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on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JESUS DIAZ and HECTOR GARCIA on behalf
of themselves and all others similarly situated,

Plaintiffs,

vs.

CAL PLATE, INC. a California corporation,
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 20STCV00696

ASSIGNED FOR ALL PURPOSES TO:
Judge: Hon. Elihu M. Berle
Dept.: 6

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES;
[PROPOSED] ORDER**

[Declarations of James R. Hawkins, Jesus
Diaz, and Hector Garcia, Filed
Concurrently Herewith]

Date: June 8, 2022
Time: 9:00 a.m.
Dept. 6

PLEASE TAKE NOTICE THAT on June 8, 2022, at 9:00 a.m., or soon thereafter as possible, in Department 6 of the above-entitled court located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Jesus Diaz and Hector Garcia will and hereby do, move the Court for final approval of the class action settlement and all agreed-upon terms therein. This Motion, unopposed by Defendant Cal Plate, Inc., seeks final approval of: (1) the Stipulation of Class and PAGA Settlement; (2) the Gross Settlement Amount of Three Hundred Fifty Thousand Dollars (\$350,000); (3) all settlement payments to individual Class Members; (4) the Plaintiff's Enhancement Payment in the amount of Six Thousand Dollars (\$6,000) each, to the named Plaintiffs Jesus Diaz and Hector Garcia; (3) Fifteen Thousand Dollars (\$15,000) in PAGA penalties; (4) costs of administering the Settlement paid to the Settlement Administrator, Simpluris, Inc. in the amount of Nine Thousand Dollars (\$9,000); (5) an award of One Hundred Seventeen Thousand Dollars (\$117,000) in attorneys' fees (i.e., 33 1/3% of the Gross Settlement Amount) to Class Counsel, James Hawkins, ALPC, and costs of Thirteen Thousand One Hundred Seventy Dollars and Sixteen Cents (\$13,170.16)

This Motion is made pursuant to California Rules of Court Rule 3.769, which requires court approval of the settlement of a putative class action. Further, this Motion, which is expected to be unopposed by Defendant Cal Plate, Inc., will be based on the following: Memorandum of Points and Authorities set forth herein; the Stipulation of Class and PAGA Settlement attached to the Declaration of James R. Hawkins as Exhibit 1; the Declarations of James R. Hawkins, Jesus Diaz, and Hector Garcia; Declaration of James R. Hawkins filed in support of Plaintiff's Motion for Preliminary Approval, and such evidence or oral argument as may be presented at the hearing, and on the complete records and file herein.

Respectfully submitted,

Dated: May 2, 2022

JAMES HAWKINS, APLC


James R. Hawkins, Esq.
Isandra Y. Fernandez, Esq.
Attorneys for Plaintiffs
Jesus Diaz and Hector Garcia

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I. INTRODUCTION

On February 14, 2022, this Court preliminarily approved the Gross Settlement Amount (“GSA”) of Three Hundred Fifty Thousand Dollars (\$350,000) as being fair, adequate, and reasonable. Further, this Court preliminarily appointed Plaintiff’s counsel, James Hawkins and Isandra Fernandez of James Hawkins APLC as class counsel, the named Plaintiffs, Jesus Diaz and Hector Garcia, as Class Representatives, and provisionally certified the Settlement Class which consists of: all persons who are or were employed by Defendant as non-exempt, hourly-paid employees in California from January 8, 2016 through February 14, 2022 (“Class Members”). The Court also preliminarily approved Simpluris, Inc. (Simpluris) as the Settlement Administrator.

On March 9, 2022, the parties notified 133 Class Members about the settlement through the Settlement Administrator, Simpluris. The opt-out and objection period ends on May 9, 2022, and the Settlement Administrator’s Report is due on May 27, 2022. Based on the most recent Settlement Administrator’s weekly report dated May 2, 2022¹, One (1) Notice Packet remains undelivered, and Zero (0) Class Members have requested exclusion or indicated that they would be objecting to the Settlement (See Declaration of James R. Hawkins “Hawkins Decl.” ¶ 21; Exh. 4).

The benefits conferred to the Settlement Class, as a result of this Settlement, are extremely favorable. Specifically, as previously set forth in Plaintiff's Motion for Preliminary Approval ("Preliminary Approval Motion"), this is a cash settlement with no reversionary aspect. Every Class Member who has not opted out of the Settlement will automatically be mailed an individual settlement payment. There is no claims filing process, and Class Members do not have to file a claim

¹ The information contained in this motion is based on the latest weekly report from the Settlement Administrator. Upon completion of the Settlement Administration, a declaration from the Settlement Administration will be submitted with the final details.

1 to be mailed a payment. Moreover, out of the 133 class members, to date, there are Zero (0) requests
2 for exclusion, no disputes, and no objections to the settlement.

3 Additionally, in the event the Court approves the requested fees, costs and enhancements, an
4 even distribution of the NSF to the 133 Class Members provides \$1,410.37 to each Class Member.
5 (Hawkins Decl. ¶ 7).

6 In sum, the proposed Settlement, which is the product of diligent advocacy and negotiations
7 by Class Counsel, provides significant benefits to the Class and has been well received as a
8 favorable outcome. The Settlement of this action is fair, reasonable, and adequate, and in the best
9 interest of the Class. Accordingly, final approval of the Settlement should be granted.

10 **II. LITIGATION AND SETTLEMENT**

11 **A. Pleadings**

12 On January 8, 2020, Plaintiff Jesus Diaz initiated this action in the Superior Court for
13 the County of Los Angeles, on behalf of himself and similarly situated persons, styled *Jesus Diaz v.*
14 *Cal Plate, Inc.*, Case no. 20STCV00696. The Complaint asserts causes of action for; (1) failure to
15 pay lawful wages owed; (2) failure to provide lawful meal periods or compensation in lieu thereof;
16 (3) failure to provide lawful rest periods or compensation in lieu thereof; (4) failure to pay timely
17 wages; (5) knowing and intentional failure to comply with itemized employee wage statement
18 provisions; (6) violations of the unfair competition law (Bus. & Prof. Code § 17200 *et seq.*) (the
19 “Action”) (Hawkins Decl. ¶ 2). On March 1, 2021, Hector Garcia provided notice to the Labor and
20 Workforce Development Agency (LWDA) of his intent to pursue Defendant for all civil penalties
21 arising from, Defendant’s alleged failure to, inter alia, pay all wages earned, including failure to
22 provide proper rest periods and meal breaks and failure to provide accurate wage statements (*Id.*).
23 On June 9, 2021, Plaintiff filed a First Amended Complaint adding an additional named Plaintiff,
24 Hector Garica, and an additional cause of action under PAGA (Hawkins Decl. ¶ 3).

25 **B. Discovery and Mediation**

26 Through discovery, Plaintiff and Cal Plate have exchanged extensive documents and
27 information related to the claims asserted. Defendant has produced thousands of pages of
28 information, including timecard records and wage reports of putative class members. Defendant also

1 provided Plaintiffs with class data and random samples of time records, wage statements,
2 information regarding the number of non-exempt employees during the relevant time period.
3 (Hawkins Decl. ¶ 8.)

4 After conducting extensive discovery, exchanging relevant information and engaging in
5 numerous discussions regarding the claims alleged, on June 28, 2021, the parties participated in a
6 private mediation with Mediator Michael Young, Esq. During the course of the mediation, the
7 parties exchanged further information and documentation concerning Plaintiff's claims, Cal Plate's
8 defenses, and aggressively advocated for their respective positions (Hawkins Decl. ¶ 9.)

9 At the conclusion of the mediation, the parties reached a settlement in this action for a
10 maximum settlement amount of \$350,000. The parties exchanged various drafts of the Memorandum
11 of Understanding (MOU) which was executed by the Parties on or about August 19, 2021 (Hawkins
12 Decl. ¶ 10). Thereafter, the parties exchanged multiple drafts of the proposed settlement release
13 agreement and class notice documents and engaged in communications regarding the settlement
14 terms. The final terms and provisions of the settlement agreement were approved and executed by all
15 the parties on or about November 19, 2021. (*Id.*, Exhibit 1- Settlement Agreement).

16 **C. The Preliminarily Approved Settlement**

17 On December 23, 2021, Plaintiff filed the Motion for Preliminary Approval of Class Action
18 Settlement ("Preliminary Approval Motion"). On February 14, 2022, the Court entered the Order
19 granting preliminary approval appointing class counsel (James R. Hawkins and Isandra Fernandez of
20 James Hawkins APLC), the class representatives (Jesus Diaz and Hector Garcia), and the Settlement
21 Administrator (Simpluris, Inc.) The Court also approved the proposed Notice of Proposed Class
22 Action and Paga Settlement (hereinafter referred to as "Class Notice"). Subject to the Court's final
23 approval, the fees and expenses to be paid from the Gross Settlement Amount are as follows:

24 **1.** Subject to Court approval, the law firm of James Hawkins, APLC shall be
25 paid \$117,000 in attorneys' fees (i.e. 33.33% of the Gross Settlement Amount) and litigation costs of
26 \$13,170.16. (Settlement Agreement ¶¶ 4(B)(4), 6).

27 **2.** Subject to Court approval, \$6,000 each shall be paid to the named Plaintiffs,
28 Jesus Diaz and Hector Garcia, for their effort and work in prosecuting the actions on behalf of the

1 class. (Settlement Agreement ¶¶ 4(B)(3), 7).

2 **3.** Subject to Court approval, \$9,000 will be set aside from the Gross Settlement
3 Amount to cover any of the Settlement Administrator’s costs of administering this Settlement.
4 (Settlement Agreement ¶¶ 4(B)(2), 8).

5 **4.** Subject to Court approval, \$15,000 will be set aside from the Class Settlement
6 Amount for the PAGA penalties, of which 75% (\$11,250) will go to the California Labor and
7 workforce Development Agency (the “LWDA Payment”), and 25% (\$3,750) will remain part of the
8 Net Settlement Fund (“NSF”) and distributed to Settlement Class Members. Plaintiff will take all
9 actions required by California Labor Code § 2699 (I) (Settlement Agreement ¶¶ 4(B)(5))

10 **5.** Payment to Class Members shall be made based on a pro rata share of the
11 NSF (“Individual Settlement Share”) (NSF is the amount remaining after deducting amounts set
12 forth in paragraphs 2-5 above from the GSA) based on the pro rata number of workweeks that each
13 of them worked for Defendant as an hourly-paid or non-exempt employee during the Class Period
14 (“Class Workweeks”). (Settlement Agreement ¶ 5). Aggrieved Employees will receive a pro rat
15 share of the Employee PAGA Amount (“Individual PAGA Payment”) based on the number of pay
16 periods that each of them worked for Defendant as an hourly-paid or non-exempt employee during
17 the PAGA Period (“PAGA Pay Periods”). Class Workweeks and PAGA Pay Periods will be
18 calculated based on Defendant’s payroll records by determining the number of weeks during which
19 the Class Member or Aggrieved Employee worked at least one (1) day during the workweek and/or
20 pay period. The Parties make no representations as to the tax treatment or legal effect of the
21 payments in this Agreement. Settlement Class Members understand and agree that they will be
22 responsible for the payment of any taxes assessed on the Individual Settlement Payments that they
23 receive. (Settlement Agreement ¶ 5).

24 **6.** Settlement Payments shall be allocated as follows for tax purposes: 33.33% of
25 each Individual Settlement Share shall be attributed to wages, which will be reported on W-2 and
26 subject to payroll tax withholding. 33.33% of each Individual Settlement Share shall be attributed to
27 penalties/other payments and 33.33% of each Individual Settlement Share shall be attributed to
28 interest, both of which shall be reported on an IRS Form 1099 by the Settlement Claims

1 Administrator. (Settlement Agreement ¶ 5(A)(3)).

2 7. This is a non-reversionary settlement with no reversion to Cal Plate. Thus, any
3 unpaid cash residue or unclaimed or abandoned class member funds, plus any accrued interest
4 thereon will be sent to the State of California Controller's Office Unclaimed Property Division.
5 (Settlement Agreement ¶¶ 4(B), 5.D).

6 **D. Dissemination of Class Notice**

7 On March 9, 2022, the Settlement Administrator, Simpluris, notified 133 Class
8 Members about the settlement. Seventeen (17) Notice Packets were returned and remailed. Based on
9 the Settlement Administrator's weekly report dated May 2, 2022, One (1) Notice Packet remains
10 undelivered, and Zero (0) Class Members have requested exclusion or indicated that they would be
11 objecting to the Settlement (Hawkins Decl. ¶ 21; Exh. 4).

12 **E. The Settlement Provides Reasonable Compensation to Class Members**

13 Even without the presumption of fairness and reasonableness, the Settlement clearly is within
14 the range of reasonableness. Subject to Court approval, the total potential Net Settlement Fund
15 (NSF) is approximately \$187,579.84 All Class Members will be paid their portion of the Class
16 Member Settlement Fund. An even distribution of the NSF to the 133 Class Members provides
17 \$1,410.37 to each Class Member. The settlement for Settlement Class members is fair, reasonable
18 and adequate, given the inherent risk of litigation, the risk relative to class certification and the costs
19 of pursuing such litigation. (Hawkins Decl. ¶ 7).

20 As discussed in Plaintiff's motion for preliminary approval, the predominant claims in this
21 action arise from alleged violations of California law with respect to rest periods and meal breaks.
22 Specifically, Plaintiffs allege that due to the workload requirements, they and class members were
23 not provided a minimum, uninterrupted 30-minute meal break before the end of the fifth hour of
24 their work shift (Hawkins Decl. ¶ 4). Plaintiffs also allege that they and Class Members were not
25 provided a second 30-minute meal period when they worked shifts in excess of 10 hours. Similarly,
26 with respect to the rest break claim, Plaintiffs allege that due to the workload requirements, they and
27 Class Members were unable to take a minimum ten-minute rest break for every four hours or major
28 fraction thereof worked during their shifts (*Id.*).

1 Cal Plate denies Plaintiff's allegations and maintains that Class Members were provided with
2 the opportunity to take all meal and rest periods to which they were entitled. Cal Plate also
3 maintained that Plaintiffs' claims were improper for class treatment. (Hawkins Decl. ¶ 5.)

4 Here, Defendant disputed that any of the claims had merit based upon its written policies.
5 Defendant also disputed the propriety of certification in this case and contends that its policies and
6 practices concerning the claims asserted in this lawsuit are compliant with California law.
7 Accordingly, it denies it has any liability for the claims asserted by Plaintiff. Given the nature of the
8 claims alleged, Defendant has also denied and continues to deny that the lawsuit is appropriate for
9 class treatment for any purpose other than for settlement purposes only (*Id.*)

10 As discussed in Plaintiff's preliminary approval motion, based on documents and information
11 produced by Defendant in discovery, in preparation for mediation and during ensuing settlement
12 negotiations, Plaintiff's counsel estimated a potential liability between \$1,241,234 to \$423,000 that
13 may be owed to the putative class, assuming Plaintiff and the Class were able to obtain an order
14 certifying the class and were also able to prove all their claims (Hawkins Decl. ¶ 6.)

15 Through his counsel, Plaintiff took into consideration the significant risk that class
16 certification could be denied on the central claims, or that a merits decision on the central claims
17 would not favor the Class (Hawkins Decl. ¶ 7). Plaintiff considered the expense and length of
18 continued proceedings necessary to continue the Action against Defendant through trial and any
19 possible appeals along with Defendant's financial position. Thus, the Settlement achieved a
20 favorable result for the putative class members especially considering the risks inherent in the
21 continued litigation of this matter (*Id.*).

22 **III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE**

23 The law favors settlement, particularly in class actions and other complex cases in which
24 substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. *City*
25 *of Seattle* 955 F.2d at 1276; *Potter v Pacific Coast Lumber Company*, (1951) 37 Cal. 2d. 592, 602-
26 603.; 4 NEWBERG §11.41. When faced with a motion for final approval of a class action settlement
27 under Code of Civil Procedure §382, a court inquires whether the settlement is "fair, adequate, and
28 reasonable." See *e.g.*, *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, (2010) 186 Cal. App.

1 4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v.*
2 *Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.

3 **A. This Court Preliminarily Found This Settlement to be Fair, Reasonable and**
4 **Adequate and Nothing Has Changed to Disturb That**

5 Before granting preliminary approval of a class action settlement, courts must determine that
6 the proposed settlement is fair, reasonable, and adequate — and not a product of fraud, overreaching,
7 or collusion. Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor Co., supra*, 48
8 Cal.App.4th at 1801. Courts must presume that a settlement is fair, reasonable, and adequate, and
9 thus appropriate for preliminary approval when the following three factors are satisfied: (1) the
10 parties reached settlement after arms-length negotiations; (2) counsel conducted sufficient
11 investigation and discovery to allow themselves and the court to act intelligently; and (3) counsel is
12 experienced in similar litigation *Id.* at 1802. *See also 7-Eleven Owners for Fair Franchising v.*
13 *Southland Corp.*, (2000) 85 Cal. App. 4th 1135, 1146. Further, as discussed below, although not
14 determinative, courts consider the percentage of objectors in determining whether a presumption of
15 fairness exists. *Id.* There is no question that these factors are satisfied here. The parties conducted
16 sufficient amount of discovery and participated in a private mediation and numerous conferences of
17 counsel that ultimately led to an arms-length settlement that provides for substantial recovery.
18 Moreover, out of 133 class members presumed to have received the Notice Packets, there have been
19 no requests for exclusion from, no disputes with, or objections to, the Settlement (Hawkins Decl. ¶
20 21).

21 **1. The Settlement Resulted From Non-Collusive, Arms-Length Negotiations**

22 There certainly is no collusion between the parties. The involvement of a neutral third-party
23 mediator is a factor that favors approval and evidences the presumptive fairness of the arms-length
24 negotiations. Indeed, courts should give considerable weight to the competency and integrity of
25 counsel and the involvement of a neutral mediator in assuring themselves that a settlement
26 agreement represents an arms-length transaction entered without self-dealing or other potential
27 misconduct. *Kullar v. Foot Locker, supra*, 168 Cal. App. 4th at 129. Here, after extensive discovery,
28 discussions, exchange of information and review of records, the parties engaged in a full day

1 mediation session with a well-respected and highly knowledgeable wage and hour mediator Michael
2 Young (Hawkins Decl. ¶ 9.)

3 **2. The Settlement is Supported by Substantial Investigative and Discovery**
4 **Efforts**

5 As discussed in the preliminary approval papers, supporting declaration and herein, Class
6 Counsel analyzed a significant amount of information that Defendant produced in response to
7 discovery requests in preparation for mediation (Hawkins Decl. ¶¶ 8-9.) The parties have conducted
8 significant investigation of the facts and law during the prosecution of the Action. Class Counsel's
9 research enabled them to pinpoint the relevant issues and claims and to assess potential liability and
10 damages. These efforts resulted in the parties having a clear view of the strengths and weaknesses of
11 their respective cases and achieving a resolution on favorable terms, as was evidenced during
12 mediation and leading to Settlement.

13 **3. Class Counsel is Experienced in Similar Litigation**

14 The endorsement of qualified and well-informed counsel of the settlement as fair is entitled
15 to significant weight. *See Dunk, supra*, 48 Cal.App.4th at 1802. As discussed in the preliminary
16 approval papers and set forth in the Declaration of Class Counsel, Class Counsel has represented,
17 mediated and settled other employee class actions in wage and hour litigation and have knowledge
18 of the strengths and weaknesses of the claims against Defendant and the benefits of the proposed
19 settlement under the circumstances of the case (Hawkins Decl. ¶¶ 12-16). Class Counsel contends
20 that the Settlement is fair, adequate, reasonable, and in the best interests of the Class as a whole.

21 **4. Class Members' Positive Reaction to the Settlement Favors Final**
22 **Approval**

23 Finally, courts look at the reaction of class members to determine if a settlement that directly
24 affects their interests should be approved as fair, adequate, and reasonable. As already discussed
25 herein, out of 133 class members presumed to have received the Notice Packets, there have been no
26 requests for exclusion from the Settlement to date (Hawkins Decl. ¶ 21). Further, a court may
27 appropriately infer that a class action settlement is fair, adequate, and reasonable even when class
28 members object to it. Indeed, a court may approve a class action settlement as fair, adequate, and

1 reasonable even over the objections of a significant percentage of class members. *See Boyd v.*
2 *Betchel Corp.*, (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General Motors* (5th Cir. 1983) 703
3 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.* (D. Ariz. 1989) 720 F. Supp. 1379,
4 1394. To date, there are no objections to the Settlement which the Court should construe as a further
5 indication of Class Members' support for the Settlement as fair, adequate, and reasonable (Hawkins
6 Decl. ¶ 21).

7 **IV. CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE**

8 The settlement provides for an enhancement award to be paid to the Class Representative.
9 The purpose is to provide an additional incentive payment, taking into consideration the risks, time
10 and effort in coming forward to fulfill all the duties associated with being a class representative.
11 Awarding incentive awards to compensate named plaintiffs in class actions has been specifically
12 recognized. See, e.g. *Clark v. American Residential Services, LLC*, (2009) 175 Cal App 4th 785, 804
13 (incentive awards to named plaintiff appropriate for participation in class action); *Bell v Farmers*
14 *Ins. Exchange*, (2004) 115 Cal App 4th 715, 726 (upholding "service payments" to named plaintiffs
15 for their efforts in bringing class case).

16 As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive awards
17 are "intended to compensate class representatives for work done on behalf of the class, to make up
18 for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize
19 their willingness to act as a private attorney general." *Cellphone Termination Fee Cases*, (2010) 186
20 Cal. App. 4th 1380, 1394 (approving an incentive award of \$10,000).

21 The class representative enhancement payment is intended to compensate named Plaintiffs
22 Jesus Diaz and Hector Garcia as the class representatives for their willingness to accept the
23 responsibility of representing the interests of all class members. The purpose is to provide an
24 incentive payment, taking into consideration the risks, time and effort expended by them in coming
25 forward to provide invaluable information and to litigate this matter on behalf of all Class Members.
26 The enhancement payment is also in consideration for executing a general release of all their claims
27 against Cal Plate (Hawkins Decl. ¶ 11), (Declaration of Jesus Diaz ("Diaz Decl." ¶ 10)), and
28 (Declaration of Hector Garcia ("Garcia Decl." ¶ 10)).

1 Plaintiffs also risked potential judgment against them if this case had been unsuccessful. In
2 class action losses, class representatives are deemed the losing party that is liable for the prevailing
3 party's costs. *Earley v. Superior Court*, (2000) 79 Cal. App. 4th 1420, 1433-1434. Finally, Plaintiffs
4 also risked this lawsuit having a negative impact on future employment opportunities, as prospective
5 employers may be less inclined to hire an employee who has served as a class representative. (Diaz
6 Decl. ¶¶ 7, 9; Garcia Decl. ¶¶ 7, 9) *See, e.g. Staton v. Boeing*, 327 F.3d 938, 977 (9th Cir. 2003) As
7 such, Plaintiffs respectfully request that this Court approve the Class Representatives enhancement
8 payment in the amount of \$6,000 each.

9 **V. CLASS COUNSEL'S REQUEST FOR ATTORNEYS FEE AWARD IS**
10 **REASONABLE**

11 Subject to court approval, this settlement amount of \$350,000 includes Class Counsel's
12 attorneys' fees of \$117,000. Plaintiffs and class members are entitled to recover their attorneys' fees
13 and costs. (Labor Code §2802; Code Civ. Proc. §1021.5(a); *Earley v. Super. Ct.*, (2000) 79
14 Cal.App.4th 1420. A fee award is justified when class benefits are obtained via settlement. *Maria P.*
15 *v. Riles*, (1987) 43 Cal.3d 1281, 1290-91; *Westside Cmty. for Indep. Living, Inc. v. Obledo*, (1983)
16 33 Cal.3d 348, 352-53.

17 Fee awards may be based on (1) the percentage-of-the-benefit method; or (2) the lodestar
18 plus multiplier method. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 254;
19 *Lealao v. Beneficial California, Inc.*, (2000) 82 Cal.App.4th 19, 27. Both methods are proper in
20 California, although courts often use a lodestar-multiplier method as a check against the
21 reasonableness of a percentage fee award. (*See, e.g., Serrano v. Priest (Serano III)*, (1977) 20
22 Cal.3d 25, 48-49 fn. 23; *People ex rel. Dept. of Transportation v. Yuki*, 31 (1995)Cal. App. 4th 1754,
23 1769-1772; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.*, (1985)172 Cal. App. 3d 914, 954.

24 **A. Class Counsel's Requested Fees Are Reasonable Under Lodestar/Multiplier**
25 **Method**

26 The lodestar-multiplier method begins with a calculation of time spent and reasonable hourly
27 compensation of each attorney and paralegal who worked on the case. Then, to compensate counsel
28 for risk, quality, and result, courts commonly apply a "multiplier" to the lodestar in awarding

attorneys' fees. California courts often increase the base lodestar with a multiplier after considering: (1) the continuing obligation of plaintiff's counsel to devote time and effort to the litigation; (2) the extent to which the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee agreement, both from the point of view of eventual success on the merits and securing an award; (4) the experience, reputation, and ability of the attorneys who performed the services, and the skill they displayed in litigation; (5) the amount involved and the results obtained on behalf of the class by plaintiffs' counsel; and (6) the reaction of the class members. *See, e.g. Serrano, supra*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co., supra*, 48 Cal. App. 4th at 1810 n.21. However, no rigid formula applies and each factor should be considered only "where appropriate." *See Dept. of Transp. v. Yuki*, (1995) 31 Cal. App. 4th 1754, 1771; *See also Serrano, supra*, 20 Cal.3d at 49.

1. Time and Effort

Class Counsel, who are experienced wage and hour class action attorneys, have put a significant number of hours in this case. Class Counsel had to conduct substantial investigation, research numerous issues and review and analyze policies, independently analyze time records, and wage statements, as well as dedicate substantial time to analyze data, time records and payroll records and to contact class members. (Hawkins Decl. ¶¶ 8-9, 17.) Those efforts, along with negotiating the settlement, obtaining preliminary approval, preparing and filing the final approval papers, required a significant amount of time and labor. (*Id.*) Since the inception of this matter, on or about October 8, 2019, the total amount of attorney time and paralegal time expended, and also estimated to be expended, in finalizing this matter, is 175.3 hours. Class Counsel's base lodestar total equates to attorney fees of \$135,645 (Hawkins Decl. ¶¶ 18, 19.)

2. Extent Litigation Precluded Other Employment

Inherent to class action litigation is the amount of time and labor required to properly adjudicate the case. From start to Settlement, judgment or verdict, class action litigation commands commitment, an extensive amount of time, labor and resources to successfully litigate. Although this litigation did not conclusively preclude other employment it did impact Class Counsel's ability to take on other class action cases. Class Counsel is a boutique law firm with few attorneys and staff. (Hawkins Decl. ¶ 15.)

1 **3. Contingent Nature of the Agreement**

2 In *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132, the court noted, the economic rationale
3 for contingency cases has been explained as follows: “A contingent fee must be higher than a fee for
4 the same legal services paid as they are performed. As discussed further below, the contingent fee
5 compensates the lawyer not only for the legal services he renders but also for the loan of those
6 services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the
7 case, which cancels the debt of the client to the lawyer) is much higher than that of conventional
8 loans.” (Posner, *Economic Analysis of Law* (4th ed. 1992) pp. 534, 567.) “A lawyer who both bears
9 the risk of not being paid and provides legal services is not receiving the fair market value of his
10 work if he is paid only for the second of these functions. If he is paid no more, competent counsel
11 will be reluctant to accept fee award cases.” *Id.*

12 **4. Experience, Reputation, and Ability of Plaintiff’s Counsel**

13 As also set forth in the Declaration of James R. Hawkins submitted in support of the
14 Preliminary Approval Motion and discussed herein, Class Counsel’s skill and experience in
15 litigating wage and hour class actions, in state and federal forums, contributed to the results obtained
16 on behalf of the putative class members. (Hawkins Decl. ¶¶ 12-16).

17 **5. Results Obtained on Behalf of the Class by Plaintiff’s Counsel**

18 The award of attorney fees should reflect the successful outcome of the case *Hensley v.*
19 *Eckerhart*, (1983) 461 U.S. 424,440. As already discussed herein and in the preliminary approval
20 motion, this case involves numerous and difficult issues largely precluding a clear-cut outcome as to
21 liability. There also were significant class certification issues concerning whether individual issues
22 predominate and whether class member declarations and statistical samplings can support
23 certification. Defendants recognized the uncertainty of Plaintiff’s claims and vigorously disputed
24 liability, Class Counsel’s ability to obtain certification, and the amount of damages. Nevertheless,
25 despite the obstacles as already discussed in the preliminary approval motion and herein, Class
26 Counsel obtained significant financial compensation for the class members. All class members who
27 did not opt out of the Settlement will receive payment. An even distribution of the NSF to the 133
28 Class Members provides \$1,410.37 to each Class Member. (Hawkins Decl.¶ 7).

Further, as also discussed, Plaintiff would have faced significant legal and factual obstacles in demonstrating that Class certification was appropriate. Despite the complexity of the case, Class Counsel have, through the investment of substantial effort, and the resources of their boutique law firm, been able to secure an outstanding Settlement on behalf of the Class Members.

6. Reaction of Putative Class Members

As already discussed herein, the reaction of the Class Members has been positive. Specifically, not one of the Class Members has objected to Class Counsel's request for attorneys' fees, nor did anyone request exclusion, or dispute the Settlement, which also provides compelling evidence that the request is fair, adequate and reasonable.

In sum, based on the six factors discussed above, Class Counsels' lodestar in this action could be enhanced by application of a multiplier, however, this is NOT being requested, as the Lodestar amount is more than the fees Class Counsel is requesting. Additionally, by settling this case prior to trial rather than continuing to litigate issues that remain somewhat unsettled, counsel obtained exceptional results for the class at far less expense to the parties, to counsel, and to this Court.

Accordingly, a positive multiplier of Class Counsel's lodestar is further warranted, "Considering that our Supreme Court has placed an extraordinarily high value on settlement, it would seem counsel should be rewarded, not punished, for helping to achieve that goal." *Lealao, supra*, 82 Cal. App. 4th at 52. Multipliers of two to four are commonplace in California class actions and can range even higher. *Wershba, supra*, 91 Cal. App. 4th at 255; *In re California Indirect Purchases* (October 22, 1998) WL1031494 at * 10, fn 5. Again, in this case, as noted above a multiplier is not necessary as the total lodestar amount is significantly more than the requested class counsel fee of \$117,000.

B. Class Counsel's Requested Fee Is Reasonable Under the Percentage of the Benefit Method

1. Attorney's Fees Should be Based Upon the Total Benefit to the Class

The primary benefit of the percentage method is that it focuses on the benefit conferred on the class as a result of the efforts of Class Counsel. Awarding Class Counsel fees based on a percentage of the recovery has the advantages of eliminating the incentive for attorneys to increase

1 hours unnecessarily, encouraging early settlement of disputes, and preserving judicial resources
2 otherwise used to monitor attorneys' billable hours. See *In re Activision Sec. Litig.*, (N.D. Cal. 1989)
3 723 F. Supp. 1373, 1378-79; *MANUAL FOR COMPLEX LITIGATION* 4th ed. § 14.121 (2004) ("in
4 practice, the lodestar method is difficult to apply, time consuming to administer, inconsistent in
5 result. . . capable of manipulation,... [and] creates inherent incentive to prolong the litigation"); See
6 also *In re Quantum Health Resources, Inc.* (C.D.Cal. 1997) 962 F. Supp. 1254, 1256 (noting that
7 lodestar "creates an incentive to keep litigation going in order to maximize the number of hours
8 included in the court's lodestar calculation.")

9 The percentage of fund method survives in California class action cases. *Laffitte v Robert*
10 *Half Intern, Inc.* (2016) 1 Ca. 4th 480, 506.[See also. *Chavez v. Netflix, Inc.*, (2008) 162 Cal. App.
11 4th 43 at 65, 66; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.*, (2005) 127 Cal.
12 App. 4th 387, 397 [the common fund doctrine is "frequently applied in class actions when the efforts
13 of the attorney for the named class representatives produce monetary benefits for the entire class"];
14 *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. 4th at 254.

15 2. **The Contingent Nature of Class Counsel's Representation Supports the**
16 **Requested Fees Based on 33.33% (One Third) of the GSA**

17 Further, the contingent nature of Class Counsel's representation also warrants the requested
18 attorney fees based on the percentage of the common fund. The risks in taking on any class action
19 are enormous especially in regards to wage-and-hour class actions because the wage laws are
20 continuously developing and a change in the law could wipe out a plaintiff's recovery. Litigating a
21 class action through trial takes years and requires the investment of hundreds of thousands of dollars.
22 Attorneys willing to undertake this risk deserve appropriate compensation. As elaborated by the
23 California Supreme Court in *Graham v. Daimler Chrysler Corp.*, (2008) 34 Cal. 4th 553, 579-580,
24 counsel should be awarded a fee enhancer for taking on contingent cases because a "contingent fee
25 compensates the lawyer not only for the legal services he renders but for the loan of those services.
26 The implicit interest rate on such a loan is higher because the risk of default (the loss of the case,
27 which cancels the debt of the client to the lawyer) is much higher than that of conventional loans."

28 As the California Supreme Court specifically explained:

1 A contingent fee must be higher than a fee for the same legal services paid as
2 they are performed. The contingent fee compensates the lawyer not only for the legal
3 services he renders but for the loan of those services. The implicit interest rate on
4 such a loan is higher because the risk of default (the loss of the case, which cancels
5 the debt of the client to the lawyer) is much higher than that of conventional loans. A
6 lawyer who both bears the risk of not being paid and provides legal services is not
7 receiving the fair market value of his work if he is paid only for the second of these
8 functions. If he is paid no more, competent counsel will be reluctant to accept fee
9 award cases.

10 *Id.* at 580.(citing *Ketchum v. Moses*,(2001) 24 Cal. 4th 1122, 1132-33).

11 In the legal marketplace, an attorney whose compensation is entirely dependent on success –
12 who takes a significant risk – should and does expect a significantly higher fee than an attorney who
13 is paid a market rate as the case goes along, win or lose. *See, e.g., Rader v. Thrasher*, (1962) 57 Cal.
14 2d 244, 253 (“[a] contingent fee contract, since it involves a gamble on the result, may properly
15 provide for a larger compensation than would otherwise be reasonable” (citation omitted); *Salton*
16 *Bay Marina v. Imperial Irrig. Dist.*, (1985) 172 Cal. App. 3d 914, 955 (contingent nature of the
17 litigation is a relevant factor in determining a reasonable attorney fee award).

18 Class Counsel represented the class members in this matter and has borne the entire risk and
19 costs of litigation on a pure contingency basis. To date, Class Counsel has not received any
20 compensation and expended litigation costs on behalf of the class. Class action contingency cases
21 are inherently risky. Upon retention, Class Counsel makes a commitment to litigate the case through
22 trial. These types of cases can take years, hundreds of hours of work and cost an enormous amount
23 of money; these risks are known upon retention. The risks involved coupled with the contingency
24 basis of this case further support Class Counsel’s request for attorneys’ fees and costs (Hawkins
25 Decl. ¶ 19.)

26 3. **Additional Factors Re: Contingency Market Rate Justify the Requested** 27 **Fee Award**

28 Further, important public policies underlie a court's determination of a motion for
attorneys' fees in class actions. Employees who are wronged by employer’s violation of state and
federal labor laws should have access to counsel with the ability and resources necessary to litigate
complex cases. *See e.g. Say-On Drug Stores, Inc. v. Superior Court*, (2004) 34 Ca1. 4th 319, 340
(enforcement of labor laws and class action device both matters of public policy); Our legal system

1 places unique reliance on private litigants to enforce substantive provisions of employment law
2 through class actions. See e.g. *Gentry v. Superior Court*, 42 Cal. 4th 443, 450-6 (2007) (confirming
3 the public importance of private enforcement of overtime laws through class actions); *Lealao*, 82
4 Cal. App. 4th (legal system relies on private litigants to enforce substantive provisions of law through
5 class and derivative actions; attorneys providing the essential enforcement services must be provided
6 incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal
7 marketplace).

8 As the California Court of Appeal recognized in *Thayer v. Wells Fargo Bank, supra*, 92 Cal.
9 App. 4th at 839: "Adequate fee awards are perhaps the most effective means of achieving [the]
10 salutary goal [of encouraging `private attorney general actions and] [c]ourts should not be indifferent
11 to the realities of the legal marketplace or unduly parsimonious in the calculation of such fees." See
12 also *Lealao*, 82 Cal.App.4th at 53 (cautioning against fee awards that are too small and therefore
13 "chill the private enforcement essential to vindication of many rights..."). At a minimum, attorneys
14 providing these substantial benefits should be paid an award equal to the amount negotiated in
15 private bargaining that take place in the legal marketplace. *Deposit Guaranty Nat. Bank, Jackson,*
16 *Miss. v. Roper*, (1980) 445 U.S. 326, 338; *Lealao*, 82 Cal. App. 4th at 49-50.

17 **4. Class Counsel's Requested Fee Award is Well Within California's**
18 **Benchmark Awards and Thus Reasonable Under the Percentage of the**
Benefit Method

19 Class Counsel's request for 33 1/3% of the monetary fund recovered is California's standard
20 benchmark and well within the range customarily approved by the California courts in comparable
21 class actions and other class actions as well as with contingency contracts negotiated by plaintiffs
22 and their counsel. "Empirical studies also show that regardless of whether the percentage method or
23 the lodestar method is used, fee awards in class actions average around one-third of the recovery."
24 See e.g. *Chavez v. Netflix, Inc., supra* 162 Cal. App. 4th at 66 fn.11; *In re California Indirect*
25 *Purchases* (October 22, 1998) WL1031494 at * 9(citing to *In re Milk Antitrust Litigation* (L.A. Sup.
26 Ct. 1998) Civ. Case No. BC070061 (33 1/3% award); *In re Facsimile Paper Antitrust Litigation*
27 (San Francisco Sup. Ct. 1997) Civ. Case No. BC0070061 (33 1/3% award) *In re Liquid Carbon*
28 *Dioxide Cases* (San Diego Sup.Ct.1996) J.C.C.P. 3012 (33 1/3% award); *Romero v Producers Dairy*

1 *Food, Inc.* (E.D. Cal. Nov. 14, 2007) WL 3492841 at * 4 (“fee awards in class actions average
2 around one-third of the recovery.” (quoting *Newberg on Class Actions* § 14.6 (4th ed.2007))

3 Moreover, the percentage should be measured against the full fund established by the
4 settlement and not upon the total value of the net settlement fund. *Williams v. MGM-Pathe*
5 *Communications Co.*, (9th Cir. 1997)129 F.3d 1026, 1027. This method recognizes that the efforts
6 of class counsel established the entire settlement, including non- monetary benefits, for the benefit of
7 the class. *Id.* In the Ninth Circuit’s decision in *Williams*, the parties settled class action claims in
8 favor of the class for a total settlement fund of \$4.5 million, and the district court awarded class
9 counsel attorneys’ fees based upon “the class members’ claims against that fund. *Williams*, 129 F.3d
10 at 1027. The class counsel in *Williams* contended that the district court erred and should have
11 calculated their fee as one-third of the entire \$4.5 million settlement fund. *Id.* The Ninth Circuit
12 agreed with class counsel and determined that the district court’s award of a fee based solely upon
13 the claims against the settlement fund was an abuse of its discretion.

14 Ninth Circuit courts have applied *Williams* in a variety of contexts, including claims-
15 made settlements without a minimum or maximum recovery. *See, e.g., Browning v. Yahoo! Inc.*,
16 (N.D. Cal. Nov. 16, 2007) WL 4105971 at *13–14(claims-made settlement with no minimum or
17 maximum recovery); *Young v. Polo Retail*, (N.D. Cal. Mar. 28, 2007) WL 951821 at*14-24 (same);
18 *Lopez v. Youngblood*, (E.D. Cal. Sept. 1, 2011) WL 10483569 at *32–43 (reversionary common
19 fund with maximum recovery only). *Hopson v. Hanesbrands Inc.*, (N.D. Cal. Apr. 3, 2009) 09
20 WL 928133 at *11; *Glass v. UBS Financial Services*, (N.D. Cal. Jan. 26, 2007) WL 221862 at
21 *16) (same). In sum, Class Counsels’ request for an award of attorney's fees in the amount of 33 1/3
22 % of the maximum settlement amount is reasonable.

23 **VI. CLASS COUNSEL'S REQUESTED COSTS ARE REASONABLE**

24 Class Counsel has not only expended substantial time in diligently prosecuting this Action,
25 but they have also expended considerable resources during litigation with no guarantee that their
26 costs would be reimbursed. The Settlement provides for reasonable actual costs of up to \$15,000.00.
27 (Settlement Agreement ¶¶ 4(B)(4), 6) The attorney cost amount incurred is \$13,170.16, thus Class
28 Counsel respectfully requests that the Court approve the incurred amount as per the Settlement

1 Agreement. (Hawkins Decl. ¶ 20 and Ex.2)

2 **VII. THE SETTLEMENT ADMINISTRATOR'S REQUESTED EXPENSES ARE**
3 **REASONABLE**

4 Simpluris was retained to administer the notice and claims process. Simpluris's duties
5 included, among other things: a) preparing, printing, and mailing of the class notice packets and b)
6 receiving and reviewing claims and exclusion requests. The Court preliminarily approved the
7 amount of \$9,000 for the Settlement Administrator. Plaintiffs now request, per the Settlement
8 Agreement, the Settlement Administrator be awarded costs of administering the settlement in an
9 amount not to exceed \$9,000 (Hawkins Decl. ¶ 21)

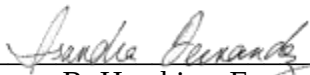
10 **VIII. CONCLUSION**

11 For all of the foregoing reasons, Plaintiff requests that the Court (1) grant final approval of
12 this Settlement and approve distribution to the settlement Class Members, (2) approve payment of
13 \$15,000 in payment of PAGA penalties, (3) approve Settlement Administrator costs in the amount of
14 \$9,000 (4) approve Class Counsel's request for an award of \$117,000 in attorneys' fees and
15 \$13,170.16 in costs, and (5) approve the request for a \$6,000.00 enhancement payment to each of the
16 named plaintiffs and class representatives, Jesus Diaz and Hector Garcia. Finally, Plaintiff requests
17 that the Court enter the [Proposed] Judgment and Final Order Approving Settlement of Class Action
18 submitted concurrently herewith.

19
20 Respectfully submitted,

21 Dated: May 2, 2022

JAMES HAWKINS, APLC

22
23 
24 James R. Hawkins, Esq.
25 Isandra Y. Fernandez, Esq.
26 Attorneys for Plaintiffs
27 Jesus Diaz and Hector Garcia
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On May 2, 2022, I served on the interested parties in this action the following document(s) entitled:

- XX] BY ELECTRONIC SERVICE: Via electronic filing service provider- electronically transmitting the documents listed above to CaseAnywhere, an electronic filing service provider, at www.caseanywhere.com pursuant to the Court's Order Authorizing Electronic Service. The transmission(s) was reported as complete and without error to the addresses as stated on the service list below.

Scott K. Dauscher, Esq. Jon M. Setoguchi, Esq. ATKINSON, ANDELSON, LOYA, RUUD & ROMO A PROFESSIONAL LAW CORPORATION 12800 Center Court Drive South, Suite 300 Cerritos, CA 90703-9364 SDauscher@aalrr.com JSetoguchi@aalrr.com <i>Attorneys for Defendant,</i> <i>CAL PLATE, INC.</i>	Labor and Workforce Development Agency Attn: PAGA Administrator 1515 Clay Street, Ste 801 Oakland, CA 94612 http://www.dir.ca.gov/Private-Attorneys-General-Act (via LWDA Website Only)
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1 [XX] **STATE:** I declare under penalty of perjury, under the laws of the State of
2 California, that the above is true and correct.

3 Executed on May 2, 2022, at Irvine, California



Nicole Miccolis