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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14 MARCUS FRENCH, on behalf of himself
15 and others similarly situated,

16 Plaintiff,

17 vs.

18 LONZA BIOLOGICS, INC. a Delaware
19 corporation, and DOES 1 to 50, Inclusive,

20 Defendants.

Case No.: 21STCV08097

Assigned for all Purposes to:
Hon. Stuart M. Rice
Dept. SSC-1

**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 and
Stephen Gomez; [Proposed] Order]

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TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. BACKGROUND.....	2
III. PROPOSED SETTLEMENT TERMS.....	4
A. Certification of the Settlement Class.....	4
B. The Benefit Conferred on the Settlement Class.....	4
C. Settlement Administration.....	5
D. Release of Claims.....	6
E. PAGA and Notice to the LWDA.....	6
IV. ARGUMENT.....	7
A. The Proposed Settlement Merits Final Approval.....	8
1. The Settlement Is the Product of Arm's-Length, Informed Negotiations.....	8
2. The Class Reacted Favorably to the Settlement.....	8
3. The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case	
Value, and Significant Litigation Risks.....	9
V. PLAINTIFF'S ENHANCEMENT AWARD.....	13
VI. SETTLEMENT ADMINISTRATION COSTS.....	13
VII. ATTORNEY'S FEES AND COSTS.....	14
A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved.....	14
B. The Requested Fee Award Is Reasonable and Appropriate.....	15
C. Class Counsel's Fees are Justified When Calculated as a Percentage of the Common	
Fund.....	16
D. A Lodestar Cross-Check Also Supports Class Counsel's Fee.....	18
E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required, 4)	
the Contingent Nature of the Fee and 5) Awards in Similar Cases.....	19
1. The Results Achieved.....	19
2. Class Counsel Bore Considerable Risk.....	20
3. The Skill Required and the Quality of Work.....	20
4. The Contingent Nature of the Fee and Risk Assumed.....	21

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

5. Awards in Other Cases.....22

F. Class Counsels’ Costs and Expenses are Reasonable.....22

VIII. CONCLUSION.....22

TABLE OF AUTHORITIES

	Page(s)
Cases	
<u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u> (2000) 85 Cal.App.4th 1135.....	13
<u>Amaral v. Cintas Corp. No. 2</u> (2008) 163 Cal.App.4th 1157.....	11
<u>In re: American Bank Note Holographics,</u> 127 F.Supp.2d 418 (S.D.N.Y. 2001).....	8
<u>Blum v. Stenson</u> (1984) 465 U.S. 886	15
<u>Boeing Co. v. Van Gernert</u> (1980) 444 U.S. 472	17
<u>Carrington v. Starbucks Corp.</u> (2018) 30 Cal.App.5th 504.....	12
<u>Cazares v. Saenz</u> (1989) 208 Cal.App.3d 279.....	21
<u>Class Plaintiffs v. City of Seattle</u> (9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953	7
<u>Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper</u> (1980) 445 U.S. 326, <u>rehg. den.</u> 446 U.S. 947	14
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794.....	7
<u>Evans v. Jeff D.</u> (1986) 475 U.S. 717	15
<u>Ferra v. Loews Hollywood Hotel, LLC</u> (2021) 11 Cal.5th 858. [Crosner Decl.].....	3, 10
<u>Fleming v. Covidien</u> (C.D. Cal. 2011) 2011 U.S.	11
<u>Harris v. Marhoefer</u> (9th Cir. 1994) 24 F.3d 16.....	22
<u>Hensley v. Eckerhart</u> (1983) 461 U.S. 424	15

1	<u>Hernandez v. Restoration Hardware, Inc.</u>	
2	(2018) 4 Cal.5th 260.....	16
3	<u>Jennings v. Open Door Mktg. Inc.</u>	
4	(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356.....	12
5	<u>Ketchum v. Moses</u>	
6	(2001) 24 Cal.4th 1122.....	21
7	<u>Laffitte v. Robert Half Int'l., Inc.</u>	
8	(2016) 1 Cal.5th 480.....	16, 18, 19
9	<u>Lane v. Facebook, Inc.</u>	
10	(9th Cir. 2012) 696 F.3d 811	13
11	<u>Lealao v. Beneficial Cal., Inc.</u>	
12	(2000) 82 Cal.App.4th 19.....	14, 16
13	<u>Levy v. Toyota Motor Sales, U.S.A.</u>	
14	(1992) 4 Cal.App.4th 807.....	14
15	<u>Mandujano v. Basic Vegetable Prods., Inc.,</u>	
16	541 F.2d 832 (9th Cir. 1976).....	8
17	<u>Martinez v. Baxalta US, Inc.,</u>	
18	Los Angeles Superior Court Case No. BC705969	3
19	<u>McKittrick v. Gardner</u>	
20	(4th Cir. 1967) 378 F.2d 872.....	21
21	<u>In re Omnivision Techs., Inc.,</u>	
22	559 (N.D. Cal. 2008).....	20
23	<u>Paul, Johnson, Alston & Hunt v. Gaulty</u>	
24	(9th Cir. 1989 886 F.2d 268, 272).....	19
25	<u>Potter v. Pacific Coast Lumber Co.</u>	
26	(1951) 37 Cal.2d 592.....	7
27	<u>Powers v. Eichen</u>	
28	(9th Cir. 2000) 229 F.3d 1249.....	21
	<u>Randolph v. Baxalta US, Inc., et al.,</u>	
	Los Angeles Superior Court Case No. BC667176.....	3, 5
	<u>Rider v. County of San Diego</u>	
	(1992) 11 Cal.App.4th 1410.....	22
	<u>Serrano v. Priest</u>	
	(1977) 20 Cal.3d 25.....	17, 22

1	<u>Slavkov v. First Water Heater Partners I</u>	
2	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 11630	12
3	<u>In re Taco Bell Wage and Hour Actions</u>	
4	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557	12
5	<u>Van Bronkhorst v. Safeco Corp.</u>	
6	(9th Cir. 1976) 529 F.2d 943,950	7
7	<u>Van Kempen v. Matheson Tri-Gas, Inc.</u>	
8	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	12
9	<u>Vincent v. Hughes Air West, Inc.</u>	
10	(9th Cir. 1977) 557 F.2d 759	17
11	<u>In re Warner Communications Sec. Litig.</u>	
12	(S.D.N.Y. 1985) 618 F.Supp. 735	17
13	<u>Wershba v. Apple Computer</u>	
14	(2001) 91 Cal.App.4th 224.....	7, 8, 13, 16
15	<u>White v. Experian Information Solutions, Inc.</u>	
16	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	13
17	Statutes	
18	Labor Code sections	11
19	Labor Code § 203	11
20	Labor Code § 226.....	11
21	Labor Code section 2699(1)(2)	6
22	PAGA	<i>passim</i>
23	Private Attorneys General Act	3
24	Unfair Competition Law, Bus. & Prof. Code sections 17200, <i>et seq.</i>	3
25	Other Authorities	
26	Cal. Rule of Court 3.769	7, 14
27	Conte, <u>Attorney Fee Awards</u> (2d ed. 1993) § 104.....	17
28	Federal Judicial Center, <u>Managing Class Action Litigation: A Pocket Guide for</u> <u>Judges</u> (3d ed. 2010), available at http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf	13

1	litigation. H. Newberg & A. Conte, 4 <u>Newberg on Class Actions</u> (4th ed. 2002), §	
2	11.41	7
3	Newberg, <u>Newberg on Class Actions</u> (3d ed.) § 14.03	17

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1
2 **I. INTRODUCTION**

3
4 Plaintiff and Class Representative Marcus French seeks final approval of a non-
5 reversionary class action settlement resolving wage and hour claims on behalf of 242 individuals
6 who worked for Lonza Biologics, Inc. (“Lonza” or “Defendant”) as non-exempt employees in
7 California during the class period of March 2, 2017, through January 1, 2022. The proposed
8 \$556,500 total settlement provides about \$281,670 in cash payments to the Class, with an average
9 award of about \$1,332, plus additional amounts payable under PAGA. The remaining balance
10 will cover a modest service award to Plaintiff, settlement administration costs, civil penalties to
11 the state, and reasonable attorney’s fees and costs. The parties and their counsel finalized the
12 settlement after extensive and difficult arms-length negotiations overseen by an experienced and
13 highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved
14 the settlement on August 15, 2022. Since then, the Court-approved notice form was mailed to the
15 Class Members on September 8, 2022, and they reacted very favorably to the settlement. Only
16 one Class Member requested exclusion, and there are no objections.

17 Class Counsel secured an excellent settlement with Lonza after some two of years
18 of investigation, litigation, and settlement negotiation and administration, all without
19 any compensation for services rendered or costs expended. The class notice duly
20 informed the class members that Class Counsel would request attorney’s fees not to
21 exceed 33.3% of the Gross Settlement Amount, or \$185,314.50, along with
22 reimbursement of no more than \$15,000 for actual costs incurred litigating this matter.
23 As of the filing of this motion, *not one Class Member objected* to the proposed fee award.
24 Consistent with the Settlement and notice, Plaintiffs now respectfully request the Court
25 award Class Counsel's fees in the amount of \$185,314.50 and costs in the amount of
26 \$12,365.94, as described in the Declaration of Zachary M. Crosner (“Crosner Decl.”)
27 filed herewith. The requested attorney’s fees are well within the range of reasonableness,
28 especially considering the complex and risky nature of this litigation, the contingent risk

1 assumed, the two-plus year delay in payment and, when subjected to a lodestar
2 crosscheck, result in a base lodestar that is slightly higher than the actual fee request.

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

6 **II. BACKGROUND**

7 The details of the procedural and factual background of this matter were outlined in
8 the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about
9 January 18, 2022). To re-familiarize the Court with this litigation, on March 2, 2021, Plaintiff
10 filed a class and representative action complaint seeking damages and penalties against Defendant
11 for several alleged violations of the Labor Code and IWC Wage Orders. Defendant Lonza is an
12 international biotechnology corporation that produces chemicals for the pharmaceutical industry.
13 In approximately October 2017, Lonza acquired a manufacturing facility from Baxalta in
14 Hayward, California, which is Lonza's only current California location. Lonza employed Plaintiff
15 Marcus French at the Hayward facility from approximately February-October 2020 as a non-
16 exempt employee. Mr. French and the class members worked under an alternative work schedule
17 ("AWS") of four 10-hour shifts per week and accordingly were not paid overtime unless they
18 worked more than 10 hours. Plaintiff contends, however, Defendant's AWS was invalid because
19 at least 2/3 of the affected employees did not vote in favor of the AWS, and he further contends
20 Lonza also applied the AWS to all non-exempt employees regardless of whether they worked in a
21 department that voted to adopt the AWS. Per Plaintiff, since the AWS was invalid, Defendant
22 failed to pay the class members for their overtime hours. Plaintiff also alleges Lonza failed to pay
23 for overtime hours worked at the correct regular rate of compensation. [Declaration of Zachary M.
24 Crosner ("Crosner Decl."), ¶ 3.]

25 Plaintiff contends further he did not receive compliant meal or rest periods, and that
26 Lonza's rest period policy did not comply with California law. First, although the meal period
27 policy appears largely compliant with California law, Plaintiff's counsel's review of time and
28 payroll records suggests substantial de facto meal period violations, as many meal periods appear

1 to be late and/or short and Lonza provided few if any second meal periods. On the rest period
2 policy, Plaintiff argues it failed to advise employees that their rest breaks were off-duty and that
3 they were entitled to 10 net consecutive minutes of break time. Lastly, to the extent Lonza paid
4 premium wages for missed/non-complaint breaks, it did not do so at the regular rate of
5 compensation as required by the recent decision in Ferra v. Loews Hollywood Hotel, LLC (2021)
6 11 Cal.5th 858. [Crosner Decl., ¶ 4.]

7 Based on these allegations, Plaintiff's class action complaint asserted claims for: (1) failure
8 to pay all wages due, including overtime wages; (2) failure to provide all required meal and rest
9 breaks or proper compensation in lieu thereof; (3) failure to provide accurate, itemized wage
10 statements; (4) failure to pay all wages due upon termination of employment; and (5) violations of
11 the Unfair Competition Law, Bus. & Prof. Code sections 17200, *et seq.* Plaintiff also alleged
12 claims under the Private Attorneys General Act ("PAGA") based on the same alleged Labor Code
13 violations. [Crosner Decl., ¶ 5.]

14 Lonza has at all times denied Plaintiff's allegations and maintained its AWS and meal
15 break and payroll policies and procedures comply with California law, that it provided the class
16 members with required meal and rest breaks, had valid meal break waivers in place, and that it
17 paid Plaintiffs and the class members all wages due. Additionally, Lonza strongly contends the
18 case cannot be maintained as any kind of class or representative action, arguing that to the extent
19 class members missed breaks or had non-compliant breaks, it paid out meal and rest break
20 premiums, and that intermittent or infrequent evidence of such violations would be purely
21 anecdotal. Thus, per Lonza individualized issues predominate and trial would be unmanageable.
22 Finally, Lonza argued that many class members participated in a class action settlement in two
23 matters pending against Baxalta US, Inc., the prior owner of the Hayward facility (Randolph v.
24 Baxalta US, Inc., et al., Los Angeles Superior Court Case No. BC667176, and Martinez v. Baxalta
25 US, Inc., Los Angeles Superior Court Case No. BC705969, and together the "Baxalta Actions"),
26 and accordingly had released some or all of the claims at issue. [Crosner Decl., ¶ 7.]

27 Since Plaintiff filed his complaint, the Parties engaged in meet and confer discussions
28 regarding discovery, potential law and motion, and the merits of the case, and ultimately agreed to

1 attempt early global mediation. They then engaged in significant informal discovery to facilitate
2 an exchange of information necessary to engage in a meaningful mediation. The Parties then
3 engaged the Hon. Michael Latin, (Ret.), a respected mediator with extensive wage and hour class
4 action experience and, on July 23, 2021, participated in a full day mediation with Judge Latin that
5 resulted in the proposed settlement. [Crosner Decl., ¶¶ 6-7.] This Court preliminarily approved
6 the settlement on August 15, 2022.

7 Class Notices were mailed to class members on September 8, 2022, with a 60-day
8 window (to November 7, 2022) for class members to opt out or object to the proposed
9 settlement. [Declaration of Stephen Gomez (“Gomez Decl.”), ¶ 8.]

10 **III. PROPOSED SETTLEMENT TERMS**

11 Under the settlement, Lonza will pay \$556,500.00 into a common fund, the Gross
12 Settlement Amount or GSA. Attorney’s fees of up to 33.3% of the GSA (\$185,314.50), litigation
13 costs of up to \$15,000 (only \$12,365.94 is requested), an enhancement award of up to \$10,000
14 for Plaintiff French, settlement administration costs of \$5,500, and a payment of \$41,737.50 to the
15 Labor & Workforce Development Agency for its share of the PAGA penalties will all be paid
16 from the Gross Settlement Amount. The remainder of approximately \$281,670 will be allocated
17 among the Participating Settlement Class Members based on their total weeks worked during the
18 Class Period, while an additional \$13,912.50 will be distributed to Class Members eligible for a
19 PAGA payment. No portion of the GSA will revert to Lonza. [Crosner Decl., ¶ 10.]

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

21 The Court conditionally certified a settlement class defined to include including all
22 individuals who worked for Defendant as a non-exempt employee in California during the Class
23 Period, which runs from March 2, 2017, through January 1, 2022. The Settlement Administrator
24 ultimately mailed class notices to 242 individuals identified as members of the Class. [Gomez
25 Decl., ¶ 8.] Nothing has changed to require reconsideration of the Court’s certification of
26 the Settlement Class.

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

28 As noted, the settlement obligates Lonza to pay \$556,500 to resolve the Settlement Class’s

1 claims, inclusive of attorney's fees and costs. Approximately \$281,670 from the GSA will be
2 distributed to the Participating Settlement Class Members. [Gomez Decl., ¶ 10.] This is a cash
3 settlement that does not require Participating Settlement Class Members to submit a claim form to
4 receive their settlement share. Participating Settlement Class Members will receive their
5 settlement checks automatically via First Class U.S. Mail. Ten percent of each settlement share
6 will be allocated to wages and the remaining ninety percent will be allocated to penalties and
7 interest. Lonza will pay any and all applicable employer-side payroll taxes separately and in
8 addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class
9 member does not cash his or her settlement check), plus interest, will be forwarded to Legal Aid at
10 Work as the agreed upon *cy pres* beneficiary. [Crosner Decl., ¶ 12.]

11 Each Participating Settlement Class Member will receive a share of the Net Class
12 Settlement Amount based on his or her total weeks worked for Lonza during the Class Period
13 while employed in a non-exempt position, and after accounting for any potential releases of the
14 claims at issue in the Baxalta Actions, as well as amounts already paid. Thus, each Class
15 Member's Individual Class Settlement Payment will be calculated using criteria typically used in
16 determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal
17 breaks, and potential statutory penalties under applicable law. These methods are intended to
18 ensure each Class Member receives a portion of the available settlement funds corresponding to
19 the relative value of his or her potential claims. The proposed allocation provides a reasonable
20 way to compensate Class Members based on the amount of time they worked for Lonza and the
21 number of instances they missed a meal or rest break, were not provided compensation in lieu of
22 such missed breaks, or did not receive proper overtime compensation. [Crosner Decl., ¶ 13.]
23 The average award to the Participating Class Members will be approximately \$1,332 with a
24 maximum award of over \$3,300, while the average PAGA award will be about \$77. [Gomez
25 Decl., ¶¶ 11-12.]

26 **C. Settlement Administration**

27 Simpluris, Inc., as the Court-approved Settlement Administrator, mailed the Notice
28 Packet to the Class members after making all reasonable effort to ascertain the best mailing

1 address, including running each address through the National Change of Address database
2 and "skip-tracing" any Notice Packets returned as undeliverable. [Gomez Decl., ¶¶ 3-7.] The
3 Class Notice, previously approved by the Court, duly informed Class Members of the
4 settlement terms, including the estimated relief each Class Member will receive, the amounts
5 to be requested for attorney's fees and the class representative enhancement awards, and the
6 right to opt out of or object to the settlement. [Gomez Decl., ¶ 5, Exh. A.] Simpluris mailed
7 242 Notice Packets on September 8, 2022. [Gomez Decl., ¶ 8.] Ultimately, zero Notice
8 Packets were deemed undeliverable, representing a 100% success rate. [Gomez Decl., ¶ 9.]
9 The 60-day response window for objecting to the settlement expired on November 7, 2022.
10 [Gomez Decl., ¶ 8.] As of the filing of this motion, Phoenix has received one (1) request for
11 exclusion (for a 99.6% participation rate), and zero objections to the settlement. No disputes
12 have been submitted regarding the information used to calculate class member settlement
13 shares. [Gomez Decl., ¶¶ 13-15.]

14 **D. Release of Claims**

15 All Participating Settlement Class Members will be deemed to release defendant Lonza
16 from all claims alleged in the operative complaint, or that could have been brought based on the
17 allegations in the operative complaint, including PAGA claims, from March 2, 2017, through
18 January 1, 2022. The release is limited to the claims that were actually pleaded or could have been
19 pleaded based on the alleged facts in the operative complaint. [Crosner Decl., ¶ 17.]

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

21 As noted, the Parties allocated \$55,650 from the GSA to resolution of Plaintiff's claims
22 under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and
23 adequate. Consistent with PAGA, \$41,737.50 of this amount will be paid to the LWDA as the
24 state's share of the civil penalties, and the remainder of \$13,912.50 will be distributed to the
25 181 Class Members eligible to receive a PAGA payment. [Gomez Decl., ¶ 12.] As required by
26 Labor Code section 2699(1)(2), Plaintiff notified the LWDA of the settlement and the final
27 approval hearing via its online portal. [Crosner Decl., ¶ 12; Exh. 1.]
28

1 **IV. ARGUMENT**

2 The law favors settlement, particularly in class actions where substantial resources can
3 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
4 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
5 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
6 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
7 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
8 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
9 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
10 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
11 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
12 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
13 two-step process intended to determine whether, under the totality of circumstances, the
14 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
15 Cal.App.4th at 245.

16 On a motion for final approval, the trial court is charged with determining whether, in
17 light of the total circumstances of the action and the response of the class members to the
18 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
19 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
20 determination and may consider a number of relevant factors, including: the strength of
21 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
22 further litigation; the amount offered in settlement; the extent of discovery and stage of the
23 proceedings; the experience and opinion of counsel; and the reaction of class members to the
24 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
25 courts generally apply a presumption of fairness to a proposed class action settlement when:
26 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
27 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
28 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;

1 Wershba, 91 Cal.App.4th at 245.

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

3 The proposed settlement of this action warrants final approval under the standards
4 summarized above. The settlement is fair, reasonable and adequate, and represents a
5 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly
6 approved by the class members, as there were no objections and only one Class Member
7 requested exclusion, for a 99.6% participation rate.

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

9 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
10 was reached following arm's-length negotiations presided over by the Hon. Michael Latin,
11 (Ret.), a highly respected and well-known mediator with extensive experience mediating wage
12 and hour class actions. [Crosner Decl., ¶ 7.] Moreover, Plaintiff and his counsel were well-
13 informed about the facts and the law, and counsel Zachary M. Crosner and Chad Crosner have
14 years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel
15 are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the
16 matter. [Crosner Decl., ¶¶ 26-34.] Defendant Lonza likewise was represented by highly-qualified
17 and experienced defense counsel. Both sides advocated vigorously for their clients, and nothing
18 was "left on the table."

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

20 The settlement was well-received by the class. As of the filing of this motion, no
21 objections have been filed, and only one Class Member requested exclusion out of 242 settlement
22 class members. [Gomez Decl., ¶ 13, 15.] As many courts recognize, class member reaction to the
23 settlement is one of the most important factors to consider in determining if final approval should
24 be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also
25 In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-
26 settled that the reaction of the class to the settlement is perhaps the most significant factor to be
27 weighed in considering its adequacy") (internal quotation marks omitted).

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

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

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

18 Prior to settlement, the parties engaged in extensive informal discovery to facilitate
19 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
20 Lonza's payroll practices, the AWS, pay stubs and time records for a sampling of class members,
21 meal and rest break policies, etc., and information from Defendant regarding class size and
22 breakdown, work weeks, rates of pay, and other information used to formulate a damages model.
23 Plaintiff also had that information reviewed by a consulting expert to assist with calculating potential
24 violation rates and potential damages. Plaintiff's counsel is confident they obtained sufficient
25 information to enable them to understand the law and facts of this case and make an informed
26 decision regarding the proposed settlement and whether it is in the best interests of the class.
27 [Crosner Decl., ¶¶ 8, 24.]

1 Using that data, Plaintiff's counsel ran various calculations and estimated Lonza's likely
2 maximum exposure on the class claims at approximately \$4.021 million, including \$1,471,000 on
3 the meal break claims, \$1,122,000 on the rest break claims, \$396,000 on the wage statement
4 claims, \$628,000 on the waiting time penalty claims, and \$396,000 on the unpaid overtime
5 wage/regular rate claims. [Crosner Decl., ¶¶ 25-26.] Plaintiff's counsel substantially discounted
6 the value of these claims, however, in light of the considerable risks posed by proceeding with the
7 litigation.

8 On the unpaid overtime wage claims, Plaintiff argued Lonza's AWS was invalid because it
9 did not receive the required 2/3 approval by the employees who voted on it, and that Lonza also
10 imposed the AWS on all of its non-exempt employees, including those in departments that didn't
11 even vote on it. Thus, Plaintiff alleges Lonza was required to pay daily overtime for all hours
12 worked over 8 in a shift rather than only paying overtime once class members worked 10 hours
13 under the invalid AWS. Plaintiff also alleges Defendant failed to properly calculate and pay
14 overtime based on the class members regular rate of compensation because Lonza failed to
15 incorporate all forms of non-hourly compensation (primarily shift differentials) in the overtime
16 calculation. In response, Defendant took the position that its AWS was properly implemented,
17 and it paid employees for all hours worked at the proper hourly rate consistent with California law.
18 [Crosner Decl., ¶ 27.]

19 For the meal break claim, Plaintiff argued that, despite maintaining a compliant written
20 policy, Defendant's own time and payroll records suggest substantial de facto violations for
21 missed, late and/or short meal periods. This was particularly true as to second meal periods,
22 which Lonza's own records indicate were rarely if ever provided. Additionally, although Lonza
23 did pay at least some meal period premiums, its records also indicate it paid those premiums at the
24 class member's base rate of pay rather than at the "regular rate of compensation" as required by
25 the California Supreme Court's recent Ferra v. Loews decision. [Crosner Decl., ¶ 28.]

26 In response, Defendant emphasized its policy was fully compliant with California law, and
27 that it provided all required meal periods and thereby met its obligations under the Labor Code
28 and Wage Order. Further, Defendant argued to the extent employees missed a meal break or took a

1 non-compliant break, any such discrepancies were aberrational and against company policy and a
2 myriad of individual issues would be required to determine if the potential violation resulted from
3 employee choice or some other reason. Consequently, per the Defendant, individualized inquiries
4 would dominate on this issue and render class certification inappropriate. [Crosner Decl., ¶ 29.]

5 As with meal breaks, Defendant argued its rest break policies complied with California law
6 and authorized and permitted employees to take all required breaks. Defendant further contended
7 that, in light of the fact that it is not required to maintain a record of rest periods, any evidence of
8 failure to authorize rest periods and/or discouragement from taking rest periods would be purely
9 anecdotal and individual issues would predominate on liability. Defendant also may contend that it
10 is only liable if Plaintiff can prove, on a shift-by-shift basis, the aggrieved employees actually did
11 not receive a fully compliant rest break. This arguably would make a trial unmanageable since the
12 number of instances an employee missed a rest break would have to be tested on a case-by-case
13 basis to determine if there was compliance. [Crosner Decl., ¶ 30.]

14 Finally, Plaintiff also alleged derivative claims under Labor Code § 226 (alleged
15 inaccurate wage statement violations) and §§ 201-203 (alleged waiting time penalties). These
16 claims were based on the invalid AWS/unpaid overtime claim and will rise or fall along with that
17 primary claim, in addition to being subject to “good faith” and other defenses available to
18 Defendant. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding
19 employer did not willfully fail to pay wages under Labor Code § 203 even though the class
20 prevailed on the merits on the underlying claim for failing to pay living wages). Accordingly,
21 Plaintiff discounted the derivative claims significantly in light of these multiple potential defenses.
22 [Crosner Decl., ¶ 31.]

23 As far as potential PAGA liability, the penalties theoretically totaled around \$1.7 million
24 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
25 at issue for every single eligible pay period. [Crosner Decl., ¶ 32.] As with the class claims,
26 Plaintiff discounted the potential PAGA penalties for the multi-layered defenses proffered by
27 Defendant on the merits, and further discounted these claims since the Court possesses wide
28 discretion to reduce such penalties even if Plaintiff ultimately prevailed. Fleming v. Covidien

1 (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9(court reduced the potential penalties by
2 over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a
3 bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction, which
4 decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016)
5 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

6 Accordingly, the Parties allocated \$55,650 to PAGA penalties, which amount is reasonable
7 and in line with comparable settlements in other class actions in California. Van Kempen v.
8 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
9 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
10 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 11630
11 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
12 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
13 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement
14 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
15 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
16 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
17 not objected to the settlement").

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

27 The overall recovery represents a significant percentage of Defendant's potential exposure
28 and, given the risks addressed above, a total recovery for the class of \$556,500, which will result

1 in average awards of some \$1,332 per class member is a significant result well within the range of
2 reasonableness considering all potential outcomes, and it will provide direct monetary awards to
3 all Class Members without further delay. [Crosner Decl., ¶¶ 18-20.]

4 Importantly, the mere fact that a settlement does not provide the same recovery as might be
5 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
6 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
7 settlement process...even if the relief afforded by the proposed settlement is substantially
8 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
9 settlement because the public interest may indeed be served by a voluntary settlement in which
10 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir.
11 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
12 different from the question whether the settlement is perfect in the estimation of the reviewing
13 court”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
14 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential recovery
15 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
16 disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d
17 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented
18 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement
19 is non-reversionary and will provide timely benefits to the Class Members without a claims
20 process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action
21 Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
22 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
23 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
24 within the “range of reasonableness,” and is fair and adequate for the Class.

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

26 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
27 \$10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable
28 given the risks he undertook on behalf of the Class Members. By contacting and retaining counsel

1 to pursue these claims, Plaintiff helped make this settlement possible for the absent Class
2 Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also
3 exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even
4 through a simple google search) for the benefit of other employees, placing himself at risk of
5 discrimination by future prospective employers. As set forth in more detail in his declaration
6 submitted with the preliminary approval motion, among taking many other actions assisting in the
7 successful litigation of this case, Plaintiff provided substantial factual information and documents
8 to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and
9 kept abreast of all significant developments. [Declaration of Marcus French, ¶¶ 2-9; Crosner
10 Decl., ¶ 21.] Finally, there are no class member objections submitted with respect to the amounts
11 Plaintiff proposes to receive. [Gomez Decl., ¶ 15.] Accordingly, the requested enhancement
12 payments to Plaintiff is appropriate and justified as part of the settlement.

13 **VI. SETTLEMENT ADMINISTRATION COSTS**

14 The settlement provides for a payment to Simpluris for its services as the Settlement
15 Administrator. As set forth in the Declaration of Stephen Gomez, Simpluris has performed and
16 will continue to perform its required duties through final distribution of the settlement funds and
17 incurred \$5,500.00 in fees and expenses. [Gomez Decl., ¶ 16.] Accordingly, Plaintiff respectfully
18 requests the Court approve payment of \$5,500 to Simpluris from the GSA. [Crosner Decl., ¶ 22.]

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

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

22 This Court has discretion over the amount of attorneys' fees awarded and court
23 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
24 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
25 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
26 marketplace for cases involving significant contingent risk, such as this one. Deposit
27 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
28 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed

1 private bargaining, if it were truly possible, might have reached” in determining a reasonable
2 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
3 litigation”). Here, Class Counsel's request for attorney’s fees and costs is reasonable and
4 justified by the work performed, the benefits obtained, and the contingent risk assumed.

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

12 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
13 obtain, and the settlement provides substantial cash payments to Class Members, with an
14 average award of about \$1,332, and with a maximum award of over \$3,300. Importantly as
15 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
16 filing of this motion, there are no objections to the settlement and only one single individual
17 opted out. [Gomez Decl., ¶¶ 11-15.]

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

19 The United States Supreme Court has ruled the parties to a class action properly may
20 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
21 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
22 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
23 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
24 should not result in a second major litigation. Ideally, of course, litigants will settle the
25 amount of a fee." The United States Supreme Court has reemphasized this policy and further
26 stressed trial courts have “a responsibility to encourage agreement” on fees. Blum v. Stenson
27 (1984) 465 U.S. 886, 902 n.19.

1 As part of the Settlement, Lonza agreed not to object to an award of no more than
2 33.3% of the GSA for attorney's fees, or \$185,314.50, and up to \$15,000 in reimbursement
3 for litigation costs and expenses. Such a fee is commensurate with what the market would
4 provide for similar services and the Court therefore can most certainly enforce the agreement.

5 As California's Court of Appeal has instructed:

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

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

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

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

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

23 The recognized advantages of the percentage method-including relative ease of
24 calculation, alignment of incentives between counsel and the class, a better
approximation of market conditions in a contingency case, and the encouragement it
25 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
26 denied our trial courts.

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

1 Indeed, both California and federal courts have long recognized an appropriate method
2 for determining the award of attorney's fees is based on a percentage of the total value of
3 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
4 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
5 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
6 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
7 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

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

16 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
17 this action of no more than 33.3% percent of the total amount recovered by the Class via the
18 lawsuit, or \$185,314.50. The percentage requested is justified for the reasons set forth further
19 below, and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed,
20 review of class action settlements shows that courts have historically awarded fees in the
21 range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner
22 Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that
23 percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on
24 Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a
25 reasonable fee award from a common fund in order to assure that the fees do not consume a
26 disproportionate part of the recovery obtained for the class, although somewhat larger
27 percentages are not unprecedented.").

28 /////

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

2 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
3 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
4 an objective measure of the work performed into the calculation of a reasonable attorney fee."
5 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 241.4 hours of time on this matter,
6 resulting in a modest and very reasonable lodestar of \$188,235.00.

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

1 In pursuing this matter, Class Counsel incurred total attorney's fees of 188,235, the
2 lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a
3 successful conclusion (241.4) attorney hours, and the requested attorney hourly rates are
4 reasonable and comport with hourly rates charged by other attorneys with similar experience in
5 this practice area in California. [Crosner Decl., ¶¶ 26-38.] On a lodestar basis, the fee request of
6 \$185,314.50 results in a base lodestar that is slightly higher than the fees requested on
7 percentage of the recovery basis. Class Counsel submits the lodestar crosscheck operates to
8 show that the percentage fee request is reasonable considering the fees requested are lower
9 than the actual value of the services rendered when valued via traditional hourly billing.

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

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

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

26 1. **The Results Achieved.**

27 Class Counsel obtained an excellent result in this case for the Class Members. The
28 Settlement provides real monetary benefits to the Class Members, and the Settlement is

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

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

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

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

25 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
26 experience. The issues presented in this case required more than just a general appreciation of
27 wage and hour law and class action procedure. This Settlement was possible only because
28 counsel persuaded Lonza that Plaintiff and the putative class had a realistic chance of

1 prevailing on their claims despite Lonza's contrary arguments, and that the case would be
2 pursued through class certification and trial if necessary. In successfully navigating these
3 hurdles, Class Counsel displayed appropriate skill while pursuing a risky and difficult
4 case.

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

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

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

24 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
25 the investment of unnecessary time in a case, and the adverse resolution of any one of several
26 difficult issues present in this matter could have doomed the entire effort. As discussed, the
27 attorney's fees in this case were not only contingent but fairly risky, and there was always a
28 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.

1 [Crosner Decl., ¶¶ 39-41.] Accordingly, the contingent nature of the fee and the financial
2 burdens on Class Counsel and Plaintiff also support the fee requested.

3 **5. Awards in Other Cases**

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

8 **F. Class Counsels' Costs and Expenses are Reasonable**

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

19 As explained in the Crosner Declaration, Class Counsel incurred a total of
20 \$12,365.94 in expenses incurred in connection with this litigation. These expenses
21 include the amounts paid for court filing fees, service of process, expert fees, postage,
22 and mediation fees, all of which are costs normally billed to and paid by the client. These
23 costs were reasonably incurred in the prosecution of this matter, and it is respectfully
24 requested that the Court authorized they be reimbursed in full. [Crosner Decl., ¶¶ 42-43.]

25 **VIII. CONCLUSION**

26 For all the foregoing reasons, Plaintiff Marcus French respectfully requests that the Court
27 grant this motion and grant final approval of the proposed class action settlement and approve the
28 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of

1 the Settlement Administrator's fees and expenses, approve the requested class representative
2 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
3 judgment in this action. Finally, Plaintiff request the Court set a final compliance hearing for
4 February 2, 2024, or a later date convenient for the Court.

5
6
7 Dated: January 11, 2023,

CROSNER LEGAL, P.C.

8
9 By: 
10 Michael Crosner, Esq.
11 Zach Crosner, Esq.
12 Jamie Serb, Esq.
13 Chad Saunders, Esq.
14 Attorneys for Plaintiff MARCUS FRENCH
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