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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL

PRISCILLA LOPEZ,

Plaintiffs,

vs.

GEO SECURE SERVICES, LLC, a Florida
Limited Liability Company; and DOES 1-10,
inclusive,

Defendants.

AND ALL CONSOLIDATED LITIGATIONS.

Case No. ECU002060

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THE UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 9, 2024
Time: 8:30 a.m.
Dept.: 5
Judge: Hon. Jeffrey B. Jones

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I. SUMMARY OF MOTION

This matter is a “Wage and Hour” representative (*i.e.*, “PAGA”) and class action. Plaintiff PRISCILLA LOPEZ, in a Representative capacity only, and on behalf of other members of the general public similarly situated, (“Plaintiff”) brings Labor Code claims against Defendant GEO SECURE SERVICES, LLC (hereinafter, “GSS” or “Defendant”).

Following approximately several years of formal litigation in various pending cases across California State and Federal Courts, and three full days of Mediation, the parties have agreed to the terms of a class and PAGA action settlement. Preliminary Approval was granted by this Court on January 5, 2024. Following the distribution of the approved Notice to the class, the proposed final settlement figures are as follows:

Approximate size of class:	2,287
Objections to Settlement:	Zero (0)
Opt-Outs:	One (1) (0.04%)
Settlement Fund (“GSA”):	\$3,690,000.00
Settlement administration:	\$21,000.00
Class representative incentives:	\$50,000.00 (\$10,000.00 each - Five Plaintiffs)
LWDA payment:	\$112,500.00 (75 % Share of \$150,000 allocation)
Attorney's fees:	\$1,230,000.00 (1/3 of total)
Litigation costs:	\$45,211.62

Please Note: there have been **no** (zero) objections to this proposed settlement. The estimated *average* gross payment to each participating Class Member based on the above figures is **\$957.57**, which does not account for the fact that certain class members will receive more or less than an “average” share, depending on the length of time each worked for Defendants during the class period. (Please see the declaration of Settlement Administrator Nicole Bench at ¶ 18.)

II. UPDATED FACTUAL AND PROCEDURAL HISTORY

Should the Court deem it relevant, a much more detailed procedural history of the case, and summary of all claims, was already set forth in Plaintiff’s original Motion for Preliminary

1 Approval filed on December 13, 2024. The Court **granted** Preliminary Approval of the parties'
2 original settlement on January 5, 2024 and signed the proposed order on January 22, 2024.

3 To briefly re-summarize, this case was highly contested. It has been pending for over 3
4 years and was in “active litigation” in several different State and Federal Courts, before being
5 consolidated before this Court for Settlement.

6 The parties attended three highly adversarial mediations, before a settlement was reached.
7 The parties spent several additional months negotiating all final settlement terms and obtaining
8 preliminary approval from the Court.

9 Most importantly for purposes of final approval, **zero** employees (out of **2,287 individuals**)
10 objected to the terms of this settlement. Only one employee (0.04 %) has opted out. (Bench decl. ¶¶
11 13-14.) Thus the class overwhelmingly supports the proposed settlement.

12 The parties Joint Stipulation of Class and PAGA Action (herein referred to in this motion as
13 “the Agreement”) contains the final terms of the class action settlement and is already on file with
14 the Court. (See Yaeckel Declaration filed on December 13, 2024: **Exhibit A** thereto.) For ease of
15 reference, the Agreement will be cited to herein again as Agreement or Exhibit A.)¹
16

17 **III. SETTLEMENT TERMS**

18 **1. Contingent Nature of the Settlement**

19 This Agreement is contingent upon final approval by the Court. If, for any reason, the
20 Settlement does not become final the Parties will be returned to their positions with respect to the
21 Action as if the Agreement had not been entered into. (**Ex. A** at p. 2 ¶1).

22 **2. Description of the Settlement Classes**

23 Solely for the purposes of the Agreement, the parties have stipulated to the certification of
24 the following Settlement Class defined as:
25

26
27 ¹ This Memorandum incorporates by reference the definitions in the Agreement and the terms used herein are
28 intended to have the same meaning as set forth in the Agreement.

1 All persons who were employed by GEO Secure Services, LLC as a non-exempt
2 employee in California at any time from April 11, 2020 through September 30, 2023
3 (the "Class").

4 (**Exhibit A** at p. 2 ¶1).

5 Class Notices were sent to 2,287 individuals, as determined by Defendants' employment
6 records. (Bench decl. ¶ 6.) Only one total individual has opted out of the litigation. (Bench decl. ¶
7 13.) **No** (zero) Class Members have objected to the proposed settlement. (Bench decl. ¶14.)
8 Following the Notice, there are a total of 2,286 total class members who will all receive a share of
9 the settlement proceeds. (Bench decl. ¶ 16.)

11 **3. Appointment of Settlement Claims Administrator**

12 ILYM Group, Inc. ("ILYM") was used as the "Settlement Administrator" for purposes of
13 providing the Notice, and its instructions, to Settlement Class Members, issuing all payments
14 pursuant to the Agreement, and to track all opt-outs and objections to the settlement.

15 As detailed in the accompanying declaration, ILYM successfully completed all steps of the
16 Notice process. (See Bench decl. ¶¶ 3-16.)

18 **4. Scope of the Release**

19 For purposes of the Agreement, Class Members release all claims that are alleged in the
20 Consolidated Complaint, filed in this Action, that are, or could have been plead, based on the facts
21 therein with respect to the following claims: (a) failure to pay overtime wages; (b) failure to pay
22 minimum wages; (c) failure to provide meal periods; (d) failure to provide rest periods; (e) waiting
23 time penalties; (f) wage statement penalties; (g) failure to timely pay wages; (h) failure to
24 reimburse business expenses; (i) failure to pay accrued unused vacation pay; (j) unfair competition;
25 and (k) all claims alleged under the California Labor Code Private Attorneys General Act of 2004.
26 The precise release language is reflected in Exhibit A at ¶ 2(A).

27 **5. Cash Payment and Allocation**

28 The Agreement provides for an automatic cash payment to the members of the class who do

1 not submit valid requests for exclusion. The settlement is non-reversionary, in that all of the Net
2 Settlement Amount, after all costs and fees are deducted, will be paid to the participating Class
3 Members.

4 Based on the final counts after the notice period, participating Class Members will be
5 entitled to an average share of approximately **\$957.57**. (Bench decl. ¶ 18.) The actual amounts
6 received vary based on length of employment during the class period. The highest estimated payout
7 is \$1,546.25. (Bench decl. ¶ 18.)

9 The settlement checks returned as undeliverable and those settlement checks remaining un-
10 cashed for more than one hundred twenty (180) calendar days after issuance will escheat to the
11 California State Controller's Office as "unclaimed property" in the names of the Settlement
12 Members who did not cash such checks. (Ex. A at ¶ 4(F).)

13 **6. Contingent Costs**

14 Defendant agrees to pay One Million Two Hundred Thousand Thirty Thousand Dollars
15 (\$1,230,000.00) in attorneys' fees, which is thirty-three and one-third (33 1/3%) of the total
16 settlement, and up to Twenty Thousand and Dollars (\$50,000.00) in litigation costs. (See **Exhibit A**
17 at ¶ 3(C)(5)).

19 For costs incurred in administrating the settlement process, Defendants will pay the actual
20 costs, quoted at not to exceed \$21,000.00, out of the settlement amount to the Settlement
21 Administrator. The settlement administrator's actual costs are \$27,390.51. (Bench decl. ¶ 17.)

23 The Agreement also provides for One Hundred Fifty Thousand Dollars (\$150,000.00) to be
24 allocated for Plaintiff's PAGA claims with 75% of the amount, or One Hundred Twelve Thousand
25 Five Hundred Dollars (\$112,500.00) being paid to the LWDA, and 25%, or \$37,500.00, being
26 distributed amongst the PAGA Members. (See **Exhibit A** at ¶ ¶ 3(C)(5)).

27 The Agreement also provides payment to each of the Five Named Plaintiffs of Ten
28 Thousand Dollars (\$10,000.00) each, which represents a Class Representative Service Award in

1 consideration for their services as Class Representatives. (See **Exhibit A** at ¶ 3(C)(3)). The class is
2 being notified of the Service Awards. (See **Ex. C** at § E)). The Class was notified and does not
3 object to any of the above allocations.

4 As detailed further below, the enhancement awards were decided pursuant to good faith
5 negotiations and is intended to recognize that it was the class representatives who initiated the
6 lawsuit, initiated the PAGA claims, provided critical documents and witnesses to their attorneys,
7 and worked with their attorney to propound and prepare written discovery, all in an effort to obtain
8 moneys allegedly owed not only to themselves, but to all other employees. For further justification
9 of the enhancements, please see the attached declarations of each named Plaintiff.
10

11 **IV. CONTROLLING LAW**

12 The following facts and law support this undisputed request.

13 **A. FINAL APPROVAL OF CLASS ACTION SETTLEMENTS**

14 The trial court has broad discretion to determine whether a class action settlement is fair
15 and reasonable. *In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706, 723.
16

17 Fairness is presumed where (1) the settlement is reached through arm's-length bargaining;
18 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
19 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Chaves v.*
20 *Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 52; *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794,
21 1802. But, even where it appears the settlement is fair, the court must still determine whether the
22 settlement should be approved after considering "the strengths and weaknesses of the claims and
23 risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116,
24 129. It considers: (i) the strength of the plaintiff's case; (ii) the risks, expense, complexity and
25 likely duration of further litigation; (iii) the risk of maintaining class action status throughout the
26 trial; (iv) the amount offered in settlement; (v) the extent of discovery completed; (vi) the stage of
27 the proceedings; (vii) the experience and views of counsel; (viii) the presence of a governmental
28

1 participant; and (ix) any reaction of putative class members. *Dunk, supra*, 48 Cal.App.4th, at 1800-
2 1801; *In re Microsoft, supra*, 135 Cal.App.4th, at 723.

3 The court should approve a class action settlement when the settlement is fair and falls
4 “within the range of reasonableness.” *Hernandez v. Vitamin Shoppe*, (2009) 174 Cal.App.4th 1441,
5 1446.

6 **B. ATTORNEYS’ FEES**

7 The California Supreme Court has recently determined that the percentage of the benefit,
8 (“percentage method”) is proper for determining a reasonable attorney fee award in an employment
9 class action case. *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480.

10 The California Supreme Court’s rationale was as follows:

11 we clarify today that use of the percentage method to calculate a fee in a common
12 fund case, where the award serves to spread the attorney fee among all the
13 beneficiaries of the fund, does not in itself constitute an abuse of discretion. We join
14 the overwhelming majority of federal and state courts in holding that when class
15 action litigation establishes a monetary fund for the benefit of the class members,
16 and the trial court in its equitable powers awards class counsel a fee out of that fund,
17 the court may determine the amount of a reasonable fee by choosing an appropriate
18 percentage of the fund created. The *recognized advantages* of the percentage
19 method—including relative ease of calculation, alignment of incentives between
20 counsel and the class, a better approximation of market conditions in a contingency
21 case, and the encouragement it provides counsel to seek an early settlement and
22 avoid unnecessarily prolonging the litigation (See pt. I, ante; *Lealao, supra*, 82
23 Cal.App.4th at pp. 48–49, 97 Cal.Rptr.2d 797; *Rawlings v. Prudential–Bache*
24 *Properties, Inc., supra*, 9 F.3d at p. 516)—**convince us the percentage method is a**
25 **valuable tool that should not be denied our trial courts.**

26 *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th 480, 503 (emphasis added).

27 The Court also determined that while permissible, a lode-star “cross check” of the
28 percentage method was **not** required of California’s trial courts. *Id.* at 506.

In fact the *Laffitte* Court further noted how advocating a lodestar, over a percentage of the
recovery, creates perverse litigation incentives:

Critics of the lodestar method note, for example, the difficulty in applying the
method and cite the **undesirable incentives created by that approach**—i.e., a
financial **incentive to extend the litigation so that the attorneys can accrue**

1 **additional hours** (and thus, additional fees). Moreover, some courts and
2 commentators have criticized the lodestar method because **it gives counsel less of**
3 **an incentive to maximize the recovery** for the class.

4 *Id.* at 494 (emphasis added).

5 Finally, "regardless whether the percentage method or the lodestar method is used, **fee**
6 **awards in class actions average around one-third of the recovery.**" *Chavez v. Netflix, Inc.*,
7 (2008) 162 Cal.App.4th 43, 66, n.11 (2008); See e.g., *In re Mego Fin. Corp. Sec. Litig.* (9th Cir.
8 2000) 213 F.3d 454, 463 (upholding award of 33.3 percent of the settlement fund).

9 **C. CLASS REPRESENTATIVE ENHANCEMENTS**

10 An incentive award may be appropriate to induce someone to serve as a class
11 representative. In determining whether to make an incentive award, the court may consider (1) the
12 risk, both financial and otherwise, the class representative faced in bringing the suit; (2) the
13 notoriety and personal difficulties encountered by the class representative; (3) the amount of time
14 and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal
15 benefit received by the class representative as a result of the litigation. *Golba v. Dick's Sporting*
16 *Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1270 citing *Cellphone Termination Fee Cases* (2010)
17 186 Cal.App.4th 1380, 1394-1395.

18 Additional factors to consider include:

19 ““the actions the plaintiff has taken to protect the interests of the class, the degree to which
20 the class has benefitted from those actions, and the amount of time and effort the plaintiff
21 expended in pursuing the litigation.’ Federal district courts have identified other factors as
22 well, including ‘the risk to the class representative in commencing suit, both financial and
23 otherwise,’ ‘the notoriety and personal difficulties encountered by the class representative,”
24 the duration of the litigation, and ‘the personal benefit (or lack thereof) enjoyed by the class
25 representative as a result of the litigation.’”

26 *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, 804.

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V. ARGUMENT

A. THE PROPOSED SETTLEMENT IS MADE IN GOOD FAITH

As specifically set forth below, the settlement meets all requirements for Court approval.

1. Strength of Plaintiffs' Case and Investigation and Discovery

The most important factor courts consider when evaluating the fairness of the class action settlement is the strength of the plaintiff's case balanced against the amount offered in settlement. *Kullar, supra*, 168 Cal.App.4th at 130.

This is a class and representative action, with Plaintiffs' claims premised on Labor Code violations, established (in part) from Defendants' uniform policies. *Brinker Rest. v. Superior Court*, (2012) 53 Cal. 4th 1004, 1051 (holding that, where a company's uniform policy prohibits off-the-clock work, certification of claims for such off-the-clock work is inappropriate, especially where the court is merely "presented with anecdotal evidence of a handful of individual instances in which employees worked off the clock.") Thus, Plaintiff's counsels' approach was to investigate Defendants' uniform employment policies by, *inter alia*, scrutinizing putative class members' time and wage records, as well as Defendants' written meal and rest period policies.

As detailed more thoroughly in the preliminary approval motion, extensive (and often highly contested) discovery occurred, followed by additional informal exchanges prior to mediation.

Plaintiffs obtained verified copies of Defendants' uniform time keeping, employee compensation, Meal Period, Rest Period, and reimbursement policies. In addition to Plaintiffs' time and wage records, Defendants also produced a large sampling of class member's records. Including "outside" documentation, Counsel reviewed over thousands pages of documents. Through this review, Plaintiffs' counsel was able to analyze and verify the following: the uniformity of Defendants' "timekeeping" and compensation practices and the average net effect it had on

1 Defendants' nonexempt employees; the format and content of Defendants' itemized wage
2 statements; the average rate of pay for Defendants' nonexempt employees; and the average number
3 of apparent meal period violations per employee based on multiple sets of timekeeping data. (See
4 Yaeckel decl. ¶ 11; Bibiyan Decl., ¶ 8).

5
6 From this data, a detailed valuation of all claims was performed, and was presented to this
7 Court at the preliminary approval stage. Three separate Plaintiff's and their counsel all concurred
8 that there was sufficient discovery (formal and informal) to evaluate the settlement. (See Yaeckel
9 decl ¶ 13-14.)

10 While Plaintiffs maintained the claims were all viable, Plaintiffs (and their counsel)
11 recognize there were substantial risks to proceeding on behalf of a class and representative group.
12 Defendants presented several potentially valid defenses to certification, liability and mitigation of
13 damages. (Yaeckel decl ¶ 11).

14
15 **2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

16 Plaintiffs' Counsel's effectiveness in prosecuting this case has translated into tangible
17 monetary benefits for the Settlement Class Members in the following respects: (a) a guaranteed
18 favorable result; (b) guaranteed monetary recovery over a reasonably short period of time, as
19 opposed to possibly waiting additional years for a potentially worse result; and (c) significant
20 savings in attorney's fees and costs, which would have greatly increased had the case progressed
21 through trial and possible appeals.

22
23 If not for this settlement, any request by Plaintiffs to certify a class would have been heavily
24 contested by Defendants. If Class Certification was denied or Defendant was able to establish
25 defenses to liability, Class Members would have received nothing.

26 If the litigation were to proceed in lieu of settlement, additional and substantial attorneys
27 fees and costs and expert witnesses fees would be incurred. Given the numerous claims being
28

1 litigated, the parties may be required to hire multiple experts each (as many as 4 per side). This
2 would result in not only the production of eight expert reports, but eight depositions as well. And,
3 based on previous discussions between counsel regarding the remaining claims (including the
4 PAGA claims), the parties anticipated (at the very least) that there would be at least one discovery
5 motion, a Motion for Class Certification and at least two dueling motions for summary judgment /
6 adjudication (one from each side). (Yaeckel decl. ¶ 12.)

8 **3. The Experience and Views of Counsel**

9 Class Counsel has considerable experience in wage and hour and class action litigation.
10 William Sullivan has over 29 years of experience, 28 years of which has been devoted to both
11 prosecuting and defending class action litigation. Mr. Yaeckel has over 12 years of experience in
12 “class litigation.” (Yaeckel Decl. ¶52). Co-Counsel the Bibyian Law Group and the Colby Law
13 Firm are also sufficiently experienced in prosecuting wage and hour class and representative action
14 litigation. (Bibiyan Decl., ¶ 9-17; Yuzna Decl. ¶ 14-17).

15 Defendant’s attorneys are skilled and sophisticated lawyers, with significant class action
16 experience. Akerman LLP (counsel to Defendant) is a national law firm ranked among the 100
17 largest firms in the United States by The American Lawyer. Defendants’ attorneys defended their
18 client vigorously throughout the litigation. (Yuzna Decl. ¶ 18).

19 Plaintiffs’ counsel all considers the Agreement to represent a fair, adequate and reasonable
20 settlement that is well within the accepted range of recoveries for similar cases. Counsel further
21 believes the Agreement is in the best interests of the Settlement Class Members. (Yaeckel Decl.
22 ¶53; Yuzna decl. ¶ 22; Bibiyan Decl., ¶ 22).

23 **4. Presence of a Governmental Actor**

24 Although the State is not directly involved in this action, Plaintiffs “stand in the shoes” of
25 the Labor and Workforce Development Agency (“LWDA”) by bringing a PAGA action.
26
27
28

1 Consideration has been made to compensate to Labor Workforce Development Agency ("LWDA")
2 in the amount of \$112,500.00 (which is the LWDA's 75% share of a \$150,000 allocation).

3 The LWDA was notified and declined to prosecute the claims itself. Counsel for the parties
4 believe this is a fair, reasonable, and adequate allocation. (Yaeckel decl. ¶ 11.) The LWDA was
5 also served with copies of the Settlement and Preliminary Approval Motion and has not objected
6 or responded to date. (*Id.*) They have also been served with the notice of this motion and all
7 supporting documents. (See concurrently filed Proof of Service.) Counsel will submit a declaration
8 updating the Court should the LWDA provide any response.

9 **5. Reaction of the Class Members to the Proposed Settlement**

10 A total of 2,287 members of the settlement class were notified and only one (1) member
11 opted out of the class. (Bench decl. ¶¶ 8-16.)

12 Perhaps most importantly, **there have been No (Zero) objections to the terms of the**
13 **proposed settlement.** (Bench decl. ¶ 14.)

14 “By any standard, the lack of objection of the Class Members favors approval of the
15 Settlement.” *In re Omnivision Technologies, Inc.*, (N.D. Cal. 2008) 559 F.Supp.2d 1036,1043; see
16 also *Ross v. A.H. Robins*, (S.D.N.Y. 1988) 700 F. Supp. 682, 684 [“The absence of objectants may
17 itself be taken as evidencing the fairness of a settlement.”]

18 **B. THE REQUESTED ATTORNEY’S FEES AND COSTS ARE REASONABLE**

19 Plaintiffs will seek, and Defendants will not oppose, a payment of One Million Two
20 Hundred and Thirty Thousand Dollars (**\$1,230,000.00**) in attorneys’ fees, which is 1/3 of the total
21 settlement, and Forty Five Thousand Two Hundred Eleven Dollars and Sixty-Two cents
22 (**\$45,211.62**) in litigation costs. (Yaeckel decl. ¶ 24, Bibiyan decl. ¶ 31; Yuzna decl.)

23 As set forth below, the requested attorney’s fees are inherently reasonable, on the basis of
24 both a percentage of the recovery and a lodestar method, given the results obtained for the class.
25 The following factors establish the reasonableness of the attorney’s fees requested.
26
27
28

1 **1. The Contingent Nature of the Fee Agreement, and Inherent Risk Therein,**
2 **Supports Awarding a Percentage of the Recovery**

3 In the instant matter, Plaintiffs' Counsel was retained on a contingency basis. (Yaeckel decl.
4 ¶ 17.) A percentage fee of 35% (thirty-five percent) was freely negotiated. (*Id.*) As part of the
5 Agreement, Counsel was required to continue the prosecution of the matter regardless of the
6 outcome of the preliminary motions (i.e. class certification.) (*Id.*)

7 There is an **established practice** in the private legal market to reward attorneys for taking
8 the risk of non-payment by paying them a **premium over their normal hourly rates** for winning
9 contingency cases. *In re Washington Public Power Supply System Securities Litigation* (9th Cir.
10 1994) 19 F.3d 1291, 1299. If attorneys' efforts create a benefit for others in addition to their own
11 client, the court is empowered to award fees from that fund. *Boeing v. Van Gemert* (1980) 444 U.S.
12 472, 478.

13 The rationale for fee enhancement in contingency cases has been explained as follows:
14 'A contingent fee must be higher than a fee for the same legal services paid as they
15 are performed. **The contingent fee compensates the lawyer not only for the**
16 **legal services he renders but for the loan of those services. The implicit**
17 **interest rate on such a loan is higher because the risk of default (the loss of**
18 **the case, which cancels the debt of the client to the lawyer) is much higher**
19 **than that of conventional loans.'** (Prosner, *Economic Analysis of Law* (4th
20 ed.1992) pp. 534, 567.) 'A lawyer who both bears the risk of not being paid
21 and provides legal services is not receiving the fair market value of his work
22 if he is paid only for the second of these functions. If he is paid no more,
23 **competent counsel will be reluctant to accept fee award cases.'** (Leubsdorf, *The*
24 *Contingency Factor in Attorney Fee Awards* (1981) 90 Yale L.J. 473, 480; see
25 also Rules Prof. Conduct, rule 4-200(B)(9) [recognizing the contingent nature of
26 attorney representation is an appropriate component in considering whether a fee
27 is reasonable]; ABA Model Code Prof. Responsibility, DR 2-106(B)(8) [same];
28 ABA Model Rules Prof. Conduct, rule 1.5(a)(8). [] **Such fee enhancements are**
intended to compensate for the risk of loss generally in contingency cases as a
class.

24 *Beasley v. Wells Fargo Bank* (1991) 235 Cal.App.3d 1407, 1419 (disapproved on other grounds.)

25 The percentage of the fund approach also sets expectations and incentivizes counsel in
26 taking on the risk of a contingency case:

27 The bases of the equitable rule which permits surcharging a common fund with the
28 expenses of its protection or recovery, including counsel fees, appear to be these:

1 fairness to the successful litigant, who might otherwise receive no benefit because
2 his recovery might be consumed by the expenses; correlative prevention of an
3 unfair advantage to the others who are entitled to share in the fund and who should
4 bear their share of the burden of its recovery; **encouragement of the attorney for
5 the successful litigant, who will be more willing to undertake and diligently
6 prosecute proper litigation for the protection or recovery of the fund if he is
7 assured that he will be promptly and directly compensated should his efforts
8 be successful.**

9 *Jordan v. California Dep't of Motor Vehicles* (2002) 100 Cal.App.4th 431, 446 (with emphasis
10 added) citing *Estate of Stauffer* (1959) 53 Cal.2d 124, 132.)

11 As a result the percentage of the recovery, routinely approved in California at 33 & 1/3
12 percent, properly incentivizes and awards counsel for diligently pursuing this matter in the face of
13 numerous obstacles to both certification and liability.

14 **2. The Continuing Obligation to Devote Time and Effort to the Litigation**

15 Since the tentative agreement, Plaintiff's Counsel has had to devote considerable time to
16 maintain the litigation, achieve Court approval for the proposed settlement, and assist the proposed
17 Class Members. (Yaeckel decl. ¶ 18.)

18 **3. The Extent to which the Litigation Precluded Other Employment**

19 Plaintiff's counsel was precluded from accepting other employment and clients due to the
20 necessity of maintaining the prosecution of the instant matter and also precluded them from
21 bringing clients to the firm. (Yaeckel decl. ¶ 19.)

22 **4. The Experience, Reputation, and Ability of the Attorneys who Performed the 23 Services, and the Skill They Displayed in Litigation**

24 Plaintiff's counsel, William B. Sullivan, has been a California-licensed attorney for
25 approximately 28 years. William B. Sullivan has approximately 27 years of experience in "class
26 action" litigation, both as plaintiff and defense counsel. (Yaeckel decl. ¶ 3.) Mr. Yaeckel has over
27 13 years experience prosecuting class and representative actions on behalf of California Employees.
28 (Yaeckel decl., ¶ 4.) Class counsel are the attorneys of record in a matter very recently (and
favorably) decided before the California Supreme Court titled *Donohue v. AMN Services, LLC*, 11
Cal.5th 58 (2021). The *Donohue* matter is a certified class and PAGA action. (Yaeckel decl. ¶ 5.)

1 The *Donohue* matter is a certified class and PAGA action. Plaintiff's counsel, are currently lead
2 counsel on approximately 30 employment "wage and hour" claims with class action, or
3 representative action allegations. (Yaeckel decl. ¶ 6.)

4 Plaintiff's counsel have recent (and successful) Trial experience in "Wage and Hour" cases.
5 In a recent successful PAGA trial, before the Hon. Katherine Bacal, Plaintiff's counsel was awarded
6 their full requested attorneys fees and the hourly rates billed were all approved. See *Carrington v.*
7 *Starbucks Corp.* San Diego Superior Court, Case No. 37-2014-00018637-CU-OE-CTL and
8 published appellate opinion at 30 Cal.App.5th 504. (Yaeckel decl. ¶ 9.)

9 Co-Counsel the Bibyian Law Group and the Colby Law Firm also have detailed their
10 extensive experience in successfully prosecuting wage and hour class and representative action
11 litigation. (Bibiyan Decl., ¶ 13-27; Yuzna Decl.).

12 Based on said experience, it is the opinion of counsel that this settlement represents a fair
13 and adequate payment. (Yaeckel decl. ¶ 7; Bibiyan Decl., ¶ 27.)

14 **6. The Amount Involved and the Results Obtained on Behalf of the Class**

15 This is not a "coupon" class action case. (Yaeckel decl. ¶ 20.) The Class is set to receive
16 significant monetary benefits they would not have received if Class Counsel did not act. (*Id.*)
17 Participating members of the Class will receive an average of \$957.57, with some class members
18 receiving as much as \$1,546.25. (Bench decl. ¶ 18.)

19 **7. A Percentage of the Common Fund Award is Proper**

20 The controlling law is more extensively set forth above. See Section IV(B) above.

21 Plaintiff's counsel submits that the request for 33 & 1/3 % in attorneys fees from the
22 "common fund" settlement is proper. *Laffitte v. Robert Half Intern. Inc.*, (2016) 1 Cal.5th 480, 503,
23 506. Historically, courts have awarded fees as high as fifty percent (50%) of the common fund,
24 depending on the circumstances of the case. *Newberg*, § 14.03; *see also In re Ampicillin Antitrust*
25 *Litig.* (D.D.C. 1981) 526 F.Supp.494 (awarding attorneys' fees in the amount of 45% of the \$7.3
26 million settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y.
27 1979) 480 F.Supp. 1195 (awarding approximately 53% of the settlement fund as attorney fees).

28 California Courts routinely approve class action attorneys' fee awards "averag[ing] around

one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions).

Additionally, a common fund award is not dependent on a determination of the actual amount claimed out of the fund by those entitled-it is the creation of the fund that is the crucial fact. In *Winslow v. Harold G. Ferguson Corp.*, the California Supreme Court expressly held that "it is equitable that [the attorney's] compensation and expenses should come from the entire fund saved for all classes concerned before it is distributed." *Winslow v. Harold G. Ferguson Corp.* (1944) 25 Cal.2d 274, 284. Likewise, *Lealao* expressly recognizes that "in a traditional common fund case, [a percentage-based fee] may be calculated on the basis of the total fund made available rather than the actual payments made to the class." *Lealao, supra*, 82 Cal.App.4th at p. 51; *see also Boeing, supra*, 444 U.S. at p. 478 ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole").

8. The Lodestar Cross-Check

If deemed necessary, a "lodestar cross-check" of the settlement also confirms the propriety of the request.

As set forth in the attached Declarations of Eric K. Yaeckel, David Bibiayan and Zoe Yuzma the actual lodestar attorney's fees incurred (to date) are estimated to amount to be approximately **\$1,397,874.00**. (Yaeckel decl. ¶ 19 Bibiyan Decl., ¶ 28-30; Yuzna Decl.). Further details of that time expended are detailed therein. (Ibid.)

Based on the Lodestar calculation, no Lodestar Multiplier is Necessary to Support the requested fee award.

Additionally, the settlement provides the class with a substantial monetary amount and the class strongly supports the fairness of the settlement, even after being notified of the requested attorneys' fee award (1 opt-outs, **and 0 objections**). In the event the Court deems a lodestar

1 analysis is necessary it will confirm that Plaintiff's fees are reasonable.

2
3 **10. The Amount of Costs**

4 Class Counsel has expended approximately \$45,211.62 in costs, including filing fees, travel,
5 mediation, copying and document preparation charges, expert fees, and delivery/service fees.
6 (Yaeckel decl. ¶ 23-24; Bibiyan decl. ¶ 31; Yuzna decl.). Defendant agreed not to oppose an
7 amount of up to \$50,000.00 in costs. Accordingly, Plaintiff's counsel therefore seeks approval of
8 the actual costs of \$45,211.62.

9 **C. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENTS ARE**
10 **REASONABLE**

11 The named Plaintiffs Priscilla Lopez, Nickolas Ortiz, Julie Castillo, Tezsanique
12 Hendrickson and Samdeeshia Bell each request an enhancement award of **\$10,000** (\$50,000 total)
13 for serving as the class representatives. Defendants do **not** oppose this request. The class was
14 notified and does **not** object.

15 A Plaintiff puts their future employment prospects at risk by becoming a class
16 representative as the fact that they filed a class action lawsuit "is searchable on the internet and may
17 become known to prospective employers when evaluating" the employee as a candidate. *Guippone*
18 *v. BH S&B Holdings, LLC*, 2011 U.S., Dist. LEXIS 126026, *20 (S.D.N.Y. Oct. 28, 2011).

19 As is corroborated in their declarations, each Plaintiffs contributed extensive time and
20 resources in the prosecution of this case. Each Plaintiff was able to provide information
21 instrumental to the prosecution of this matter including identifying numerous witnesses that could
22 corroborate her claims.

23 Moreover, by "sticking out their neck out" as a Class Representative in a publicly filed
24 lawsuit, each Plaintiff took a substantial risk that may adversely impact her ability to work in this
25 field in the future.

26 Any company who does a detailed background check, will be able to determine that
27 Plaintiffs asserted legal claims against their former employer. An entire industry exists that allows
28 employers to run extensive background searches on potential employees. Companies who provide
these services specifically highlight the fact that their services allows employers to weed out

1 litigious employment candidates. (Yaeckel decl. ¶¶ 27-29.)

2 Each Plaintiff also risked personally owing a large cost award, into the tens of thousands of
3 dollars, had her claims been unsuccessful. (See e.g. Yaeckel decl. ¶ 30; Castillo decl ¶ 8; Lopez
4 decl. ¶ 8).

5 Despite all the risks, Plaintiffs, at all times, remained committed to securing a monetary
6 recovery on behalf of the entire class. (See accompanying declarations).

7 Accordingly, Plaintiff asks the Court to approve a class representative enhancement in the
8 amount of \$10,000 to each named Plaintiff.

9 **VI. CONCLUSION**

10 Based on the foregoing, Plaintiffs respectfully request that this Court grant Plaintiffs'
11 Motion consistent with the accompanying proposed Order and Final Judgment.

12
13 Dated: April 17, 2024

**SULLIVAN & YAECKEL LAW GROUP,
APC**

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