

Jacob N. Whitehead, SBN 266123
jacob@wemploymentlaw.com
W EMPLOYMENT LAW, APC
7700 Irvine Center Drive, Suite 930
Irvine, CA 92618
Telephone: (949) 674-4922

Attorneys for Plaintiffs, and Settlement Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JOSEPH MONTAGUE, an individual,
MICHAEL DUPONT, an individual, CURTIS
MOORE, an individual, CHARISSEE
TABOTABO, an individual, RENAE
HILLOCK, an individual, UNINI ODAIBOM
an individual, MICHAEL LATHE, an
individual, BRENT MILLER, an individual,
GIANCARLO VELLEJO, an individual, and
BENJAMIN TACDERAS, an individual,

Plaintiffs,

vs.

GLOBAL CONNECTIONS TO
EMPLOYMENT, INC., a Florida corporation,
and DOES 1-50, inclusive,,

Defendants.

Case No.: 37-2022-00004601-CU-OE-CTL

*Assigned for all purposes to
Hon. Matthew C. Braner*

**PLAINTIFFS' APPLICATION FOR
APPROVAL ATTORNEYS FEES AND
REASONABLE LITIGATION COSTS**

*[With Concurrently Filed Declaration of Jacob N.
Whitehead and (Proposed) Order]*

Date: February 9, 2024

Time: 9:00 a.m.

Dept.: C-60

Filed: February 3, 2022

Trial Date: None Set

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

PLEASE TAKE NOTICE that on February 9, 2024 at 9:00 a.m. or as soon thereafter as the matter may be heard in Department C-60 of the above-captioned Court located at 330 W. Broadway San Diego, California 92101, class and PAGA Representative Plaintiffs Joseph Montague, Michael Dupont, Curtis Moore, Charissee Lyn Uy Tabotabo-Allen (formerly Charissee Tabotabo), Renae Hillock, Unini Odaibom, Michael Lathe, Brent Miller, Giancarlo Vellejo, and Benjamin Tacderas (the "Plaintiffs") each individually and on behalf of all others similarly situated, will and do hereby move this Court for entry of an Order for the

1 following:

- 2 1. Granting Approval of the Application for Approval of Attorney's fees in the amount
3 of Eighty Thousand Dollars (40%) of the Gross Settlement Amount and reasonable
4 litigation costs in the amount of Nine Thousand, Five Hundred and Forty-One
5 Dollars and Thirty-Nine Cents (\$9,541.39).

6 This motion is made pursuant to this Notice of Motion, the Memorandum of Points and
7 Authorities filed herewith, the Declaration of Attorney Jacob N. Whitehead, (the Motion for
8 Final Approval of Class and PAGA Settlement concurrently filed herewith) and any other
9 papers and documents filed with this Court, and upon such further oral and/or documentary
10 evidence as may be present to the Court at the time of the hearing of this matter.

11 Respectfully submitted,

12
13 DATED: January 22, 2024

W EMPLOYMENT LAW, APC

14
15 By:


16 Jacob N. Whitehead
17 Attorney for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Subject to the Court Final Approval of Plaintiffs' concurrently filed unopposed Motion for approval of the Joint Stipulation of the PAGA and Class Action Settlement and Release of Claims (the "Settlement Agreement") for the work performed and benefits achieved, Class Counsel, formally request to be compensated for their efforts in litigating and ultimately resolved the action on favorable terms for the PAGA Members and Participating Settlement Class. Despite the risks facing Plaintiffs and the Settlement Class, Class Counsel was able to negotiated a non-reversionary, gross settlement amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00) from with the Class and PAGA Members will receive immediate monetary relief, rather than get bogged down in class certification and further contested motions, trial and appeals.

Through this motion Class Counsel requests the Court approved attorneys' fees in the amount of \$80,000.00 (40%) and reimbursement of reasonable litigation costs in the amount of Nine Thousand, Five Hundred and Forty-One Dollars and Thirty-Nine Cents (\$9,541.29) for the work it has and will continue to perform to the conclusion of this action.

II. FACTUAL BACKGROUND AND LITIGATION HISTORY

Beginning in mid-March of 2021, Class Counsel began investigating this case. (See Declaration of Jacob N. Whitehead ("Whitehead Decl.") ¶ 18. As part of that early investigation, Class Counsel had discussions with more than a dozen potential class members and eventually engaged ten of the presently named Representative Plaintiffs in the action, all of whom were former or then-current employees of Defendant. *Id.* During that time Class Counsel review 100's of pages of documents, which included employee contracts, extensive pre-onboarding communications, (including texts, correspondence and emails) and on-boarding documents, policies pertaining to termination and wage statements and agreements signed by each of the plaintiffs. In addition I conducted extensive interviews with the plaintiffs in which we discussed the factual issues underlying their claims, including offers of

1 employment, work hours, compensation, reimbursement of expenses incurred, and reasons for
2 discharge for each Plaintiff. After the foregoing I prepared a timeline of events and began
3 further in depth legal analysis and investigation of the potential claims involved.

4 On May 27, 2021, Class Counsel prepared and filed Plaintiffs notice with the
5 California Labor & Workforce Development Agency (“LWDA”) stating the facts and
6 theories underlying the claims alleged against Defendant, in compliance with the California
7 Labor Code’s Private Attorneys General Act of 2004 (“PAGA”), Labor Code §2698 et seq.
8 (and then again, as amended on Sept. 29, 2021, adding additionally named Plaintiffs) [See
9 Whitehead Decl. at ¶ 6]

10 On February 3, 2022, Plaintiffs filed their Complaint in the San Diego Superior Court,
11 Case No. 30-2022-00004601-CU-OE-CTL, alleging (1) Violation of the Private Attorney
12 Generals Act of Labor Code § 2698 et seq.; (2) Negligent Misrepresentation & Fraud (in
13 Violation of Civ. Code §§ 1572 & 1710 et seq.); (3) Intentional Misrepresentation & Fraud
14 (in Violation of Civ. Code §§ 1710 & 3294 et seq.); (4) False Promise (in Violation of Civ.
15 Code § 1710 (4)); (5) Breach of Contract; (6) Breach of Covenant of Good Faith and Fair
16 Dealing; (7) Misrepresentation Inducing Employee to Change Residence (in Violation of
17 Labor Code § 970 et seq.); and (8) Unfair Business Practices (in Violation of Bus. & Prof.
18 Code § 17200). [Whitehead Decl. ¶ 7]

19 The matter was subsequently removed by Defendant to the United States District
20 Court, Southern District of California, presiding Judge Michael M. Anello,¹ Case Number:
21 3:22-cv-00342-MMA-NLS. [Whitehead Decl. ¶ 8]

22 Thereafter the Parties met and conferred and agreed to set a date for mediation.

23 **A. Class Counsel Obtained Pre-Mediation Informal Discovery**

24 Class Counsel requested detailed class information, a sampling of payroll records and
25 relevant policies from Defendant in preparation for mediation. (Whitehead Decl. ¶ 9)

26
27 ¹ Pursuant to stipulation of the Parties the action was subsequently remanded back to San Diego
28 County Superior Court.

Defendant provided Class Counsel with data related to the PAGA / Aggrieved Employees and the Settlement Class, which Class Counsel spent time culling over in order to assess Defendant's potential damages exposure. Class Counsel then prepared a very detailed mediation brief.

B. The Parties Participated in an All-Day Mediation with Mediator Steven Pearl

On May 17, 2022, the Parties engaged in an all-day private mediation session before Steve Pearl, Esq., a neutral and well-respected mediator who is very knowledgeable regarding class and PAGA claims. Through arms-length negotiations with the assistance of Mediator, Pearl, the Parties reached a settlement after accepting the mediator's proposal which was issued on May 17, 2022.

On June 2, 2022, the Parties stipulated to remand the case back to San Diego Superior Court. The United States District Court, Southern District of California, granted the Parties' stipulation and remanded the Action back to the Superior Court of California, County of San Diego. This Court now has exclusive jurisdiction over Plaintiff's Class and PAGA claims.

After mediation the Parties began memorializing the terms of the Settlement into a long form agreement. Following several round of revisions, including conference calls, the long form Settlement Agreement including the Class Notice and Request for Exclusion forms were eventually executed and finalized on August 31, 2023. [¶ 13 and **Exhibit A** to Whitehead Decl.)

C. Class Counsel Prepared and Filed the Preliminary Approval Motion

After the Settlement Agreement was finalized and executed by all Parties, Class Counsel prepared and filed the Motion for Preliminary Approval and supporting documents on August 31, 2023. On October 13, 2023, the Court granted the Motion for Preliminary Approval.

Thereafter the approve Notices were mailed to the Class and PAGA Group Members. Class Counsel is happy to report that *not a single member – out of 217 individuals who received notice – opted out nor objected to the proposed Settlement.*

1 **III. THE AWARD OF ATTORNEYS FEES AND COSTS REQUESTED ARE**
2 **APPROPRIATE WHEN A COMMON FUND HAS BEEN CREATED FOR**
3 **THE BENEFIT OF THE CLASS**

4 Where, as here, the settlement produces a common fund for the benefit of the entire class,
5 courts have the discretion to employ either the lodestar method or the percentage-of-recovery
6 method. The determination of an appropriate percentage requires careful consideration of all
7 the circumstances of the case. The unopposed requested fee falls on the average end of
8 California’ historical benchmark for attorneys’ fees ranging from 20% to 50% of a common
9 fund and is a fair compensation for undertaking a complex, risky, expensive and time-
10 consuming litigation on a contingent basis. Courts have long recognized the ”common fund”
11 or “common benefit” doctrine, under which attorneys who create a common fund or benefit for a
12 group of persons may be awarded their fees and costs to be paid out of the fund. *Serrano v. Priest*
13 (“Serrano III”) (1977) 20 Cal.3d 25, 34, quoting *D’Amico v. Board of Medical Examiners* (1974)
14 11 Cal.3d 1; *Glendale City Employees’ Association v. City of Glendale* (1975) 15 Cal.3d 328, 341
15 fn.19; *Quinn v. State of California* (1995) 15 Cal.3d 162, 167; see also *Boeing Co. v. Van Gemert*
16 (1980) 444 U.S. 472, 478; and *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

17 The California Supreme Court recently affirmed that trial courts may grant attorney fees in a
18 common fund case based on a percentage of the recovery. (*Laffitte v. Robert Half International*
19 *Inc.*, (2016) 1 Cal.5th 480.) An attorneys’ fee based on a percentage of the common fund fairly
20 replicates the fair market value of such services and is fair and reasonable in view of the typical
21 common fund attorneys’ fees awards and similar California class action wage and hour
22 settlements. Furthermore, the California Supreme Court recognized in *Laffitte* that a fee award
23 based on a percentage of the recovery in a common fund is proper as the award serves to spread
24 the attorneys’ fees amongst all beneficiaries of the fund, aligns the incentives between plaintiffs’
25 counsel and the class, is a better approximation of the market conditions in a contingency case,
26 and encourages class counsel to seek an early settlement and avoid unnecessarily prolonging
27 litigation. (Id.) Pursuant to *Laffitte*, this request is fair and reasonable in view of the typical
28 common fund attorneys’ fees awards and similar California class action wage and hour
settlements and the hours worked on this case.

Courts typically factor in the following five factors: 1.) The results achieved; 2.) the risk of litigation; 3.) the skill required and the quality of work; 4) the contingent nature of the fees and the financial burden carried by the plaintiffs; and 5.) awards made in similar cases.

1. Class Counsel has Achieved Tangible and Meaningful Relief

Class Counsel has secured a non-reversionary Gross Settlement Amount of Two-Hundred and Fifty Thousand Dollars (\$250,000.00) for the current and former employees of Defendant. After Plaintiff's individual settlement claims, attorneys' fees, costs, class representative enhancement payments and settlement administrator costs are deducted, the class recovery from with the Settlement Class members will receive a proportionate share of the Class Settlement Awards in the amount of \$62,978.12, with an estimated average gross payment of \$290.22 (with the highest gross payment being \$486.96 and the lowest estimated gross payment being \$5.87).

Class Counsel achieved a PAGA Settlement in the Amount of Twelve Thousand, Five Hundred Dollars of which Nine Thousand Three Hundred and Seventy Five Dollars (\$9,375.00 – 75%) will benefit the State of California. Twenty-Five Percent (25%) of the PAGA Payment will be allocated to each of the 174 PAGA Group members on a pro rata basis, using the number of pay periods during the PAGA Period in which each PAGA Member worked. The average individual PAGA share is an estimated to be \$17.96 (the highest is currently estimated at approximately \$26.60 and the lowest pro-rata share is currently estimated at approximately 0.14).

Outside of Class Counsel's efforts, these Class and PAGA Group Members would have been left with no option but to pursue individual claims. The likelihood of an employee pursuing an individual claims, let alone finding an attorney who will take the claim is slim. Thus, many of these employees would have recovered nothing but for Class Counsel's efforts.

2. Class Counsel Undertook Significant Risks

Depending on what claims survived, Class Counsel would have had to conduct discovery, retain experts and move for class certification. Class Counsel could have lost the

1 class certification battle. Moreover, even if Class Counsel certified all or a portion of their
2 claims, they likely would have faced a motion to de-certify or a motion for summary
3 judgment or adjudication. Even if Class Counsel defeated any such attempts to decertify the
4 class or eliminate Plaintiffs' claims, a jury or the Court may still decide the merits of the case
5 in Defendant's favor – and after final judgment, Class Counsel would have to decide what
6 issues, if any to appeal. Boiled down, Class Counsel faced substantial risks, which
7 influenced factors in favor of settlement.

8 **3. Class Counsel's Experience, Skill and High Quality Work Led to a Favorable** 9 **Settlement**

10 As noted in the accompanying Declaration of Jacob Whitehead, Class Counsel is
11 experienced in litigating wage and hour cases and complex class and PAGA actions in both
12 state and federal court. [Whitehead Decl. at ¶¶ 4-5] Class counsel has demonstrated skillful
13 preparation and adept work in this action. From the filing of the initial Class Complaint, and
14 realizing the probability of success, subsequently filed the First Amended and the currently
15 operative Second Amended Complaint. Even when the Parties agreed to mediate, Class
16 Counsel did not stand idly by waiting for mediation to occur. Class Counsel requested
17 detailed data related to the PAGA and Settlement Class Members, which enabled an
18 informed and detailed analysis of viability of claims and valuation of estimated damages to
19 the Settlement Class Members and PAGA employees. Based on their analysis, Class
20 Counsel prepared a detailed mediation brief. Here, Class Counsel's ability to obtain a
21 favorable settlement in the face of robust opposition from Defendant reflects their skill and
22 tenacity further warranting the requested attorney's fees award.

23 **4. Class Counsel Shouldered All the Risks and Costs on a Contingent Basis**

24 a.) The Contingent Nature of This Case

25 For Class Counsel, the attorney fees requested here were wholly contingent in
26 nature and in cases like this, presented more risk than the usual contingent fee case. There
27 was the prospect of the enormous cost inherent in class action litigation – which has
28 previously become reality in both trial courts and the Court of Appeals in other wage and

1 hour class litigation. Class Counsel risked not only their time, but also money to ensure the
2 successful litigation of this action on behalf of all the aggrieved employees and Class
3 Members. [Whitehead Decl. ¶¶ 18-19]

4 Class Counsel's representation of the class, on a contingency basis entailed
5 thousands of dollars of expense and required counsel to forgo significant other work. Wage
6 and hour work in the context of complex litigation presents a difficult area of law that is not
7 within the knowledge of many lawyers. This kind of class action work requires specialized
8 learning and the willingness to take large risks. *Id.*

9 From the outset, Class Counsel undertook significant financial risk in prosecuting this
10 action against a well-represented and well-financed Defendant. Class Counsel
11 undertook this matter solely on a contingent basis with no guarantee of recovery and risked
12 their time and resources to prosecute the Action. Class Counsel understood that, even if
13 successful, they would not be paid, or reimbursed for any expenses. *Id.* Nevertheless, Class
14 Counsel conducted substantial work and were able to persuade Defendant that it faced
15 significant liability exposure such that it was willing to settle the claims in an amount not to
16 exceed Two-Hundred and Fifty Thousand Dollars (\$250,000.00). As stated above, notably
17 none of the 217 class members opted or, nor objected to the Settlement. This indicates they
18 were satisfied with the result and terms of the Settlement. Under the circumstances, an
19 attorney fees award equal to forty percent (40%) of the GSA is both reasonable and
20 consistent with the awards in California and the Ninth Circuit.

21 **5. The Amount Requested is Similar to Amounts That Have Been Repeatedly**
22 **Approved By Other Courts In Wage and Hour Class Actions and Similar**
23 **Cases**

24 A common fund is most appropriate where the common benefit to the class can be
25 qualified. (*Lealao v. Beneficial California, Inc.* (2000) 82 Cal. App. 4th 19, 50-51.) The
26 requested fee of \$476,000.00 (equal to 40% of the GSA falls in line with the range of
27 percentages repeatedly awarded in other class action litigation in this Ninth Circuit and by
28 numerous other California trial Courts. California trial courts have repeatedly authorized

1 attorney's fees as a percentage of a common fund up to 45% percent. Examples ranging
2 anywhere from 25 percent all the way up to 45 percent may be found at *Walgreens Overtime*
3 *Cases*, JCCP No. 4387 (Coordinated Actions) (31% fee award); *Laykin et al. v. Ann Taylor*
4 *Retail Inc., et al.*, LASC BC328843 and BC342729 (Coordinated Actions) (27.5% fee
5 award); *Collins v. Aaron Bros.*, LASC No. BC 208856 (33 1/3% fee award); *Gallegos v.*
6 *Office Depot*, Santa Clara Sup. Ct., Case No. CV 797847 (33 1/3% fee award); *Chalmers v.*
7 *Electronics Boutique*, LASC Case No. BC306571 (33% of common fund); *Graubard, et al.*
8 *v. Goodyear Tire & Rubber Co.*, LASC Case No. BC 230520 (33% award); *Viovens, et al, v.*
9 *Wackenhut Corp.*, LASC Case No. BC290071 (31% award); *Goddard v. Longs Drugs Stores,*
10 *Alameda Super. Ct. Case No. RG04141291* (25% award); *Crandall v. U-Haul International,*
11 *Inc.*, LASC Case No. BC178775 (40% award); *Albrecht v. Rite Aid Corp.*, San Diego Super.
12 *Ct. Case No. 729219* (35% award); *Marroquin v. Bed Bath & Beyond*, Alameda Super. Ct.
13 *Case No. RG04145918* (33 1/3% award); *In re Liquid Carbon Dioxide Cases*, San Diego
14 *Super. Ct Case No. J.C.C.P. 3012* (33 1/3% award plus costs); *In re California Indirect-*
15 *Purchaser Plasticware Antitrust Litigation*, San Francisco Super. Ct. Case Nos. 961814,
16 963201, and 963590 (33 1/3% fee award plus costs); *Bright v. Kanzaki Specialty Papers*, S.F.
17 *Super. Ct. Case No. 964899* (33 1/3% fee plus costs); *Andrews v. First Interstate Bank of*
18 *California*, S.F. Super. Ct. Case No. 953575 (30% fee award including costs); *In re*
19 *California Indirect-Purchaser Infant Formula Antitrust Class Action Litigation*, LASC Case
20 *No. J.C.C.P. No. 2557* (30% fee award including costs); *Sconce/Lamb Cremation Cases*,
21 *LASC Case No. J.C.C.P. No. 2085* (30% fee award plus costs). (*Crisman v. Good Guys, Inc.*
22 *(San Diego Superior Court 2007) Case No. GIS21939* [33 1/3 fee award plus costs],
23 [Cannon, J.]; *BCI Overtime Cases*, (San Diego Superior Court 2007) J.C.C.P. 4280 [33 1/3 %
24 fee award plus costs] [Gunn, J.]; *Menchykv. Beverages & More, Inc.* (Alameda County
25 *Super. Ct. 2006) Case No. RG 05196918* [33 1/3% fee award plus costs] [McKibben, J.];
26 *O'Hara, et al. v Factory 2-U Stores, Inc.* (Alameda County Super. Ct. 2002) No. 834123-5 [33
27 1/3% fee award plus costs] [Sabraw, J.]; *Davis v. The Money Store, Inc.* (Sacramento Super. Ct.
28 2000) No. 99AS01716 [33 1/3 % fee award]; *Azbug v Kerkorian* (Los Angeles Super. Ct. 1990)

1 CA-000981 [45 percent fee award plus costs]; *Haitz v. Meyer, et. al.* (Alameda Super. Ct. 1990)
2 Case No 572968-3 [45% fee award] *O'Hara, et al. v Factory 2-U Stores, Inc.* (Alameda County
3 Super. Ct. 2002) No. 834123-5 [33 1/3% fee award plus costs] [Sabraw, J.]; *Davis v. The Money*
4 *Store, Inc.* (Sacramento Super. Ct. 2000) No. 99AS01716 [33 1/3 % fee award]; *Azbug v*
5 *Kerkorian* (Los Angeles Super. Ct. 1990) CA-000981 [45 percent fee award plus costs]; *Haitz v.*
6 *Meyer, et. al.* (Alameda Super. Ct. 1990) Case No. 572968-3 [45% fee award].

7 **IV. AN AWARD OF ATTORNEYS' FEES AS REQUESTED IS ALSO**
8 **REASONABLE UNDER THE LODESTAR METHOD**

9 In *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559, the court addressed the issue of
10 what evidence is required in California to support a fee application. The court held:
11 “Testimony of an attorney as to the number of hours worked on a particular case is sufficient
12 evidence to support an award of attorney fees, even in the absence of detailed time records.”
13 *Id.* There is no need to attach the voluminous invoices prepared in a case as a basis for an
14 award of fees and costs. *Id.* Through Class Counsel’s declaration in support of this
15 application, as well as Class Counsel’s attached time sheets and costs sheets, however,
16 Plaintiffs present a thorough breakdown of all hours spent, and costs incurred, in prosecuting
17 this class action. Pursuant to *Martino*, supra, this presentation is more than sufficient to
18 support the amount sought. Class Counsel’s hourly rates, time expended on this matter and
19 costs spent on this matter are summarized and on behalf of Whitehead Employment Law are
20 attached to the Declaration of Jacob N. Whitehead, **Exhibits B-1 and B-2** thereto). However,
21 if used at all the lodestar method should serve only to cross check the reasonableness of the
22 fee request. The California Supreme Court in *Laffitte* has now made clear that a lodestar cross-
23 check is not required. (*Laffitte*, supra, 1 Cal. 5th at 506.) Through court’s have the discretion to
24 apply one, Plaintiffs submit that a cross-check is not necessary in this case; however, even if the
25 Court were to employ one, the cross-check supports the requested fees here. Further, if the Court
26 chooses to perform a lodestar analysis, case law is clear the Court is not required to “closely
27 scrutinize each claimed attorney hour, but...instead... ‘focus on the general question of whether
28 the fee award appropriately reflected the degree of time and effort expended by the attorneys”

1 (*Id.* at 505.)

2 Under the lodestar method, a base fee amount is calculated from a compilation of time
3 reasonably spent on the case and the reasonable hourly compensation of the attorney. The base
4 amount is then adjusted by use of a multiplier in light of various factors. *Serrano III*, (*supra*) 20
5 Cal.3d at 48. The Ninth Circuit has also commented that the utility of the lodestar cross-check is
6 limited. (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050) ("The lodestar method
7 is merely a cross-check on the reasonableness of a percentage figure, and it is widely recognized
8 that the lodestar method creates incentives for counsel to expend no more hours than may be
9 necessary on litigating a case so as to recover a reasonable fee, since the lodestar method does not
10 reward early settlement."). (See *Lopez v. Youngblood* (E.D. Cal. Sep. 2, 2011) 12 No. 07-0474-
11 DLB, 2011 WL 10483569.) ("A lodestar cross-check is not required in this circuit, and in a case
12 such as this, is not a useful reference point"). Moreover, it is well recognized that the lodestar
13 cross-check can reward unnecessary overbilling, inflation of timekeeping records, and inefficient
14 litigation. (See, *Albion Pac. Prop. Res., LLC v. Seligman* (N.D. Cal.16 2004) 329 F. Supp. 2d
15 1163, 1170-71; *Sproul v. Astrue* (S.D. Cal. Jan. 30, 2013) 2013 WL 394056, *2 ("Courts are
16 loathe to penalize experienced counsel for efficient representation under contingency
17 agreements..."))

18 Under either theory of awarding fees, the case that should govern the court's decision is
19 *Lealao*, (*supra*) (2000) 82 Cal.App.4th 19. *Lealao* stands for the proposition that court-awarded
20 attorneys' fees should approximate what counsel could get on the free market for the same
21 services. (*Id.* at 50.). Specifically, *Lealao* holds that if the Court sets fees under a lodestar, the
22 multiplier should consider what counsel would have earned on the free market. The free market is
23 determined by the percentage of the common fund, not the lodestar amount. *Id.* Accordingly,
24 whatever method the Court uses to set fees, the Court should look to what the free market would
25 bear under any circumstances. Even if the Court awards fees under the lodestar method, under
26 *Lealao*, the lodestar fees may be adjusted by a multiplier to reflect the percentage of the fund. (*Id.*
27 at 19 and 50.)

28 Here, Class Counsel earned the requested percentage fee, as this case was vigorously

1 litigated. Whitehead Employment Law expended 288.0 hours litigating this case for a total of
2 \$113,630.00 billable hours) (Whitehead Decl. ¶20, and **Exhibit B-1** thereto.) Class Counsel's
3 standard billable rates have been approved by multiple courts in the Southern California regions
4 of Los Angeles and Orange Counties, further warranting approval of the requested fees.
5 [Whitehead Decl. ¶5, 20].

6 **V. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT**
7 **OF REASONABLE COSTS**

8 In the course of this litigation, Class Counsel had to incur substantial out-of-pocket costs.
9 As stated supra, Class Counsel expended \$9,541.39 in costs in litigating this case. The incurred
10 costs included court filing fees, photocopy charges, service of process fees, and mailing charges.
11 Such costs are typical and appropriate for cost reimbursement in these types of cases. See e.g. ,
12 *In re United Energy Corp. Sec. Litig.* (C.D. Cal. 1989) 1989 WL 7321 1, *6 (quoting *Newberg,*
13 *Attorney Fee Awards*, § 2.19 (1987)); see also, *In re GNC Shareholder Litigation* (W.D. Pa.
14 1987) 668 F. Supp. 450, 452. The costs advanced and incurred in this litigation benefitted the
15 Class and PAGA Members. The Settlement Agreement provides for the reimbursement of
16 reasonably attorney's costs. [Whitehead Decl. ¶ 22; Exh. A thereto at § 4.5] The request for
17 reimbursement of costs is fair and reasonable. Detailed billing summary records for Class
18 Counsel are attached as **Exhibit B-2** to the concurrently filed Declaration of Jacob N. Whitehead
19 concurrently filed in support of Plaintiffs' Application for Approval of Attorneys' Fees and
20 Costs.

21 **VI. THE LWDA HAS RECEIVED A COPY OF THIS MOTION**

22 On the same day this motion was filed with the Court, a copy was submitted to the
23 LWDA per requirement set forth in Labor Code §2699.5. (See Whitehead Decl., **Exhibit C**)

24 **VII. CONCLUSION**

25 Plaintiffs respectfully request that the Court grant the concurrently filed Motion for Final
26 Approval of the Class and PAGA Settlement and based on the foregoing request that this Court
27 award the requested attorneys' fees and costs.
28

1 Respectfully Submitted,

2 January 22, 2024

W EMPLOYMENT LAW, APC

3
4 By: 

Jacob N. Whitehead, Esq.

Attorneys for Plaintiffs

And the proposed Class Members and

Aggrieved Employees