel also support the fee requested.

21 **5. Awards in Other Cases**

22 As discussed, the attorney's fees requested by Class Counsel are within the range of
23 fees awarded in comparable cases, as California courts regularly approve class action fee
24 awards amounting to 1/3 of a common fund, as approved by the California Supreme Court in
25 Lafitte. Additionally, review of class action settlements over the past 10 years shows that the
26 courts have historically awarded fees in the range of 20 to 50 percent, depending upon the
27 circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618
28 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to

1 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50%
2 of the fund is the upper limit on a reasonable fee award from a common fund in order to
3 assure that the fees do not consume a disproportionate part of the recovery obtained for the
4 class, although somewhat larger percentages are not unprecedented."). Class Counsel's
5 requested fees equal to 1/3 the gross amount recovered on behalf of the class and are well
6 within the range of reasonableness under either the percentage of the recovery or the lodestar
7 method in light of the contingent risk assumed, the delay in payment, the result achieved, and
8 the overall quality of the representation.

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

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

20 As explained in the Ardestani Declaration, Class Counsel incurred a total of
21 \$12,083.06 in expenses incurred in connection with this litigation. These expenses include
22 the amounts paid for court filing fees, Case AnyWhere charges, LACC charges, service
23 of process, expert fees, postage, and mediation fees, all of which are costs normally billed
24 to and paid by the client. These costs were reasonably incurred in the prosecution of this
25 matter. These costs were necessary for the successful prosecution of the case and are in
26 reasonable in amount, and Class Counsel accordingly requests they be reimbursed in full.
27 [Ardestani Decl., ¶¶ 42-43.]

28 /////

1 **VIII. CONCLUSION**

2 For all the foregoing reasons, Plaintiff Benny Steinfield respectfully requests that the Court
3 grant this motion and grant final approval of the proposed class action settlement and approve the
4 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
5 the Settlement Administrator's fees and expenses, approve the requested class representative
6 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
7 judgment in this action. Finally, Plaintiff request the Court set a final compliance hearing for
8 September 19, 2024, or a later date convenient for the Court.

9
10 Dated: August 24, 2023

CROSNER LEGAL, P.C.

11
12 

Zachary M. Crosner

Jamie K. Serb

Sepideh Ardestani

Attorneys for Plaintiff Benny Steinfield