Carolyn Hunt Cottrell (SBN 166977)
Ori Edelstein (SBN 268145)
SCHNEIDER WALLACE COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Tel: (415) 421-7100
Fax: (415) 421-7105
ccottrell@schneiderwallace.com
oedelstein@schneiderwallace.com

Attorneys for Plaintiff VANESSA CANO, *on behalf of herself and others similarly situated*

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Eve Howe, Esq. (SBN 350007)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Email: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
ehowe@lelawfirm.com
whts@lelawfirm.com

Attorneys for Plaintiff SHEILA TOVAR, *on behalf of herself and others similarly situated*

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

SHEILA TOVAR and VANESSA CANO, on behalf of themselves and others similarly situated, Plaintiffs, vs. GC SERVICES LIMITED PARTNERSHIP; and DOES 1 to 100, inclusive, Defendants.	Case No. 37-2021-00038640-CU-OE-CTL Hon. Blaine K. Bowman **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** Date: June 27, 2025 Time: 8:30 a.m. Dept.: C-74 Action Filed: September 10, 2021

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I. INTRODUCTION

Plaintiffs Sheila Tovar and Vanessa Cano ("Plaintiffs") seek final approval of the Settlement.[1] The Settlement resolves 641 Class Members' claims, 363 of whom are also Aggrieved Employees under the Private Attorneys General Act ("PAGA"). This Settlement provides an excellent benefit to the members of the Class and the Aggrieved Employees.

The basic monetary terms of the Settlement are as follows: (1) the Gross Settlement Amount is $650,000.00; (2) the Administrator's expenses are $12,500.00; (2) Plaintiffs' service award is up to $15,000.00 each to Plaintiffs Cano and Tovar; (3) attorneys' fees are 35% of the Gross Settlement Amount, or $227,500.00, and costs of $21,471.91; (4) a PAGA payment of $26,000.00; and (5) a Net Settlement Amount of approximately $333,154.00 will be available for distribution to Participating Class Members.

The average settlement payment for Participating Class Members is approximately **$505.46**.[2] *See* Declaration of Kevin Lee Regarding Settlement Administration ("Lee Decl.") ¶ 13. This is a strong recovery for a wage and hour class action, particularly considering the risks and factual circumstances described herein.

The Court granted preliminary approval of this Settlement and the response of the Settlement Class has been overwhelmingly positive. There have been zero objections, zero opt-outs, and zero disputes regarding workweeks.

The Settlement satisfies the criteria for settlement approval under California law and falls well within the range of reasonableness and should be finally approved.

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[1] Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Class Action Settlement Agreement and Release ("Settlement"), attached as **Exhibit 1** to the Declaration of Carolyn H. Cottrell in Support of Plaintiffs Motion for Preliminary Approval of Class Action Settlement, filed October 3, 2024 ("October 3, 2024 Cottrell Decl.").

[2] The average Settlement Payment is actually higher than calculated by the Settlement Administrator because the Settlement Administrator assumed the full $30,000 in Class Counsel's Costs, when the actual amount of costs sought are only $21,471.91, using actual costs increases the Net Settlement amount by approximately $9,000 to $333,154 and would make the average recovery approximately $520.

II. BACKGROUND

On July 1, 2021, Plaintiff Tovar filed a class action against Defendant in this Court. Declaration of Ori Edelstein in Support of Plaintiffs' Motion for Final Approval of Class and PAGA Action Settlement. ("Edelstein Decl."), ¶ 8. Plaintiff Cano filed a PAGA action against Defendant in the Superior Court of California, County of Los Angeles, on July 19, 2021. Edelstein Decl., ¶ 9. On September 10, 2021, Plaintiff Tovar filed a PAGA action for penalties. *Id.*, ¶ 10. Plaintiff Cano filed her Class and Collective Action Complaint against Defendant in United States District Court, Central District of California on January 9, 2023. *Id.*, ¶ 13.

Through these complaints, Plaintiffs allege claims for: (1) failure to pay for all hours worked; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to reimburse necessary business expenditures; (6) failure to timely pay earned wages; (7) failure to provide timely and accurate wage statements; (8) waiting time penalties; and (9) unfair business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq*. Cottrell Decl., ¶¶ 14, 17.

The Parties agreed to mediate Plaintiff Cano's and Plaintiff Tovar's class and PAGA actions with well-respected mediator Jeff Ross on July 18, 2023. Edelstein Decl., ¶ 14. The Parties engaged in extensive informal discovery in preparation for mediation. *Id.* Defendant informally produced documents and data, including but not limited to hundreds of pages of documents (including applicable policies and procedures), two excel spreadsheets with time and pay information, and various figures and data points. *Id*. Class Counsel used this information to perform a detailed investigation of Defendant's timekeeping and payroll policies and practices, and to prepare a comprehensive damages analysis. *Id*.

With the assistance of Mr. Ross, who has vast experience mediating wage and hour disputes, counsel engaged in serious and arm's length negotiations. *Id.* The case did not settle on the date of the mediation. *Id.* However, following mediation, negotiations continued, and Defendant produced certain confidential information to Plaintiffs about its financial condition and ability to pay a settlement, which Plaintiffs took into consideration in further negotiations. *Id.* Plaintiff consulted a financial expert to analyze Defendant's confidential financial information. *Id.* The expert confirmed that Defendant had limited ability to fund a settlement, and that continuing to litigate would pose substantial risk that Defendant would not be able to pay any judgment or settlement in the future. *Id.* Following further negotiations, Mr. Ross ultimately made a mediator's proposal, which the Parties accepted, culminating in an agreement to settle for $650,000.00, on October 4, 2023. *Id.*

After the agreement to settle, counsel for the Parties extensively met and conferred over the detailed terms of the settlement for purposes of executing a long-form settlement agreement and worked to finalize the Settlement Agreement and corresponding notice documents, subject to the Court's approval. *Id.*, ¶ 16. Several drafts and revisions were circulated in order to arrive at the final settlement. *Id*. The Settlement Agreement was fully executed on March 8, 2024. *Id.*

Per the Settlement Agreement, the Parties agreed to consolidate all PAGA and class actions in this court for settlement purposes. Settlement, ¶ 21. On April 8, 2024, the Court approved the Parties' Joint Stipulation and Order for Leave to File a First Amended Complaint. Edelstein Decl., ¶ 17. On May 15, 2024, Plaintiffs filed the First Amended Complaint consolidating all claims. *Id.*

On October 3, 2024, Plaintiffs filed a Motion for Preliminary Approval of Class and PAGA Action Settlement, which the Court approved on December 27, 2024. *Id.*, ¶ 18.

Following preliminary approval, the Court appointed Settlement Administrator, Phoenix Settlement Administrators, mailed the Notice in English and Spanish to all 641 Class Members. Lee Decl., ¶ 5. No Notices were returned to Phoenix as undeliverable. As of the close of the notice period, there have been no objections, no requests for exclusion, and no workweek disputes. *Id.*, ¶¶ 6-9.

III. THE SETTLEMENT WARRANTS FINAL APPROVAL

A class action may not be dismissed, compromised, or settled without the approval of the court.[5] Here, the Court has already granted preliminary approval, notice has been mailed to the Class Members, and the Settlement Class has responded favorably. With this Motion, Plaintiffs request that the Court take the final step in the settlement approval process by granting final approval of the Settlement, the Service Award, and Class Counsel's fees and costs.

A. The Best Practicable Notice Was Provided to The Class.

Notice of a class action settlement should be the best "practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." *Torrisi* *v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1374; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 251 (the standard is whether the notice has a reasonable chance of reaching a substantial percentage of the class members). The notice is adequate where the notice is given in a "form and manner that does not systematically leave an identifiable group without notice." *Mandujano v. Basic Vegetable Prod., Inc*. (9th Cir. 1976) 541 F.2d 832, 835. Sending individual notices to settlement class members' last-known addresses meets this standard and is an adequate means of providing notice. *Grunin v. International House of Pancakes* (8th Cir. 1975) 513 F.2d 114, 121 (referring to *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 174-77).

Here, pursuant to the Court's order granting preliminary approval, the Settlement Notice was mailed in English and Spanish to the 641 Class Members according to the terms of the Settlement. *See* Lee Decl., ¶ 5. The Notice, as approved by the Court, provided a description of the case and the proposed Settlement, informed Class Members of their individual workweeks and estimated individual settlement payment, explained how Settlement Class Members could receive payment under the Settlement, exercise their right to opt-out, object, or dispute their workweeks, and identified Class Counsel and the anticipated attorneys' fees and costs. *See* Lee Decl., ¶ 5, Ex. A.

Following the initial mailing to all potential Class Members, zero notices were returned as undeliverable. Lee Decl., ¶ 6. Phoenix followed all of the procedures set forth in the Court-approved notice plan. Reasonable steps have been taken to ensure that all Class Members receive the notice packets. Accordingly, the notice process satisfies the "best practicable notice" standard.

B. Final Approval Is Appropriate Because the Settlement Is Fair, Reasonable, And Adequate

For final approval, a Court must ensure that "the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027. The decision to approve or reject a proposed settlement is committed to a court's broad discretion. *Wershba*, 91 Cal.App.4th at 234-35. As long as the Court has sufficient information about the nature and magnitude of the claims being settled, as well as impediments to recovery, the Court should be able to make an independent assessment of the reasonableness of the terms agreed upon. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. Plaintiffs provide the necessary information regarding the claims being settled and recognizes and appreciates the risks of continued litigation.

A presumption of fairness exists where: (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802.[3]

Here, all factors are present. First, the terms of the Settlement was the result of arm's-length bargaining. Edelstein Decl., ¶¶ 23. The Parties attended a private mediation with mediator Jeff Ross, Esq., and a settlement was reached after extensive arm's-length settlement discussions between Class Counsel, Defendants' counsel, and the mediator. *Id.*, ¶ 10-12.

Second, sufficient investigation and discovery occurred to allow Plaintiffs, Class Counsel, and the Court to act intelligently. The Settlement was negotiated between counsel after facts and issues were developed sufficiently to allow Class Counsel to make an intelligent decision about the propriety of settlement. Defendant produced documents relating to its employee policies, practices, and procedures, as well as time and pay records. *Id.*, ¶ 11. Class Counsel investigated the applicable law and facts in this case and extensively analyzed the strengths and weaknesses of the Class claims. *Id.*, ¶¶ 8-35.

Third, Class Counsel have extensive experience and expertise in similar wage-and-hour class actions. *Id.*, ¶¶ 5-7. Based on Class Counsel's knowledge and expertise in this area of law, Class Counsel believes this Settlement will provide a substantial benefit to the Class Members. *Id.*, ¶ 24.

Fourth, Class Members approve of the Settlement, and there have been no exclusions and no objections to the Settlement. Lee Decl., ¶¶ 7-9. Accordingly, the Settlement is presumptively fair.

C. The Settlement Amount Favors Approval

Under the Settlement, Defendant agreed to make a cash payment, with no right of reversion, amounting to the Gross Settlement Amount of $650,000.00. Settlement, ¶ 2.s. The Gross Settlement

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[3] Unless otherwise indicated, all internal citations omitted and all emphasis added.

Amount of $650,000.00 is approximately 21% of the total exposure on Plaintiffs' substantive claims and 8% of the total assessed exposure including derivative claims and potential PAGA penalties. *See* Edelstein Decl., ¶ 37.

These percentages fall easily within the within the range of reasonableness, especially when considering the risks outlined below. *See, e.g*., *Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)* (9th Cir. 2000) 213 F.3d 454, 459 ("'It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.'")[4]

The Settlement results in a Net Settlement Amount of $324,000 for Class Members, with the average settlement payment estimated to be approximately $505 per Class Member, with the highest Settlement Payment approximately $3,270.[5] Lee Decl., ¶ 12-13. The settlement amount results in a recovery that is in range of settlements that have been approved by California courts.

Accordingly, this factor militates in favor of the Court granting final approval.

D. The Risks of Continued Litigation Favors Approval

The Settlement yields a prompt, certain, and substantial recovery for Settlement Class Members. Absent this Settlement, Class Members would be forced to wait years for the case to makes its way through litigation (including discovery, class certification, dispositive motions, trial, and appeal). Litigating the class claims in this action would require substantial additional discovery including written discovery, the depositions of current and former employees and experts, as well a deposition of Defendants' person most qualified on several topics. *Id*. It would also require consideration, preparation, and presentation of voluminous documentary evidence and the

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[4] The California Supreme Court has authorized and urged California's trial courts to use Federal Rule of Civil Procedure Rule 23 and federal case law for guidance in considering class action issues. *See Green v. Obledo* (1981) 29 Cal. 3d 126, 145-46. *See also, Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016) Case No. 15-cv-2198-EMC, 2016 WL 5907869, at *7 (approving wage and hour settlement representing 8.1% of the total verdict value); *Stovall-Gusman v. W.W. Granger, Inc.* (N.D. Cal. June 17, 2015) 2015 WL 3776765, at *4 ("10% gross and 7.3% net figures are 'within the range of reasonableness'"); *Balderas v. Massage Envy Franchising, LLP* (N.D. Cal. July 21, 2014) 2014 WL 3610945, at *5 (gross settlement amount of 8% of maximum recovery and net settlement amount of 5%); *Ma v. Covidien Holding, Inc.* (C.D. Cal. Jan. 31, 2014) 2014 WL 360196, at *4-5 (9.1% of "the total value of the action" is within the range of reasonableness).

[5] As noted above in footnote 2, these numbers understate the recoveries because the Settlement Administrator's Net Settlement Amount did not account for the actual costs sought.

preparation and analysis of expert reports. *Id.* Resolution of these claims now through the Settlement will benefit the parties and the court system. *Id.*, ¶ 46.

The reasonableness of the Settlement is further underscored by the fact that Defendants have legal and factual grounds available to defend this action and that further litigation poses the risk of no recovery. Throughout this litigation, Defendant has vigorously denied the allegations in Plaintiffs' Complaint and has denied any and all liability. *Id.*, ¶ 42. Defendant has taken the position that this case is not suitable for class treatment and has asserted that it has fully complied with its obligations under California's labor laws. *Id.* Defendant asserts that it maintained lawful policies and practices with respect to meal and rest periods and adequately compensated Class Members with meal and/or rest period premiums in the event of either a missed meal or rest period. *Id.* In short, Defendant has asserted numerous legal and factual grounds available to defend this action, all of which present difficult hurdles for Plaintiff. *Id.*, ¶ 44.

The fairness of the Settlement is further underscored by Defendant's financial condition at the time of the mediation. *Id.*, ¶ 41. The Court may consider Defendant's financial resources and ability to pay a larger settlement when deciding whether to approve a class settlement. *See*, *e.g.*, *Dunk*, 48 Cal.App.4th at 1801 (noting a court must include the risk of insolvency and inability to pay a larger settlement in its assessment of the reasonableness of a class action settlement). Here, Plaintiff consulted a financial expert who opined that Defendant had limited ability to fund a settlement, and that continuing to litigate would pose substantial risk that Defendant would not be able to pay any large judgment or settlement in the future. *Id.* Defendant's financial condition was a significant factor in reaching the settlement. Settlement, ¶ 21, b.

Assuming that class certification is granted, Plaintiffs will then have to establish class-wide liability and prove up various issues regarding damages. Proving liability and damages issues would also be complicated by any individualized differences among Class Members and will be vigorously disputed by Defendant. *Id.*, ¶ 43. Obtaining class certification, establishing liability, and proving damages will require months if not years of further litigation and will necessitate expert witness testimony and significant additional resources. *Id.*; *see, e.g.*, *Milstein v. Huck* (E.D.N.Y. 1984) 600F.

Supp. 254, 267 ("[t]he expense and possible duration of the litigation should be considered in evaluating the reasonableness of [a] settlement").

While Plaintiffs believe that they would prevail on these issues and others, they also recognize the risk that a fact finder may find for Defendant on one or more of these issues and or found damages to be significantly less than what Plaintiffs claim. *Id*., ¶¶ 45-46. Given the broad scope and magnitude of risks, Class Counsel concluded that the Settlement here that provides a material percentage of the substantive damages estimate is a beneficial and just result for the Class. *Id*., ¶¶ 47-48; *see also Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 19, aff'd, (9th Cir. 1981) 661 F.2d 939 ("As a quid pro quo for not having to undergo the uncertainties and expenses of litigation, the plaintiffs must be willing to moderate the measure of their demands.").

E. The Experience and Views of Counsel Favor Approval

Although a court must independently review a proposed settlement, the judgment of experienced counsel regarding the settlement is entitled to great weight and supports a presumption of fairness. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc*. (C.D. Cal. 2004) 221 F.R.D. 523, 528 ("'Great weight is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation.'"); *Dunk*, 48 Cal. App. 4th at 1802. Indeed, as one court recognized, "'[t]he recommendations of plaintiffs' counsel should be given a presumption of reasonableness.'" *In re Omnivision Tech*s. (N.D. Cal. 2007) 559 F. Supp. 2d 1036, 1043.

Here, Class Counsel are known for their experience and success in wage and hour class actions like this one, and Class Counsel fully support the Settlement as in the best interest of the Class. Edelstein Decl., ¶¶ 5-7. This factor heavily favors this Court's approval of the Settlement.

F. The Reaction of the Class Members Favor Approval

A court may also consider the reaction of the class in determining whether to approve a settlement. *Dunk*, 48 Cal. App. 4th at 1801. Here, the Administrator followed all of the procedures set forth in the Court-approved notice plan, and reasonable steps have been taken to ensure that all Class Members receive the notice packets. No Class Member has objected to the Settlement, and no Class Member has requested exclusion from the Class. *See* Lee Decl., ¶¶ 7-9. Thus, the reaction of the Class weighs heavily in favor of approving the Settlement. *See Dunk*, 48 Cal. App. 4th at 1802 (one of the factors leading to a presumption that the settlement is fair, reasonable and adequate is that "the percentage of objectors is small").

G. The Requested Plaintiffs' Service Awards Should Be Approved

Enhancement awards "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Cellphone Termination Fee Cases* (2010) 186 Cal. App. 4th 1380, 1393–94.

Here, Plaintiffs have substantially contributed their time and efforts over a period of almost four years in pursuing the Class and PAGA claims, and Plaintiffs' roles were crucial in this case. Edelstein Decl., ¶ 50. The claims involved in this case are largely based on testimonial evidence, and thus, Class Counsel required significant participation and assistance by Plaintiffs to build the case. *Id.*, ¶ 51. As demonstrated in Plaintiffs' Declarations, Plaintiffs had numerous discussions with Class Counsel, worked with Class Counsel to review facts and answer questions, assisted Class Counsel in their mediation efforts, and remained apprised of the case since electing to become a proposed Class representative. *See* Declaration of Vanessa Cano In Support of Motion for Final Approval of Class and PAGA Action Settlement ("Cano Decl.") ¶¶ 5-9; and Declaration of Sheila Tovar In Support of Motion for Final Approval of Class Action Settlement ("Tovar Decl."), ¶ 7.

Moreover, Plaintiffs took the significant risk of coming forward to represent the interests of their fellow employees. Edelstein Decl., ¶ 53. They stepped into this matter so that the class claims could proceed out of a sincere desire to see through the adjudication of Defendant's treatment of its employees. Cano Decl., ¶ 6; Tovar Decl., ¶ 4-6. As a result of their service, they subjected themselves to considerable risk with regard to having their names in the public forum. In addition, Plaintiffs, unlike the Class Members, also agree to a general release of claims. Settlement, ¶ 20.

Plaintiffs' enhancement awards in the amount of $15,000.00 each are reasonable considering the efforts they made and the risks they took in prosecuting this action to obtain the Settlement. Edelstein Decl., ¶ 53-54. Moreover, this figure is well within the range of service awards approved in comparable cases. *See, e.g., Sano v. Southland Management Group, Inc.* (Cal. Super. Dec. 02, 2013) No. BC489112, 2013 WL 7231686, at *3 (approving two $15,000 service awards in context of class action settlement); *Benedict v. Reachlocal, Inc.* (Cal. Super. Dec. 09, 2011) No. BC 432721, 2011 WL 9155053 (approving $12,500 and $10,000 service awards).

The Class does not object to Plaintiffs' service awards in the amount of $15,000.00 each. Lee Decl., ¶ 8. The requested service award should be finally approved.

H. The Requested Attorneys' Fees and Costs Should Be Approved

The excellent result did not come without extensive effort, skill, and substantial risk of Class Counsel. For their efforts and the substantial risk they undertook in obtaining this Settlement and the considerable monetary compensation to the Class Members, Class Counsel seeks an award not to exceed 35% of the Gross Settlement Amount, or $227,500.00 as well as reasonable litigation expenses of $21,471.91. Edelstein Decl., ¶ 55; Howe Decl. ¶ 8, Ex. 1; Declaration of Brittany Shaw in Support of Motion for Final Approval[6] ¶ 7. As demonstrated below, these fees and costs are warranted under the law.

1. The Requested Fee Award is Fair and Reasonable Under Relevant Factors

Among the factors considered in determining whether the requested fee percentage is reasonable are: (1) the results achieved; (2) the risk of further litigation; (3) the skill required of plaintiff's counsel and the quality of work performed by plaintiff's counsel; (4) the contingent nature of the fee and the financial burden carried by the plaintiff; and (5) awards made in similar cases. *Vizcaino v. Microsoft Corp*. (9th Cir. 2002) 290 F.3d 1043, 1048-50. All these factors support an award here of 35% of the common fund. *See* Edelstein Decl., ¶¶ 55-75.

First, as discussed above, Class Counsel's efforts resulted in a substantial settlement by any standard, and an especially good result in light of the challenges Plaintiffs would face in continuing to litigate the claims on a class basis, including Defendant's financial condition. *See* Section IV.B through IV.D, *supra*. The average payout per class member is approximately $505. Lee Decl., ¶ 13. This result was achieved by the work and success of Class Counsel, who negotiated the Settlement after extensive preparation, investigation, review of documents produced by Defendants, and mediation. Edelstein Decl., ¶¶ 21-48

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[6] Lawyers for Justice incurred costs in submitting the LWDA notice for Plaintiff Cano and initiating the Cano actions.

Second, Class Counsel are experienced class action litigators. *See* Section IV.C, above. Class Counsel invested over 300 hours to this litigation. Edelstein Decl., ¶ 83; Howe Decl., ¶ 8. This experience and expertise, combined with the high quality of work performed in this case by Class Counsel, resulted in the Settlement achieved.

Third, Class Counsel have been representing Plaintiffs in this matter on a strictly contingency basis, and incurred the risk of non-recovery after a substantial investment of time, money, and resources, and have done so since the inception of the cases without any payment or compensation. Edelstein Decl., ¶¶ 56-60. This is no easy burden for any firm.

Fourth, as discussed below, the request for attorney's fees in the amount of 35% of the common fund falls well within the range accepted by state and federal courts in California in comparable wage-and-hour actions. *Laffitte v. Robert Half Int'l Inc.* (2016) 1 Cal.5th 480, 503.

In short, the requested fee award is fair and reasonable when considering relevant factors.

2. California Courts Routinely Approve Attorneys' Fees Awards Based on a Percentage of the Common Fund

The California Supreme Court has "join[ed] the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, . . . the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. *Laffitte*, 1 Cal. 5th at 503 (approving award of attorney's fees in the amount of one third of the gross $19 million settlement under the common-fund theory). By awarding counsel a percentage of the total recovery, rather than fees based on hours worked, the common-fund method encourages attorneys to efficiently litigate to achieve the best results possible for the class. *Id*. at 492-94.

The requested fee here is 35% of the Gross Settlement Amount, consistent with the average fee award in class actions. *See e.g., Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal. 5th 480, 506 ("33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits").[7]

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[7] *See also Chavez v. Netflix, Inc*. (2008) 162 Cal. App. 4th 43, 66 n.11; Eisenberg & Miller, Attorney Fees in Class Action Settlements: An Empirical Study, J. of Empirical Legal Studies, Vol. 1, Issue 1, 27-78, March 2004, at 35

3. A Lodestar Cross-Check Confirms the Reasonableness of the Fee Award

Although not required, the trial court may use an abbreviated lodestar "cross-check" for common-fund awards if the court considers it useful. *Laffitte*, 1 Cal. 5th at 504-05. The Supreme Court expressly instructed that "the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the fee award." *Id.* at 505. In conducting a lodestar cross-check, the court is not "required to closely scrutinize each claimed attorney-hour." *Id.* An evaluation may be done by reviewing "counsel declarations summarizing overall time spent." *Id.*

In conducting a lodestar cross-check, the Court first determines a lodestar value for the fees by multiplying the time reasonably spent by plaintiffs' counsel on the case by a reasonable hourly rate. *In re Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 556-57. To determine whether the requested rate is reasonable, courts look to the prevailing rate for similar work in the pertinent geographic region. *PLCM Group v. Drexler* (2000) 22 Cal. 4th 1084, 1096-97 (using prevailing hourly rate in community for comparable legal services even though party used in-house counsel). Here, Class Counsel's hourly rates are comparable to those charged by other class action plaintiffs' counsel and the firms defending class actions, and similar rates have been approved by numerous federal and state courts.

Class Counsel's aggregate lodestar is currently estimated at approximately $347,028.50 based on approximately 460 hours of attorney and staff time. *See* Edelstein Decl., ¶¶ 61-65; Howe Decl., ¶ 8. Class Counsel's aggregate lodestar will increase as a result of preparation for and attendance at the Final Approval Hearing and the settlement administration process. Edelstein Decl., ¶ 63.

(independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates); *Ochoa v. Haralambos Beverage Co.*, No. BC319588 (approving 33.3% fee award with no mention of lodestar crosscheck) (Los Angeles Super. Ct., Feb. 1, 2007); *Jones v. Alliance Imaging, Inc.* (approving 33% fee award with no mention of lodestar crosscheck) (Alameda County Super. Ct., No. RG05210418, Nov. 27, 2006); *Garcia v. Save Mart Supermarkets* (Stanislaus County Super. Ct., No. 312026, Aug. 3, 2004) (approving 33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.* (San Diego County Super. Ct., No. GIC795732, Feb. 10, 2004) (approving 33% fee award with no mention of lodestar crosscheck).

A cross-check of Class Counsel's lodestar results in the application of a ***negative*** multiplier of 0.65, confirming that the requested fee award is a reasonable and fair payment. *See e.g., Wershba*, 91 Cal. App. 4th at 255 (noting that multipliers can range from 2 to 4 or higher); *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp.294, 298 ("Multipliers in the 3-4 range are common in lodestar awards for lengthy and complex class action litigation"); *Vizcaino*, 290 F.3d at 1051 & n.6 (multipliers "ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied"; affirming fees where the cross-check multiplier is 3.65).

4. The Litigation Costs are Fair and Reasonable

Class Counsel requests reimbursement of their actual out-of-pocket expenses incurred to prosecute this action in an amount of $21,471.91. *See* Edelstein Decl., ¶ 73, Ex. B; Howe Decl., ¶¶ 20- 21, Ex. 1; Shaw Decl., ¶ 7. Attorneys are permitted to recover their litigation costs and expenses under the California Labor Code and the common-fund doctrine. Cal. Lab. Code §§ 218.5, 226, 1194, 2699; *Serrano v. Priest* (1977) 20 Cal.3d 25, 35. Class Counsel incurred costs including, for example, costs for filing and service, mediation costs, document retrieval and printing costs, mailing costs, and jury fees. Edelstein Decl., ¶ 74; Howe Decl., ¶ 20, Shaw Decl., ¶ 7. These expenses were necessary to the effective representation of the Class Members. *Id.*

I. The Requested Settlement Administration Costs Are Fair and Reasonable

Class Counsel also request that the Court approve payment of up to $12,500.00 for costs necessary to administer the Settlement. The Parties have chosen Phoenix Class Action Administration Solutions ("Phoenix") to administer the Settlement. Phoenix's comprehensive fees and costs for administering this Settlement, covering both incurred and anticipated expenses, amount to $12,500. Phoenix will proceed with additional tasks related to this matter, such as calculating settlement award payments, issuing and mailing settlement award checks, handling necessary tax filings and reporting on these payments, and any other tasks mutually agreed upon by the Parties or ordered by the Court for Phoenix to undertake. These costs are reasonable and uncontested by Defendant and the Class and should be approved.

IV. THE PROPOSED IMPLEMENTATION SCHEDULE

Plaintiffs respectfully request that the Court approve the proposed implementation schedule for approval of the Settlement as set forth in the Notice of Motion and Proposed Order.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for Final Approval and enter an Order consistent with the Proposed Order submitted herewith.

DATED: June 4, 2025

Respectfully submitted,

<u>/s/ Ori Edelstein</u>
Carolyn H. Cottrell
Ori Edelstein
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

Attorneys for Plaintiff, the Class, Aggrieved Employees, and the State of California