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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ELIA REZKALLA, Individually, and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

CORECIVIC, INC., a Maryland Corporation;
and CORECIVIC OF TENNESSEE, LLC, a
Tennessee Limited Liability Company, and
DOES 1-10, inclusive.

Defendants

CASE NO. 37-2021-00045841-CU-OE-CTL

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S UNOPPOSED MOTION FOR
FINAL APPROVAL OF (1) CLASS
ACTION SETTLEMENT; (2)
ATTORNEYS' FEES AND COSTS; and (3)
CLASS REPRESENTATIVE AWARD**

Date: June 30, 2023

Time: 1:30 p.m.

Dept: C-72

Judge: Hon. Timothy Taylor

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I. SUMMARY OF MOTION

This motion seeks final approval of a “wage and hour” representative (“PAGA”) and class action settlement, that was heavily litigated. Plaintiff ELIA REZKALLA has sued on behalf of a class of nonexempt employees who worked for the named Defendants during the operative class period, set forth herein.

Following the distribution of the approved Notice to the class, the proposed final settlement figures are as follows:

Final size of potential class:	1,084 Participating Class Members*
Objections to Settlement:	Zero (0)
Opt-Outs:	Zero (0)
Gross settlement amount (“GSA”):	\$950,000.00
Claims administration:	\$11,580.20
Costs/expenses of litigation:	\$10,378.93
LWDA payment:	\$37,500 (75% Share of \$50,000 allocation)
Attorney's fees:	\$316,666.67 (1/3 of GSA)
Class representative incentive:	\$5,000.00

***Please Note:** At preliminary approval, it was estimated that there were only 1,051 Class Members. As noted in this motion, there are actually 1,084 Class Members within the Settlement Class. However, this small change is not material as the settlement value was determined based on the total workweeks between class members, which was accurately represented during the negotiations.

There have been **no (zero) objections** to this proposed settlement. The *average* gross payment to each participating Class Member based on the above figures is **\$506.34** which does not account for the fact that certain class members will receive more or less than an “average” share, depending on the length of time each worked for Defendants during the class period. (Please see the declaration of Settlement Administrator Jeffrey Johnson at ¶ 16.)

II. UPDATED FACTUAL AND PROCEDURAL HISTORY

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

(ROA # 37 at § II-III.) The Court **granted** Preliminary Approval of the parties’ original settlement on March 17, 2023. (ROA # 53.)

The parties attended a highly adversarial mediation, presided over by a well respected “Wage and Hour” mediator (Lisa Klerman). The parties spent several additional months negotiating all final settlement terms and obtaining preliminary approval from the Court. (*Id.*)

Most importantly for purposes of final approval, **zero** employees (out of **1,084 individuals**) objected to the terms of this settlement and **zero** employees have opted out. (Johnson decl. ¶¶ 11-12.) Thus the class overwhelmingly supports the proposed settlement.

The parties Joint Stipulation of Class and PAGA Action (herein referred to in this motion as “the Agreement”) contains the terms of the class action settlement and is already on file with the Court. (ROA # 38: **Exhibit A** thereto.) For ease of reference, the Agreement will be cited to herein again as Agreement or Exhibit A.)¹

III. SETTLEMENT TERMS

The Agreement includes the following key terms:

1. Contingent Nature of the Settlement

The parties entered into the Agreement exclusively for the purpose of resolving the action and facilitating the negotiated settlement. Should the Court, for any reason, not finally approve the Agreement, or if the Agreement is terminated for any reason, then the Agreement will be null and void and this action will revert to its status with respect to any and all matters as they existed prior to the parties signing the Agreement. (**Ex. A** at ¶ 9.)

2. Description of the Settlement Classes

Solely for the purposes of the Agreement, the parties have agreed that the term “Class Member” is defined as:

all current and former nonexempt employees of Defendants who were employees in California between March 1, 2019 through January 1, 2023. (**Exhibit A** at ¶ I.Y.)

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

1 Class Notices were sent to 1,084 individuals, as determined by Defendants’ employment
2 records. (Johnson decl. ¶ 6(a).) **No** (zero) individuals have opted out of the litigation. (Johnson decl.
3 ¶ 11.) **No (zero)** Class Members have objected to the proposed settlement. (Johnson decl. ¶12.)
4 Following the Notice, there are a total of 1,084 total class members who will all receive a share of the
5 settlement proceeds. (Johnson decl. ¶ 13.)
6

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

8 CAC Services Group, LLC. (“CAC”) was used as the “Settlement Administrator” for purposes
9 of providing the Notice, and its instructions, to Settlement Class Members, issuing all payments
10 pursuant to the Agreement, and to track all opt-outs and objections to the settlement.

11 As detailed in the accompanying declaration, CAC successfully completed all steps of the
12 Notice process. (See Johnson decl. ¶¶ 4-14.)

13 **4. Scope of the Release**

14 For purposes of the Agreement, Class Members release all “Wage and Hour” claims that are
15 either or both: (1) alleged in the First Amended Complaint; or (2) or which relate to or arise out of the
16 allegations and claims asserted in the First Amended Complaint and could have been alleged in the
17 complaint relating in any way to violations of the wage and hour provisions of the California Labor
18 Code or the California Wage Orders, or any other wage and hour provisions of California law. The
19 precise release language is at **Exhibit A: ¶ I.Q.**
20

21 **5. Cash Payment and Allocation**

22 The Agreement provides for an automatic cash payment to the members of the class who do
23 not submit valid requests for exclusion. The settlement is non-reversionary, in that all of the Net
24 Settlement Amount, after all costs and fees are deducted, will be paid to the participating Class
25 Members.
26

27 Based on the final counts after the notice period, participating Class Members will be entitled
28 to an average share of approximately **\$506.34**. (Johnson decl. ¶ 16.) The actual amounts received vary

1 based on length of employment during the class period. The highest estimated payout is \$1,003.07 and
2 the lowest amount is \$1.02. (Johnson decl. ¶ 16.)

3 The settlement checks returned as undeliverable and those settlement checks remaining
4 un-cashed for more than one hundred twenty (120) calendar days after issuance will be tendered to the
5 California Controller's Unclaimed Property Fund in the name of the Participating Settlement Class
6 Member as listed on the settlement check. (**Ex. A** at ¶ 26.)

7 **6. Contingent Costs**

8 Defendant agrees to pay Three Hundred and Sixteen Thousand Six Hundred and Sixty-Six
9 Dollars and Sixty-Seven Cents (\$316,666.67) in attorneys' fees, which is thirty-three and one-third
10 (33 1/3%) of the total settlement, and up to Twelve Thousand Dollars (\$12,000.00) in litigation costs.
11 (See **Exhibit A** at ¶ 5.) The actual costs sought are less, and Plaintiff seeks reimbursement of
12 \$10,378.93. (Yaeckel decl. ¶ 20).

13 For costs incurred in administrating the settlement process, Defendants will pay the actual
14 costs, quoted at not to exceed \$12,500.00, out of the settlement amount to the Settlement
15 Administrator. (See **Exhibit A** at ¶ 7.) The actual costs sought are less, and the Administrator seeks
16 \$11,580.20 for its fees and costs. (Johnson decl. ¶ 17.)

17 Defendant also agrees to allocate Fifty Thousand Dollars (\$200,000.00) to Plaintiffs' PAGA
18 claims with 75% of the amount, or \$37,500.00, being paid to the LWDA, and 25%, or \$12,500.00,
19 being distributed amongst the class members. (See **Exhibit A** at ¶ 8.)

20 Defendants also agree to pay Plaintiff Five Thousand Dollars (\$5,000.00) as an enhancement
21 award in consideration for his service as Class Representatives. (**Ex. A** at ¶ I.F.) The enhancement
22 award was decided pursuant to good faith negotiations and is intended to recognize that it was the class
23 representatives who initiated the lawsuit, initiated the PAGA claims, provided critical documents and
24 witnesses to their attorneys, and worked with their attorney to propound and prepare written discovery,
25 all in an effort to obtain moneys allegedly owed not only to themselves, but to all other employees. For
26 further justification of the enhancements, please see the attached declarations of Mr. Rezkalla.
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IV. CONTROLLING LAW

The following facts and law support this undisputed request.

A. FINAL APPROVAL OF CLASS ACTION SETTLEMENTS

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

Fairness is presumed 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. *Chavez v. Netflix, Inc.*, (2008) 162 Cal.App.4th 43, 52; *Dunk v. Ford Motor Co.*, (1996) 48 Cal.App.4th 1794, 1802. But, even where it appears the settlement is fair, the court must still determine whether the settlement should be approved after considering "the strengths and weaknesses of the claims and risks of the particular litigation." *Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal.App.4th 116, 129. It considers: (i) the strength of the plaintiff's case; (ii) the risks, expense, complexity and likely duration of further litigation; (iii) the risk of maintaining class action status throughout the trial; (iv) the amount offered in settlement; (v) the extent of discovery completed; (vi) the stage of the proceedings; (vii) the experience and views of counsel; (viii) the presence of a governmental participant; and (ix) any reaction of putative class members. *Dunk, supra*, 48 Cal.App.4th, at 1800-1801; *In re Microsoft, supra*, 135 Cal.App.4th, at 723.

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

B. ATTORNEYS' FEES

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

The California Supreme Court's rationale was as follows:

we clarify today that use of the percentage method to calculate a fee in a common fund case, where the award serves to spread the attorney fee among all the beneficiaries of

1 the fund, does not in itself constitute an abuse of discretion. We join the overwhelming
2 majority of federal and state courts in holding that when class action litigation
3 establishes a monetary fund for the benefit of the class members, and the trial court in
4 its equitable powers awards class counsel a fee out of that fund, the court may
5 determine the amount of a reasonable fee by choosing an appropriate percentage of the
6 fund created. The *recognized advantages* of the percentage method—including relative
7 ease of calculation, alignment of incentives between counsel and the class, a better
8 approximation of market conditions in a contingency case, and the encouragement it
9 provides counsel to seek an early settlement and avoid unnecessarily prolonging the
10 litigation (See pt. I, ante; *Lealao, supra*, 82 Cal.App.4th at pp. 48–49, 97 Cal.Rptr.2d
11 797; *Rawlings v. Prudential–Bache Properties, Inc., supra*, 9 F.3d at p.
12 516)—**convince us the percentage method is a valuable tool that should not be
13 denied our trial courts.**

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

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

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

19 Critics of the lodestar method note, for example, the difficulty in applying the method
20 and cite the **undesirable incentives created by that approach**—i.e., a financial
21 **incentive to extend the litigation so that the attorneys can accrue additional
22 hours** (and thus, additional fees). Moreover, some courts and commentators have
23 criticized the lodestar method because **it gives counsel less of an incentive to
24 maximize the recovery** for the class.

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

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

29 C. CLASS REPRESENTATIVE ENHANCEMENTS

30 An incentive award may be appropriate to induce someone to serve as a class representative.
31 In determining whether to make an incentive award, the court may consider (1) the risk, both financial
32 and otherwise, the class representative faced in bringing the suit; (2) the notoriety and personal

difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit received by the class representative as a result of the litigation. *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1270 citing *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394-1395.

Additional factors to consider include:

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

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

V. ARGUMENT

A. THE PROPOSED SETTLEMENT IS MADE IN GOOD FAITH

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

1. Strength of Plaintiffs’ Case and Investigation and Discovery

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

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

As detailed more thoroughly in the preliminary approval motion, extensive (and often highly

1 contested) discovery occurred, followed by additional informal exchanges prior to mediation. (See
2 ROA # 37 at § II.)

3 Plaintiff obtained verified copies of Defendants' uniform time keeping, employee
4 compensation, Meal Period, Rest Period, and reimbursement policies. In addition to Plaintiffs' time
5 and wage records, Defendants also produced a large sampling of class member's records. Including
6 "outside" documentation, Counsel reviewed over 5,000 pages of documents. Through this review,
7 Plaintiffs' counsel was able to analyze and verify the following: the uniformity of Defendants'
8 "timekeeping" and compensation practices and the average net effect it had on Defendants' nonexempt
9 employees; the format and content of Defendants' itemized wage statements; the average rate of pay
10 for Defendants' nonexempt employees; and the average number of apparent meal period violations per
11 employee based on multiple sets of timekeeping data.

12 From this data, a detailed valuation of all claims was performed, and was presented to this
13 Court at the preliminary approval stage. (See ROA # 37 at § IV and the declaration of Eric Yaeckel
14 in Support of Preliminary Approval.)

15 While Plaintiffs maintained the claims were all viable, Plaintiffs (and their counsel) recognize
16 there were substantial risks to proceeding on behalf of a class and representative group. Defendants
17 presented several potentially valid defenses to certification, liability and mitigation of damages. (*Id.*)

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

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

24 If not for this settlement, any request by Plaintiffs to certify a class would have been heavily
25 contested by Defendants. (See ROA # 37 at § IV.)

26 Given the existence of viable defenses, for the vast majority of the class claims, it was unlikely
27 that all class claims could have been certified and brought to trial. Therefore, this class action
28 settlement is a superior result for both parties. In exchange for a full release, Class members are able

1 to recover substantial monetary amounts *now*. Defendant is also able to “buy its peace” and avoid the
2 costs of defending all future claims stemming from the same wage and hour issues in this case.

3 Regarding Plaintiff’s PAGA representative claims, there is also a substantial risk that Plaintiff
4 would either fail to obtain a favorable judgment on one or more of these claims, or that a favorable
5 award on one or more PAGA claims can be reduced. *See Thurman v. Bayshore Transit Mgmt., Inc.*,
6 (2012) 203 Cal.App.4th 1112, 1135 (holding the Superior Court may “mitigate” PAGA penalties, even
7 after a finding of liability).

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

9 Class Counsel has considerable experience in wage and hour and class action litigation. Mr.
10 William Sullivan has over 28 years of experience, 27 years of which has been devoted to both
11 prosecuting and defending class action litigation. Mr. Eric Yaeckel has over 12 years of experience
12 as an attorney who is primarily engaged in prosecuting class and representative actions.

13 Based on a detailed analysis of all the claims and the risks involved in continuing litigation,
14 class counsel submits the \$950,000.00 Gross Settlement Fund represented a fair, and more than
15 reasonable, settlement. (Yaeckel decl. ¶¶ 3-9.)

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

17 Although the State is not directly involved in this action, Plaintiffs “stand in the shoes” of the
18 Labor and Workforce Development Agency (“LWDA”) by bringing a PAGA action. Consideration
19 has been made to compensate to Labor Workforce Development Agency ("LWDA") in the amount of
20 \$37,500.00 (which is the LWDA's 75% share of a \$50,000 allocation).

21 The LWDA was notified and declined to prosecute the claims itself. Counsel for the parties
22 believe this is a fair, reasonable, and adequate allocation. (Yaeckel decl. ¶ 12.) The LWDA was also
23 served with copies of the Settlement and Preliminary Approval Motion and has not objected or
24 responded to date. (*Id.*) They have also been served with the notice of this motion and all supporting
25 documents. (See concurrently filed Proof of Service.) Counsel will submit a declaration updating the
26 Court should the LWDA provide any response.

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

28 A total of 1,084 members of the settlement class were notified and **zero** members opted out of

1 the class. (Johnson decl. ¶¶ 6(a), 11, 13.)

2 Perhaps most importantly, **there have been No (Zero) objections to the terms of the**
3 **proposed settlement.** (Johnson decl. ¶ 12.)

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

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

9 Plaintiffs will seek, and Defendants will not oppose, a payment of Three Hundred and Sixteen
10 Thousand Six Hundred and Sixty Six Dollars and Sixty-Seven Cents (\$316,666.67) in attorneys’ fees,
11 which is 1/3 of the total settlement, and Ten Thousand Three Hundred Seventy Eight Dollars and
12 Ninety Three Cents (\$10,378.93) in litigation costs. (See **Exhibit A** at ¶ 5 and 7.)

13 As set forth below, the requested attorney’s fees are inherently reasonable, on the basis of both
14 a percentage of the recovery and a lodestar method, given the results obtained for the class. The
15 following factors establish the reasonableness of the attorney’s fees requested.

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

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

22 There is an **established practice** in the private legal market to reward attorneys for taking the
23 risk of non-payment by paying them a **premium over their normal hourly rates** for winning
24 contingency cases. *In re Washington Public Power Supply System Securities Litigation* (9th Cir. 1994)
25 19 F.3d 1291, 1299. If attorneys' efforts create a benefit for others in addition to their own client, the
26 court is empowered to award fees from that fund. *Boeing v. Van Gemert* (1980) 444 U.S. 472, 478.

27 The rationale for fee enhancement in contingency cases has been explained as follows:

28 'A contingent fee must be higher than a fee for the same legal services paid as they
are performed. **The contingent fee compensates the lawyer not only for the legal**

1 services he renders but for the loan of those services. The implicit interest rate
2 on such a loan is higher because the risk of default (the loss of the case, which
3 cancels the debt of the client to the lawyer) is much higher than that of
4 conventional loans.' (Prosner, Economic Analysis of Law (4th ed.1992) pp. 534,
5 567.) 'A lawyer who both bears the risk of not being paid and provides legal
6 services is not receiving the fair market value of his work if he is paid only for
7 the second of these functions. If he is paid no more, competent counsel will be
8 reluctant to accept fee award cases.' (Leubsdorf, The Contingency Factor in
Attorney Fee Awards (1981) 90 Yale L.J. 473, 480; see also Rules Prof. Conduct,
rule 4-200(B)(9) [recognizing the contingent nature of attorney representation is an
appropriate component in considering whether a fee is reasonable]; ABA Model
Code Prof. Responsibility, DR 2-106(B)(8) [same]; ABA Model Rules Prof.
Conduct, rule 1.5(a)(8). [] **Such fee enhancements are intended to compensate for
the risk of loss generally in contingency cases as a class.**
Beasley v. Wells Fargo Bank (1991) 235 Cal.App.3d 1407, 1419 (disapproved on other grounds.)

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

11 The bases of the equitable rule which permits surcharging a common fund with the
12 expenses of its protection or recovery, including counsel fees, appear to be these:
13 fairness to the successful litigant, who might otherwise receive no benefit because his
14 recovery might be consumed by the expenses; correlative prevention of an unfair
15 advantage to the others who are entitled to share in the fund and who should bear their
16 share of the burden of its recovery; **encouragement of the attorney for the
successful litigant, who will be more willing to undertake and diligently
prosecute proper litigation for the protection or recovery of the fund if he is
assured that he will be promptly and directly compensated should his efforts be
successful.**

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

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

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

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

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

27 Plaintiff's counsel was precluded from accepting other employment and clients due to the
28 necessity of maintaining the prosecution of the instant matter and also precluded them from bringing

clients to the firm (Yaeckel decl. ¶ 17.)

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

Plaintiff's counsel, William B. Sullivan, has been a California-licensed attorney for approximately 28 years. William B. Sullivan has approximately 27 years of experience in "class action" litigation, both as plaintiff and defense counsel. (Yaeckel decl. ¶ 3.) Mr. Yaeckel has over 12 years experience prosecuting class and representative actions on behalf of California Employees. (Yaeckel decl., ¶ 4.) Class counsel are the attorneys of record in a matter very recently (and favorably) decided before the California Supreme Court titled *Donohue v. AMN Services, LLC*, 11 Cal.5th 58 (2021). The *Donohue* matter is a certified class and PAGA action. (Yaeckel decl. ¶ 5.) The *Donohue* matter is a certified class and PAGA action. Plaintiff's counsel, are currently lead counsel on approximately 30 employment "wage and hour" claims with class action, or representative action allegations. (Yaeckel decl. ¶ 6.)

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

Based on said experience, it is the opinion of counsel that this settlement represents a fair and adequate payment. (Yaeckel decl. ¶ 9.)

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

This is not a "coupon" class action case. (Yaeckel decl. ¶ 18.) The Class is set to receive significant monetary benefits they would not have received if Class Counsel did not act. (*Id.*) Participating members of the Class will receive an average of \$506.34, with some class members receiving as much as \$1,003.07. (Johnson decl. ¶ 16.)

7. A Percentage of the Common Fund Award is Proper

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

Plaintiff's counsel submits that the request for 33 & 1/3 % in attorneys fees from the "common

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

California Courts routinely approve class action attorneys' fee awards "averag[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions).

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

8. The Lodestar Cross-Check

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

As set forth in the attached Declaration of Eric K. Yaeckel, the actual lodestar attorney's fees incurred (to date) are estimated to amount to be approximately **\$255,618.00** The Attorney's fees are broken down as follows:

Mr. William Sullivan served as lead investigator and trial counsel, per the specific request of Plaintiffs. (Yaeckel decl. ¶ 19(a).) The billing rate for Mr. William Sullivan is **\$720.00** per hour. (Yaeckel decl. ¶ 19(a).) Over the course of the investigation (including pre-filing), Mr. William

1 Sullivan has currently expended approximately **162.7** hours in the service of this action. **162.7** hours
2 times **\$720.00** equals **\$117,144.00**. The work includes nearly all preliminary investigation, some client
3 and Class interaction/meetings, and some pre-settlement work, including the preparation of Plaintiff's
4 Mediation Brief and damages analysis. (*Id.*) This time also includes traveling to at least 36 interviews
5 with proposed Class Members residing across various parts of California. (*Id.*) The preliminary
6 investigation included the review and analysis of several documents. (*Id.*) During this time, Mr.
7 Sullivan also investigated Defendant, its business practices, and any variations in Class Members' job
8 duties and rates of pay. (*Id.*)

9 Mr. Eric Yaeckel, was the partner primarily assigned to oversee the "day to day" activity of the
10 primary associates assigned to this case. The billing rate of Mr. Yaeckel is **\$600.00** per hour. (Yaeckel
11 Decl. ¶ 19(b)). Mr. Eric Yaeckel has currently expended approximately **99.4** hours in the service of this
12 action. **99.4** hours times **\$600.00** equals **\$59,640.00**. (Yaeckel Decl. ¶ 19(b).) Aside from supervising
13 the Associates, this work includes attending hearings and most of the day to day communication with
14 opposing counsel. Mr. Yaeckel also primarily handled the numerous exchanges between the mediator
15 and Defense counsel to negotiate and finalize the settlement following the progress made at mediation.
16 Mr. Yaeckel also undertook the review and drafting of all settlement documents and the preliminary
17 and final approval motions. (*Id.*)

18 Mr. Ryan Kuhn and Ms. Karoline Kitlowski (briefly) also served as Associate Attorneys
19 assigned to the case. (Yaeckel decl. ¶ 19c.) The associates' billing rate on this matter is **\$420.00** per
20 hour. The associates expended approximately **180.2** hours in the service of this action. **180.2** hours
21 times **\$420.00** equals **\$75,684.00**. The work performed by the associates consisted of, for the most part,
22 analysis of Defendants' documents and records, in preparation for mediation and a class certification
23 motion. The associates were also assigned to discovery creation/review, the preparation of "meet and
24 confer" letters and other contact with defense counsel, and the drafting and filing of numerous separate
25 motions, including pleadings challenges and numerous different motions to compel discovery. The
26 associates also provided an analysis of employment records to determine "commonality" and damages.
27 (Yaeckel decl. ¶ 19(c).)

28 Based on past experience, counsel estimates Mr. Yaeckel will incur an additional 7.5 hours in

1 assisting Class Members on questions and issues regarding the settlement, meeting with Class
2 Members (including those who file "late" submissions), and preparing for and attending the Final
3 Approval hearing in this matter. 7.5 times \$420.00 equals **\$3,150.00**.(Yaeckel decl. ¶ 19(d).)

4 **9. The Lodestar Multiplier**

5 Given the attorneys fees incurred – in the approximate amount of **\$255,618.00**– a multiplier
6 of approximately **1.24** is necessary for the full award requested (and undisputed) by Plaintiff.

7 California courts and the Ninth Circuit hold that the trial court in determining whether to apply
8 a multiplier should look at the case and its results as a whole. Historically, California courts have
9 approved **multipliers of 1.5 to 4**. See *Coalition for Los Angeles County Planning v. Board of*
10 *Supervisors*, (1977) 76 Cal. App. 3d 241, 251 (multiplier of 2+); *Kern River Public Access Committee*
11 *v. City of Bakersfield*, (1985) 170 Cal. App. 3d 1205, 1228 (multiplier of 1.5); *Downey Cares v.*
12 *Downey Community Development Commission*, (1987) 196 Cal. App. 3d 983, 994 (multiplier of 1.5);
13 *Sternwest Com. v. Ash*, (1986) 183 Cal. App. 3d 74, 75.

14 Furthermore, the Federal courts have applied multipliers ranging from 1.7 to 4.0, even when
15 the class action involved relatively routine issues. See *Rabin v. Concord Assets Group, Inc.*, (S.D.N.Y.
16 1991) Fed. Sec. L. Rep. (CCH) Par. 96,471 at 92, 091 (multiplier of 4.4); *Behrens v. Wometco*,
17 (S.D.Fla 1988) 118 F.R.D. 534, 549 (multiplier of 3); *Rievman v. Burlington Northern Railroad Co.*,
18 (S.D.N.Y. 1987) 118 F.R.D. 29, 35 (noting multiplier~ between 3 and 4.5 are common).

19 Here, the multiplier requested is within the range of what California and federal courts often
20 apply in class action cases. Moreover, the results obtained here, versus the risk of a zero recovery,
21 given the numerous asserted defenses, support this modest multiplier request. (Yaeckel decl. ¶ 22.)

22 Additionally, the settlement provides the class with a substantial monetary amount and the class
23 strongly supports the fairness of the settlement, even after being notified of the requested attorneys'
24 fee award (0 opt-outs, **and 0 objections**). In the event the Court deems a lodestar analysis is necessary
25 it will confirm that Plaintiff's fees are reasonable.

26 **10. The Amount of Costs**

27 Class Counsel has expended approximately **\$10,378.93** in costs, including filing fees, travel,
28 mediation, copying and document preparation charges, expert fees, and delivery/service fees. (Yaeckel

decl. ¶ 20.) Defendant agreed not to oppose an amount of up to \$12,500.00 in costs. Accordingly, Plaintiff's counsel therefore seeks approval of the actual costs of \$10,378.93. (Yaeckel decl. ¶ 21.)

C. THE REQUESTED CLASS REPRESENTATIVE ENHANCEMENT IS REASONABLE

Plaintiff requests an enhancement award of **\$5,000** to Mr. Rezkalla (the named Plaintiff) for serving as the class representative. Defendants do **not** oppose this request. The class was notified and does **not** object.

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

Plaintiff contributed extensive time and resources in the prosecution of this case. Plaintiff was able to provide information instrumental to the prosecution of this matter including identifying numerous witnesses that could corroborate his claims. The plaintiff also assisted with reviewing and providing insight on Defendant's documents produced. (Yaeckel decl. ¶ 24; See Rezkalla decl. ¶¶ 3-8.)

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

Any company who does a detailed background check, will be able to determine that Plaintiff asserted legal claims against their former employer. An entire industry exists that allows employers to run extensive background searches on potential employees. Companies who provide these services specifically highlight the fact that their services allows employers to weed out litigious employment candidates. (Yaeckel decl. ¶¶ 26-28.)

In addition, the Plaintiff's co-workers have all been notified of the lawsuit, so there is a large pool of peers who now know of each of him bringing claims against a former employer, which could also jeopardize future positions.

Plaintiff also risked personally owing a large cost award, into the tens of thousands of dollars, had his claims been unsuccessful. (See Rezkalla decl. ¶ 9.)

Despite all the risks Plaintiff, at all times remained committed to securing a monetary recovery on behalf of the entire class. (See Rezkalla decl. ¶ 10.)

Accordingly, Plaintiff asks the Court to approve a class representative enhancement in the amount of \$5,000 to Mr. Rezkalla.

VI. CONCLUSION

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

Dated: June 7, 2023

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Ryan T. Kuhn
Karoline D. Kitlowski
Attorneys for Plaintiff ELIA REZKALLA, Individually,
and on behalf of other members of the public similarly
situated