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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

CHRIS N. DILLER, EDWARD SANDOVAL, and ISRAEL CRUZ CHAN, on behalf of themselves and all others similarly situated; Plaintiffs, vs. GOLDEN STATE SUPPLY LLC, a Nevada Limited Liability Company; WORLDWIDE AUTO PARTS, INC., a Corporation; and DOES 1-100, Inclusive,	CASE NO. 34-2020-00281372 **CLASS ACTION** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT** Date: September 29, 2023 Time: 9:00 a.m. Dept.: 27

Defendants.) Judge: Hon. Jill Talley
)
) Complaint filed: July 1, 2020
) Trial Date: None
)
) **UNLIMITED CIVIL CASE**
)

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MEMORANDUM OF POINTS AND AUTHORITIES

In accordance with California Rules of Court (CRC), Rule 3.769, Plaintiffs, Chris N. Diller, Edward Sandoval, and Israel Cruz Chan, individually and on behalf of all other similarly situated individuals (hereinafter collectively "Plaintiffs") respectfully present their Memorandum of Points and Authorities in Support of final approval of this class action against Defendants GOLDEN STATE SUPPLY LLC and WORLDWIDE AUTO PARTS, INC. (hereinafter collectively "Defendant"). Plaintiffs and Defendants shall hereinafter collectively be referred to as the "Parties".

I. PROCEDURAL HISTORY/SUMMARY OF LITIGATION

On July 1, 2020, Plaintiff Chris N. Diller filed a class action Complaint in Sacramento County Superior Court on behalf of himself and other non-exempt employees who were employed as Golden State Supply, LLC ("GSS"). A First Amended Complaint was filed on September 8, 2020, adding Edward Sandoval as a named plaintiff. Plaintiffs' First Amended Complaint alleged the following causes of action: (1) missed meal and rest breaks in violation of California Labor Code sections 226.7, 512, and IWC Wage Order No. 4; (2) failure to pay earned wages and overtime; and (3) violations of California Business and Professions Code ("B&P") section 17200 et seq. GSS timely answered on October 14, 2020. See Declaration of Matthew R. Schoech (hereinafter "Schoech Decl."), ¶ 5.

GSS and Plaintiffs agreed to mediate the class claims along with a related case entitled *Israel Cruz Chan v. Worldwide Auto Parts, Inc.* (San Diego Superior Court Case No. 37-2021-00035159). The *Chan* matter asserts the following causes of action: (1) failure to provide meal periods; (2) failure to provide rest breaks; (3) failure to pay minimum and straight line wages; (4) failure to pay overtime compensation; (5) failure to reimburse all necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties; (6) failure to timely pay wages due upon termination of employment; (7) failure to provide accurate wage statements; (8) violations of B&P section 17200 et seq.; and (9) Violation of California Labor

Code section 2698 et seq., the Private Attorneys General Act of 2004 ("PAGA"). *Id.* at ¶ 6.

The parties proceeded to mediate the claims with Todd Smith, Esq., on November 5, 2021, and, after a full day mediation and several months of continued negotiations, a settlement was reached. After the settlement was reached, on May 26, 2022, a Second Amended Complaint was filed that effectively consolidated the *Israel Cruz Chan v. Worldwide Auto Parts, Inc.*, et al., San Diego Superior Court Case No. 20-2021-0035159 ("Chan Action"), class action complaint with the Diller Action for the purposes of seeking preliminary and final approval of the class settlement. The Second Amended Complaint added WORLDWIDE AUTO PARTS, INC., as a Defendant. GOLDEN STATE SUPPLY, LLC, and WORLDWIDE AUTO PARTS, INC., shall hereinafter collectively be referred to as Defendants. *Id.* at ¶¶ 7 and 8.

The Court issued an Order granting preliminary approval of the class action settlement on October 31, 2022. The Court originally scheduled the Motion for Final Approval to be heard on February 3, 2023, but after it was discovered that there were more class members encompassed in the class definition that originally contemplated the parties stipulated to continue the hearing to April 26, 2023, and redefine the Class Definition to

> The Class Members shall consist of all persons employed by Golden State Supply, LLC or Worldwide Auto Parts, Inc., who work in any non-exempt hourly paid position at any Carquest branded retail and/or Distribution Centers in California, at any time between July 1, 2016, to preliminary approval.

See **<u>Exhibit 1</u>** to Plaintiffs' Request for Judicial Notice in Support of Motion for Final Approval of Class Settlement (hereinafter "RFJN"). The Parties subsequently discovered that there was still a discrepancy with the class size even with the revised definition due to significant turnover at Defendants' retail locations so, while there were additional class members included in the settlement, they worked a relatively small number of workweeks. The Parties agreed to continue negotiations and agreed to address the discrepancy in the class size with Defendant's payment of an additional $100,000 in addition to payment of any additional administration costs to the Class Administrator in excess of the amounts originally estimated. See **Exhibit 2** to the RFJN. The Parties further agreed to modify the class definition to cut off the class as of December 31, 2021, rather than the date of preliminary approval as follows:

> The Class Members shall consist of all persons employed by Golden State Supply, LLC or Worldwide Auto Parts, Inc., who work in any non-exempt hourly paid position at any Carquest branded retail and/or Distribution Centers in California, at any time between July 1, 2016, to December 31, 2021.

Id.

With the class size discrepancy being resolved by way of an additional settlement contribution by Defendants and modification of the class definition, as well as zero requests for exclusion or objections to the settlement by the 2,844 class members, the Court's previous finding that the settlement appears to be fair, adequate, and reasonable, is validated. (See Declaration of Kevin Lee Regarding Notice and Settlement Administration, ¶¶ 5-10 (hereinafter "Lee Decl."). Overall, current, and former employees of Defendants who fall within the class definition set forth in the Joint Stipulation and Class Action Settlement ("Agreement") executed by the parties stand to receive a significant monetary recovery, all without even having to make a claim. Specifically, class members will receive between $0.51 and $1,043.80, with the average settlement to be paid of approximately $348.26. (See Lee Decl., ¶ 13)

The Agreement contemplates the release of the class claims alleged in this case and no more. (See Agreement, §§ 1.22 and 7.1, attached as **Exhibit 1** to the Declaration of Matthew Schoech ("Schoech Decl."). The Agreement provides substantial payment to current and former employees of Defendants who worked in any non-exempt hourly paid position at any Carquest branded retail and/or Distribution Centers in California, at any time between July 1, 2016, to December 31, 2021. The Agreement details a common fund settlement which allows class members to opt out, object to the settlement, or dispute the number of workweeks with no requirement to submit a claim form. (Id. at §§ 4.3, 6.1-6.12). Because none of the 2,884 class members opted out or objected to the settlement, each class member will receive a percentage of the Net Settlement Amount ($1,700,000, minus disbursements discussed *infra*) commensurate with the percentage of workweeks worked by each Class Member during the Class Period, as reflected in Defendants' records. (*Id.*, §§ 1.15 and 4.3).

The payment to be distributed to Class Members as settlement ("Total Class Distribution Amount") will be the net amount remaining from the Settlement Amount of $1,700,000, after the deduction of (i) an enhancement payment payable to Chris Diller, Edward Sandoval, and Israel Cruz Chan in recognition for them serving as Class Representatives, in an amount not to exceed $15,000 ($5,000 each); (ii) attorneys' fees totaling $566,666.67,000 (33 1/3% of Settlement Amount) and costs incurred litigating the Action totaling $16,795.76; (iii) reasonable costs of administering the settlement, including payment of the Settlement Amount to class members, in an amount of $17,750[1], and the amount of the PAGA payment paid to the LWDA totaling $60,000. (*Id.,* ¶ 1.15). In exchange, the Class Members release the class claims against Defendant. (*Id.*, ¶ 7.1).

"The settlement of a class action requires court approval to prevent fraud, collusion, or unfairness to the class." (*In re Cellphone Termination Fee Cases,* 180 Cal.App.4th 1110, 1117 (2009) [citation omitted].) "The court must determine the settlement is fair, adequate, and reasonable. The purpose of [this] requirement is the protection of those class members, including the named plaintiffs, whose rights may not have been given due regard by the negotiating

[1] Defendants agreed to pay any additional amounts owed to the Claims Administrator as a result of the increased class size.

parties." (Ibid. [citation, punctuation omitted].) "The court has a fiduciary responsibility as guardian of the rights of the absentee class members when deciding whether to approve a settlement agreement.'" (*Ibid*.)

The proposed settlement and resulting Agreement was achieved after extensive, arms-length negotiations through mediator Todd Smith, Esq. It falls well within the range of reasonableness for approval under California law and is precisely the type of case recognized as ideally suited for class adjudication in that it involves a large number of individually small claims. It adequately and fairly compensates the members of the Class, who would likely never otherwise have their injuries addressed, by providing for the certification of a Settlement Class, providing real compensation to Class members in cash and without the need for submitting individual claims, and a release of Class claims. As discussed more fully below, the proposed settlement warrants approval.

II. SUMMARY OF THE SETTLEMENT

A. The Settlement Class

If approved, the proposed settlement, which is detailed fully in the Settlement Agreement, will result in a dismissal of this action and the conveyance of substantial monetary value to the Settlement Class. In return for a full settlement of their claims, all non-exempt employees of Defendants who worked at any Carquest branded retail location and/or Distribution Centers in California at any time between July 1, 2016 to December 31, 2021, are entitled to compensation without even having to make a claim. Class Members were also provided Notice of the proposed settlement and were given the opportunity to opt out, object, or challenge the calculation of workweeks. See Agreement Attached as **Exhibit 1** to Schoech Decl., § 6. These protective mechanisms help to preserve putative class member's rights under the Agreement.

The Claims Administrator was able to effectively serve the Class Notice on all 2,884 Class Members and there were no opt-outs, objections, or disputes. See Lee Decl., ¶¶ 2-10.

B. The Settlement Amount

The parties negotiated, and the Court preliminarily approved, this no-claims-made settlement. The Gross Settlement Amount, $1,700,000, is further fair and reasonable in light of a number of factors:

- the respective strengths of the positions of the parties;
- the likelihood of class certification;
- the likelihood of ultimate success on the merits;
- the potential recovery for the core allegations;
- the time, effort and cost involved in further litigating the case;
- the non-litigation risks to be faced by the named plaintiffs continuing with a public lawsuit;
- the unlikelihood of class members being able to bring individual claims against Defendants; and
- the uncertainty that comes from an award of a judgment subject to appeal.

Based on Plaintiffs' counsel and their expert's analysis of data and documentation produced in this action, the potential recovery for the core class allegations is approximately $5,240,028 (not including interest and attorney's fees), such that the $1,700,000 Settlement Amount covers approximately 32.4% of the maximum damages potentially recoverable by the settlement class. *See*, Schoech Decl., at ¶ 11. The settlement represents a reasonable compromise given the percentage of the total demand that was secured, the average recovery per class member, Defendants' defenses to Plaintiffs' claims, and the uncertainty of class certification. *See*, Schoech Decl., at ¶ 18.

Under the circumstances of the case—where the risks and costs of prevailing are significant, and the Settlement affords relief to approximately 2,884 Class Members who will receive payment—the amount of the Settlement is fair, adequate, and reasonable. Given the attendant risks above, this is still a significant recovery that Courts in California have approved as fair and reasonable. *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982) ("a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair."); *In re Mego Finan.al Corp. Secur. Lit. v. Nadar*, 213 F.3d 454, 459 (9th Cir. 2000) (finding settlement amount of approximately one sixth of the estimated potential recovery "fair and adequate"). See *Sequeira Ruiz v. JCP Logstics, Inc.* (C.D. Cal. March 10, 2016) 2016 WL 6156211, *5 (approving class settlement in wage-hour case which represented "approximately 39.6% of [defendant's] maximum potential liability"); *Villegas*, 2012 WL 5878390, at *6 (preliminarily approving a settlement representing 15% of the potential recovery).

C. Class Notice

The parties crafted a Class Notice that would both satisfy the Court and maximize the likelihood of reaching potential Class members. Specifically, the notice plan provided for a Class Notice – which was attached to the Schoech Declaration in support of the Motion for Preliminary Approval of the Class Action Settlement, and which is annexed as **Exhibit A** to the Lee Declaration filed herewith. The Class Notice provided the Class Members with various key information and protections as follows:

i. A summary of the claims and settlement;

ii. The estimated Individual Class Member Settlement Payment, separately calculated and described for each Class Member;

iii. That each Class Member has the right to opt out of the Settlement and preserve all of his/her rights against Defendants, if any, including any released claims;

iv. That the Settlement Agreement shall become effective only upon the entry of a final, non-appealable order by the Court approving the Settlement Agreement;

v. That, if so ordered, the Settlement Agreement shall be effective as to all Class Members who did not timely elect to opt out of the Class;

vi. That such Class Member has the right to object to this Settlement Agreement at the Fairness Hearing;

vii. That such Class Member could dispute the amount of their settlement payment;

viii. Explanation of the PAGA settlement and release;

ix. That all Released Claims (as defined below) of a Class Member shall be released, resolved, fully settled, waived, and that no person, including the Class Member, shall be entitled to any further distribution thereon;

x. That any Class Member with questions regarding the Settlement Agreement should contact Class Counsel at the contact information contained in the Class Notice; and

xi. The date and time of the Fairness Hearing.

The Class Notice further provided clear instructions to any Class Member who wished to participate in the settlement, dispute the amount of payment, or to opt out or object to the proposed settlement, and explained the difference between objecting and exclusion. (*See* Lee Decl., **Exhibit A**, Class Notice, questions 6, 8, 10, 11, and 12). Notice to potential parties about how to effectively and voluntarily engage in the settlement was therefore likely to reach the intended audience and accessible enough to preserve putative class members' rights to understand and/or object to the proposed settlement.

Phoenix Settlement Administrators ("Phoenix") was selected by the parties and appointed by the Court as the Claims Administrator and facilitated the service of the Class Notice. See Lee Decl., ¶ 2. Phoenix received the data from Defendants on May 12, 2023, containing the contact information and number of workweeks worked by each Class Member. Id. at ¶ 3. Phoenix conducted a National Change of Address ("NCOA") search on June 7, 2023, in order to update the class list of addresses as accurately as possible. *Id.* at ¶ 4. Including updated addresses from the NCOA search, on June 7, 2023, Phoenix mailed the Class Notice to all 2,884 Class Members. *Id*. at ¶ 5. Of those 2,884 Class Notices, 53 were returned as undeliverable with no forwarding address. *Id* at ¶ 6. Phoenix performed skip traces on the 53 returned Class Notices utilizing TransUnion TLOxp and obtained updated addresses for the 53 individuals and remailed the Class Notices to those addresses. *Id*. None of the remailed notices were returned as undeliverable. *Id*. at ¶ 7.

With all 2,884 Class Notices being mailed, Phoenix did not receive any requests for exclusion, objections, or disputes. *Id.* at ¶¶ 8-10.

The notice constituted the best notice practicable under the circumstances and effectuated due and sufficient notice to the Class Members, not only of the proposed Settlement Agreement terms but also of all the appropriate dates and procedures for opting out, objecting to the Settlement, and/or appearing at the final approval hearing. *See* Rule 3.769(f) ("If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.”).

The notice procedure set forth in the parties’ preliminary approval was adopted by this Court in preliminarily approving the settlement and is thus “adequate to ‘fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings.” *7-Eleven Owners for Fair Franchising v. Southland Corp.,* 85 Cal.App.4th 1135, 1164 (2000) (citation omitted). Further, as required, the notice is neutral as to the merits of the proposed Settlement. As evidenced by the fact that not one of the 2,884 Class Members served with the requested exclusion, objected to the settlement, or disputed their potential settlement amount (Lee Decl., ¶¶ 8-10) the notice plan was more than adequate.

D. The Proposed Release

The proposed release was negotiated, and properly limited to matters pled and investigated in the litigation. It does not in any way disadvantage Class members. Specifically, the release by Class members provides that:

> Upon the Settlement Effective Date, all Settlement Class Members will be deemed to have, and by operation of the Order Granting Final Approval of Class Action Settlement will have, expressly and irrevocably released, acquitted, and forever discharged all of the Released Parties from any and all claims, under federal, state or local law, rights, penalties, demands, damages, debts, accounts, duties, costs (other than those costs required to be paid pursuant to this Settlement Agreement), liens, charges, complaints, causes of action, obligations, liabilities, whether known or unknown, that were alleged or could have been alleged based upon the facts set forth in *Chris N. Diller and Edward Sandoval v. Golden State Supply, LLC,* Case No. 34-2020-00281372 (Superior Court for the State of California in and for the County of Sacramento) and *Israel Cruz Chan v. Worldwide Auto Parts, Inc. and Advance Stores, Inc.*, Case No. 37-2021-00035159-CU-OE-CTL (Superior Court for the State of California in and for the County of San Diego) which occurred during the Class Period (“Released Claims”), including claims for: (1) failure to pay wages for all time

> worked at minimum wage in violation of Labor Code sections 1194 and 1197; (2) failure to pay overtime wages in violation of Labor Code sections 510, 1194, and 1198; (3) failure to pay all double-time hours worked at the double-time rate of pay in violation of Labor Code Sections 510 & 1194 and the Wage Orders ; (4) failure to pay all vacation and/or "paid time off" wages due in violation of Labor Code Section 227.3 and the Wage Orders; (5) failure to reimburse for necessarily incurred business expenses in violation of Labor Code section 2802; (6) failure to provide meal periods and meal period premium wages in violation of Labor Code Sections 512 & 226.7 and the Wage Orders;; (7) failure to provide rest breaks and rest break premium wages in violation of Labor Code Section 226.7 and the Wage Orders;; (8) failure to provide accurate wage statements in violation of Labor Code Section 226 and the Wage Orders; (9) failure to timely pay all earned wages and final paychecks at time of separation of employment in violation of Labor Code sections 201, 202, and 203; (11) all claims under PAGA that could have been premised on the claims, causes of action or legal theories described above in (1)-(9); (12) all claims for unfair business practices under California Business & Professions Code Section 17200 et seq. that could have been premised on the claims, causes of action or legal theories of relief described above in (1)-(9); and (13) all damages, including, but not limited to, liquidated damages, civil and statutory penalties, interest and other amounts recoverable under said claims, causes of action or legal theories of relief identified above in (1)-(10). Expressly excluded from the Released Claims are all other claims, including claims for vested benefits, wrongful termination, unemployment insurance, disability, social security, workers' compensation, and claims outside of the Class Period. The Settlement Class Members will be deemed to have specifically acknowledged that this Release reflects a compromise of disputed claims. The Settlement Class Members also waive and release all claims for attorneys' fees and costs incurred by Settlement Class Members or by Class Counsel in connection with the Litigation and the Settlement of the Litigation, except for the Attorneys' Fees and Costs as set forth in this Agreement and as approved by the Court.

(See Agreement Attached as **Exhibit 1** to Schoech Decl, §§ 7.1 and 7.1.1).

E. Requested Attorneys' Fees Payment, Enhancement Payment, and Settlement Administration Costs

In accordance with the Agreement, the following amounts to be approved by the Court and deducted from the Settlement Payment are: (i) attorneys' fees and expenses for Class Counsel, not to exceed 33 1/3% of the Settlement Payment in addition to litigation costs not to exceed $17,500 (actual litigation costs total $16,195.76) ; (ii) an enhancement payment not to exceed $5,000 each, total of $15,000, to Chris Diller, Edward Sandoval, and Israel Chan Cruz as Class Representatives; and (iii) reasonable costs of administering the settlement in an amount not to exceed $17,750 (actual claims administration costs approximated to be $29,000—Defendants have agreed to pay the difference (see Second Joint Stipulation to Amend Proposed Class Definition attached as **Exhibit 2** to the RFJN).

Each of the foregoing disbursements should be approved as fair, reasonable, and adequate.

F. The Settlement Amount is Fair, Reasonable and Adequate

The Gross Settlement Amount of $1,700,000 represents a fair, reasonable, and adequate resolution of this case. The original Settlement Amount of $1,600,000 was calculated using information and data uncovered through formal and informal discovery, case investigation and the exchange of information by the parties. The parties agreed to the additional $100,000 after discovery of the additional Class Members as a result of the significant turnover at Defendants' retail locations. Said new Class Members accounted for a relatively small number of workweeks making the additional settlement funds fair, reasonable, and adequate under the circumstances. The proposed Settlement Amount takes in to account the potential risks and rewards inherent in any case and in particular with this case. Moreover, considering all of the facts in this case, the Settlement Amount represents a considerable recovery for all Class Members.

The Net Settlement Amount of $1,004,387.57 will be available to pay Settlement Class Members. The Net Settlement Amount was determined by subtracting the requested Class Counsel attorneys' fees ($566,666.67), and Class Counsel costs ($16,195.76), requested Enhancement Payments to Plaintiffs Diller, Sandoval, and Chan for $5,000.00 each (totaling

$15,000.00), the PAGA Amount ($80,000.00), and the requested Settlement Administration Costs ($17,750.00) from the Gross Settlement Amount ($1,700,000.00). *See* Lee Decl., ¶ 12.

Based upon the workweeks worked by each Class Member in the Class Period, the highest Individual Settlement Payment to be paid is approximately $1,044.11, the lowest Individual Settlement Payment to be paid is approximately $0.51, while the average Individual Settlement Payment to be paid is approximately $348.37. *Id*. at ¶ 13. 11. There are two thousand eight hundred eighty-four (2,884) Class Members who did not submit timely and valid Requests for Exclusion and are therefore deemed Settlement Class Members, representing 100% of the Class. Settlement Class Members have worked a collective total of two hundred seventy-six thousand one hundred sixty-four (276,164) Workweeks during the Class Period. Each Workweek is valued at approximately $3.64. *Id*. at ¶ 14.

Additionally, $80,000.00 of the Gross Settlement Amount has been allocated toward penalties under the Private Attorneys General Act ("PAGA Amount"), of which 75%, or $60,000.00, shall be paid to the Labor and Workforce Development Agency ("LWDA"), and 25%, or $20,000.00, of which shall be paid to all current and former hourly non-exempt individuals who are or were employed by Defendant during the PAGA Period. There are two thousand one hundred eighty-five (2,185) Aggrieved Employees who worked a total of one hundred thirty-three thousand six hundred fourteen (133,614) workweeks during the PAGA Period. The highest Individual PAGA Payment to be paid is approximately $19.54, and the average Individual PAGA Payment to be paid is approximately $9.15. Id. at ¶ 15.

At the final approval stage, "[a]n allocation formula need only have a reasonable, rational basis [to warrant approval], particularly if recommended by "experienced and competent" class counsel. *In re American Bank Note Holographics, Inc., Securities Litig*., 127 F. Supp. 2d 418, 429-30 (S.D.N.Y 2001). In light of the considerations, Class Counsel believes that the proposed Settlement as a whole is fair, reasonable, and in the best interest of the Class Members. (Schoech Decl. ¶10.) Although the recommendations of Class Counsel are not conclusive, the Court can properly take the recommendations into account, particularly if Class Counsel appear to be competent, have experience with this type of litigation, and significant discovery and investigation has been completed. Conte & Newberg, *Newberg on Class Actions,* §11.47 (4th Ed.) Accordingly, the Court should grant final approval of the proposed Settlement.

G. The Requested Attorneys' Fees are Fair, Reasonable, and Adequate

(i) The Attorneys' Fees Request Should be Granted in its Entirety.

The request for attorney's fees is fair, reasonable, and adequate under the circumstances. Only after a settlement was reached and relief negotiated for the Class, did the parties discuss attorneys' fees. (Schoech Decl., ¶ 14.) Further, given that any fee award must be approved by the Court, the Agreement contemplates an award of reasonable attorneys' fees and costs as awarded by the Court, but the parties did not negotiate a specific fee payment. Rather, Plaintiff agreed not to seek more than 33 1/3% of the Settlement Amount for attorneys' fees and costs not to exceed $17,500, and Defendant has agreed not to object to this request. (Agreement, ¶¶ 1.2 and 4.5.) Proposed class members were placed on notice that Class Counsel stood to be paid up to 33 1/3% of the total Settlement Amount and reimbursed costs not to exceed $17,500, and none one of the 2,884 objected or opted out of the settlement.

In *Laffitte v. Robert Half International, Inc.,* 1 Cal.5th 480, 506 (2016), our Supreme Court ruled that trial courts "retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee." Thus, "when an attorney fee is awarded out of a common fund preserved or recovered by means of litigation . . . the award is not per se unreasonable merely because it is calculated as a percentage of the common fund." *Id*., at 486.

In this case the total value of the fund is $1,700,000 of which $1,024,694.24 will be paid in Individual Settlement and PAGA payments to Class Members. (See Lee Decl., ¶¶ 12 and 14). Accordingly, this Court has discretion to utilize either a percentage-of-the-fund or a lodestar method to "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace of comparable litigation." *In re Vitamin Cases,* 110 Cal.App.4th 1041, 1060 (2003) (quoting *Lealao v. Beneficial California, Inc.,* 82 Cal.App.4th 19, 49–50 (2000)). As the Court explained in *In re Consumer Privacy Cases* 175 Cal.App.4th 545 (2009):

Regardless of whether attorneys' fees are determined using the lodestar method or awarded based on a "percentage-of-the-benefit" analysis under the common fund doctrine, the ultimate goal is the award of a reasonable fee to compensate counsel for their efforts, irrespective of the method of calculation. It is not an abuse of discretion to choose one method over another as long as the method chosen is applied consistently using percentage figures that accurately reflect the marketplace. *Id*. at 557-58.

Here, Class Counsel is asking for an award of $566,666.67 in attorney fees (determined by multiplying the gross settlement of $1,700,000 by the 33 1/3% allocated in the Settlement Agreement for fees) and their actual costs which total $16,195.76. By any standard, the attorney fees sought by Class Counsel are reasonable given the length and complexity of this litigation and should be granted without hesitation. (Schoech Decl., ¶ 22.)

(ii) The Combined Lodestar is Fair and Reasonable

The "starting point" of the analysis – lodestar amount – is calculated by multiplying the number of hours reasonably expended times the reasonable hourly rate of compensation. *Serrano* *v. Priest* (1977) 20 Cal. 3d 25, 48 ("Serrano III"). The lodestar properly includes time expended in pre-litigation activity, (interviewing the client, investigating the facts and law, developing litigation strategy, and drafting the pleadings), during the litigation, and in applying for a fee award. *See, e.g.*, *Serrano v. Unruh,* 32 Cal. 3d 621, 635 -637 (1982) ("Serrano IV"); *Webb v. Board of Education,* 471 U.S. 234 (1985).

The inquiry whether the hours expended were "reasonable" is made in view of the ultimate result of the litigation, and not a hindsight examination of each discrete step along the way. So long as the hours expended were reasonably incurred in pursuit of that ultimate result and are the type of work which would be billed to a paying client, they are properly included in the lodestar. *Hensely v. Eckerhart,* 461 U.S. 424, 431 - 434 (1983). A reasonable hourly rate is determined by reference to the prevailing market rate, in the relevant legal market, for attorneys of comparable experience, expertise, and skill in comparably complex work. *Children's Hospital & Medical Center v. Bonte*, 97 Cal.App.4th 740, 783 (2002); *Blum v. Stenson* 465 U.S. 886, 895 fn. 11 (1984) (federal law accord); *PLCM Group, Inc. v. Drexler*, 22 Cal. 4th 1084 (2000); *see also, Ketchum v. Moses*, 24 Cal.4th 1122, 1139 (2001) (reputation of counsel to be considered in determining reasonable hourly rate); *Margolin v. Regional Planning Com.*, 134 Cal. App. 3d 999, 1003 (1982) (rates in comparable litigation are relevant in determining reasonableness).

Once the lodestar is determined, the Court "may increase or decrease that amount by applying a positive or negative 'multiplier' to take in to account a variety of other factors, including the quality of the representation, the novelty or complexity of the issues, the results obtained, and the contingent risked presented." *Lealao v. Beneficial California, Inc.* 82 Cal.App.4th 19, 26 (2000); *see also Ketchum,* 24 Cal.4th at 1132; *Serrano III,* 20 Cal. 3d at 48-

49. The purely contingent nature of class counsel's fee, very high contingency risk confronted, delay in compensation, and preclusion of other employment are all properly considered factors. *Id.; Horsford v. Bd. of Trustees of California State Univ.*, 132 Cal.App. 4th 359, 399-400 (2005); *Ketchum*, 24 Cal 4th at 1136; *Lealao,* 82 Cal.App.4th at 42-50.

Collectively, Class Counsel have expended 486.92 attorney hours prosecuting this class action, and reasonably expect to spend an additional 10-20 hours to conclude settlement approval and settlement administration (this 10-20 hour estimate has not been included in the lodestar). Class Counsel's combined lodestar, based upon the hours expended and reasonable billing rates, is $308,908. (Schoech Decl., at ¶¶ 15-17; Van Dyke Decl., at ¶¶ 7-10; Rastegar Decl., at ¶¶ 32-33). A breakdown of the attorneys, the hourly rates, and the number of hours expended by each attorney is provided below and in the supporting attorney declarations:

Lawyer	Title	CA Bar Admission	Rate	Hours	Lodestar
Matthew Schoech	Managing Partner	2004	$ 600.00	286.8	$ 172,080.00
Glen Van Dyke	Managing Partner	1996	$ 650.00	83.5	$ 54,275.00
Farzad Rastegar	Managing Partner	1991	$ 850.00	33.75	$ 28,687.50
Thomas S. Campbell	Attorney	1998	$ 650.00	82.87	$ 53,865.50
			TOTALS	486.92	$ 308,908.00

The extent of the proceedings in this action, as discussed above and in the accompanying declarations of counsel, demonstrate that the number of hours expended was reasonable and necessary to obtain this settlement. As set forth more fully in the accompanying Declarations of Matthew Schoech, Glen Van Dyke, and Farzad Rastegar, for the past four years, Class Counsel thoroughly investigated and researched the viability of this case prior to filing the complaint, initial client intakes, client communications, legally research and analysis, drafting and filing pleadings, research of expert witnesses, strategy meetings, attend meetings and negotiations with defense counsel, communications with counsel, propound and respond to written discovery, analysis of significant amounts of data pertaining to the allegations in the Complaint, damage calculations, attend case management conferences, review and analyze settlement agreement, and preparation of motions for preliminary and final approval of class settlement. (Schoech Decl., ¶¶ 9-10; Rasteger Decl., ¶¶ 4).

The billing rates for each attorney, the owner of their respective firms, is reasonable in the relevant market for each of these attorneys given their standing, particularly for comparably complex class action work by comparably qualified attorneys. (Schoech Decl., ¶ 17, 21; Van Dyke Decl., ¶¶ 9-10; Rastegar Decl., ¶¶ 15-31.) For instance, in *Ridgeway v. Wal-Mart Stores, Inc*. 268 F.Supp.3d 975, 993 (N.D. Cal. 2017), partner hourly rates of $850 per hour (and a multiplier of 2.0) was approved in a class action.

Based on the quality of the result achieved here, the substantial contingency litigation risk presented by achieving class certification and proving the existence of a defect, class counsel's preclusion of other work, and the delay of compensation, Class Counsel's requested fee award of $566,666.67 is reasonable and fair.

Trial courts have "wide latitude" in assessing the value of attorneys' fees, and their decisions will "'not be disturbed on appeal absent a manifest abuse of discretion.'" *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal. App. 4th 19, 41; *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132 (The "experienced trial judge is the best judge of the value of professional services rendered in his court[.]"); *Cellphone Termination Fee Cases* (2009) 180 Cal. App. 4th 1110, 1118. California law provides that attorneys' fees awards should be equivalent to fees freely negotiated in the legal marketplace and paid in comparable litigation based on the result achieved and risk incurred. See *Lealao* at 47, 50. Fee awards that are too small will "chill the private enforcement essential to the vindication of many legal rights and obstruct the representative actions that often relieve the courts of the need to separately adjudicate numerous claims." *Id.* at 53. Therefore, fees in representative actions should approximate the probable terms of a contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation. *Id.* at 48. The percentage-of-the-benefit approach is preferred in such cases because "it better approximates the workings of the marketplace than the lodestar approach." *Id.* at 49.

(iii) The Attorney Fee Request is Reasonable Based on a Percentage-of-the-Fund Analysis

A percentage-of-the-fund analysis also justifies the common fund fee award requested here. *Lafitte*, supra, 1 Cal. 5th at 506. As one California court has specifically recognized, percentage-of-the-fund awards generally average around one-third (33.333%) of the total recovery. *Chavez v. Netflix, Inc.*, 162 Cal.App 4th 43, 66, fn. 11 (2008) ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"); *see also In re Activision Securities Litigation*, 723 F. Supp. 1373, 1378 (N.D. Cal. 1989) (noting the benchmark in federal common fund cases is 25%). Additionally, one-third (33 1/3 %) is consistent with contingency fee rates in the Northern California legal market, generally, where rates of 30-40% of gross recovery are typical.

Here, the requested attorney fees are $566,666.67 which is 33 1/3% of the total amount of Settlement Payments of $1,700,000. This 33 1/3% figure is entirely consistent with the percentage that contingency attorneys customarily charge for their services in Northern California and the federal common fund "benchmark" range, *supra*.

Furthermore, in deciding whether to approve a percentage fee award such as this, the court may consider the risks and potential value of the litigation; whether counsel took the case on contingency; the novelty and difficulty together with the skill shown by counsel; and the number of hours worked and the asserted hourly rates. *Laffitte*, *supra*, 1 Cal. 5th at 504. As set forth in herein, this settlement was reached after both sides considered the risks and value of the litigation. While Plaintiff maintain their claims are viable and, if proven, would be in excess of the $1,700,000 settlement after factoring in interest, penalties, and attorneys' fees, there is no guarantee the class would recover said amounts considering the legal defenses. (Schoech Decl., ¶¶ 12-13.) This Settlement represents a compromise based on the facts and circumstances attendant to this Action. (*Id*.) There is undeniably significant litigation risk avoided by the proposed Settlement, whether at class certification proceedings, at trial, or in appellate proceedings. (*Id*.)

Additionally, seasoned class action and attorneys prosecuted this litigation solely on a contingent-fee basis and have been at risk that they would not receive any compensation for prosecuting claims against the Defendant. (Schoech Decl., ¶ 4; Van Dyke Decl., ¶ 4; Rastegar Decl., ¶ 30.)

While Class Counsel, devoted its time and resources to this matter, it necessarily had to take time and resources away from some other pending matters. (*Id.*) In fact, as set forth herein, Class Counsel litigated this case over the course of a year and a half, expending a total of 486.92 hours. Furthermore, the hourly rates for these seasoned attorneys are fair and reasonable given their respective backgrounds and experience. (See discussion, *supra*.). In sum, the requested fee of $566,666.67 which represents 33 1/3% of the Total Settlement Payments, is fair, reasonable under a percentage-of-the-fund method and by a traditional lodestar analysis.

(iv) Class Counsel's Litigation Costs and Expenses are Fair and Should be Reimbursed

The Settlement Agreement provides for a reimbursement of attorney fees and costs and caps reimbursable litigation costs at $17,500. To date, Class Counsel's litigation costs are $16,195.76 (Schoech Decl., ¶¶ 19-20 and Rastegar Decl., ¶ 38). These costs are largely comprised of filing fees, mediation costs, postage and copy costs, legal research costs, expert fees. *Id*. As noted, there are no objectors to this Settlement, including the provision for payment of litigation expenses. Moreover, these litigation expenses were reasonably necessary to prosecute and settle this action. Accordingly, the request for costs should be granted.

H. The Enhancement Payments to Plaintiffs are Reasonable

Incentive awards are routinely approved to compensate class representatives for their time, effort, and risks incurred on behalf of the class. See e.g., *Clark v. American Residential Services, Inc.* 175 Cal.App.4th 785, 804, (2009).

Similarly, the Court's preliminary approval order implicitly designated Chris Diller, Edward Sandoval, and Israel Chan Cruz as the Class Representatives. In that capacity, Plaintiffs seeks payment of an incentive award for their committed service and substantial time and effort serving as class representatives, in the amount of $5,000 each, a total of $15,000.00. Defendant has agreed not to oppose the request. An award of this amount is reasonable given the hours that Plaintiffs have spent litigating this case and assisting Class Counsel in resolving this case with Defendant. (Schoech Decl. ¶ 22)

Plaintiffs had multiple telephone conferences and emails with their attorneys about the factual bases for the claims that we were pursuing in this action. (Declaration of Chris Diller in Support of Motion for Final Approval of Class Settlement ("Diller Decl."), ¶ 3; Declaration of Edward Sandoval in Support of Motion for Final Approval of Class Settlement ("Sandoval Decl."), ¶ 7). Plaintiffs worked to educate themselves regarding the requirements of being the class representatives and regarding how the litigation process works. (Diller Decl., ¶¶4-6; Sandoval Decl., ¶¶4-6)

Plaintiffs knew the risks of litigation, including being potentially liable for Defendants' fees and costs if the lawsuit was unsuccessful, that the lawsuit could continue for several years, and that it would be public knowledge that Plaintiffs were involved in a class action lawsuit. Plaintiffs also understood that my own claim for damages would be delayed because they were proceeding in an action for all other past and present employees in my position. Even with this knowledge, Plaintiffs were willing to serve as class representatives because they believed Defendant owed them and other employees for missed meal and rest breaks and unpaid wages. (Diller Decl., ¶6; Sandoval Decl., ¶6)

Plaintiffs spent several hours providing facts and documentation to their attorneys in order for the Complaint to be prepared and reviewed the complaint for accuracy and completeness. (Diller Decl., ¶7-11; Sandoval Decl., ¶7-11). Plaintiffs continued to search for documentation to assist in the prosecution of their claims and would have frequent contact with their attorneys to keep up on the status of litigation. (Diller Decl., ¶8; Sandoval Decl., ¶8). Plaintiffs stayed actively involved in the litigation process and worked with their attorneys to provide settlement authority necessary to assist with the settlement negotiations, conferred with their attorneys' during the mediation, remained on-call during the negotiations and, ultimately, approved of the settlement that was reached as a result of the negotiations. (Diller Decl., ¶9-10; Sandoval Decl., ¶9-10).

Plaintiffs carefully reviewed the terms of the proposed settlement and evaluated the risks and the benefits of settlement. Plaintiffs accepted the proposed settlement after evaluating proposed outcome to assure that it was fair. (Diller Decl., ¶10; Sandoval Decl., ¶10). Over a three- and four-year period, respectively, Plaintiffs have been continually involved in this litigation since this case was filed, and over the course of this litigation, have spent a significant amount of time conferring and working with their attorneys on the prosecution of my claims, responding to their inquiries, and evaluating the settlement and related documents. (Diller Decl., ¶11; Sandoval Decl., ¶11).

Plaintiff, Israel Chan Cruz, also understood his obligations as a class representative and that he would have a fiduciary duty to the Class. (Declaration of Israel Chan Cruz ("Cruz Decl."), ¶ 5.). Mr. Chan Cruz understood that he would need to consider the interests of the Class above his own and that he would be required to oversee the progress of the case, communicate with his attorneys, keep himself updated on the progress of the case, pass on information to and answer questions from class members, keep his attorneys updated, and participate in decisions about the lawsuit. (*Id.* at ¶¶ 6-7.). Mr. Chan Cruz participated in all stages of the case and kept himself updated with the work done litigating the lawsuit, the discovery performed, as well as the settlement negotiations that were conducted. (*Id*. at ¶ 9.). More specifically, Mr. Cruz Chan has spent numerous hours working on which included: (1) had numerous meetings with his attorneys, Rastegar Law Group, APC, before, during and after the filing and settlement of this lawsuit; (2) provided his attorneys with information and documentation regarding his wage claims; (3) informed his attorneys of other employees who experienced the same wage and hour violations; (4) assisted his attorneys in preparing for the mediation in this action and discussed issues related to the potential settlement of this action; (5) provided information to assist in settlement negotiations; and (6) approved the Settlement that was ultimately achieved. (*Id*. at ¶ 10.). Overall, it is estimated that Mr. Cruz Chan spent approximately 15 hours on this case. (*Id*.)

Apart from this reasonable enhancement payment to Plaintiffs, their personal recovery in this action and settlement will be determined in the same way as another Class Member, so their interests are in no way placed ahead of the other class members'. Further, as with attorneys' fees, putative class members were fully aware of the potential for this disbursement deducted from the Settlement Amount and there were no objections to such. (See Lee Decl., ¶ 9, and Class Notice attached as **Exhibit A**).

I. The Award of Settlement Administration Costs is Reasonable

Plaintiffs submit that payment in the amount not to exceed $17,750 is reasonable. As set forth herein, the class size was expanded from 1,754 to 2,884 individuals which caused the Claims Administrator costs to increase from $17,750 to $29,000. See Lee Decl., ¶ 16. Defendants have agreed to pay the additional Claims Administrator costs pursuant to stipulation. See **Exhibit 2** to the RFJN. The Lee Declaration describes the time and effort involved in administering the class settlement to date. The $17,750 payment out of the settlement funds represents approximately 1.04% of the total Settlement Amount, and approximately than $6.15 per class member. Based on the fees and costs associated with the administration of the class action, the additional fees and costs for calculating tax payments, distribution, and responding to inquiries, the amount of the claims administration fees are fair and reasonable.

III. THE PROPOSED SETTLEMENT MERITS FINAL APPROVAL

A. The Standards for Approval of Class Action Settlements

As a matter of public policy, settlement is a strongly favored method of resolving disputes. (*See Util. Reform Project v. Bonneville Power Admin.*, 869 F.2d 437, 443 (1989).) There is also a "strong judicial policy that favors settlement," particularly "where complex class action litigation is concerned." (*Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 2176 (9th Cir. 1992); 4 Herbert B. Newberg & Alba Conte, Newberg on Class Actions (4th ed. 2002) § 11:41 ("Newberg"); *In re Pacific Enterprises Securities Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). The court has broad discretion in reviewing a proposed class settlement for approval. *Kullar v. Foot Locker Retail, Inc.,*168 Cal.App.4th 116, 127-128 (2008). The Court must consider whether the settlement as a whole is reasonable; it stands or falls in its entirety. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998); *Class Plaintiffs*, supra, 955 F.2d at 1276; *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

"The settlement or fairness hearing is not to be turned into a trial or rehearsal for trial on the merits." *Officers for Justice*, supra, 688 F.2d at 625. Yet, the Court should explore "all the relevant factors" bearing on approval of a class action settlement. *See Hanlon*, supra, 150 F.3d at 1026.) In determining the fairness of a proposed settlement, the court is guided by factors which were summarized by the Ninth Circuit in *Hanlon*, 150 F.3d at 1026:

Assessing a settlement proposal requires the district court to balance a number of factors: the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extend of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement. *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9^{th}. Cir. 2012); *Torrisi v. Lazar*, 8 F.3d 1370, 1375 (9th Cir. 1993). "The list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." *Dunk v. Ford Motor Co*., 48 Cal.App.4th 1794, 1801 (1996). "The relative degree of importance to be attached to any particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts and circumstances presented by each individual case." *Officers for Justice, supra*, 688 F.2d at 625. Due regard should be given to what is otherwise a private consensual agreement between the parties. (*Id*.) The inquiry "must be limited to the extent necessary to reach a reasoned judgment 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." (*Id*.) "Ultimately, the [trial] court's determination is nothing more than 'an amalgam of delicate balancing, gross approximations and rough justice.'" (*Id.* (citation omitted.).) All of these factors support final approval.

Moreover, there is a strong and uniform policy in the State of California favoring compromises leading to the expeditious resolution of litigation. *Hamilton v. Oakland School Dist,*. 219 Cal. 322, 329 (1933) ("it is the policy of the law to discourage litigation and to favor compromises"); *Rich Vision Ctrs., Inc. v. Board of Medical Examiners*, 144 Cal.App.3d 110, 115 (1983) (there exists a "general policy of favoring compromises of contested rights"); *Stambaugh v. Superior Court*, 62 Cal.App.3d 231, 235 (1976). This judicial policy is particularly compelling in cases such as this involving a complex representative action. *Officers for Justice, supra*, 688 F.2d at 625 ("voluntary conciliation and settlement are the preferred means of dispute resolution . . . especially . . . in complex class action litigation.")

B. The Proposed Settlement Warrants a Presumption of Fairness

A class settlement should be approved if the settlement is found to be fair, adequate, and reasonable. *Dunk,* 48 Cal.App.4th 1794, 1801. Generally, 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. (*Id*. at 1802.) The proposed settlement here satisfies the above requirements.

There is an initial presumption that a proposed settlement is fair and reasonable when it is the result of arm's-length negotiations. *See Williams v. Vukovich*, 720 F.2d 909, 922-923 (6th Cir. 1983) ("The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs"); see also 4 Newberg on Class Actions §11.41; Manual for Complex Litigation (Third) §30.42.) Indeed, the non-collusive nature of the negotiations and the stature of counsel have often been recognized as important factors in the final approval of class action settlements. *See Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D.Cal.1980) aff'd 661 F.2d 939 (9th Cir. 1981)("the fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight").

C. The Settlement is the Result of Arm's-Length Negotiations

The first consideration in the approval analysis is whether the settlement is the result of serious, informed, and non-collusive negotiations. Courts place "a good deal of stock in the product of an arms-length, non-collusive, negotiated resolution[.]" *Rodriguez v. West Publishing Corp*., 563 F.3d 948, 965 (9th Cir. 2009). "Where a settlement is the product of arms-length negotiations conducted by capable and experienced counsel, the Court begins its analysis with a presumption that the settlement is fair and reasonable." *See e.g.*, *Ellis*, 87 F.R.D. at 18 (affording "considerable" weight to settlements resulting from arm's length, good faith negotiations undertaken by experienced counsel.) The proposed settlement here is the result of extensive analysis of the claims, a full day mediation with an experienced mediator, and months of negotiations following the mediation, which resulted in a total settlement amount of 31% of the value of the maximum total damages– a significant recovery in light of the risk, time, burden, and expense, of continuing this litigation and the potential for decertification or ultimate dismissal of claims. (Schoech Decl., ¶11.)

D. Substantial Investigation has Been Conducted

Substantial documentation was exchanged and analyzed between the parties before reaching a settlement that counsel for all considered in reaching the instant settlement. Indeed, because of the extensive documentation obtained, Plaintiffs' counsel were fully informed of the extent of the claims and the strengths and weaknesses of the allegations and thus, could be confident that they were in the best possible position to evaluate the risks of continued litigation and negotiate a resolution on behalf of the Class. As described above, the parties engaged in extensive fact exchange, as well as an exchange of legal theories, case law, and damages calculations. The parties further negotiated over the terms of the settlement agreement, including exchanging information about the structure of the agreement as well as a range of settlement amounts that would be acceptable to both sides. Both parties had a full and fair opportunity to investigate each of these matters and ensure that settlement was an appropriate and fair resolution.

E. Class Counsel is Experienced in Class Litigation

Also weighing in favor of preliminary approval is Class Counsel's experience and success in other consumer class actions. *See In re Mego Finan.al Corp. Secur. Lit.* v. *Nadar*, 213 *F.3d* 454, 459 (9th Cir. 2000) (counsel's experience and competence considered by the Court in approving settlement). Plaintiff's Counsel have worked on large, complex cases for decades, with a particular focus on consumer protection claims. Combined, Class Counsel have over 65 years of experience litigating complex matters throughout California, having litigated, and resolved over hundreds complex civil actions, including wage an hour cases and class actions. (Schoech Decl., ¶3; Van Dyke Decl. ¶3; Rastegar Decl., ¶¶ 21-26.) Drawing from this experience, Class Counsel executed the Settlement Agreement confident that it constitutes a fair and adequate outcome. (Schoech Decl., ¶ 12; Rastegar Decl. ¶ 5).

F. The Reaction of the Settlement Class

The final day for Class Members to exclude themselves from the settlement, object to the settlement, or dispute the number of workweeks was July 22, 2023. See Lee Decl., ¶¶8-10. No requests for exclusion, objections, or disputes were received. *Id*. That means that the 2,884 Class Members who stand to receive a sizeable award from the settlement have chosen to be bound by the terms of the settlement. Id. at ¶11. Further, Class Counsel is not aware of any negative reaction from any class members. (Schoech Decl., ¶ 26.)

G. A Comparison Between the Relief Provided by the Settlement and the Potential Result of Proceeding Through Trial Underscores the Value of the Settlement

Plaintiffs and Class Counsel closely considered the potential recovery which might be achieved for the Class if this matter proceeded through trial. (Schoech Decl., ¶¶ 11.) That evaluation confirmed that the proposed Settlement is in the best interests of the Class. Plaintiffs' counsel estimates that if Plaintiff were to prevail on the merits of the core claims their maximum potential damages would be $5,240,028 (not including interest and attorneys' fees) (*Id*.) In addition, the costs would increase substantially to litigate the matter through trial and appeal. As it stands now, the litigation costs amount to $16,195.76, or approximately $5.62 per class member – significantly less than even the filing fee for an individual plaintiff. Based on this comparison and given the costs and risks of further litigation (including the risks that the Class will not be certified), the settlement, providing for monetary relief to the entire class of $1,700,000, is an excellent result.

Nonetheless, despite the potential recovery and the confidence that Plaintiffs have in the substantive underpinning of their case, continuing to litigate this dispute is not without risks. For example, if litigation continued, this matter would still need to overcome the hurdle of obtaining class certification as well as any potential motion for summary judgment. These hurdles were alone significant enough to warrant a discount at settlement. If Defendant defeated certification there would be no class-wide relief regardless of the merits of the Class members' claims. Further, even if Plaintiff was successful on a motion for class certification, Defendant could move for decertification of the Class before or during trial and likely would challenge certification on appeal. Accordingly, this factor weighs heavily in favor of final approval of the Settlement Agreement, because if at any point the Class failed to become certified or if certification was reversed, the Class would get nothing.

Further, even if the Class was certified via motion and this matter continued through trial, there is no way to assure that the Class would fare any better than the proposed Settlement. Even a meritorious case can be lost at trial with devastating results. *See In re JDS Uniphase Corp. Sec. Litig.*, No. C-02-1486CW, 2007 WL 4788556 (N.D. Cal. Nov. 27, 2007) (after a lengthy trial, jury returned a verdict against plaintiffs, the action was dismissed.) Indeed, as one court has aptly noted, "it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements". *Officers for Justice v. Civil Service Com'n, of City and County of San Francisco*, 688, F.2d 615, 625 (9th Cir. 1982). Nor does success at trial eliminate the risk to the Class. In *In re Apollo Group, Inc. Sec. Litig.*, following a plaintiffs' verdict, the court overturned the verdict and granted defendants' motion for judgment as a matter of law. *In re Apollo Group, Inc. Sec. Litig*., No. CV 04-2147-PHX-JAT, 2008 WL 3072731 (D. Ariz. Aug. 4, 2008) (overturned only on appeal at *In re Apollo Group, Inc. Sec. Litig.,* No. 08-16971, 2010 WL 5927988 (9th Cir. June 23, 2010).)

Additionally, but for this litigation and the proposed settlement, the claims of the Class Members would likely go un-prosecuted because their individual claims are not large enough to warrant individual litigation. Further, the claims are also the type which would likely not be vindicated on an individual basis because, by the very nature of the allegations, the existence of the claims alleged here were not likely to be discovered by the Class. Lastly, the Settlement provides for relief now rather than a speculative payment years from now. Consequently, Plaintiffs are confident that the proposed settlement is a highly successful result for the Class.

IV. CONCLUSION

Accordingly, Plaintiffs respectfully requests that the Court grant final approval of the class action Settlement in its entirety, the requested Attorney Fee Award in the amount of $566,666.67 and costs of $16,195.76 to Class Counsel, the Class Representative Enhancement Payment to Plaintiffs, Chris Diller, Edward Sandoval, and Israel Chan, of $5,000 each, and Administrative Costs in the amount of $17,750 payable to the Claims Administrator, Phoenix. Plaintiffs further respectfully requests that the Court enter final judgment in this action and retain continuing jurisdiction over the enforcement and administration of the Settlement.

DATED: September 5, 2023

SCHOECH LAW GROUP, PC

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