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on behalf of himself, the Certified Class
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

LEE, RONGHUI, an individual California
resident on behalf of himself and all others
similarly situated,

Plaintiff,

vs.

HUNGRYPANDA US INC., a Delaware
corporation; and DOES 1-10, inclusive,

Defendant.

) Case No. CIVSB2126633

) **MEMORANDUM IN SUPPORT OF**
) **MOTION FOR FINAL APPROVAL OF**
) **CLASS ACTION SETTLEMENT AND**
) **AWARD FOR ATTORNEYS' FEES,**
) **COSTS, AND CLASS REPRESENTATIVE**
) **ENHANCEMENT**

) Date: February 20, 2025
) Time: 8:30 a.m.
) Judge: Hon. Christian Towns
) Dept.: S-26

) Action Filed: September 2, 2021
) Trial Date: None

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1 **I. INTRODUCTION**

2 Plaintiff Ronghui Lee (“Plaintiff”) seeks final approval of the \$1,500,000.00 class action
3 settlement (the “Settlement”)¹ with defendant Hungry Panda US Inc. (“HungryPanda” or
4 “Defendant”). On August 1, 2024, the Court granted preliminary approval of the class action
5 Settlement. The Settlement resolves all of the claims in this action on behalf of the 3,322 certified
6 Class Members, the state of California for the alleged violations of the Private Attorneys General
7 Act Labor Code § 2698 *et seq.* (“PAGA”), Plaintiff, and Class Counsel against Defendant based
8 upon the factual allegations in the first amended complaint filed in this Court. The Class Period for
9 the Settlement is September 2, 2017 through May 9, 2023 (the “Class Period”). Plaintiff’s lawsuit
10 is referred to herein as the “Action.”

11 The Settlement satisfies all of the criteria for final approval and falls well within the range
12 of approval. It has been met with overwhelming support by the Class, which is evidenced by the
13 fact **that no Class Member has objected to the Settlement.** (Declaration of Makenna Snow
14 “Snow Decl.” ¶ 11, Favarote Decl. ¶ 4.) The certified class has 3,322 members. (Snow Decl. ¶ 12,
15 Favarote Decl. ¶ 3.) If the Court awards all amounts sought, the average Class Member will receive
16 \$237.21, plus a PAGA average penalty payment of approximately \$13.61, for a total projected
17 average payment of \$250.82 per Class Member, and the highest estimated gross payment to a Class
18 Member would be \$3,591.97. (Snow Decl. ¶13.)

19 Gross Settlement Fund:	\$1,500,000.00;
20 Class Counsel Fees (33.3%):	\$500,000.00;
21 Class Counsel Expenses (up to): ²	\$25,000.00;
22 Enhancement Award:	\$10,000.00;
23 ILYM Administration Fees:	\$27,000.00;
24 LWDA PAGA Payment (75%):	\$112,500.00;
25 Aggrieved Employees’ PAGA Amount (25%):	\$37,500.00;

26 ¹ A copy of the fully executed Settlement Agreement, including its exhibits, is attached as
27 Exhibit 1 to the Favarote Declaration.

28 ² Class Counsel’s costs are actually \$20,929.16, so the remaining \$4,070.84 will be added
to the Net Settlement Amount resulting in about an additional \$1.22 to each Class Member.

1 **C. Discovery and Investigation of Facts Prior to Settlement.**

2 Prior to the denial of Defendant's motion to set aside the default in this matter, Plaintiff
3 propounded and Defendant responded to (1) Form Interrogatories – General; (2) Form
4 Interrogatories – Employment Law; (3) Special Interrogatories; (4) Requests for Production of
5 Documents; (5) Requests for Admissions. (Favarote Decl. ¶ 23.)

6 Following the denial of Defendant's motion to aside default, Defendant refused to
7 participate in the discovery process requiring Plaintiff to subpoena Defendant as a non-party.
8 Plaintiff subpoenaed the Class Contact information and after Defendant's motion to quash was
9 denied by the Court, Defendant produced the contact information. Over the course of the last 3
10 years, the bulk of Plaintiff's investigation into the allegations in the Complaint consisted of
11 interviewing class members and obtaining documentary evidence from them regarding the claims
12 at issue. Class Counsel's office, via a Mandarin speaking staff member, conducted dozens of
13 interviews, obtained numerous payroll documents, and investigated various occurrences throughout
14 the litigation including as to Defendant's policies and practices as experienced by the Class
15 Members and Defendant's conduct throughout the Class Period. While the process was slow given
16 the language barriers, the investigation was successful in identifying numerous violations and
17 assisted in obtaining certification of the Class. (Favarote Decl. ¶ 23.)

18 Additionally, as part of the mediation process, Defendant produced a detailed declaration
19 from its Senior Delivery Operations Manager, Shengzhi Liu, providing: (i) the total number of
20 Class Members who worked during the Class Period; (ii) the total workweeks worked by the Class
21 Members during the Class and PAGA periods; (iii) the details of how long work shifts lasted for
22 Class Members; (iv) the average amount of time (in hours) that Class Members delivered per day;
23 (v) the aggregate number of work weeks that drivers performed at least one delivery; (vi) aggregate
24 number of delivery trips made by the Class Members; (vii) the average amount paid to Class
25 Members per delivery; (viii) average number of deliveries made by Class Members per day;
26 (ix) the average distance traveled by Class Members per delivery; and (x) the average amount of
27 time (in hours) that Class Members spent making a delivery from when they accepted the delivery
28 offer on the app until the delivery as completed. (Favarote Decl. ¶ 24.)

1 In addition to this vital information that formed the basis to which Class Counsel assessed
2 the strengths and weaknesses of the case and the potential damages to the Class, Defendant
3 provided its legal basis for its position that the Order denying its motion to set aside the default
4 would prevail on appeal. The issue of the default was also a substantial risk factor associated with
5 analyzing the advantages and disadvantages of reaching a negotiated resolution on behalf of the
6 Class. Finally, the issue of Defendant's financial condition was a major risk factor for the Class.
7 Defendant is a start-up, niche, food delivery company with very few tangible assets. Therefore, to
8 establish its financial condition and the benefit to the Class of the Settlement, Defendant, as part of
9 this Settlement and Motion for Preliminary Approval, agreed to file the following financial
10 documents with the Court, under seal: (1) California and Federal tax returns for the last two years;
11 (2) profit and loss statements for the last two years; (3) balance sheets for the last two years.
12 (Favarote Decl. ¶ 26.)

13 The parties conducted a mediation in San Diego, California with renowned wage/hour
14 mediator Hunter Hughes on February 26, 2024. The case did not settle at mediation, but the parties
15 continued exchanging additional information. On June 24, 2024, the parties reached a settlement
16 and executed a Memorandum of Understanding ("MOU"). Thereafter, on July 9, 2024, the parties
17 finalized and executed the long form Settlement. (Favarote Decl. ¶ 14.)

18 **III. TERMS OF THE SETTLEMENT**

19 The following is a summary of the material elements of the Settlement.

20 **A. Principal Terms**

21 Hungry Panda will pay \$1,500,000.00 (the "Gross Settlement Fund") to settle the Action on
22 a class-wide basis for the approximately 3,322 Class Members. (Settlement, ¶ 21; Favarote Decl.
23 ¶¶ 3, 16, 17.) The total number of Class Member work weeks settled under the Settlement
24 Agreement totals approximately 44,095 (Settlement is calculated per work week worked during the
25 Class Period). (Settlement, ¶21; Favarote Decl. ¶ 18.)

26 From the Gross Settlement Fund will be paid (a) \$788,000.00 in *pro rata* awards to the
27 Class Members based on the number of workweeks worked between September 2, 2017 and May
28 9, 2023 (the "Net Settlement Amount") (b) a payment of \$150,000 for PAGA penalties with 75%

1 (\$112,500) going to the LWDA for its share of the civil penalties and \$37,500 (25%) going to
2 Class Members; (c) Class Representative Payment to Plaintiff in the amount of \$10,000.00 (as
3 approved by the Court) to compensate him for his services to the Class in pursuing in the Action and
4 the risk he assumed on behalf of the absent Class Members; (d) Class Counsel Attorneys' Fees of
5 \$500,000 (33.33% of the Gross Settlement Fund as approved by the Court) to compensate them for
6 their services to the Class in prosecuting the Action and securing the Settlement, and Class
7 Counsels' litigation expenses of up to \$25,000 (as approved by the Court); (v) a payment to the
8 Settlement Administrator, ILYM Group, for its reasonable fees and expenses incurred in
9 administering the Settlement, which are estimated at approximately \$27,000.00; (vi) any other fees
10 or expenses (other than attorneys' fees and expenses) incurred in implementing the terms and
11 conditions of Settlement and securing the judgment from the Court pursuant to the Settlement.
12 None of the Gross Settlement Amount will revert to Defendant. (Favarote Decl., ¶ 17; Settlement,
13 ¶¶ 11, 21, 24, 28, 39.)

14 Before individual payroll taxes, and before PAGA penalties, the average Individual Net
15 Settlement Payment to Class Members is expected to be approximately \$237.21 plus the average
16 PAGA group member payment of approximately \$13.61, for a total of approximately \$250.82 per
17 Class Member on average. (Favarote Decl. ¶ 4.)

18 Once the judgment becomes final and the settlement sum is paid in full, Class Members
19 will release their respective claims against Defendant and its related entities, under California law
20 that were raised or that could have been raised in the Action based on the facts alleged in the
21 Action. (Favarote Decl. ¶ 20; Settlement, ¶ 31.) The Release Period is September 2, 2017 through
22 July 1, 2024. (Favarote Decl. ¶ 20; Settlement ¶ 35.)

23 **IV. THE SETTLEMENT ADMINISTRATION**

24 The parties selected, and the Court approved, ILYM Group, Inc. ("ILYM" or "Settlement
25 Administrator") as the settlement administrator. Makenna Snow with ILYM was the designated
26 Claims Administrator for the administration of this class action/PAGA settlement. (Snow Decl.
27 ¶ 1.)

28 ///

1 On August 2, 2024, ILYM received the Court approved text for the Notice of Class Action
2 Settlement (“Class Notice”) from Counsel for Plaintiff. (Snow Decl. ¶ 4.) A final draft of the Class
3 Notice, in English and Chinese and in the same substance and form approved by the Court, was
4 prepared by ILYM and approved by the parties.

5 On October 17, 2024, counsel for HungryPanda provided ILYM with a mailing list
6 containing Class Members’ names, last known addresses, social security numbers that it had⁴,
7 telephone numbers, and email addresses, total number of workweeks, and total number of pay
8 periods (“Class Members’ Data”). (Snow Decl. ¶ 5.) The Class Members’ Data contained data for
9 3,322 Class Members.

10 On November 5, 2024, Class Notices were mailed via First Class mail, emailed, and/or
11 texted, to the 3,322 Class Members contained in the Class Member Data. (Snow Decl. ¶ 7.) The
12 Class Notice advised Class Members that they submit an objection postmarked by January 4, 2025.
13 (Snow Decl. ¶ 11.) 167 Class Notice Packets were returned as undeliverable as of January 7, 2025.
14 ILYM performed computerized skip traces for the 167 Class Members returned Notice Packets that
15 did not have a forwarding address, in an effort to obtain an updated address for purposes of re-
16 mailing the Notice Packet. (Snow Decl. ¶ 8.) Of the 167 skip traces performed, 71 updated
17 addresses were obtained, and the Notice Packet was promptly re-mailed to those Settlement Class
18 Members, via U.S. First Class Mail. (Snow Decl. ¶ 9.) Of the 167 address traces performed, 96
19 Notice Packets have been deemed undeliverable as no updated address was found notwithstanding
20 the skip tracing. (Snow Dec. ¶ 10.)

21 ILYM has not received any objections to the Settlement. (Snow Decl. ¶ 11.)

22 **V. FINAL APPROVAL OF THE CLASS SETTLEMENT IS WARRANTED.**

23 The process for approving a settlement is set forth in Rule 3.769, California Rules of Court.
24 The decision of whether a settlement is fair, reasonable, and adequate is made at the final approval
25 stage, after notice of the settlement has been given to the class members and they have had an

26
27 ⁴ Since HungryPanda classified the Class Members as independent contractors it did not
28 have social security numbers for all of the Class Members. A W-9 form for reporting their social
security numbers for tax purposes was sent out with the notice and is required for tax reporting.

1 opportunity to voice their views of the settlement or to exclude themselves from the settlement.
2 See Cal. R. Ct. 3.769(g).

3 At the final fairness hearing, “[t]he trial court has broad discretion to determine whether the
4 settlement is fair.” *Rebney v. Wells Fargo Bank* (1990) 220 Cal. App. 3d 1117, 1138. It should
5 consider relevant factors, such as the strength of plaintiff’s case, the risk, expense, complexity and
6 likely duration of further litigation, the risk of maintaining class action status through trial, the
7 amount offered in settlement, the extent of discovery completed and the stage of the proceedings,
8 the experience and views of counsel, the presence of a governmental participant, and the reaction
9 of the class members to the proposed settlement. *7-Eleven Owners for Fair Franchising v.*
10 *Southland Corp*, (2001) 85 Cal. App. 4th 1135, 1146.

11 In granting the preliminary approval motion, the Court reviewed the nature of the case, the
12 history of the litigation, and the legal requirements for approval of a class settlement. The proposed
13 settlement clearly satisfies the standard for final approval as it is well within the range of possible
14 approval and there are no grounds to doubt its fairness as evidenced by the fact that no one in the
15 Class objected to the Settlement. (Snow Decl. ¶ 11.)

16 **A. The Settlement Resulted From Arm’s Length Negotiations.**

17 There is an initial presumption that a proposed settlement is fair and reasonable when it is
18 the result of arm’s length negotiations. *See Williams v. Vukovich*, 720 F.2d 909, 922-23 (6th
19 Cir.1983) (“The court should defer to the judgment of experienced counsel who has competently
20 evaluated the strength of his proofs”); *In re Excess Value Ins. Coverage Litig.*, No. M-21-84
21 (RMB) 2004 U.S. Dist. LEXIS 14822, at *34 (S.D.N.Y. July 30, 2004) (“Where ‘the Court finds
22 that the settlement is the product of arm’s length negotiations conducted by experienced counsel
23 knowledgeable in complex class litigation, the settlement will enjoy a presumption of fairness”);
24 *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001) (granting
25 preliminary settlement approval) (“when a settlement is the result of extensive negotiations by
26 experienced counsel, the Court should presume it is fair”); *see also* 2 Herbert Newberg & Alba
27 Conte, Newberg on Class Actions, § 11.41 at 90 (4th Ed. 2002).

28 ///

1 Here, the Settlement was reached following arms' length negotiations. Class Counsel's
2 investigation as to the class claims included interviewing class members and obtaining
3 documentary evidence from them regarding the claims at issue. Class Counsel's office, via a
4 Mandarin speaking staff member, conducted dozens of interviews, obtained numerous payroll
5 documents, and investigated various occurrences throughout the litigation including as to
6 Defendant's policies and practices as experienced by the Class Members and Defendant's conduct
7 throughout the Class Period. While the process was slow given the language barriers, the
8 investigation was successful in identifying numerous violations and assisted in obtaining
9 certification of the Class. (Favarote Decl. ¶ 23.)

10 Defendant's default in this action resulted in more motion practice than in a typical action.
11 Defendant moved to set aside the default which resulted in multiple rounds of briefings and two
12 oral arguments. Defendant also filed a motion to compel arbitration, and opposed every discovery
13 effort Class Counsel took. Every time Class Counsel subpoenaed documents and testimony,
14 Defendant filed a motion to quash. On May 31, 2023, Defendant filed a motion to quash a
15 subpoena for the Class Member's contact information. On August 2, 2023, Class Counsel prevailed
16 and Defendant's motion to quash was denied. On October 23, 2023, Defendant filed another
17 motion for a protective order and motion to quash. Class Counsel opposed the motion and the
18 strength of their opposition compelled Defendant to come to the bargaining table and the hearing
19 on that motion was stayed pending mediation.

20 Class Counsel also fully briefed an unopposed⁵ motion for class certification and submitted
21 a default prove up plan which was filed on March 24, 2023. On May 9, 2023, the Court granted
22 Class Counsel's motion and certified the class.

23 The parties conducted a mediation in San Diego, California with renowned wage/hour
24 mediator Hunter Hughes on February 26, 2024. The case did not settle at mediation, but the parties
25 continued exchanging additional information. On June 24, 2024, the parties reached a settlement
26 and executed a Memorandum of Understanding ("MOU"). Thereafter, on July 9, 2024, the parties

27 _____
28 ⁵ Due to Defendant's default Defendant was precluded from opposing the motion.

1 finalized and executed the long form Settlement. (Favarote Decl. ¶ 14.)

2 **B. The Settlement Has No Obvious Deficiencies.**

3 It is well settled that the Court may appropriately infer that a class action settlement is fair
4 and reasonable when, among other reasons, few class members object to it. *7-Eleven Owners for*
5 *Fair Franchising, supra* (2000) 85 Cal.App.4th at 1153 (noting the “overwhelming positive” class
6 member response to the settlement and the small number of objectors (9 out of 5,454 class
7 members)). Here, there have been no objections to the Settlement. (Snow Decl. ¶ 11.) Each
8 participating Class Member will receive an average estimated combined Settlement Share of
9 \$250.82 before employment taxes. (Favarote Decl. ¶ 4.) This is a favorable result. (Id.)

10 **C. The Settlement Falls Well Within the Range of Possible Approval.**

11 The Settlement represents a fair and reasonable resolution given the substantial risks of
12 expense and delay versus the certain and immediate recovery for the Class Members. While Class
13 Counsel believes that he has a high probability of success in defending the default based upon the
14 Court’s thorough analysis and ruling, the potential for an adverse order reversing the trial Court’s
15 order created concern. Additionally, the area of law on “gig economy workers” such as delivery
16 drivers is constantly in flux with the law changing rapidly and the uncertainty regarding the
17 application of Proposition 22 to this case. On top of all of those uncertainties, is Defendant’s
18 financial condition. The appeal process could take years, and Defendant has only been operating in
19 California for approximately the last 5 years and asserts that it is not currently profitable. The
20 likelihood of Defendant being able to pay a large default judgment to the Class that is upheld by
21 the Court of Appeals years from now is perilous to say the least. There is also the chance that the
22 default would not be upheld or that it would have to be reopened to obtain a sufficient recovery for
23 the Class Members, this could set the case back to square one and all of the many risks that would
24 entail, including recertification and trial.

25 HungryPanda argued in its motion to quash that the application of Proposition 22 to each
26 Class Member’s independent contractor classification and status created individualized issues and
27 that its application drastically cuts down both the liability period and number of class members to a
28 miniscule amount. Accordingly, there is risk and significant expenses associated with this case,

1 especially where, as here, the law in question, Proposition 22, has come under many challenges and
2 its application remains a hotly litigated issue. Decertification motions and reversals following trial
3 are also a legitimate risk in light of the U.S. Supreme Court decision in *Wal-Mart Stores, Inc. v.*
4 *Dukes*, 564 U.S. 338, 349-50 (2011).

5 These uncertainties, along with the financial viability of a non-profitable company such as
6 Defendant, bore heavily on the negotiations leading to the Settlement. On July 7, 2025, Defendant
7 lodged with the Court, under seal, confidential financial documents which demonstrate its financial
8 condition. In the face of these legal and financial uncertainties, the parties agreed to a compromise
9 Settlement of \$1,500,000.00. A settlement is not judged *solely* against what might have been
10 recovered had a plaintiff prevailed at trial, nor does a settlement have to provide 100% of the
11 damages sought to be fair and reasonable. *See Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
12 224, 246, 250 (2001) (“Compromise is inherent and necessary in the settlement process ... [E]ven
13 if the relief afforded by the proposed settlement is substantially narrower than it would be if the
14 suits were to be successfully litigated, this is no bar to a class settlement because the public interest
15 may indeed be served by a voluntary settlement in which each side gives ground in the interest of
16 avoiding litigation.”) (internal quotation marks and citation omitted); *Officers for Justice*, 688 F.2d
17 615 (9th Cir. 1982) at 628 (“It is well-settled law that a cash settlement amounting to only a
18 fraction of the potential recovery will not . . . render the settlement inadequate or unfair.”).

19 **D. The Amount Allocated to the Class is Fair and Favorable.**

20 The Class consists of 3,322 individuals who worked for HungryPanda. (Favarote Decl. ¶ 4.)
21 Each participating Class Member will receive an average combined settlement of approximately
22 \$250.82. (*Id.*) These numbers compare favorably with other settlements. *See, e.g., Rhom v.*
23 *Thumbtack, Inc.*, 2017 WL 4642409 (N.D. Cal. Oct. 17, 2017) (granting final approval of claims-
24 made settlement where 66,676 class members shared in \$225,000.00 settlement, amounting to
25 \$3.30 gross per class member); *Aceves v. AutoZone, Inc.*, No. 5:14-CV-02032 [ECF 58] (C.D. Cal.
26 Nov. 18, 2016) (granting final approval where 206,650 class members shared in \$5,700,000.00
27 settlement - \$27.58 gross and approximately \$20.00 net per class member); *Feist v. Petco Animal*
28 *Supplies, Inc.*, No. 3:16-cv-01369-H-DHB [ECF 48] (S.D. Cal. 2018) (granting final approval;

37,279 class members shared in \$1,200,000 settlement- \$32.00 gross and approximately \$20.00 net per class member).

VI. CLASS COUNSEL'S EFFORTS.

Class Counsel has collectively spent over 864.9 hours in the Action and have incurred \$586,231 in legal fees and \$20,929.16 in costs. (Favarote Decl. ¶¶ 34, 37, Becerra Decl. ¶ 13.) Prior to agreeing to settle the case, Class Counsel conducted significant litigation and investigation as detailed in the concurrently filed declarations of Torey Joseph Favarote and Joseph R. Becerra.

Class Counsels' investigation as to the class representative's claims, included interviewing dozens of class members and reviewing documents produced by those class members, including their payroll documents, photographs taken of work shifts that were worked for Defendant, and policies and contracts provided to them by Defendant. Prior to default, Plaintiff also propounded, and Defendant responded, to written discovery including special interrogatories, form interrogatories, requests for production of documents, and requests for admissions. Finally, as part of the mediation of this matter, Defendant produced a verified declaration providing the key Class Member data including pay and work shift information for the Class. (Favarote Decl. ¶ 25.) Defendant also filed under seal its confidential financial documents which were also provided to Class Counsel confidentially. (Favarote Decl. ¶ 26.)

In addition, as noted above, Class Counsel was required to engage in significant motion practice in this matter, including multiple rounds of briefing on Defendant's motion to set aside the default, multiple motions to quash, and filing a class certification motion with prove up plan. (Favarote Decl. ¶ 24, Becerra ¶ 5.)

A. The Requested Enhancement Awards to the Named Plaintiff Is Fair and Reasonable.

Incentive awards to the class representatives are not only authorized, but entirely appropriate. *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). "Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit." *Cook v. Niedert*, 142 F. 3d 1004, 1016 (7th Cir. 1998); see also *Rodriguez v. West Publ. Corp.*, 2007 WL 2827379 (C.D. Cal. Sept. 10, 2007), aff'd in part, rev'd in part sub nom. *Rodriguez v. West Publ. Corp.* 563 F.3d 948 (9th Cir. 2009)

1 [incentive awards should compensate for risks taken, such as “retaliation . . . , discrimination,
2 trouble finding employment, and significant financial risk.”].)

3 The *Rodriguez* court noted that “[i]ncentive awards are fairly typical in class action cases.
4 See 4 William B. Rubenstein et al., Newberg on Class Actions § 11:38 (4th ed. 2008); Theodore
5 Eisenberg & Geoffrey P. Miller, *Incentive Awards to Class Action Plaintiffs: An Empirical Study*,
6 53 U.C.L.A. L.Rev. 1303 (2006)”. *Rodriguez, supra*, at 958 (italics in original).

7 In evaluating the enhancement award to a class representative, a court should consider all
8 relevant factors including: (1) the risk to the class representative in commencing suit, both financial
9 and otherwise; (2) the notoriety and personal difficulties encountered by the class representative;
10 (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation
11 and; (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the
12 litigation. *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995); *see also*
13 *Staton v. Boeing Co.*, *supra* at 977 (court should consider all “relevant factors including the actions
14 the plaintiff has taken to protect the interests of the class, the degree to which the class has
15 benefitted from those actions, . . . the amount of time and effort the plaintiff expended in pursuing
16 the litigation[,] . . . and reasonable fears of workplace retaliation.” (internal marks and citation
17 omitted).) Here, the relevant factors warrant final approval of the proposed enhancement award of
18 \$10,000.00⁶ to Mr. Lee. A \$10,000.00 enhancement for Mr. Lee is warranted because of the
19 sacrifices Mr. Lee has taken to act as class representative. Mr. Lee provided a number of key
20 documents from his employment with Defendant and faced harassment and retaliation from
21 Defendant and its managers in response to this action. This included Defendant cutting Mr. Lee’s
22 order assignments and wages repeatedly until the termination of his employment. Mr. Lee also
23 spent considerable time with Class Counsel providing information for this case. Mr. Lee has
24 provided a substantial benefit to 3,322 individuals, most of whom he never knew or met. (Lee
25 Decl. ¶¶ 5-9, Favarote ¶¶ 31-32.)

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28 ⁶ Approximately 0.66% of the total settlement amount.

1 **1. The Class Has Benefited Significantly From Plaintiff's Efforts.**

2 Plaintiff Lee's efforts have resulted in more than \$825,000 dollars of compensation for
3 participating Class and PAGA Members. Plaintiff Lee took time away from work and his family to
4 speak to Class Counsel and educate himself on the case, the claims, and the details of the proposed
5 settlement agreement. (Lee Decl. ¶ 5.) Plaintiff Lee spoke to Class Counsel and attended meetings
6 to discuss the details of the settlement agreement before signing it. (Lee Decl. ¶¶ 5-6.) Plaintiff Lee
7 regularly communicates with Class Counsel about the case status and next steps. (Lee Decl. ¶ 8.)

8 **2. Plaintiff Took a Substantial Burden and Risk for the Class.**

9 Plaintiff Lee took significant risks and burdens by stepping forward on a class basis. First,
10 he exposed himself to the potential for significant financial loss as he arguably could have been
11 found liable to pay Defendant's costs if the case was unsuccessful. Accordingly, he shouldered the
12 risk of owing thousands of dollars in costs if they did not prevail. (Lee Decl. ¶ 9.)

13 Second, Plaintiff Lee subjected himself now—and in the future—to being stigmatized for
14 bringing a class action against his former employer. (Lee Decl. ¶¶ 9-10.) Records of filings and
15 settlements of class actions are public and are readily accessible on-line and through pay services
16 (e.g., Lexis, etc.). Additionally, the fact that Plaintiff Lee does not speak English fluently created
17 the trepidation and concern regarding the extensive terms of the Settlement. Notwithstanding all of
18 that, Plaintiff Lee stepped in for the Class without regard to himself.

19 **3. The Requested Amount of the Enhancement Awards Are Reasonable.**

20 For the reasons above, the proposed payment of \$10,000.00 (to Plaintiff Lee) is fair
21 and reasonable. (Lee Decl., ¶ 10, Favarote Decl. ¶¶ 31-32.) *See In re TFT-LCD (Flat Panel)*
22 *Antitrust Litig.*, Case No. 3:07-md-1827 SI, 2011 WL 7575003, at *2 (N.D. Cal. Dec. 27, 2011)
23 (approving \$15,000.00 incentive awards for 11 class representatives “in recognition of their work
24 performed for the benefit of the Class and risks undertaken”); *Singer v. Becton Dickinson and Co.*,
25 08-cv-821 IEG (BLM), 2010 WL 2196104, at *9 (S.D. Cal. June 1, 2010) (finding class
26 representative award of \$25,000.00 reasonable).

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1 **B. The Requested Attorney's Fees and Costs and Fair and Reasonable.**

2 This successful outcome for the Class was the product of significant work by Class
3 Counsel, Torey Joseph Favarote, Gleason & Favarote LLP ("Mr. Favarote"), and Joseph R.
4 Becerra, Becerra Law Firm ("Mr. Becerra").⁷ Here, the Settlement Agreement states that Class
5 Counsel will make a motion for attorneys' fees and costs at the same time as the Motion for Final
6 Approval of the Settlement, in the amount of 33.3% of the total settlement or \$500,000 plus costs
7 for the case in the amount of no more than \$25,000.

8 **1. Summary of Class Counsel's Efforts.**

9 Because this lawsuit is a common fund case, Class Counsel seeks an award of fees
10 reflecting the same, and commensurate with their demonstrated efficiency and ability in obtaining a
11 substantial award for the Class. As such, the use of the percentage of recovery methodology
12 should be applied. This number reflects positively upon the efforts expended by Class Counsel on
13 behalf of the absent Class Members.

14 The fruits of this lawsuit will provide a tremendous benefit to the Class Members. Before
15 individual payroll taxes, and before PAGA penalties, the average Individual Net Settlement
16 Payment to Class Members is expected to be approximately \$237.21, plus the average PAGA
17 group member payment of approximately \$13.61, for a total of approximately \$250.82 per Class
18 Member.⁸ (Favarote Decl. ¶ 3.)

19 Mr. Favarote has practiced law in California for over twenty-five (25) years and has
20 significant experience with wage-and-hour class litigation and has been appointed Class Counsel in
21 several other matters. The declaration of Torey Joseph Favarote, filed herewith, demonstrates the
22 depth and range of his experience. (Favarote Decl., ¶ 35, See also Declaration of Torey Joseph
23 Favarote in Support of the Motion for Preliminary Approval Decl. ¶¶ 55-58.)

24 ⁷ For ease of review, the summary of these efforts will be discussed together with an
25 analysis of the factors governing attorney fee awards. As a secondary "backup" to the percentage
26 of the common fund requested, Class Counsel will also discuss their Lodestar calculation in
27 connection with the efforts they have extended in this matter. The Lodestar discussion is merely
28 presented as a "double check" on the reasonableness of the "percentage of the common fund"
request which forms the basis of this fee application.

⁸ 25% of \$150,000.00 PAGA Allocation = \$37,500.00; \$37,500.00 ÷ 2,755 PAGA group
members = \$13.61.

1 Mr. Becerra also has significant experience with employment law including more than 20
2 years of wage-and-hour class action litigation. He has previously been appointed Class Counsel in
3 dozens of wage-and-hour class actions. The declaration of Mr. Becerra, filed herewith,
4 demonstrates the depth and range of experience. (Becerra Decl., ¶ 10-12.)

5 Class Counsel spent considerable time on this litigation which included multiple rounds of
6 briefing on Defendant's default, defending against multiple motions to quash, interviewing class
7 members, and preparing and filing a motion for class certification. (Favarote Decl., ¶ 24; Becerra
8 Decl. ¶ 5.)

9 **2. The Attorney's Fees Request is Fair and Appropriate Under the
Common Fund Method.**

10 Class Counsel seeks an award of 33.3% of the total settlement or \$500,000.00, plus costs
11 for the case up to \$25,000. This amount is fair and reasonable under either the "Common Fund" or
12 "Lodestar" methods.

13 Class Counsel seeks to recover attorneys' fees based upon a percentage of the common
14 fund created by their efforts. While the contemporaneously filed declarations of Class Counsel sets
15 forth the "Lodestar" amounts as a "double check" of the percentage fee, Class Counsels' primary
16 basis for the fee award sought is based upon a percentage of recovery, in light of the efficiency
17 they exhibited in resolving this case for the benefit of the Class. As stated in *Newberg on Class*
18 *Actions, Fourth Edition*, vol. 4, p. 556, §14.6:

19 Unlike the lodestar method which can encourage class counsel to
20 devote unnecessary hours to generate a substantial fee, under the
21 POR [percentage of recovery] method, the more the attorney
22 succeeds in recovering money for the client, and the fewer legal
23 hours expended to reach that result, the higher dollar amount of
fees the lawyer earns. Thus, one of the primary advantages of the
POR method is that it is thought to equate the interests of class
counsel with those of the class members and encourage class
counsel to prosecute the case in an efficient manner.

24 In short, Class Counsel should be rewarded for creating substantial recoveries for the Class
25 in the most efficient method possible.

26 California encourages attorneys to take the enormous risks of time and money necessary to
27 vindicate the public interest, and to protect the public policies underlying our employment laws.
28 To fulfill this policy, California law provides that attorney fee awards should be equivalent to fees

1 paid in the legal marketplace to compensate for the result achieved and risk incurred. *See Lealao v.*
2 *Beneficial Cal., Inc.*, 82 Cal.App.4th 19 (2000). Accordingly, Class Counsels' request is based on
3 marketplace standards.

4 In *Lealao*, the First District held that when an action leads to a recovery that can be
5 "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee
6 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
7 litigation." *Id.* at 50. Even in cases where class members present claims against a potential
8 maximum settlement fund (*as opposed to the guaranteed payment here*), and the settlement
9 agreement provides that the defendant agrees to pay the attorneys a percentage of the same, use of
10 that percentage method is appropriate. *Id.* at 32.

11 In clear common fund cases, like the one before this Court, use of the percentage of
12 recovery as a basis for determination of attorneys' fees is the appropriate method. As noted by the
13 court in *Dunk v. Ford Motor Company*, 48 Cal.App.4th 1794, 1809 (1996), "In *Serrano v. Priest*,
14 20 Cal.3d 25 (1977) [citation omitted], the California Supreme Court acknowledged the use of a
15 percentage method in common fund cases." Here, a common fund has been created, and it
16 contemplates payment of attorneys' fees directly from that fund on a percentage basis.

17 The governing principles, as well as a survey of attorney fee jurisprudence (both in
18 California and throughout the country), are set out in *Lealao*. As the Court in *Lealao* explained, in
19 determining an attorney fee request, courts should strive to award fees equivalent to those "freely
20 negotiated in the legal marketplace in comparable litigation." *Lealao, supra*, at 50. "If courts were
21 to ask what fee structure an informed, sophisticated client would use to compensate his attorney
22 when close monitoring is not feasible, they would at least have focused on the correct question."
23 *Id.* at 48. As *Lealao* recognizes, fee awards that are too small will "chill the private enforcement
24 essential to the vindication of many legal rights and obstruct the representative actions that often
25 relieve the courts of the need to separately adjudicate numerous claims." *Id.* at 53. Finally, an
26 attorney's fee motion should not turn into "a second major litigation." *Id.* at 31 (citing *Hensley v.*
27 *Eckerhart*, (1983) 461 U.S. 424, 437). Where the amount of the available settlement is a "certain
28 easily calculable sum of money," California courts may calculate attorney fees as a reasonable

1 percentage of the settlement created. Weil and Brown, California Practice Guide, Civil Procedure
2 Before Trial, Chapter 14, section 14:145; *Dunk, supra*, at 1808.

3 The Common Fund Doctrine is predicated on the principle of preventing unjust enrichment.
4 It provides that when a litigant's efforts create or preserve a fund from which others derive
5 benefits, the litigant may require the passive beneficiaries to compensate those who created the
6 fund. Both state and federal courts in California have embraced this doctrine. *Serrano v. Priest*
7 *(Serrano III)*, *supra* at 35; *Crampton v. Takegoshi*, (1993) 17 Cal.App.4th 308, 317; *Vincent v.*
8 *Hughes Air West, Inc.*, 557 F.2d 759 (9th Cir. 1977) at 769.

9 In the present case, it is clear that the payments to the Class Members constitute a common
10 fund. Under the foregoing doctrine, courts have historically and consistently recognized that class
11 litigation is increasingly necessary to protect the rights of individuals whose injuries and/or
12 damages might not be resolved absent group representation.

13 Accordingly, in the determination of a reasonable common fund fee award, courts award
14 fees to serve as economic incentive for lawyers to bring class action litigation in order to achieve
15 increased access to the judicial system for meritorious claims and to enhance deterrents to
16 wrongdoing. *See A. Conte, Attorney Fee Awards*, 2nd Ed. 1993, 104, p.6.

17 The goal in a case such as this is to set a fee that approximates the probable terms of a
18 contingent fee contract negotiated by a sophisticated attorney and client in comparable litigation.
19 *Lealao, supra*, at 48. *In re Warner Communications Sec. Lit.* (S.D.N.Y. 1985) 618 F.Supp. 735,
20 Newberg on Class Actions, and other authorities in various judicial circuits all support the
21 conclusion that fees between 25% and 40% of a common fund have normally been awarded over
22 the past several years. Class Counsel's requested fee comes to 33.3%, a percentage well within the
23 range of reasonableness.

24 *Newberg on Class Actions Fourth Edition*, vol. 4, p. 560, §14.6 contains an interesting
25 analysis and discussion of the concept of a marketplace analysis and why it is so valuable in
26 determining a percentage award:

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1 [Goodrich and Silver⁹] ... suggest that fee awards should be
2 consistent with contingent fee arrangements negotiated in non-class
3 litigation:

4 1. . . . As Judge Posner emphasized in *In re Continental Illinois*
5 *Securities Litigations*, “[t]he object in awarding a reasonable
6 attorney’s fee...is to simulate the market...**The class counsel are**
7 **entitled to the fee they would have received had they handled a**
8 **similar suit on a contingent fee basis, with a similar outcome, for**
9 **a paying client.” In non-class litigations, one-third contingency**
10 **fees are typical. In their concurring opinion in *Blum*, Justices**
11 **Brennan and Marshall observed that “[i]n tort suits, an attorney**
12 **might receive one-third of whatever the plaintiff recovers. In**
13 **those cases, therefore, the fee is directly proportional to the**
14 **recovery.”**

15 Here, the excellent result justifies the awarding of a fee that is consistent with the standard
16 market fee. Class Counsels’ experience, reputation, and ability to obtain a substantial result for the
17 Class as expeditiously as possible should be rewarded.

18 **3. The Fees Appropriately Cross-Check with the Lodestar Method.**

19 It is sometimes helpful for courts to “cross-check” a percentage award by employing a
20 Lodestar coupled with a multiplier analysis. While the Lodestar method is generally considered
21 inappropriate in a common fund case where real cash benefits are made available to class members,
22 such as in this case, its use can provide further validation of the appropriateness of the percentage
23 award. See, *In re Prudential Ins. Co. of America Sales Practice Litigation* (D.N.J. 2000) 106 F.
24 Supp.2d 721.

25 The fee total for Gleason & Favarote LLP (“G&F”) for prosecuting the Action is
26 \$257,581.00. The hours G&F expended litigating the Action total 426.7. (Favarote Decl. ¶ 34.)
27 The costs incurred by G&F prosecuting the Action total \$17,762.63. (*Id.*, Exhibit 3). The fee total
28 for Becerra Law Firm (“BLF”) in prosecuting the Action are \$332,250 for the 443 hours that BLF
billed to the Action. (Becerra Decl., ¶ 13.) BLF also had \$3,166.53 in costs in the Action.
(Becerra Decl., ¶ 13; Exhibit 1.) As such, the total fees billed by Class Counsel collectively for the
Action equals \$589,831 plus \$20,929.16 in costs.

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⁹ Goodrich, Frank and Silver, Reagan, *Common Fund and Common Fund Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525 (Summer 1995).

1 There is a two-step Lodestar/multiplier method adopted in *Serrano III*, *supra*, 20 Cal. 3d at
2 48, and reaffirmed in *Ketchum v. Moses*, 24 Cal. 4th 1122, 1134 (2001). Trial courts first calculate
3 the “Lodestar,” consisting of “all the hours reasonably spent, excluding those relating solely to the
4 fee,” times reasonable hourly rates. *Ketchum*, *supra*, at 1133. The Lodestar may then be enhanced
5 or multiplied to take into account factors other than hours and rates that go into the determination
6 of a reasonable attorneys’ fee, as “the unadorned lodestar reflects the general local hourly rate for a
7 fee-bearing case; it does not include any compensation for contingent risk, extraordinary skill, or
8 any other factors a trial court may consider” *Id.* at 1138.

9 Here, Class Counsel base their Lodestar on attorney hourly rates typically charged by
10 attorneys with similar years of experience in similar litigation. Mr. Favarote, and Mr. Becerra, are
11 experienced class action litigators with over 45 years of combined practice of law. Mr. Favarote’s
12 and Mr. Becerra’s rates are \$750.00 per hour. (Favarote Decl., ¶ 35; Becerra Decl., ¶ 12.) Class
13 Counsel was over 3 years ago approved at this rate in this Court in *Arthur Barnes et. al. v. Target*
14 *Corp.*, Lead Case No. CIVDS2007761 (consolidated with Case Nos. CIVDS2012750 and
15 CIVDS2004578) and *Stokes et. al. v. Exact Staff, Inc.*, Case No. CIVDS1924628.

16 Class Counsel’s attorney’s fees requested (\$500,000) is less than 85% the total fees
17 billed by Class Counsel collectively which total \$589,831.

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1 **VII. CONCLUSION**

2 Based upon the foregoing, the parties respectfully request that the Court enter an order
3 granting final approval of the Settlement and approve the Class Representative Enhancement in the
4 amount of \$10,000 and Class Counsel's request for attorney's fees of \$500,000 (33.3% of the
5 Settlement) and costs of \$20,929.16.

6 Dated: January 24, 2025

7 BECERRA LAW FIRM
8 JOSEPH R. BECERRA

9 By: _____

10 Joseph R. Becerra

11 Attorneys for Plaintiff Ronghui Lee, on
12 behalf of himself and all others similarly
13 situated for the Certified Class

14 Dated: January 24, 2025

15 GLEASON & FAVAROTE, LLP
16 TOREY JOSEPH FAVAROTE
17 DAVID H. DANNING

18 By: _____

19 Torey Joseph Favarote

20 Attorneys for Plaintiff Ronghui Lee, on
21 behalf of himself and all others similarly
22 situated for the Certified Class
23
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1 **PROOF OF SERVICE**

2 I, Thomas Steinhart, declare:

3 I am and was at the time of the service mentioned in this declaration, employed in the
4 County of Los Angeles, California. I am over the age of 18 years and not a party to the within
5 action. My business address is Gleason & Favarote, LLP, 3646 Long Beach Blvd., Suite 203,
6 Long Beach, CA 90807.

7 On January 24, 2025, I served a copy(ies) of the following document(s):

8 **MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS
9 ACTION SETTLEMENT AND AWARD FOR ATTORNEYS' FEES, COSTS, AND CLASS
10 REPRESENTATIVE ENHANCEMENT**

11 on the parties to this action as follows:

Attorney	Party(ies) Served	Method of Service
GIBSON, DUNN & CRUTCHER LLP Michael Holecek Arthur Halliday Alexa L. Yarnell 333 South Grand Avenue Los Angeles, California 90071 Telephone: 213.229.7000 Facsimile: 213.229.7520 MHolecek@gibsondunn.com AHalliday@gibsondunn.com AYarnell@gibsondunn.com	Attorneys for Default Defendant/Non- Party HUNGRYPANDA US INC.	By Email

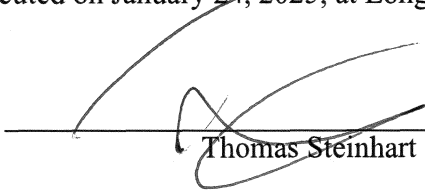


13 [BY ELECTRONIC TRANSMISSION] I caused said document to be sent by electronic
14 transmission to the e-mail address indicated for the party(ies) listed above.



16 [BY HAND] I directed the sealed envelope(s) to the party(ies) so designated on the
17 service list to be delivered by Ace Attorney Service, Inc. this date.

18 I declare under penalty of perjury under the laws of the State of California that the above is
19 true and correct, and that this declaration was executed on January 24, 2025, at Long Beach,
20 California.

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22 Thomas Steinhart
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