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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SAN FRANCISCO**

15 LILIYA GOTISHAN, as an individual and
16 on behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 KYO AUTISM THERAPY, LLC, a
20 California limited liability company; and
21 DOES 1-50, inclusive,

22 Defendants.

Case No.: CGC-21-596378

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND REQUEST FOR
ATTORNEY'S FEES AND COSTS

[Filed concurrently with Notice of Motion and
Motion; Declarations of Chad Saunders, Liliya
Gotishan, and Bryn Bridley; [Proposed] Order]

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Liliya Gotishan seeks final approval of a non-
3 reversionary class and representative action settlement (“Settlement”) resolving wage and hour
4 claims on behalf of 2,992 individuals who were employed by Kyo Autism Therapy, Inc. (“Kyo” or
5 “Defendant”) as hourly non-exempt employees in California during the class period of November
6 10, 2017 through January 1, 2023. The proposed \$1,015,000 total settlement provides about
7 \$572,196 in cash payments to the Settlement Class, with an average award of about \$195, plus
8 additional amounts payable under PAGA. The remaining balance will cover a modest service
9 award to Plaintiff, settlement administration costs, civil penalties to the state, and reasonable
10 attorneys’ fees and costs. The parties and their counsel finalized the Settlement after extensive and
11 difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The
12 Court conditionally certified the Class and preliminarily approved the Settlement on April 12,
13 2023. Since then, the Court-approved class notice form (“Class Notice”) was mailed to the Class
14 Members on June 27, 2023, and they reacted very favorably to the Settlement. No Class Members
15 requested exclusion, and there are no objections.

16 Class Counsel secured an excellent Settlement with Defendant after extensive
17 investigation, litigation, and settlement negotiation and administration, all without any
18 compensation for services rendered or costs expended. The Class Notice duly informed
19 the Class Members that Class Counsel would request attorneys’ fees not to exceed 1/3 of
20 the Gross Settlement Amount, or \$338,333.33, along with reimbursement of no more
21 than \$30,000 for actual costs incurred litigating this matter. As of the filing of this
22 motion, *not one Class Member objected* to the proposed fee award. Consistent with the
23 Settlement and Class Notice, Plaintiffs now respectfully request the Court award Class
24 Counsel's fees in the amount of \$338,333.33 and actual costs in the amount of
25 \$14,470.08, as described in the Declaration of Chad Saunders (“Saunders Decl.”) filed
26 herewith. The requested attorney’s fees are well within the range of reasonableness,
27 especially considering the complex and risky nature of this litigation, the contingent risk
28

1 assumed, the nearly two-plus year delay in payment and, when subjected to a lodestar
2 crosscheck, results in a modest lodestar enhancement of 1.36.

3 Accordingly, on behalf of themselves and the Settlement Class, Plaintiff respectfully
4 requests the Court grant this motion, give full and final approval to the Settlement, grant
5 Class Counsel's request for attorneys' fees and costs, and enter judgment accordingly.

6 **II. BACKGROUND**

7 The details of the procedural and factual background of this matter were outlined in
8 the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about
9 January 18, 2022). To re-familiarize the Court with this litigation, defendant Kyo provides
10 autism therapy services to client patients throughout most of California. Plaintiff Gotishan worked
11 for Kyo as a non-exempt employee from approximately January to October 2020. On November
12 10, 2021, Plaintiff, behalf of herself and all others similarly situated, filed a class action and
13 PAGA complaint in this Court seeking damages and civil penalties against Defendant for several
14 alleged violations of the Labor Code and applicable IWC Wage Orders. Plaintiff asserted her
15 claims on behalf of individuals who worked for Defendant as non-exempt employees in California
16 during the relevant time frame. [Saunders Decl., ¶ 3.]

17 Plaintiff asserts multiple wage and hour claims against Defendant. First, Plaintiff contends
18 she and the class members did not receive all wages due, as based on review of time sheets and
19 other records produced by Kyo, it appears Kyo rounded off employee time punches such that the
20 employees lost hours worked and related compensation. Those same records also suggest
21 employees frequently worked split shifts but did not receive the additional compensation required
22 for working a split shift. Plaintiff next contends she and other employees did not receive all
23 required meal and rest breaks, or did not receive them on a compliant basis, and did not receive an
24 extra hour of premium pay in lieu of a missed or non-compliant break. Plaintiff also contends
25 employees used their own vehicles to travel for work purposes without proper reimbursement.
26 Finally, Plaintiff alleges Kyo's wage statements were inaccurate on their face because the
27 statements miscalculated the total hours worked by double counting any overtime hours.
28 [Saunders Decl., ¶ 4.]

1 Based on these allegations, Plaintiff's class action complaint asserts claims for: (1) failure
2 to pay all wages due, including split shift premiums; (2) failure to provide all required meal and
3 rest breaks or compensation in lieu thereof; (3) failure to provide accurate, itemized wage
4 statements; (4) failure to pay all wages due upon termination of employment; (5) failure to
5 reimburse expenses, and (6) violations of the Unfair Competition Law, Bus. & Prof. Code sections
6 17200, *et seq.* Plaintiff also alleges a claim under the Private Attorneys General Act based on the
7 same alleged Labor Code violations. [Saunders Decl., ¶ 5.]

8 Kyo has at all times denied Plaintiff's allegations and maintained its meal break and
9 payroll policies and procedures complied with California law, that it provided the class members
10 with required meal and rest breaks, that it paid break premium payments when there were
11 documented violations, that it paid Plaintiff and the class members all wages due, including any
12 required split time premiums, and that it issued legally compliant wage statements. Kyo further
13 contends its expense reimbursement policies provided appropriate reimburse for use of personal
14 autos. Additionally, Kyo strongly contends the case cannot be maintained as any kind of class or
15 representative action, arguing for instance that, to the extent class members missed breaks, that
16 such breaks were non-compliant, it was against company policy, and intermittent or infrequent and
17 evidence of such violations would be purely anecdotal. Thus, per Kyo, individual issues
18 predominate, class certification would be inappropriate, and trial would be unmanageable.
19 [Saunders Decl., ¶ 6.]

20 After Plaintiff filed the complaint, the Parties engaged in meet and confer discussions
21 regarding discovery, potential law and motion, and the merits of the case, and ultimately agreed to
22 attempt early global mediation. They then engaged in significant informal discovery to facilitate
23 an exchange of information necessary to engage in a meaningful mediation. The parties then
24 engaged Lisa Klerman, Esq., a respected mediator with extensive wage and hour class action
25 experience and, in August 2022, participated in a full day mediation with Ms. Klerman that
26 resulted in the proposed settlement. [Saunders Decl., ¶¶ 7-8.] This Court preliminarily approved
27 the Settlement on April 12, 2023.

28 Class Notices were mailed to Settlement Class on June 27, 2023, with a 60-day

1 window (to August 26, 2023) for any Settlement Class Member to opt out or object to the
2 proposed Settlement. [Declaration of Bryn Bridley (“Bridley Decl.”), ¶¶ 6, 10.]

3 **III. PROPOSED SETTLEMENT TERMS**

4 Under the settlement, Kyo will pay \$1,015,000.00 into a common fund, the Gross
5 Settlement Amount or GSA. Attorney’s fees of up to one-third of the GSA (\$338,333.33),
6 litigation costs of up to \$30,000 (only \$14,470.08 is requested), an enhancement award of \$10,000
7 for the plaintiff, settlement administration costs of no more than \$20,000, and a payment of
8 \$50,000 for PAGA civil penalties (of which \$37,500 (75%) will go to the Labor & Workforce
9 Development Agency for its share of the PAGA penalties and \$12,500 (25%) will be paid to
10 PAGA Employees¹), all will be paid from the GSA. The remainder of approximately \$572,196
11 will be allocated to the Participating Class Members based on their total weeks worked during the
12 Class Period. No portion of the GSA will revert to Kyo. [Saunders Decl., ¶ 9.]

13 **A. Certification of the Settlement Class**

14 The Court conditionally certified a Settlement Class defined to include including all
15 current and former hourly non-exempt employees employed by Kyo in California during the Class
16 Period of November 10, 2017 through January 1, 2023. The Settlement Administrator
17 ultimately mailed Class Notices to 2,992 individuals identified as members of the Settlement
18 Class. [Bridley Decl., ¶ 6.] Nothing has changed to require reconsideration of the Court’s
19 certification of the Settlement Class.

20 **B. The Benefit Conferred on the Settlement Class**

21 As noted, the settlement obligates Kyo to pay \$1,015,000 to resolve the claims of the
22 Settlement Class, inclusive of attorney’s fees and costs. At least \$576,196 from the GSA will be
23 distributed to the Participating Class Members, with additional amounts going to PAGA
24 Members² for their portion of the PAGA payment. This is a cash settlement that does not require
25 Participating Class Members to submit a claim form to receive their settlement share.
26 Participating Class Members will receive their settlement checks automatically via First Class

27 ¹ “PAGA Members” means all non-exempt employees of Defendant from September 15, 2020 through January 1, 2023
28 (the “PAGA Period”).

1 U.S. Mail. One-third of each settlement share will be allocated to wages and the remaining two-
2 thirds will be allocated to alleged unpaid expenses, penalties and interest. Kyo will pay any and all
3 applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the
4 Court's approval, any amounts not cashed, will be forwarded to the State Controller's Unclaimed
5 Property Fund. [Saunders Decl., ¶ 11.]

6 Each Participating Class Member will receive a share of the Net Settlement Amount based
7 on his or her total weeks worked for Kyo in California during the Class Period while employed in
8 a non-exempt position. Thus, each Class Member's Individual Settlement Share will be calculated
9 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium
10 wages for missed meal breaks, and potential statutory penalties under applicable law. These
11 methods are intended to ensure each Class Member receives a portion of the available settlement
12 funds corresponding to the relative value of his or her potential claims. The proposed allocation
13 provides a reasonable way to compensate Class Members based on the amount of time they
14 worked for Kyo and the number of instances they missed a meal break, were not provided
15 compensation in lieu of such missed breaks, lost wages due to the alleged failure to pay split shift
16 premiums, or did not receive proper expense reimbursement. [Saunders Decl., ¶ 12.]

17 The average overall award currently is estimated to be approximately \$195, with a
18 maximum award of over \$1,290. The average award to the PAGA Members will be about \$6,24.
19 [Bridley Decl., ¶¶ 12-13.]

20 **C. Settlement Administration**

21 Atticus Administration, Inc., as the Court-approved Settlement Administrator, mailed
22 the Class Notice to the Settlement Class after making all reasonable effort to ascertain the
23 best mailing address, including running each address through the National Change of Address
24 database and "skip-tracing" any Class Notice returned as undeliverable. [Bridley Decl., ¶¶ 4-
25 7.] The Class Notice, previously approved by the Court, duly informed the Settlement Class
26 of the Settlement terms, including the estimated relief each Settlement Class Member will
27 receive, the amounts to be requested for attorney's fees and costs, and the requested
28 enhancement award, and the right to opt out of or object to the Settlement. [Bridley Decl., ¶ 6,

1 Exh. A.] Atticus mailed 2,992 Class Notices on June 27, 2023. [Bridley Decl., ¶ 6.] At the
2 time this motion was filed, 44 Class Notices were deemed undeliverable, representing a
3 98.4% success rate. [Bridley Decl., ¶ 6.] The 60-day response window for objecting to or
4 opting out of the Settlement will expire on August 26, 2023. [Bridley Decl., ¶ 10.] As of the
5 filing of this motion, Atticus has received zero requests for exclusion and zero objections to
6 the Settlement. No disputes have been submitted regarding the information used to calculate
7 any Participating Class Member's Individual Settlement Payment. [Bridley Decl., ¶ 10.]
8 Since the response deadline falls after the filing deadline for this motion, Atticus will submit a
9 supplemental declaration to confirm the final numbers prior the September 14 hearing.
10 [Bridley Decl., ¶ 10.]

11 **D. Release of Claims**

12 All Participating Class Members will be deemed to release defendant Kyo from all claims
13 alleged in the operative complaint, or that could have been brought based on the allegations in the
14 operative complaint, from November 10, 2017 through January 1, 2023. PAGA claims will be
15 released for the period of September 15, 2020 through January 1, 2023. The release is limited to
16 the claims that were actually pleaded or could have been pleaded based on the alleged facts in the
17 operative complaint. [Saunders Decl., ¶ 15.]

18 **E. PAGA and Notice to the LWDA**

19 As noted, the Parties allocated \$50,000 from the GSA to resolution of Plaintiff's claims
20 under PAGA, and it is respectfully requested that the Court approve that amount. The proposed
21 PAGA period is from September 10, 2017 to January 1, 2023, and there are 2,004 PAGA
22 Members eligible for a payment under PAGA. [Bridley Decl., ¶ 4.] As required by Labor Code
23 section 2699(l)(2), Plaintiff gave notice of the settlement and the approval hearing to the LWDA
24 via its online portal. [Saunders Decl., ¶ 17; Exh. 1.]

25 **IV. ARGUMENT**

26 The law favors settlement, particularly in class actions where substantial resources can
27 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
28 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle

1 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
2 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
3 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
4 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
5 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
6 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
7 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
8 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
9 two-step process intended to determine whether, under the totality of circumstances, the
10 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
11 Cal.App.4th at 245.

12 On a motion for final approval, the trial court is charged with determining whether, in
13 light of the total circumstances of the action and the response of the class members to the
14 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
15 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
16 determination and may consider a number of relevant factors, including: the strength of
17 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
18 further litigation; the amount offered in settlement; the extent of discovery and stage of the
19 proceedings; the experience and opinion of counsel; and the reaction of class members to the
20 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
21 courts generally apply a presumption of fairness to a proposed class action settlement when:
22 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
23 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
24 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;
25 Wershba, 91 Cal.App.4th at 245.

26 **A. The Settlement Merits Final Approval**

27 The Settlement of this action warrants final approval under the standards summarized
28 above. The Settlement is fair, reasonable and adequate, and represents a favorable resolution

1 of highly disputed claims. Further, the Settlement has been overwhelmingly approved by the
2 Settlement Class to this point, as there are no objections and zero class members have
3 requested exclusion as of the filing of this motion.

4 **1. The Settlement Is the Product of Arm's-Length, Informed Negotiations**

5 The Settlement is not the result of fraud or collusion. Rather, the proposed Settlement
6 was reached following arm's-length negotiations presided over by Lisa Klerman, Esq., a highly
7 respected and well-known mediator with extensive experience mediating wage and hour class
8 actions. [Saunders Decl., ¶ 8.] Moreover, Plaintiff and her counsel were well-informed about
9 the facts and the law, and counsel Zachary Crosner, Jamie Serb, and Chad Saunders have years of
10 litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-
11 qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
12 [Saunders Decl., ¶¶ 29-38.] Defendant likewise was represented by highly-qualified and
13 experienced defense counsel. Both sides advocated vigorously for their clients and nothing was
14 "left on the table."

15 **2. The Class Reacted Favorably to the Settlement**

16 Thus far the Settlement has been well-received by the Settlement Class. As of the filing
17 of this motion, no objections have been filed, and no class members have requested exclusion.
18 [Bridley Decl., ¶ 10.] As many courts recognize, class member reaction to the settlement is one of
19 the most important factors to consider in determining if final approval should be granted. Mandujano
20 v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank
21 Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of
22 the class to the settlement is perhaps the most significant factor to be weighed in considering its
23 adequacy") (internal quotation marks omitted).

24 **3. The Settlement Is Fair and Reasonable Considering the Benefits**
25 **Conferred, the Case Value, and Significant Litigation Risks**

26 The Settlement involves a substantial sum of money that, when distributed, will confer
27 meaningful monetary benefits on the Settlement Class. As described above, each individual
28 award will be based on an allocation consistent with the nature of the claims asserted and will

1 fairly and equitably allocate the available funds in relation to the degree of alleged damage each
2 Settlement Class Member incurred. While Settlement Class Members who worked for only a
3 short period of time will receive relatively small sums, those with longer tenures and who
4 worked more hours and shifts throughout the Class Period will receive appropriately larger
5 awards.

6 Prior to settlement, the parties engaged in extensive informal discovery to facilitate
7 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
8 Defendant's payroll practices, pay stubs and time records for a sampling of Settlement Class
9 Members, wage and hour policies, etc., and information from Defendants regarding the class size
10 and breakdown, workweeks, rates of pay, and other information used to formulate a damages model
11 with the assistance of a consulting expert. Plaintiff's counsel are confident they obtained sufficient
12 information to enable them to understand the law and facts of this case and make an informed
13 decision regarding the settlement and whether it is in the best interests of the Settlement Class.
14 [Saunders Decl., ¶¶ 7, 14.]

15 Using that data, Plaintiff ran various calculations and estimated Kyo's likely maximum
16 exposure on the class claims at approximately \$14,630,000 million, including \$1,330,000 on the
17 unpaid wage/split shift claims, \$81,000 on the unpaid wage/rounding claims, \$2,284,000 on the
18 meal break claims, \$1,661,000 on the rest break claims, \$374,000 on the expense reimbursement
19 claims, \$2,202,000 on the wage statement claims, and \$7,072,000 on the waiting time penalty
20 claims. However, in light of the multiple and considerable risks posed by proceeding with the
21 litigation, Plaintiff and Plaintiff's counsel substantially discounted the value of these claims.
22 [Saunders Decl., ¶¶ 23-24.]

23 First, Plaintiff contends Kyo rounded employee time punches to nearest quarter-hour, and
24 that such rounding overall favored the employer over the employee and caused the class members
25 to lose significant amounts of compensable time due to the rounding. In response, Kyo argued its
26 time was entirely neutral in its overall effect on employee time, and thus permissible under
27 California law. See's Candy Shops, Inc. v. Superior Court (2012) 210 Cal. App. 4th 889 (2012);
28

1 *see also* DLSE Enforcement Policies and Interpretations Manual (Revised), at §§ 47.1, 47.2 (2019
2 ed.). [Saunders Decl., ¶ 25.]

3 On the split shift issue, class members frequently worked in two separate 3.5 to 4 hours
4 “shifts” in a day, with each segment separated by two hours or more. Wage Order 15, §2(R)
5 (defining a split shift as “a work schedule which is interrupted by non-paid non-working periods
6 established by the employer, other than bona fide rest or meal periods.” Wage Order 5, § 2(R).but
7 did not receive a required split shift premium. Wage Order 15, § 4(C) (“[w]hen an employee
8 works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the
9 minimum wage for that workday[.]”) Defendant countered these breaks typically were travel time
10 between appointments, for which it paid the class members and, accordingly, the shift was not
11 “split” such that premiums were required. [Saunders Decl., ¶ 26.]

12 For the meal and rest break claims, regardless of the legitimacy of the applicable written
13 policies, Plaintiff argued Defendant’s own records reflect violations. First, per Plaintiff, the
14 records provided by Defendant do not show the start and stop times of meal periods, and second,
15 the time rounding practice, as applied to meal periods, runs afoul of Donohue v. Amn Servs., 11
16 Cal. 5th 58, 61 (2021), where the California Supreme Court held even minimal intrusions into
17 lunch periods occasioned by rounding may violate the law. [Saunders Decl., ¶ 27.]

18 In response, Defendant argued its break policies were fully compliant with California law,
19 and that it provided all required meal periods and thereby met its obligations under the Labor
20 Code and applicable Wage Order. Further, Defendant argued to the extent employees missed a
21 break or took a non-compliant break, including a short break due to alleged time rounding, any
22 such discrepancies were aberrational and against company policy and a myriad of individual
23 issues would be required to determine whether the potential violation resulted from employee
24 choice or some other reason. Consequently, per the Defendant, individualized inquiries would
25 dominate on this issue and render class certification inappropriate. Additionally, Kyo argued it
26 authorized and permitted all necessary rest periods and, again, if an employee failed to take such
27 breaks, individualized inquiries would dominate on this issue and render class certification
28 inappropriate. [Saunders Decl., ¶ 28.]

1 Plaintiff based the expense reimbursement claim on the need to use personal vehicles to
2 travel for company business, for which class members were not reimbursed as required by Labor
3 Code section 2802. On the other hand, Defendant argued it maintained a reimbursement policy
4 that provided for mileage reimbursement, paid for mileage when employees submitted the proper
5 documentation and, to the extent employees failed to take advantage of that policy and submit
6 their mileage for reimbursement, it was purely by personal choice. [Saunders Decl., ¶ 29.]

7 On the wage statement claim, Plaintiff argued Defendant overstated the total hours worked
8 on Class Members' wage statements by double-counting them when they worked overtime, as the
9 time sheets list all the hours worked, including overtime hours, as regular hours, and then list all
10 overtime hours worked a second time as a separate line item. Per Plaintiff, when the hours are
11 added together it results in an inaccurate number of total hours worked, which is a facial,
12 standalone violation of Labor Code section 226(a)(2). Kyo countered that all information required
13 by the statute is found in the wage statements, and accordingly employees can "promptly and
14 easily determine" their hours worked and other information mandated by Section 226. Labor
15 Code § 226(e) from the wage statements alone and without reference to other documents or
16 information. [Saunders Decl., ¶ 30.]

17 Finally, Plaintiff also alleged derivative claims under Labor Code § 226 (alleged inaccurate
18 wage statement violations) and §§ 201-203 (waiting time penalties). These claims were based on
19 the unpaid wage claims and break premium claims, and will rise or fall along with the primary
20 claims, in addition to being subject to "good faith" and other defenses available to Defendant. E.g.,
21 Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not
22 willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits
23 on the underlying claim for failing to pay living wages). Accordingly, Plaintiff discounted the
24 derivative claims significantly in light of these multiple potential defenses. [Saunders Decl., ¶ 31.]

25 As far as potential PAGA liability, the theoretical penalties totaled over \$20 million if
26 Plaintiff should prevail on all claims and establish violations of the multiple Labor Code sections
27 at issue for every single eligible pay period. [Saunders Decl., ¶ 32.] As with the class claims,
28 Plaintiff discounted the potential PAGA penalties for the multi-layered defenses proffered by

1 Defendant on the merits, and further discounted these claims since the Court possesses wide
2 discretion to reduce such penalties to as little as nothing even if Plaintiff ultimately prevailed. Lab.
3 Code § 2699(e)(2); Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9
4 (court reduced the potential penalties by over 82% after a bench trial); Carrington v. Starbucks
5 Corp. (2018) 30 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just \$5
6 per pay period, a 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and
7 Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after
8 trial). Accordingly, the Parties allocated \$50,000 to PAGA penalties, which amount is reasonable
9 and in line with comparable settlements in other class actions in California. Van Kempen v.
10 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
11 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
12 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
13 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
14 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
15 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
16 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
17 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
18 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
19 not objected to the settlement").

20 Thus, Defendant raised various defenses to each of Plaintiff's claims, any one of which, if
21 successful, could have derailed Plaintiff's case. Accordingly, Plaintiff faced risky issues going
22 forward with this litigation, and given the need to secure class certification, try the case, and deal
23 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff
24 and her counsel discounted the value of the class claims consistent with the risks discussed above,
25 and carefully weighed the likelihood of the class receiving substantially greater benefit if the
26 litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial
27 risks – settlement on the proposed terms and without prolonged and costly litigation was in the
28 best interests of the Settlement Class. [Saunders Decl., ¶¶ 22-24.]

1 The overall recovery represents a significant percentage of Defendant's potential exposure
2 and, given the risks addressed above, a total recovery for the Settlement Class of \$1,015,000,
3 which will result in average awards of some \$__ per Participating Class Member, is a significant
4 result within the range of reasonableness based on all potential outcomes, and will provide direct
5 monetary awards to all Participating Class Members without further delay. [Saunders Decl., ¶ 24.]

6 Importantly, the mere fact that a settlement does not provide the same recovery as might be
7 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
8 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the
9 settlement process...even if the relief afforded by the proposed settlement is substantially
10 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
11 settlement because the public interest may indeed be served by a voluntary settlement in which
12 each side gives ground in the interest of avoiding litigation"); Lane v. Facebook, Inc. (9th Cir.
13 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is
14 different from the question whether the settlement is perfect in the estimation of the reviewing
15 court"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
16 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery
17 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
18 disapproved"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d
19 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented
20 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement
21 is non-reversionary and will provide timely benefits to the Class Members without a claims
22 process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action
23 Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at (reversionary provisions
24 and/or cumbersome claims process may indicate lack of fairness). Plaintiff and her counsel submit
25 the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

26 **V. NAMED PLAINTIFF AWARD**

27 Pursuant to the terms of the settlement, Plaintiff seeks an incentive award of \$10,000 for
28 her service in bringing these claims on behalf of the Settlement Class. The request is reasonable

1 given the risks she undertook on behalf of the Settlement Class. By contacting and retaining
2 counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent
3 Settlement Class Members, while shouldering the risk of being liable for Defendant's litigation
4 costs. Plaintiff also exposed herself to unwanted notoriety related to filing a public lawsuit
5 (discoverable even through a simple google search) for the benefit of other employees, placing
6 themselves at risk of discrimination by future prospective employers. As set forth in more detail in
7 her declaration submitted herewith, among taking many other actions assisting in the successful
8 litigation of this case, Plaintiff provided substantial factual information and documents to counsel,
9 attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast
10 of all significant developments. [Declaration of Liliya Gotishan, ¶¶ 2-9; Saunders Decl., ¶ 25.]
11 Finally, there are no Settlement Class Member objections submitted with respect to the amounts
12 Plaintiffs propose to receive. [Bridley Decl., ¶ 10.] Accordingly, the requested enhancement to
13 Plaintiff is appropriate and justified as part of the settlement.

14 **VI. SETTLEMENT ADMINISTRATION COSTS**

15 The Settlement provides for a payment to Atticus for its services as the Settlement
16 Administrator. As set forth in the Declaration of Bryn Bridley, Atticus has performed and will
17 continue to perform its required duties through final distribution of the settlement funds and
18 incurred \$20,000 in fees and expenses. [Bridley Decl., ¶ 15.] Accordingly, Plaintiff respectfully
19 requests the Court approve payment of \$20,000 to Atticus from the GSA. [Saunders Decl., ¶ 26.]

20 **VII. ATTORNEY'S FEES AND COSTS**

21 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be** 22 **Approved**

23 This Court has discretion over the amount of attorneys' fees awarded and court
24 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
25 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
26 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
27 marketplace for cases involving significant contingent risk, such as this one. Deposit
28 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.

1 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
2 private bargaining, if it were truly possible, might have reached" in determining a reasonable
3 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
4 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
5 justified by the work performed, the benefits obtained, and the contingent risk assumed.

6 As addressed in detail above, at the time the parties reached the tentative settlement
7 success for Plaintiff and the putative Settlement Class was far from certain. Plaintiff faced a
8 real risk that some or all the claims would not be certified for class treatment, as Defendant
9 had strong arguments that their compensation policies were legal and properly compensated
10 the Settlement Class. Even if Plaintiff certified some or all of the claims and ultimately
11 prevailed on the merits, it undoubtedly would have taken several years to realize any recovery
12 while they pursued class certification, trial, and any appeals. [Saunders Decl., ¶¶ 16-21.]

13 Nonetheless, Plaintiff succeeded and obtained the relief she set out to obtain, and the
14 Settlement provides substantial cash payments to all Participating Class Members, with an
15 average award of about \$195, and with a maximum award of over \$1,390. Importantly as
16 well, the Settlement Class has been overwhelmingly supportive of the Settlement – as there
17 are no present objections to the settlement and no opt outs. [Bridley Decl., ¶ 10.]

18 **B. The Requested Fee Award Is Reasonable and Appropriate**

19 The United States Supreme Court has ruled the parties to a class action properly may
20 negotiate not only the settlement of the action itself but also the payment of attorneys' fees.
21 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
22 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorneys' fee
23 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
24 should not result in a second major litigation. Ideally, of course, litigants will settle the
25 amount of a fee." The United States Supreme Court has reemphasized this policy and further
26 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
27 (1984) 465 U.S. 886, 902 n.19.

1 As part of the settlement, Defendant agreed not to object to an award of no more than
2 1/3 of the GSA for attorneys' fees, or \$338,333.33, and up to \$30,000 in reimbursement for
3 actual litigation costs and expenses. Such a fee is commensurate with what the market would
4 provide for similar services and the Court therefore can most certainly enforce the agreement.

5 As California's Court of Appeal has instructed:

6 Given the unique reliance of our legal system on private litigants to enforce
7 substantive provisions of law through class and derivative actions, attorneys
8 providing the essential enforcement services must be provided incentives roughly
9 comparable to those negotiated in the private bargaining that takes place in the
legal marketplace, as it will otherwise be economic for defendants to increase
injurious behavior

10 Lealao, 82 Cal.App.4th at 47.

11 Here, the parties did not negotiate the inclusion of attorneys' fees until after extensive
12 arms-length bargaining regarding relief to the Settlement Class was completed. [Saunders
13 Decl., ¶ 27.] The requested fee and cost award was a product of these arms-length
14 negotiations and fairly reflects the marketplace value of the services rendered by Class
15 Counsel in this case. As a result, the fee agreed to by the parties should be approved.

16 C. **Class Counsel's Fees are Justified When Calculated as a Percentage of the**
17 **Common Fund**

18 In approving fee applications, courts typically apply either a percentage-of-recovery
19 method or the lodestar method. Laffitte v. Robert Half Int'l, Inc. (2016) 1 Cal.5th 480, 489;
20 Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other
21 grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California
22 Supreme Court recently recognized the advantages and equities of calculating attorney's fees
23 using the percentage-of-the-common-fund method in another wage-and-hour case:

24 The recognized advantages of the percentage method-including relative
25 ease of calculation, alignment of incentives between counsel and the class, a
26 better approximation of market conditions in a contingency case, and the
27 encouragement it provides counsel to seek an early settlement and avoid
unnecessarily prolonging the litigation convince us the percentage method is a
valuable tool that should not be denied our trial courts.

28 Laffitte, 1 Cal.5th at 503 (citations omitted).

1 Indeed, both California and federal courts have long recognized an appropriate method
2 for determining the award of attorneys' fees is based on a percentage of the total value of
3 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
4 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
5 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
6 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
7 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

8 In determining a reasonable common fund fee award, courts should also consider the
9 fact that fees serve as an economic incentive for lawyers to bring class action litigation to
10 achieve increased access to the judicial system for meritorious claims and to enhance
11 deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without
12 prosecution on contingency via the class action mechanism, the courthouse door would
13 effectively be closed to most class members due to the relatively small size of their individual
14 claims in relation to the enormous time and cost associated with class action litigation.

15 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
16 this action of no more than 1/3 of the Gross Settlement Amount recovered by the Class via
17 the lawsuit, or \$338,333.33. The percentage requested is justified for the reasons set forth
18 further below, and comports with fee awards calculated on a percentage-of-the-benefit basis.
19 Indeed, review of class action settlements shows that courts have historically awarded fees in
20 the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner
21 Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that
22 percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on
23 Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a
24 reasonable fee award from a common fund in order to assure that the fees do not consume a
25 disproportionate part of the recovery obtained for the class, although somewhat larger
26 percentages are not unprecedented.").

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28 /////

1 **D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request**

2 To ensure the fairness of an attorneys' fee award, courts frequently conduct a lodestar
3 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
4 an objective measure of the work performed into the calculation of a reasonable attorney fee."
5 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 300.3 hours of time on this matter,
6 resulting in a modest and very reasonable lodestar of \$240,885.

7 As is fully detailed in the Saunders Declaration, Class Counsel's efforts included,
8 among other things: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the
9 putative Settlement Class, including legal research, research into similar claims and claims against
10 other employers in the same industry, and attempts to locate and contact other Kyo employees; (2)
11 drafting a PAGA notice letters (3) drafting the initial complaint and related documents; (4) case
12 management, including communications with defense counsel, meeting and conferring/preparing
13 case management statements, etc.; (5) lengthy discussions with defense counsel regarding
14 settlement/mediation and informal discovery needed for meaningful settlement discussions; (6)
15 engaging in substantial informal discovery, including propounding informal discovery "requests"
16 and reviewing documents and other information produced; (7) working with Plaintiff's experts on
17 a damages model; (8) drafting a mediation brief and accompanying damages model after review
18 and analysis of the informal discovery production; (9) attending an all-day mediation;
19 (10) negotiating and drafting the settlement agreement and related documents; (11) drafting the
20 consolidated amended complaint; (12) drafting the motion for preliminary approval, and attending
21 the hearing; (13) administration of the settlement, including communications with the Settlement
22 Administrator and the Settlement Class ; (14) drafting the motion for final approval and motion for
23 attorneys' fees, and attending the final approval hearing; and (15) extensive communications with
24 the Plaintiffs regarding case status, case investigation and document review, mediation, and
25 settlement terms. Additionally, Class Counsel will incur additional time following final approval
26 to, inter alia, respond to Settlement Class Member inquiries, work with the Settlement
27 Administrator on the distribution of settlement funds, and on the compliance hearing. [Saunders
28 Decl., ¶ 28, Exh. 2.]

1 In pursuing this matter, Class Counsel incurred total attorneys' fees of \$249,560, and
2 the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to
3 a successful conclusion (300.3 attorney hours), and the requested attorney hourly rates are
4 reasonable and comport with hourly rates charged by other attorneys with similar experience in
5 this practice area in California. [Saunders Decl., ¶¶ 29-43.] On a lodestar basis, the fee request
6 of \$338,333.33 results in a multiplier of 1.36, which is a modest enhancement entirely in line
7 with California law. Indeed, California courts routinely approve multipliers in the in the 2-4
8 range to compensate for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008)
9 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of
10 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher.");
11 City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of
12 2.34).) Class Counsel submits that the requested 1.4 multiplier effectively operates to show
13 that the percentage fee request is reasonable considering the challenges presented in this
14 contingency fee matter, and appropriately compensates Class Counsel for the contingent risk
15 assumed and delay in payment during the time Counsel has been representing Plaintiffs.
16 Thus, the multiplier results in a fee constituting a fair return on the contingency.

17 E. **The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill**
18 **Required, 4) the Contingent Nature of the Fee and 5) Awards in Similar**
19 **Cases.**

20 What has now emerged in most fee award decisions is the recognition that fee
21 determinations in both common fund and statutory fee situations are incapable of
22 mathematical precision because of the intangible factors that must be resolved in the court's
23 discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In
24 determining an appropriate fee in a common fund case, a Court must decide, based on the
25 unique posture of each case, what percentage of the common fund would most reasonably
26 compensate Class Counsel given the nature of the litigation and the performance of counsel.
27 Paul, Johnson, Alston & Hunt v. Graulity (9th Cir. 1989 886 F.2d 268, 272) (the benchmark
28 percentage fee may be adjusted to account for the circumstances involved in a case).

1 Courts apply a five-part test in calculating a reasonable percentage fee in common
2 fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the
3 quality of work; (4) the contingent nature of the fee and the financial burden carried by the
4 plaintiffs; and (5) awards made in similar cases. Laffitte, 1 Cal.5th at 489.

5 **1. The Results Achieved.**

6 Class Counsel obtained an excellent result in this case for the Settlement Class. The
7 Settlement provides real monetary benefits to the Settlement Class, and the Settlement is
8 particularly advantageous to the Settlement Class because the proceeds will be distributed
9 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
10 Considering many individual claims would be very modest and would not be cost-effective to
11 pursue successfully, the Settlement provides them with fair compensation for their claims.
12 Moreover, the absence of any objection to either the Settlement or the attorney's fees request
13 bolsters the excellent results. Indeed, the approval of the Settlement Class is overwhelming to
14 this point as indicated by the fact that no class members have opted out. Additionally, the
15 settlement amounts to a substantial percentage of the maximum value of the amount the
16 Settlement Class might have obtained after trying the case and recovering maximum unpaid
17 wages and penalties. "It is well-settled law that a cash settlement amounting to only a fraction
18 of the potential recovery does not per se render the settlement inadequate or unfair." In re
19 Omnivision Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

20 **2. Class Counsel Bore Considerable Risk.**

21 At the time of filing the complaint, Class Counsel recognized that they would have to
22 expend a substantial amount of time and advance significant costs to prosecute a statewide
23 class action suit with no guarantee of compensation or reimbursement, in the hope of
24 prevailing against a sophisticated company represented by first-rate attorneys. Despite
25 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
26 of class certification and the ability to prove class-wide and individual damages. In light of
27 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would
28 dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's

1 firm, not receiving any compensation for several years while simultaneously advancing
2 litigation costs posed considerable risk and difficulty. [Saunders Decl., ¶¶ 44-45.]

3 **3. The Skill Required and the Quality of Work.**

4 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
5 experience. The issues presented in this case required more than just a general appreciation of
6 wage and hour law and class action procedure. This Settlement was possible because of
7 counsel's diligent efforts, as discussed above. In successfully navigating those hurdles,
8 Class Counsel displayed appropriate skill while pursuing a risky and difficult case.

9 **4. The Contingent Nature of the Fee and Risk Assumed**

10 There is a substantial difference between the risk assumed by attorneys being paid
11 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
12 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
13 1256. The attorney working on a contingent basis can only log hours while working
14 without pay towards a result that will hopefully entitle him to a market fee considering
15 the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee
16 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this
17 risk in this all or nothing contingent fee case wherein the necessity and financial burden
18 of private enforcement makes the requested award appropriate.

19 Counsel retained on a contingency fee basis, whether in private matters or in class
20 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent
21 fee schedule to compensate for both the contingent risk assumed and the delay in
22 payment. The simple fact is that despite the most vigorous and competent of efforts,
23 success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875.
24 Indeed, if counsel is not adequately compensated for the risks inherent in difficult class
25 actions, competent attorneys will be discouraged from prosecuting similar cases.
26 Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208
27 Cal.App.3d 279, 287.

1 Here, the contingent fee practice of Plaintiff's counsel simply does not accommodate
2 the investment of unnecessary time in a case, and the adverse resolution of any one of several
3 difficult issues present in this matter could have doomed the entire effort. As discussed, the
4 attorney's fees in this case were not only contingent but fairly risky, and there was always a
5 real chance Plaintiff's counsel would receive nothing for any number of reasons. [Saunders
6 Decl., ¶¶ 44-45.] Accordingly, the contingent nature of the fee and the financial burdens on
7 Class Counsel also support the fee requested.

8 **5. Awards in Other Cases**

9 As discussed, the attorneys' fees requested by Class Counsel are within the range of
10 fees awarded in comparable cases, as California courts regularly approve class action fee
11 awards amounting to 1/3 of a common fund. Additionally, even putting aside the California
12 Supreme Court's approval of a 1/3 fee in Lafitte, review of class action settlements over the
13 past 10 years shows that the courts have historically awarded fees in the range of 20 to 50
14 percent, depending upon the circumstances of the case. In re Warner Communications Sec.
15 Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common
16 fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) §
17 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from
18 a common fund in order to assure that the fees do not consume a disproportionate part of the
19 recovery obtained for the class, although somewhat larger percentages are not
20 unprecedented."). Class Counsel's requested fees equal one-third of the Gross Settlement
21 Amount recovered on behalf of the Class and are well within the range of reasonableness
22 under either the percentage of the recovery or the lodestar method in light of the contingent
23 risk assumed, the delay in payment, the result achieved, and the overall quality of the
24 representation.

25 **F. Class Counsel's Costs and Expenses are Reasonable**

26 Plaintiff's counsel also requests reimbursement of actual out-of-pocket expenses incurred
27 to prosecute this action. These expenses were incidental and necessary to the effective
28 representation of the Settlement Class, and Plaintiff's counsel is permitted to recover litigation

1 costs and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20
2 Cal.3d at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v.
3 County of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the
4 common fund “[o]f necessity, and for precisely the same reasons discussed above with respect to
5 the recovery of attorneys’ fees by ... [Plaintiffs’] attorneys”). Plaintiff’s counsel also are entitled to
6 recover “those out-of-pocket expenses that would normally be charged to a fee-paying client.”
7 Harris v. Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

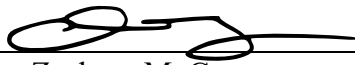
8 As explained in the Saunders Declarations, Class Counsel incurred a total of
9 \$14,470.08 in actual expenses incurred in connection with this litigation. These expenses
10 include the amounts paid for court filing fees, service of process, expert fees, postage,
11 and mediation fees, all of which are costs normally billed to and paid by the client. These
12 costs were reasonably incurred in the prosecution of this matter, and Plaintiff requests
13 they be reimbursed in full. [Crosner Decl., ¶¶ 46-47.]

14 **VIII. CONCLUSION**

15 For all the foregoing reasons, Plaintiff respectfully request that the Court grant this motion
16 and grant final approval of the class and representative action Settlement and approve the PAGA
17 Payment to the State. Plaintiff further requests the Court approve payment of the Settlement
18 Administrator’s fees and expenses, approve the requested enhancement, approve the award of
19 attorneys’ fees and costs as requested, and enter judgment in this action. Finally, Plaintiffs request
20 the Court set a final compliance hearing for May 15, 2024, or a later date convenient for the Court.

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23 Dated: August 18, 2023

CROSNER LEGAL, P.C.

24
25 By: 
26 Zachary M. Crosner
27 Jamie K. Serb
28 Chad Saunders
Attorneys for Plaintiff Liliya Gotishan