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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

PRISCILLA AGUILAR, JULIAN HARO,
JUAN MADERA, and RICHARD NUNEZ, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

OWENS-BROCKWAY GLASS
CONTAINER, INC., a Delaware Corporation,
and DOES 1-50, inclusive,

Defendant.

Case No. 21STCV33017

Assigned for All Purposes:
Hon. Yvette M. Palazuelos

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND AWARD OF
ATTORNEYS' FEES, COSTS, AND
CLASS REPRESENTATIVE INCENTIVE
PAYMENT**

Hearing Information

Date: September 12, 2024
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Dept: 9

Complaint Filed: September 8, 2021
Trial Date: None set

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1 **I. INTRODUCTION**

2 This motion seeks final approval of a common fund, non-reversionary wage and hour class
3 action settlement of \$3,700,000 between Plaintiffs Priscilla Aguilar, Julian Haro, Juan Madera,
4 and Richard Nunez (“Plaintiffs”), on behalf of themselves and the provisionally certified Class,
5 and Defendant Owens-Brockway Glass Container, Inc. (“Defendant”).

6 The Settlement was preliminarily approved on December 14, 2023. The Settlement
7 Administrator, CPT Group, Inc. (“CPT Group”), carried out the notice and other procedures
8 ordered by this Court. The Class Members had until April 15, 2024 to submit a request for
9 exclusion, object to the Settlement or dispute their workweeks. There is no opposition to the
10 Settlement, and the Class Members overwhelmingly approve of the Settlement. CPT Group has
11 received no objections to the Settlement and only two Class Members have requested exclusion
12 from the Settlement. Accordingly, Plaintiffs request that the Court grant final approval of the
13 Settlement.

14 In conjunction with Plaintiffs’ request for final approval, Plaintiffs also respectfully
15 request the Court grant Class Counsel’s request for attorneys’ fees and costs by approving this
16 motion and application for an award of \$1,295,000 for attorneys’ fees and \$24,074 for costs.
17 Plaintiffs further request that this Court award a \$15,000 incentive payment to each Plaintiff for
18 their role in obtaining this excellent result for the Class. The Settlement meets the criteria for final
19 approval and Plaintiffs respectfully request this Court grant final approval and enter the proposed
20 Order and Judgment filed concurrently herewith.

21 **II. SUMMARY OF SETTLEMENT TERMS PRELIMINARILY APPROVED**

22 There are 1,104 Participating Class Members, which represents a 99.82% participation rate.
23 (Declaration of Irvin Garcia on Behalf of CPT Group, Inc. Regarding Settlement Administration
24 and Notice (“Garcia Decl.”) ¶ 13).

25 **A. Settlement Amounts**

26 Subject to Court approval, the Net Settlement Amount to be distributed to Participating
27 Class Members is calculated as follows:
28

Gross Settlement Amount	\$3,700,000.00
Less Attorneys' Fees (Requested)	\$1,295,000.00
Less Attorneys' Litigation Costs (Requested)	\$24,074.00
Less Class Representative Incentive Payments (Requested)	\$60,000.00
Less PAGA Payment	\$300,000.00
Less Administration Costs	\$15,000.00
Net Settlement Amount	\$2,005,926.00

B. Calculation of Participating Class Member's Individual Settlement Payments

All Participating Class Members will receive their corresponding pro-rata share of the Net Settlement Amount without the need to submit a claim form. Based on estimated settlement calculations at this time, the estimated weekly pay period rate is \$12.01 (\$24.02 biweekly), the average gross payment to each Participating Class Member is estimated to be \$1,813.68 and the highest gross payment is estimated to be \$3,807.68. (Garcia Decl., ¶ 14).

C. Release by the Class and Plaintiffs

Upon the Effective Date and Defendant's funding of the Gross Settlement Amount, Participating Class Members will fully release the Released Claims as defined in the Settlement Agreement. (Declaration of James R. Hawkins in Support of Plaintiffs' Motion for Final Approval ("Hawkins Decl.") Ex. 1, ¶ 6.1). Plaintiffs will also generally release Defendant of all claims and a waiver of Section 1542 of the California Civil Code. (*Id.* ¶¶ 6.3, 6.4).

III. THE SETTLEMENT ADMINISTRATOR CARRIED OUT THE NOTICE PROCEDURES

On January 16, 2024, CPT Group received the Class Data from Defendant. (Garcia Decl. ¶ 5). CPT Group also received the court-approved Notice on December 14, 2023. (*Id.* ¶4, Exhibit A). On February 14, 2024, CPT Group mailed, via U.S. First Class mail, the Notice of Class Action Settlement ("Class Notice") to all 1,106 Class Members. (Garcia Decl. ¶¶ 5-7). The Class

1 Notice advised Class Members of their right to request exclusion from the Settlement, object to
2 the Settlement, dispute their workweeks, do nothing, and the implications of each such action.
3 The Class Notice advised Class Members of applicable deadlines and other events, including the
4 Final Approval Hearing, and how Class Members could obtain additional information, and
5 provided a toll-free telephone number. The Class Notice also disclosed the claims that would be
6 released upon final approval and each Class Member's total pay periods worked during the Class
7 Period and PAGA Period and estimated Individual Settlement Payment and individual PAGA
8 payment based thereon. (Garcia Decl., Exhibit A).

9 The Settlement Administrator mailed a total of 1,106 Class Notices to Class Members of
10 which 35 were returned as undeliverable by the U.S.P.S. without a forwarding address. (Garcia
11 Decl. ¶ 8). After receiving the returned Notices, CPT Group promptly performed a computerized
12 skip trace of the returned Class Notices in an effort to obtain an updated address for purposes of
13 re-mailing the Notice Packets. (*Id.*). CPT Group obtained updated or forwarding addresses for 25
14 Class Members and the Class Notices were re-mailed. (*Id.*, ¶ 9). Ultimately, 10 Class Notices
15 remained undeliverable. (*Id.*). Therefore, CPT Group successfully delivered Class Notices to
16 1,096 of the 1,106 Class Members, representing 99.1% of the Class.

17 The deadline to object or request exclusion from the Settlement was April 15, 2024 and
18 April 22, 2024¹ for those Class Members whose Class Notices were remailed. As of the response
19 deadline, no Class Member submitted an objection to the Settlement and only two Class Members
20 requested to be excluded from the Settlement. (Garcia Decl. ¶¶ 10, 12, Ex. B [Copy of Requests
21 for Exclusion]). In addition, one Class Member disputed the number of workweeks listed in his
22 Class Notice but later rescinded the dispute. (Garcia Decl. ¶ 11). Thus, 99.82% of Class Members
23 will participate in the Settlement. (Garcia Decl. ¶ 13).

24 CPT Group followed all the notice procedures delineated by this Court in the Preliminary
25 Approval Order. Therefore, notice to the Class of the Settlement was reasonably calculated, and
26 has apprised the Class Members of the pendency of the action and afforded them an opportunity
27

28 ¹ The response deadline landed on a Sunday and therefore was extended to the next business day.

1 to opt out or present their objections or disputes.

2 **IV. THE SETTLEMENT SATISFIES THE REQUIREMENTS FOR FINAL**
3 **APPROVAL.**

4 **A. Legal Standard for Final Approval of Class Action Settlement.**

5 “[V]oluntary conciliation and settlement are the preferred means of dispute resolution.
6 This is especially true in complex class action litigation . . .” *7-Eleven Owners for Fair*
7 *Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1140, 1151 (internal citation omitted).
8 A class action may not be dismissed, compromised, or settled without the Court’s approval. Cal.
9 Rules of Court (“CRC”) 3.769 and 3.770. The Court’s inquiry is limited to whether the proposed
10 settlement is “fair, adequate, and reasonable.” *Wershba v. Apple Comp., Inc.* (2001) 91 Cal. App.
11 4th 224, 244-245. A settlement is “fair, adequate and reasonable” warranting final approval when
12 “the interests of the class are better served by the settlement than by further litigation.” Manual
13 for Complex Litigation (4th ed. 2008) § 21.61.

14
15 CRC 3.769 describes the procedure for final approval of a class action settlement in three
16 distinct steps: (1) preliminary approval of the proposed settlement at an informal hearing; (2)
17 dissemination of mailed and/or published notice of the settlement to all affected class members;
18 and (3) a “formal fairness hearing,” or final settlement approval hearing, at which class members
19 may be heard regarding the settlement, and at which matters concerning the fairness, adequacy,
20 and reasonableness of the settlement may be presented.

21 The first and second steps have been completed. The third and final step is the Final
22 Approval Hearing, at which the Court determines whether the Settlement is fair, adequate, and
23 reasonable. A settlement agreement is presumptively fair when it is (1) the product of arm’s-
24 length bargaining; (2) supported by sufficient investigation and/or discovery to allow assessment
25 of Plaintiffs’ claims; (3) supported by experienced counsel; and (4) subject to only a small
26 percentage of objections. *In re Cellphone Fee Termination Cases* (2010) 186 Cal. App. 4th 1380,
27 1389 (internal quotation citation omitted). To enter a final order approving the Settlement and
28 enter judgment thereon, California courts consider several factors, including the strength of the

1 Plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of
2 maintaining class action status through trial; the value of the settlement; the extent of discovery
3 completed and the stage of the proceedings; the experience and views of counsel; and the reaction
4 of the class members to the proposed settlement. *Wershba*, 91 Cal. App. 4th at 244-45. Courts
5 must also give "proper deference to the private consensual decision of the parties . . . to the extent
6 necessary to reach a reasoned judgment that the agreement is not the product of fraud or
7 overreaching by, or collusion between, the negotiating parties, and the settlement, taken as a
8 whole, is fair, reasonable and adequate to all concerned." *Hanlon v. Chrysler Corp.* (9th Cir.
9 1998) 150 F.3d 1011, 1027.

10 **B. The Factors to be Considered Favor Final Approval**

11 Settlement resolves inherent uncertainty and is therefore strongly favored by the courts,
12 particularly in class actions. *See Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943,
13 950. Here, Plaintiffs recognized several risks inherent in litigating this case: (1) the probability of
14 certifying the action as a class action; (2) the probability of maintaining the class action status
15 through trial; and (3) the likelihood of class action recovery at trial after analyzing the merits of
16 Defendant's legal defenses.

17 In Plaintiffs' assessment of the significant risks associated with the pursuit of additional
18 litigation, Plaintiffs considered the likelihood of achieving class action certification and the ability
19 to maintain class action status throughout the trial, considering the defenses asserted by the
20 Defendant. Specifically, Plaintiffs evaluated the probability of securing a recovery similar to or
21 greater than what the Plaintiffs might obtain if a judgment were rendered in their favor. Notably,
22 even if Plaintiffs were to establish the Defendant's liability for all claims outlined in the Amended
23 Complaint, they would still need to prove damages including but not limited daily/weekly
24 overtime premiums owed, meal/rest period premiums owed, interest, and PAGA penalties, among
25 other factors, each of which entails a multitude of divergent computations and formulas. (Hawkins
26 Decl. ¶ 23).

27 Furthermore, Class Counsel conducted an analysis of the likelihood of achieving class
28

1 certification on behalf of the Class and maintaining the class action status throughout the trial.
2 Additionally, in the event this case were to proceed as a class action throughout the trial, we
3 considered the substantial litigation expenses that both Parties would inevitably incur. These
4 expenses encompass the cost and time associated with reviewing extensive documents, as well as
5 the process of identifying and retaining statisticians and other expert witnesses for testimony
6 during the trial. (*Id.*).

7 Furthermore, beyond the substantial risks and inherent uncertainties associated with
8 continuing the litigation, both Plaintiffs and Defendant face the inescapable reality that further
9 litigation, potentially extending through trial and appeals, would entail significant financial and
10 temporal burdens. (*Id.*, ¶ 22)

11 While the proposed Settlement may be less than the amount that the Class could
12 potentially recover following trial, it is highly unlikely that Plaintiffs and the Class would receive
13 the full amount to which they believe they are entitled. As such, the Gross Settlement Amount,
14 even if only a fraction of a total *potential* recovery, is a fair and adequate *real* recovery for Class
15 Members. *See In re Mego Fin. Corp. Sec. Litig.* (9th Cir. 2000) 213 F.3d 454, 459.

16
17 **C. The Value and Fairness of the Settlement Favors Final Approval.**

18 A court must consider whether the settlement is fair. *See Hanlon*, 150 F. 3d 1027. Here,
19 the monetary relief provided by the Settlement is a meaningful recovery to the Class warranting
20 final approval. In conjunction with Plaintiffs' Motion for Preliminary Approval, Class Counsel
21 provided the Court with a detailed description of the claims, legal defenses, and Defendant's
22 potential exposure on those claims, thereby providing the Court with a sufficient understanding
23 of the amount in controversy and potential outcomes of the case, so that it can properly evaluate
24 the sufficiency of the Settlement, as required in *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App.
25 4th 116, 129-30 (2008). (See, Declaration of James R. Hawkins in Support of Plaintiffs' Motion
26 for Preliminary Approval of Class Action and PAGA Settlement, ¶¶ 15-23). At the time of
27 preliminary approval, the Court made a finding that the Gross Settlement Amount appeared to be
28 within the "ballpark of reasonableness" and the Settlement could be preliminarily deemed fair,

adequate and reasonable. (Preliminary Approval Order, ¶¶ 4, 8). Moreover, no Class Member has objected to the Settlement as unfair or inadequate and only two Class Members have opted out of the Class. (Garcia Decl. ¶¶ 10, 122). Thus, nothing has changed since the time of preliminary approval, which also favors final approval.

Plaintiffs and Class Counsel have secured a common fund of \$3,700,000 for the Settlement of the claims alleged in this class and PAGA action. This is well within the ballpark of reasonableness and is respectfully submitted to be a meaningful benefit to the Class Members. The 1,104 Participating Class Members will be paid a pro-rata portion of the Net Settlement Amount. As such, the Settlement treats each Class Member equally relative to others in the Class. While Class Counsel believes Plaintiffs' claims are meritorious, Defendant has raised formidable factual and legal arguments in support of their defenses. Given these available grounds for defending against the asserted class claims and the risks of maintaining class certification through the trial and after any appeals, the Settlement is fair, reasonable, and adequate. (Hawkins Decl. ¶ 22).

D. The Parties' Investigation Favors Final Approval

"[T]he extent of discovery completed and the stage of proceedings" are factors considered in assessing the fairness, adequacy, and reasonableness of a class action Settlement. *Dunk v. Ford Motor Co.*, (1996) 48 Cal. App. 4th 1801. "This factor evaluates whether the parties have sufficient information to make an informed decision about settlement." *In re LinkedIn User Privacy Litig.*, 309 F.R.D. 573, 588 (N.D. Cal. 2015) (citation omitted).

The Parties entered into the Settlement after conducting an extensive investigation, which enabled Class Counsel and Defense Counsel to thoroughly evaluate the strengths and weaknesses of the claims. Class Counsel previously provided the Court with a detailed description of the investigation conducted in this action in conjunction with the Motion for Preliminary Approval. The settlement negotiations between the Parties were extensive and occurred at arm's length. The Parties attended a full day mediation session with the experienced wage and hour mediator Paul Grossman. (Hawkins Decl. ¶ 21). Thus, the Parties' investigation and discovery are sufficient to

1 allow Class Counsel and the Court to act intelligently and in the best interest of the Class.

2 **E. The Endorsement of the Parties' Counsel Favors Final Approval**

3 The endorsement of experienced and well-informed counsel of a settlement as fair,
4 reasonable, and adequate is entitled to significant weight. *Dunk*, 48 Cal. App. 4th at 1801-02.
5 Here, counsel for both Parties have significant experience litigating wage and hour class actions
6 and endorse the Settlement as being fair, adequate, and reasonable. (Hawkins Decl. ¶ 22). Class
7 Counsel believes that the Settlement is the best interest of the Class, and an excellent result for
8 the Class. This endorsement of counsel is entitled to significant weight in favor of final approval.

9 **F. The PAGA Settlement Should Be Approved**

10 As set forth in Plaintiffs' Motion for Preliminary Approval, the settlement allocates
11 \$300,000 of the Gross Settlement Amount to resolving Plaintiffs' PAGA claims, 75%, or
12 \$225,000 of which constitutes the LWDA portion of the settlement. The remaining 25%, or
13 \$75,000 will be distributed to the PAGA Members based on their respective pay periods worked
14 during the PAGA Period. The PAGA penalties were negotiated in good faith, were not a result of
15 self-interest at the expense of Class Members, and are within the range of similar amounts
16 included in other wage and hour class action settlements.

17
18 Where a settlement includes a good faith amount for PAGA penalties and "there is no
19 indication that this amount was the result of self-interest at the expense of other" class members,
20 such amounts are generally considered reasonable. (*Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr.
21 3, 2009) 2009 WL 928133 at *1, *9.) Courts routinely approve settlements where only a small
22 portion of the gross settlement amount is allocated to PAGA penalties. (See *Nordstrom*
23 *Commission Cases* (2010) 186 Cal.App.4th 576 [approving a settlement where no portion was
24 allocated to PAGA penalties; *Jack v. Hartford Fire Ins. Co.* (S.D. Cal. Oct. 13, 2011) 2011 WL
25 4899942 at *6 [approving a PAGA payment of 0.25%]; *McKenzie v. Fed. Express Corp.* (C.D.
26 Cal. Jan. 23, 2012) 2012 WL 12882124 at *5 [acknowledging that courts approve PAGA claim
27 settlements in the range of zero to two percent of the total settlement].)

28 Therefore, the PAGA Payment to the LWDA and PAGA Members should be approved.

1 **V. THE ATTORNEYS' FEES REQUESTED ARE FAIR AND REASONABLE**
2 **AND FAVOR APPROVAL**

3 “When a fee is set by a court rather than by contract, the object is to set it at a level that
4 will approximate what the market would set. . . . The judge, in other words, is trying to mimic the
5 market in legal services.” *Gaskill v. Gordon* (7th Cir. 1998) 160 F.3d 361, 363. Given the unique
6 reliance of our legal system on private litigants to enforce substantive provisions of law in class
7 actions, attorneys providing these substantial benefits should be paid an award equal to the
8 amount negotiated in private bargaining that takes place in the legal marketplace. *Deposit*
9 *Guaranty Nat. Bank, Jackson, Miss. v. Roper* (1980) 445 U.S. 326, 338, *rehg. denied*, 446 U.S.
10 947. The “percentage of the fund method more accurately reflects the results achieved.” *Laffitte*
11 *v. Robert Half International, Inc.*, 1 Cal. 5th 439 (2016); see also *Lealao v. Beneficial California,*
12 *Inc.* (2000) 82 Cal.App.4th 19, 50.

13 At the time this case was brought, the result was far from certain. Defendant’s numerous
14 defenses to the case created difficulties with proof and complex legal issues for Class Counsel to
15 overcome. Throughout the action, Defendant has challenged whether Plaintiffs can prove
16 commonality. As a result, there was considerable risk that Plaintiffs would not prevail on a motion
17 for certification or that Defendant would prevail on its defenses, thus, defeating any and all
18 recovery to the Class. Even if Plaintiffs were to obtain class certification, liability is by no means
19 a foregone conclusion. (Hawkins Decl. ¶ 24). The Settlement was possible only because Class
20 Counsel was able to persuade Defendant that Plaintiffs could potentially prevail on the legal issues
21 regarding liability and obtain and maintain class certification for the Class through trial and
22 overcome difficulties in proof as to monetary relief. In successfully navigating these hurdles so
23 as to persuade Defendant to settle, Class Counsel displayed skills consistent with those that might
24 be expected of attorneys of comparable experience.

25 To represent the Class on a contingent fee basis, Class Counsel had to devote the necessary
26 time and resources to this contingent case. Class Counsel gave up the hourly work that a firm can
27 bank on for the risky contingent fee work in this case which could have paid Class Counsel
28

nothing. *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000).

A. The Agreement for the Payment of Fees and Expenses is Appropriate and Should be Enforced

Parties to a class action may negotiate not only the settlement of the action itself, but also the payment of attorneys' fees. See *Evans v. Jeff D.* (1980) 475 U.S. 717, 734-35, 738, n.30. "Ideally, of course, litigants will settle the amount of a fee." *Hensley v. Eckerhart* (1983) 461 U.S. 424, 437. The trial court "has a responsibility to encourage agreement" on fees. *Blum v. Stenson* (1984) 465 U.S. 886, 902 n.19. Here, as part of the Settlement, Defendant agreed not to oppose an award of 35% of the Gross Settlement Amount for attorneys' fees. Such a fee is in line with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. The United States Supreme Court instructed, ". . . attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for Defendant to increase injurious behavior." *Deposit Guaranty Nat. Bank, supra*, 445 U.S. at 338.

Here, the requested fee and cost award was negotiated during adversarial bargaining by counsel for each of the parties, after the substantive terms of the Settlement had been negotiated. The requested fee and cost award was a product of arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. Thus, the fee agreed to by the parties should be approved.

B. Class Counsel's Fee Award is Properly Calculated as a Percentage of the Total Value Created for the Benefit of the Class

Class Counsel seeks an attorney fee award for their successful prosecution and resolution of this action, calculated as 35% of the value of the common fund created by the Settlement. Courts have long recognized that an appropriate method for determining the award of attorneys' fees is based on a percentage of the total value of benefits afforded to class members by the settlement. *Laffitte*, 1 Cal. 5th at 494; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Paul*,

1 *Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 272; *Vincent v. Hughes Air*
2 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The awarding of a fee based on a percentage of the
3 common fund recovered is to “spread litigation costs proportionately among all the beneficiaries
4 so that the active beneficiary does not bear the entire burden alone.” *Vincent, supra*, 557 F.2d at
5 769. The Gross Settlement Amount is \$3,700,000 thus Class Counsel requests \$1,295,000 in
6 attorneys’ fees as it is properly calculated as a percentage (35%) of the common fund created for
7 the benefit of the Settlement Class.

8
9 **1. In a Common Fund Case, the Supreme Court Approves an Award**
10 **Based Upon the Percentage of the Fund**

11 California courts are expressly authorized to award attorneys’ fees so as “to ensure that
12 the fee awarded is within the range of fees freely negotiated in the legal marketplace in
13 comparable litigation.” *Lealao v. Beneficial Cal., Inc., supra*, 82 Cal.App.4th at 50. As *Lealao*
14 explained, “attorneys providing the essential enforcement services must be provided incentives
15 roughly comparable to those negotiated in the private bargaining that takes place in the legal
16 marketplace, as it will otherwise be economic for Defendant to increase injurious behavior. It has
17 therefore been urged (most persistently by Judge Richard Posner) that in defining a ‘reasonable
18 fee’ in such representative actions the law should “mimic the market.” *Id.* at 47.

19 In this case, the fees are being paid from the common fund, accordingly, the fee should be
20 awarded to mimic fees freely negotiated in the legal marketplace for comparable common fund
21 cases under *Lealao*. As *Lealao* acknowledged, the percentage-of-the-benefit approach should be
22 considered because here “it better approximates the workings of the marketplace than the lodestar
23 approach.” *Id.*, 82 Cal.App.4th at 49; see also *Apple Computer, Inc. v. Superior Court* (2005)
24 126 Cal.App.4th 1253, 1270. In *Laffitte*, the California Supreme Court confirmed that the
25 percentage of the fund method is properly used in a common fund case:

26 The recognized advantages of the percentage method – including
27 relative ease of calculation, alignment of incentives between counsel
28 and the class, a better approximation of market conditions in a
contingency case, and the encouragement it provides counsel to seek

1 an early settlement and avoid unnecessarily prolonging the litigation
2 (*Lealao, supra*, 82 Cal.App.4th at pp. 48–49; *Rawlings v.*
3 *Prudential-Bache Properties, Inc., supra*, 9 F.3d at p. 516) persuade
4 us the percentage method is a valuable tool that should not be denied
5 our trial courts.

6 *Laffitte*, 1 Cal. 5th at 503.

7 Moreover, the Supreme Court in *Laffitte* indicated that the trial courts may utilize a
8 “lodestar cross-check” to double check the reasonableness of the percentage fee award. *Id.* The
9 Supreme Court affirmed the propriety of a lodestar cross-check where the multiplier exceeded 2.
10 Indeed, the Court explicitly held that the lodestar is a cross check that should not override the
11 primary use of the percentage method in stating, “[W]e emphasize the lodestar calculation, when
12 used in this manner, does not override the trial court's primary determination of the fee as a
13 percentage of the common fund and thus does not impose an absolute maximum or minimum on
14 the potential fee award . . . A lodestar cross-check is simply a quantitative method for bringing a
15 measure of the time spent by counsel into the trial court's reasonableness determination; as such,
16 it is not likely to radically alter the incentives created by a court's use of the percentage method.”
17 *Id.* at 505.

18 Because the Settlement is a common fund, and the percentage of the fund is the
19 comparable marketplace for fee awards in common fund cases, *Laffitte* and *Lealao* support an
20 award based upon the percentage of the common fund. Here, as noted above, 35% of the common
21 fund settlement is within the reasonable range of comparable awards for common fund cases,
22 which establishes the requested award as reasonable. Moreover, as discussed below, the use of
23 the lodestar cross-check in this case further supports the reasonableness of the percentage fee
24 award as it falls squarely within the range approved in *Laffitte*.

25 **2. The Percentage Fee Award is Supported by a Lodestar Cross-Check**

26 The reasonableness of the requested attorneys’ fee of \$1,295,000 is also established by
27 reference to Class Counsel’s lodestar cross-check in this matter. The lodestar for Class Counsel
28 is **\$564,707.50**, and therefore the requested fee would represent a multiplier of approximately
2.29 on that billed time. (Hawkins Decl. ¶ 46). Lodestar cross-checks with multipliers far in

1 excess of 2 are commonly approved. *See e.g., Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th
2 224, 255 (2001) (“Multipliers can range from 2 to 4 or even higher.”); *Vizcaino v. Microsoft Corp.*
3 (9th Cir. 2002) 290 F.3d 1043, 1051 and fn. 6 (approving 3.65 multiplier and collecting cases
4 “finding a range of 0.6-19.6, with most (20 of 24, or 83%) from 1.0-4.0 and a bare majority (13
5 of 24, or 54%) in the 1.5-3.0 range”); *Rievman v. Burlington Northern Railroad Co.* (S.D.N.Y.
6 1987) 118 F.R.D. 29, 35 (“In recent years, multipliers between 3 and 4.5 have been common”);
7 *Behrens v. Wometco Enterprises, Inc.* (S.D. Fla. 1988) 118 F.R.D. 534, 549 (court applied
8 multiplier of 3, noting that this was “average” for a large complicated class action where
9 multipliers ranged from 2.26 to 4.5).

10 Here, the fee request cross checks with a lodestar multiplier of 2.29. This amount does not
11 include the time that will be spent on administering this settlement following final approval and
12 responding to inquiries by class members, which is likely to be a significant additional investment
13 of time. Thus, this Court should find that the award is justified and cross checks under California
14 law. In this case, consideration of Class Counsel’s overall lodestar as a cross-check to the
15 percentage figure strongly supports the reasonableness of the requested fee award.

16 **3. The Percentage Award is Reasonable**

17 Fee determinations in both common fund and statutory fee situations are incapable of
18 mathematical precision because of the intangible factors that must be resolved in the court’s
19 discretion based on the circumstances of each particular case. *See, A. Conte, Attorney Fee*
20 *Awards*, 2nd Ed., 207, at 44. A court must decide, based on the unique posture of each case, what
21 percentage of the common fund would most reasonably compensate Class Counsel given the
22 nature of the litigation and the performance of counsel. *Paul, Johnson, Alston & Hunt, supra*,
23 886 F.2d at 272. Courts apply a five-part test in reviewing a reasonable percentage fee in common
24 fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality
25 of work; (4) the contingent nature of the fee and the financial burden carried by the Plaintiffs; and
26 (5) awards made in similar cases. *In re Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 WL
27 4293467 at *9. Here, each of the five factors are met and strongly support an award of the
28

percentage fee (35%) requested in this case.

a. The Results Achieved

“The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award.” *Omnivision*, 2007 WL 4293467 at *9. Class Counsel obtained a very favorable result in this case for the Class Members. The Settlement provides monetary benefits to the Class Members that are comparable to or even exceed those recovered in similar wage and hour class actions because the claimants will all receive a meaningful payment of their damages. The Settlement is advantageous to the Class Members because the proceeds will be distributed shortly as opposed to waiting additional years for a similar, or possibly, less favorable result. There is little question that the result achieved in this litigation is favorable. The average gross payment to each Class Member is estimated to be \$1,813.68 and the highest gross payment is estimated to be \$3,807.68, and the average estimated payment amongst all PAGA Members is \$67.81 and the highest payment is \$152.03. (Garcia Decl., ¶¶ 14-16). The individual settlement payments are in excess of the majority of wage and hour class actions which are settled and approved. (Hawkins Decl., ¶ 36 ; Ex. 1 [Trends in Wage and Hour Settlements: 2019 Update]).

b. The Risks of Litigation

“The risk that further litigation might result in Plaintiffs not recovering at all, particularly a case involving complicated legal issues, is a significant factor in the award of fees” *Omnivision*, 2007 WL 4293467 at *9. As detailed above, the result was far from certain. Here, and as extensively detailed in Plaintiffs’ Motion for Preliminary Approval, a number of defenses asserted by Defendant present serious threats to the claims of Plaintiffs and the other Class Members. (Hollis Preliminary Approval Decl. ¶¶ 23-38). There was considerable risk that Plaintiffs would not prevail on a motion for class certification and/or Defendant would prevail on their defenses, thus, defeating any and all recovery to the class. Even if Plaintiffs successfully obtained class certification of their wage and hour claims, proving class-wide liability was by no means a foregone conclusion. All of these were very substantial risks any of which could have resulted in

1 the Class receiving nothing if the claims were litigated.

2 **c. The Skill Required and the Quality of Work**

3 Practice in the narrow areas of wage and hour and class action litigation requires skill,
4 knowledge and experience in two distinct subsets of the law, and Class Counsel must have
5 expertise in both. The issues presented in this case required more than a general appreciation of
6 wage and hour law and class action procedure as this area of practice is still developing as
7 evidenced by the California Supreme Court's ruling in *Ferra v. Loews Hollywood Hotel, LLC*
8 (2021) 11 Cal.5th 858, *Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93, and
9 *Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal. App. 5th 638. The Settlement was possible only
10 because Class Counsel was able to persuade Defendant that Plaintiffs could potentially prevail on
11 the difficult legal issues regarding liability, maintain class certification, overcome difficulties in
12 proof as to monetary relief and take the case to trial.

13
14 In successfully navigating these hurdles Class Counsel displayed the necessary dual skill
15 set. The high quality of the work in this case was mandated by the very vigorous and contentious
16 defense presented by counsel for Defendant. Class Counsel was required to invest substantial time
17 and resources in every stage of this action. (Hawkins Decl. ¶ 54). The favorable result obtained
18 by the settlement supports the skill and quality of work of Class Counsel.

19 **d. The Contingent Nature of the Fee and Financial Burden**

20 There is a substantial difference between the risk assumed by attorneys being paid by the
21 hour and attorneys working on a contingent fee basis. *Powers v. Eichen* (9th Cir. 2000) 229 F.3d
22 1249, 1256. The attorney working on a contingent basis can only log hours while working without
23 pay towards a result that will hopefully entitle him to a marketplace contingent fee considering
24 the risk and other factors of the undertaking, otherwise, the contingent fee attorney receives
25 nothing. *Id.* at 1257.

26 In this case, Class Counsel subjected themselves to this contingent fee market risk in this
27 all or nothing contingent fee case wherein the necessity and financial burden of private
28 enforcement makes the requested award appropriate. Counsel retained on a contingency fee basis,

1 is entitled to a premium in order to compensate for both the risks and the delay in payment. See
2 e.g. *Stanger v. China Elec. Motor, Inc.* (9th Cir. 2016) 812 F.3d 734 (courts “must” apply a risk
3 enhancement); *Stetson v. Grissom* (9th Cir. 2016) 821 F.3d 1157, 1166 (abuse of discretion not
4 to apply risk multiplier). Despite the most vigorous and competent of efforts, success is never
5 guaranteed. *McKittrick v. Gardner* (4th Cir. 1967) 378 F.2d 872, 875. If counsel is not adequately
6 compensated for the risks inherent in difficult class actions, competent attorneys will be
7 discouraged from prosecuting similar cases. *Steiner v. BOC Financial Corp.* (S.D.N.Y. 1980)
8 1980 U.S. Dist. LEXIS 14561 at *6- *7. Here, a number of difficult issues, the adverse resolution
9 of any one of which could have doomed the successful prosecution of the action, were present
10 here. As discussed above, attorneys’ fees in this case were not only contingent but extremely
11 risky, with a very real chance that Class Counsel would receive nothing for their efforts, having
12 devoted time and advanced costs, and in this type of litigation where the corporate Defendant and
13 their attorneys are well funded, this can prove to be very expensive and risky. (Hawkins Decl. ¶
14 53). Because the risk of advancing costs in this type of litigation can be significant, it is therefore
15 cost prohibitive to many attorneys. Class Counsel has advanced \$24,074 in costs which could not
16 have been recovered if this case had been lost. (Hawkins Decl., ¶ 50; Ex. 4).

18 e. Awards in Similar Cases

19 The attorneys’ fees requested by Class Counsel are within the range of fees awarded in
20 comparable cases. Over the past 10 years, the courts have historically awarded fees in the range
21 of 20% to 50%. *In re Warner Communications Sec. Lit* (S.D. N.Y. 1985) 618 F.Supp. 735, 749-
22 50. Class Counsels’ requested fees are 35% of the total value of the case, a percentage well within
23 the range of reasonableness given the excellent results obtained for the Class, the risks undertaken,
24 and the skill of the prosecution. *See Laffitte*, 1 Cal. 5th at 486, 506.

25 4. Class Counsel’s Costs Were Reasonably Incurred

26 Class Counsel requests reimbursement for expenses and costs in the amount of \$24,074
27 which is within the amount preliminarily approved by this Court. The difference of \$926 will be
28 added to the Net Settlement Amount to be distributed to Participating Class Members. These

litigation expenses are detailed in the Hawkins Declaration. (Hawkins Decl., ¶ 50). These costs were reasonably incurred in the prosecution of this matter.

5. The Class Representative Should Receive the Requested Enhancement Payment

Plaintiffs respectfully submit that for their service as the Class Representatives, Plaintiffs should be awarded \$15,000.00 each as the agreed Class Representative Incentive Payment. Defendant agreed not to oppose the payment of these amounts to Plaintiffs.

Plaintiffs have performed their duties to the Class admirably and without exception. The full extent of Plaintiffs' participation is detailed in the Declaration of James R. Hawkins and the Declarations of Plaintiffs Priscilla Aguilar, Julian Haro, Juan Madera, and Richard Nunez filed concurrently herewith. Plaintiffs also assumed the risk that they might possibly be liable for costs incurred in connection with this case. Plaintiffs also risked being "blacklisted" by other future employers for having sued Defendant in a class action. See *Guippone v. BH S&B Holdings LLC* (S.D.N.Y. Oct. 28, 2011) 2011 U.S. Dist. LEXIS 126026, at **4, 20. Without Plaintiffs' support, cooperation and information, no other fellow employees would be receiving any benefit. The payment of the incentive payment to a successful class representative is appropriate and the amount of \$15,000 each (\$60,000 total) is a small portion of the total Settlement (1.6%) secured on behalf of the Class. (Hawkins Decl. ¶¶ 25-31). This payment to compensate Plaintiffs for their effort and risk in bringing this case to benefit the other 1,106 employees and secure a total settlement of \$3,700,000.

VI. THE SETTLEMENT ADMINISTRATOR'S REQUESTED EXPENSES ARE REASONABLE AND APPROPRIATE.

The parties retained a neutral third-party administrator, CPT Group, to administer the notice process and distribute the settlement payments. CPT Group's duties include those testified to in the Declaration of CPT Group. (Garcia Decl. ¶¶ 2-12). CPT Group's expenses for present and future work towards administering the Settlement are \$15,000, which Plaintiffs believe is appropriate and respectfully requests the Court award to CPT Group. (Id., Ex. C)

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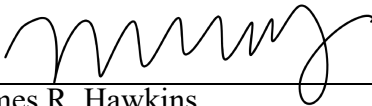
VII. CONCLUSION

The Settlement is the product of arm’s length negotiations after significant investigation and discovery, mediation, and negotiation. It provides substantial benefits to the Class Members that are discernibly fair when weighed against the significant potential risks, delays, and costs of further litigation. Thus, Plaintiffs respectfully request that the Court grant final approval of the Settlement.

In addition, Class Counsel’s fee request is well within the realm of reasonableness approved by courts given the efforts expended in this case. Class Counsel undertook great risks on a contingent fee basis and achieved a favorable result for the benefit of Class Members. Class Counsel respectfully requests approval of the application for award of attorneys’ fees of \$1,295,000 reimbursement of litigations costs of \$24,074 and an enhancement award of \$15,000 to each Plaintiff as the Class Representatives.

Dated: June 18, 2024

JAMES HAWKINS APLC

By: 
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