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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ORANGE**

11 ANTOINE BRESSE, individually and on
12 behalf of himself and all others similarly
13 situated,

14 Plaintiff,

15 v.

16 INFINITE COMPUTER SOLUTIONS,
INC., a Delaware Corporation; and DOES 1-
17 50, inclusive,

18 Defendants.
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Case No. 30-2022-01243447-CU-OE-CXC

CLASS ACTION

Assigned for All Purposes to:
Hon. Melissa McCormick

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

Date: August 21, 2025
Time: 2:00 p.m.
Dept: CX-105

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TABLE OF AUTHORITIES

State Cases

Carrington v. Starbucks Corp.

(2018) 30 Cal.App.5th 504 9

Cazares v. Saenz

(1989) 208 Cal.App.3d 279..... 18

Chavez v. Netflix, Inc.

(2008) 162 Cal.App.4th 43 15

City of Oakland v. Oakland Raiders

(1988) 203 Cal.App.3d 78 15

Dunk v. Ford Motor Co.

(1996) 48 Cal.App.4th 1794 5

Hernandez v. Restoration Hardware, Inc.

(2018) 4 Cal.5th 260 14

Ketchum v. Moses

(2001) 24 Cal.4th 1122 18

Laffitte v. Robert Half Int'l., Inc.

(2016) 1 Cal.5th 480..... 13, 14, 15, 16

Lealao v. Beneficial Cal., Inc.

(2000) 82 Cal.App.4th 19 12

Levy v. Toyota Motor Sales, U.S.A.

(1992) 4 Cal.App.4th 8073 12

Potter v. Pacific Coast Lumber Co.

(1951) 37 Cal.2d 592 5

Rider v. County of San Diego

(1992) 11 Cal.App.4th 1410..... 19

Serrano v. Priest

(1977) 20 Cal.3d 25 14

7-Eleven Owners for Fair Franchising v. Southland Corp.

(2000) 85 Cal.App.4th 1135 10

Staton v. Boeing

(9th Cir. 2003) 327 F.3d 938, ... 11

1	<i>Wershba v. Apple Computer</i>	
2	(2001) 91 Cal.App.4th 224	5, 10, 13
3	Federal Cases:	
4	<i>Blum v. Stenson</i>	
5	(1984) 465 U.S. 886	13
6	<i>Boeing Co. v. Van Gernert</i>	
7	(1980) 444 U.S. 472	11, 14
8	<i>Ching v. Siemens Indus, Inc.</i>	
9	(N.D. Cal. June 27, 2014) 2014 WL 2926210.....	8
10	<i>Class Plaintiffs v. City of Seattle</i>	
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12	<i>Deposit Guaranty Nat'l Bank, Jackson, Miss. v. Roper</i>	
13	(1980) 445 U.S. 326	5, 12
14	<i>Ellis v. Naval Air Rework Facility</i>	
15	(N.D. Cal. 1980), 87 F.R.D. 15.....	9
16	<i>Evans v. Jeff D.</i>	
17	(1986) 475 U.S. 717.....	13
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19	(E.D. Pa. 1985) 630 F. Supp. 482	9
20	<i>Glass v. UBS Fin. Servs.</i>	
21	(N.D. Cal. Jan. 26, 2007) 2007 WL 221862	8
22	<i>Harris v. Marhoefer</i>	
23	(9th Cir. 1994) 24 F.3d 16.....	19
24	<i>Hensley v. Eckerhart</i>	
25	(1983) 461 U.S. 424	13
26	<i>In re: American Bank Note Holographics</i>	
27	127 F.Supp.2d 418 (S.D.N.Y. 2001)	6
28	<i>In re MyFord Touch Consumer Litig.</i>	
	2019 WL 1411510	7
	<i>In re Omnivision Techs., Inc.</i>	
	(N.D. Cal. 2008) 559 F.Supp.2d 1036.....	17
	<i>In re Taco Bell Wage and Hour Actions</i>	

1	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557	9
2	<i>In re Warner Communications Sec. Litig.</i>	
3	(S.D.N.Y. 1985) 618 F.Supp. 735.....	15, 18
4	<i>Jennings v. Open Door Mktg. Inc.</i>	
5	(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356.....	9
6	<i>Lane v. Facebook, Inc.</i>	
7	(9th Cir. 2012) 696 F.3d 811, 819	10
8	<i>Mandujano v. Basic Vegetable Prods., Inc.</i>	
9	541 F.2d 832 (9th Cir. 1976)	6
10	<i>McKittrick v. Gardner</i>	
11	(4th Cir. 1967) 378 F.2d 872.....	18
12	<i>Paul, Johnson, Alston & Hunt v. Graulity</i>	
13	(9th Cir. 1989) 886 F.2d 268.....	16
14	<i>Powers v. Eichen</i>	
15	(9th Cir. 2000) 229 F.3d 1249.....	18
16	<i>Slavkov v. First Water Heater Partners I</i>	
17	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303	9
18	<i>Van Bronkhorst v. Safeco Corp.</i>	
19	(9th Cir. 1976) 529 F.2d 943.....	5
20	<i>Van Kempen v. Matheson Tri-Gas, Inc.</i>	
21	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	9
22	<i>Vincent v. Hughes Air West, Inc.</i>	
23	(9th Cir. 1977) 557 F.2d 759	14
24	<i>White v. Experian Information Solutions, Inc.</i>	
25	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	10
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	Rules	
	Cal. Rule of Court 3.769	5, 12

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Secondary Sources

H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41 5

Newberg, Newberg on Class Actions (3d ed.) § 14.03..... 15, 19

Conte, Attorney Fee Awards (2d ed. 1993) § 104 14

Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) 10

1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Antoine Bresse (“Plaintiff”) seeks final approval of
3 a non-reversionary class action settlement resolving wage and hour claims on behalf of 625
4 individuals employed by Defendant Infinite Computer Solutions, Inc. (“ICS” or “Defendant”) in
5 California as non-exempt employees during the Class Period from January 31, 2018 through May
6 19, 2024. The proposed \$2,361,280.97 total settlement provides about \$1,425,454.40 in cash
7 payments to the Class, with an average award of about **\$2,280.73** and high award of **\$8,037.38**,
8 plus additional amounts payable under PAGA. The remaining balance will cover the requested
9 service award to the Plaintiff, Administration Expenses Payment, civil penalties to the state, and
10 reasonable attorney’s fees and costs.

11 The Parties and their counsel finalized the settlement after extensive and difficult arms-
12 length negotiations overseen by an experienced and highly-regarded mediator. The Court
13 conditionally certified the Class and preliminarily approved the settlement on April 15, 2025.
14 Since then, the Court-approved notice form was mailed to the Class Members on June 6, 2025,
15 and they have reacted very favorably to the settlement. As of the date of this motion, there are no
16 objections and only four class members opted out.

17 Further, Class Counsel secured an excellent settlement with ICS after some two years of
18 investigation, litigation, and settlement negotiation and administration, all without any
19 compensation for services rendered or costs expended. The class notice duly informs the class
20 members that Class Counsel would request attorney’s fees not to exceed one-third of the Gross
21 Settlement Amount, or \$804,610.92, along with reimbursement of no more than \$25,000 for
22 actual costs incurred litigating this matter. As of the filing of this motion, not one Class Member
23 objected to the proposed fee award. Consistent with the Settlement and class notice, Plaintiff now
24 respectfully requests the Court award Class Counsel's fees in the amount of \$795,426.99 and costs
25 in the amount of \$13,399.58, as described in the Declarations of James R. Hawkins (“Hawkins
26 Decl.”) filed 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, and the two-plus year delay in payment and, when subjected to a lodestar crosscheck,
2 result in fee award equal to the base lodestar with a reasonable upward modifier.

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

6 **II. SUMMARY OF KEY TERMS OF THE PROPOSED SETTLEMENT**

7 Under the Settlement, Defendant will pay \$2,361,280.97¹ into a common fund, the Gross
8 Settlement Amount ("GSA"). Attorney's fees of up to \$795,426.99 (33.33% of the GSA), litigation
9 costs of \$13,399.58, Class Representative Service Payment of \$10,000 to Plaintiff (reduced to
10 \$5,000 in Class Notice), Administration Expenses Payment of \$9,500, and \$112,500 for PAGA
11 Penalties (of which \$84,375 will go to the California Labor & Workforce Development Agency
12 ("LWDA") for the State's share of civil penalties and \$28,125 will go to Aggrieved Employees), all
13 will be paid from the GSA. The Net Settlement Amount of around \$1,425,454.40 will be allocated
14 pro rata to the Participating Class Members based on their weeks worked during the Class Period.
15 No portion of the GSA will revert to Defendant. (Hawkins Dec. ¶¶ 8-9).

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

17 The Court conditionally certified a Settlement Class defined to include all current and former
18 non-exempt employees of Infinite Computer Solutions, Inc. who worked in the state of California
19 during the Settlement Class Period from January 31, 2018 to May 19, 2024. (Id. ¶ 4). The Settlement
20 Administrator ultimately mailed class notices to 629 individuals identified as members of the
21 Settlement Class. Nothing has changed to require reconsideration of the Court's certification of the
22 Settlement Class. (Admin Dec. ¶¶ 5-7).

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

24 As noted, the settlement obligates Defendant to pay \$2,361,280.97 to resolve the Settlement
25 Class's claims, inclusive of attorney's fees and costs. At least \$1,425,454.40 from the GSA will be

27 ¹ The Escalator Clause of the Settlement Agreement indicates if the workweeks exceed 50,245 by more than 10%,
28 then the Gross Settlement Amount would increase proportionally by the amount more than 10%. Because the number
of workweeks was 58,347 the Escalator Clause was triggered. The Gross Settlement Amount increased to
\$2,361,280.97 (\$2,225,000.00 + \$136,280.97 escalator). (Hawkins Dec. ¶ 8).

distributed to the Participating Class Members. This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share.

Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to non-wage damages, penalties, and interest, which allocation is consistent with Defendant's potential liability as discussed below. (Hawkins Dec. ¶ 12). Defendant will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash their settlement check) will be forwarded to the California Controller's Unclaimed Property Fund in the name of the Class Member. Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked in California as a non-exempt employee during the Class Period.

Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under applicable law. (Hawkins Dec. ¶ 11). These methods are intended to ensure each Class Member receives a settlement award corresponding to the relative value of their potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Defendant and the amount unpaid wages, etc.

The average class award to the Participating Class Members will be approximately \$2,280.73 and awards will range from \$24.43 to a maximum award of \$8,0337.68, while the average PAGA award will be about \$47.11. (Administrator Decl. ¶¶ 14-15).

C. Settlement Administration

Phoenix Class Action Administration Solutions, as the Court-approved Settlement Administrator, mailed the Notice Packets to the Class members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms,

1 including the estimated relief each Class Member will receive, the amounts to be requested for Class
2 Counsel's Fees Payment, Class Counsel's Litigation Expenses Payment, and the Class
3 Representative Service Payment, and the right to opt out of or object to the settlement. Phoenix
4 mailed 629 Notice Packets on June 6, 2025. As of the filing of this motion, all Notice Packets were
5 deemed deliverable, for a 100% success rate. The response window for opting out, objecting to the
6 settlement, or submitting a dispute, expires on August 5, 2025. As of the filing of this motion,
7 Phoenix has received only four requests for exclusion (for a 99.36% participation rate), zero
8 objections to the settlement, and no disputes have been submitted regarding the information used to
9 calculate class member settlement shares. (Hawkins Dec. ¶¶ 18-19).

10 **D. Release of Claims**

11 Upon final approval and payment of the Settlement, Participating Class Members shall
12 forever release the Released Parties for the Released Claims for the Class Period, including all
13 claims pleaded in the Operative Complaint, and which could reasonably have been alleged, based
14 on the Class Period facts, allegations, and/or claims stated in the Operative Complaint, for work
15 performed during the Class Period, and as specifically detailed in Sections 6.2 of the Agreement.
16 (Hawkins Dec. ¶ 13). Additionally, the Aggrieved Employees will release the Released Parties from
17 all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on
18 the PAGA Period facts stated in the Operative Complaint, and PAGA Notice, and as more
19 specifically detailed in Section 6.3 of the Agreement. (Hawkins Dec. ¶ 14).

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

21 As noted, the Parties allocated \$112,500 from the GSA to resolution of Plaintiff's claims
22 under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and
23 adequate, and consistent with PAGA's underlying purposes. Under PAGA, \$84,375 (75%) of this
24 amount will be paid to the LWDA as the State's share of the civil penalties, and the remainder of
25 \$28,125 (25%) will be distributed to the 598 Aggrieved Employees eligible to receive a PAGA
26 payment. As required by Labor Code section 2699(1)(2), Plaintiff notified the LWDA of the
27 settlement and the final approval hearing via its online portal. (Hawkins Decl. ¶).
28

1 **III. ARGUMENT**

2 **A. Standards For Approval**

3 The law favors settlement, particularly in class actions where substantial resources can be
4 conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A. Conte, 4
5 Newberg on Class Actions (4th ed. 2002), § 11.41; *Class Plaintiffs v. City of Seattle* (9th Cir. 1992)
6 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976)
7 529 F.2d 943,950; *Potter v. Pacific Coast Lumber Co.* (1951) 37 Cal.2d 592, 602. Nevertheless, to
8 make certain the rights of absent parties are not unjustly compromised, the settlement of a class
9 action requires court approval. Cal. Rule of Court 3.769; *Dunk v. Ford Motor Co.* (1996) 48
10 Cal.App.4th 1794, 1801; *Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 245. The purpose
11 of that judicial review is to protect against fraud or collusion, and to ensure fairness to absent class
12 members. *Dunk*, 48 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished
13 through a two-step process intended to determine whether, under the totality of circumstances, the
14 settlement is fair, reasonable and adequate. *Dunk*, 48 Cal.App.4th at 1801; *Wershba*, 91 Cal.App.4th
15 at 245. On a motion for final approval, the trial court is charged with determining whether, in light
16 of the total circumstances of the action and the response of the class members to the proposed
17 settlement, the settlement is fair, reasonable, and adequate. *Dunk*, 48 Cal.App.4th at 1801-02;
18 *Wershba*, 91 Cal.App.4th at 244-45. The court has broad discretion in making that determination
19 and may consider a number of relevant factors, including: the strength of plaintiff's case; the
20 likelihood of potential recovery; the risk, expense and likely duration of further litigation; the
21 amount offered in settlement; the extent of discovery and stage of the proceedings; the experience
22 and opinion of counsel; and the reaction of class members to the settlement. *Id.* In light of the strong
23 judicial policy favoring the settlement of class actions, courts generally apply a presumption of
24 fairness to a proposed class action settlement when: (1) the settlement is reached through arm's-
25 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
26 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
27 is small. *Dunk*, 48 Cal.App.4th at 1802; *Wershba*, 91 Cal.App.4th at 245.

1 **B. The Proposed Settlement Merits Final Approval**

2 The proposed settlement of this action warrants final approval under the standards summarized
3 above. The settlement is fair, reasonable and adequate, and represents a favorable resolution of
4 highly disputed claims. Further, the settlement was overwhelmingly approved by the Settlement
5 Class Members as there are no objections and only four class members have requested exclusion.

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

7 The settlement is not the result of fraud or collusion. Rather, the proposed settlement was
8 reached following arm's-length negotiations presided over by Steve Mehta, Esq., a highly
9 respected and well-known mediator with extensive experience mediating wage and hour class
10 actions. Moreover, Plaintiff and counsel were well-informed about the facts and the law, and
11 counsel at James Hawkins APLC have years of litigation experience, including litigating wage
12 and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of
13 pursuing further litigation or settling the matter. Defendant likewise was represented by highly
14 qualified and experienced defense counsel. Both sides advocated vigorously for their clients and
15 nothing was "left on the table." (Hawkins Dec. ¶ 21).

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

17 The settlement was well-received by the class. As of the filing of this motion, no
18 objections have been filed, and only four Class Members requested exclusion, for a 99.36%
19 participation rate. (Hawkins Dec. ¶ 19). As many courts recognize, class member reaction to the
20 settlement is one of the most important factors to consider in determining if final approval should
21 be granted. *Mandujano v. Basic Vegetable Prods., Inc.*, 541 F.2d 832, 837 (9th Cir. 1976); *see*
22 *also In re: American Bank Note Holographics*, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is
23 well- settled that the reaction of the class to the settlement is perhaps the most significant factor to
24 be weighed in considering its adequacy") (internal quotation marks omitted).

25 **3. The Settlement is a Reasonable Compromise of Claims**

26 Prior to settlement, the parties engaged in formal and informal discovery to facilitate
27
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1 settlement discussions. (Hawkins Dec. ¶ 21). Thus, Plaintiff reviewed documents and information
2 regarding Infinite Computer Solutions' payroll practices, a random sampling of pay stubs and time
3 records from class members, applicable compensation plans, meal and rest break policies, etc.,
4 and information from Defendant regarding class size and breakdown, work weeks/pay periods,
5 rates of pay, and other information used to formulate a damages model. Plaintiff then had that
6 information analyzed by a consulting expert to assist in determining potential violation rates and
7 other data used to formulate a damages model. Plaintiff's counsel are confident they obtained
8 sufficient information to understand the law and facts of this case and make an informed decision
9 regarding the proposed settlement and whether it is fair and reasonable.

10 The Settlement compares favorably to other class settlements in terms of potential
11 recovery. *In re MyFord Touch Consumer Litig.*, 2019 WL 1411510, at *10 (citing cases where
12 settlement ranges from 5% to 10% of potential recovery). By way of example, Plaintiff alleged
13 that Defendant failed to pay for all hours worked, provide first meal breaks or rest breaks as a
14 matter of pattern and practice, failed to pay meal or rest period premiums, and failed to reimburse
15 necessary expenses. Defendant contended that its policies were facially compliant, that employees
16 were prohibited from working off the clock, that meal and rest periods were provided as required
17 by law, that any premiums owed were paid, and that it reimbursed all necessary expenses.
18 Defendant also contended that if Plaintiff had proceeded with the lawsuit and survived summary
19 judgment, the class and representative action allegations would have been stricken, no class would
20 have been certified in connection with any of the claims, and the action would have proceeded on
21 an individual basis because, among other reasons, individual issues predominate, Plaintiff is not
22 similarly situated to the putative class members he purports to represent, and the claims are not
23 manageable on a representative basis.

24 While Plaintiff believes in the strength of the allegations and that the claims are
25 appropriate for class certification, certification was far from certain given Defendant's defenses
26 and the state of the law regarding certification. The risk that Defendant could defeat certification,
27 defeat the representative claims, and/or prevail on their defenses, warranted a compromise. After
28 arms-length negotiations between experienced and informed counsel and with the assistance

1 of a mediator, the Parties agreed to the GSA of \$2,250,000 (subject to an escalator clause).

2 As the *Glass* court held:

3
4 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
5 and likely duration of further litigation likewise favors the settlement. Regardless of
6 how this Court might have rules on the merits of the legal issues, the losing party
7 likely would have appealed, and the parties would have faced the expense and
8 uncertainty of litigation an appeal. “The expense and possible duration of the
9 litigation should be considered in evaluating the reasonableness of [a] settlement.”

10 *Glass v. UBS Fin. Servs.* (N.D. Cal. Jan. 26, 2007) 2007 WL 221862, at *9 (citations omitted).

11 “Generally, unless the settlement is clearly inadequate, its acceptable and approval are preferable
12 to lengthy and expensive litigation with uncertain results.” *Ching v. Siemens Indus, Inc.*, (N.D.
13 Cal. June 27, 2014) 2014 WL 2926210, at *4 (quotation omitted).

14 The many risks posed by further litigation support approval of the settlement. Here, when
15 assessing a class action settlement, the Court should consider “[t]he strength of plaintiff’s case, the
16 risk, expense, complexity, and likely duration of further litigation, [and] the risk of maintaining
17 class action status.” *Dunk*, 48 Cal.App.4th at 1801.

18 Here, Defendant asserted strong defenses to Plaintiff’s claims that create a possibility that
19 the claims might not be certified or might fail on the merits. Counsel recognized the expense and
20 length of proceedings necessary to continue the litigation through trial and any appeals. Counsel
21 also considered the uncertainty and risk of further litigation, and the difficulties and delays
22 inherent in such litigation. While Plaintiff believes in the strength of the allegations and that the
23 claims are certifiable, Plaintiff and Class Counsel have balanced their evaluation of the validity
24 and merit of the asserted claims against potential problems of proof, the legal standards governing
25 litigation of class claims, uncertainty of obtaining and maintaining class certification, the potential
26 for appeals, and the expense and burden of prolonged litigation. Based on Class Counsel’s
27 evaluation, the Settlement is fair, adequate, and reasonable and in the best interest of the Class,
28 including Plaintiff.

The view of the attorneys actively conducting the litigation also “is entitled to significant

1 Weight” in deciding whether to approve the settlement. *Fisher Bros. v. Cambridge-Lee Indus.,*
2 *Inc.* (E.D. Pa. 1985) 630 F. Supp. 482, 488; *Ellis v. Naval Air Rework Facility*, (N.D. Cal. 1980),
3 87 F.R.D. 15, 18, *affd*, 661 F.2d. 939 (9th Cir. 1981); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610,
4 616- 17. Class Counsel negotiated this Settlement at arm’s length, and believe this is a fair and
5 reasonable settlement in light of the complexities of the case, the state of the law, and
6 uncertainties of class certification and litigation. Given the risk inherent in litigation and the
7 defenses asserted, this class action settlement is fair, adequate, and reasonable and in the best
8 interests of the Class Members, and should be finally approved.

9 As far as potential PAGA liability, as with the class claims Plaintiff discounted the
10 potential PAGA penalties based on Defendant’s various defenses on the merits and also accounted
11 for the Court’s wide discretion to reduce such penalties, or to decline to award penalties at all.
12 Labor Code § 2699(e)(2); *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504 (trial court
13 awarded penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal);
14 *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557
15 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$112,500 to PAGA
16 Penalties.

17 Plaintiff submits this amount is reasonable under the circumstances and in line with
18 comparable settlements in other wage and hour class actions in California. *E.g., Van Kempen v.*
19 *Matheson Tri-Gas, Inc.* (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
20 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
21 *Slavkov v. First Water Heater Partners I* (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
22 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
23 \$345,000 and the possible weaknesses in plaintiffs’ case, or 2.2 percent of total settlement).
24 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
25 and will be able to weigh in as necessary. *Jennings v. Open Door Mktg. Inc.* (N.D. Cal. Oct. 3,
26 2018. 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
27 where “[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
28 not objected to the settlement.

1 Thus, Plaintiff and counsel discounted the value of the class claims consistent with the
2 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
3 greater benefit if the litigation continued. Plaintiff and counsel concluded - in light of these very
4 real and substantial risks - settlement on the proposed terms and without prolonged and costly
5 litigation was in the best interests of the class. The overall \$2,361,280.97 recovery represents a
6 significant percentage of Defendant's potential exposure. Given Defendant's multi-layered
7 defenses and all other potential risks of continued litigation, a total recovery for the class of
8 \$2,361,280.97 which will result in average award of about \$2,280.73 per class member, plus
9 additional sums under PAGA, is a significant result well within the range of reasonableness
10 considering all potential outcomes, and it will provide direct monetary awards to all Participating
11 Class Members without further delay.

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

1 Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
2 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
3 claims process may indicate lack of fairness). Plaintiff and counsel submit the settlement is within
4 the “range of reasonableness,” and is fair and adequate for the Class.

5 **IV. ADMINISTRATION EXPENSES PAYMENT**

6 The settlement provides for a payment to Phoenix Class Action Administration Solutions from
7 the GSA for its services as the Settlement Administrator. As set forth in the Declaration of Jarrod
8 Salinas, Phoenix has performed and will continue to perform its required duties through final
9 distribution of the settlement funds, and incurred \$9,500 in fees and expenses. Accordingly,
10 Plaintiff respectfully requests the Court approve payment of \$9,500 to Phoenix from the GSA.
11 (Administrator Decl. ¶ 18, Ex.B).

12 **V. PLAINTIFF'S CLASS REPRESENTATIVE SERVICE PAYMENT**

13 Pursuant to the terms of the settlement, Plaintiff seeks a modest service payment of for his
14 services in bringing these claims on behalf of the Class. This request is reasonable given the risks
15 undertaken on behalf of the Class Members, and by contacting and retaining counsel to pursue
16 these claims, Plaintiff helped make this settlement possible for the absent Class Members, while
17 shouldering the risk of being liable for Defendant’s litigation costs. Plaintiff also exposed himself
18 to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google
19 search) for the benefit of other employees, placing himself at risk of discrimination by future
20 prospective employers. This request is also less than As set forth in more detail in the declaration
21 of Plaintiff submitted herewith, among taking many other actions assisting in the successful
22 litigation of this case, Plaintiff provided substantial factual information and documents to counsel,
23 attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast
24 of all significant developments. (Hawkins Dec. ¶¶ 25-33; See generally, Bresse Dec).
25 Accordingly, the requested service payment to Plaintiff is appropriate and justified as part of the
26 settlement. *Staton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class
27 representatives service and incentive payments ranging from \$2,000 to \$25,000).
28

1 **VI. CLASS COUNSEL’S FEES AND LITIGATION EXPENSES PAYMENT**

2 **A. The Attorneys’ Fees Requested Are Fair and Reasonable and Should Be Approved**

3 This Court has discretion over the amount of attorneys’ fees awarded and court approval is
4 required for Class Counsel’s fees. Cal. Rule of Court 3.769; *Levy v. Toyota Motor Sales, U.S.A.*
5 (1992) 4 Cal.App.4th 807, 813; *Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19. In
6 defining a reasonable fee, the Court should attempt to mimic the marketplace for cases involving
7 significant contingent risk, such as this one. *Deposit Guaranty Nat’l Bank, Jackson, Miss. v. Roper*
8 (1980) 445 U.S. 326, 338, reh’g. den. 446 U.S. 947; *Lealao*, 82 Cal.App.4th at 49-50 (court should
9 attempt “to award the fee that informed private bargaining, if it were truly possible, might have
10 reached” in determining a reasonable fee, and a fee award should approximate a “range of fees
11 freely negotiated in comparable litigation”). Here, Class Counsel’s request for attorney’s fees and
12 costs is reasonable and justified by the work performed, the benefits obtained, and the contingent
13 risk assumed. (Hawkins Dec. ¶¶ 34-37, 57-58).

14 As addressed in detail above, at the time the parties reached the tentative settlement success
15 for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that some or all
16 the claims would not be certified for class treatment, as Defendant had strong arguments that its
17 compensation policies were legal and properly compensated the class members. Even if Plaintiff
18 certified some or all of the claims and ultimately prevailed on the merits, it undoubtedly would
19 have taken several years to realize any recovery while pursuing class certification, trial, and an
20 almost certain appeal.

21 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief set out to obtain, and the
22 settlement provides substantial cash payments to Class Members, with an average award of about
23 **\$2,280.73**, and with a maximum award of **\$8,037.68**. Importantly as well, the Class Members
24 have been overwhelmingly supportive of the Settlement - as of the filing of this motion, there are
25 no objections to the settlement and only four out of 629 individuals have opted out.

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

1 The United States Supreme Court has ruled the parties to a class action properly may negotiate
2 not only the settlement of the action itself but also the payment of attorney's fees. *Evans v. Jeff D.*
3 (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In *Hensley v. Eckerhart* (1983) 461 U.S. 424, 437, the
4 Supreme Court explained that negotiated, agreed-upon attorney's fee provisions are the ideal
5 towards which the parties should strive: "A request for attorney's fees should not result in a
6 second major litigation. Ideally, of course, litigants will settle the amount of a fee." The United
7 States Supreme Court has reemphasized this policy and further stressed trial courts have "a
8 responsibility to encourage agreement" on fees. *Blum v. Stenson* (1984) 465 U.S. 886, 902 n.19.

9 As part of the Settlement, Defendant agreed not to object to an award of no more than 33.33%
10 of the GSA for attorney's fees and up to \$25,000 in reimbursement for litigation costs and
11 expenses (only \$13,399.58 is requested). Such a fee is commensurate with what the market would
12 provide for similar services and the Court therefore can most certainly enforce the agreement. As
13 California's Court of Appeal observed:

14 Given the unique reliance of our legal system on private litigants to enforce
15 substantive provisions of law through class and derivative actions, attorneys
16 providing the essential enforcement services must be provided incentives roughly
17 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.

18 *Lealao*, 82 Cal.App.4th at 47.

19 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
20 arms-length bargaining regarding relief to the Class was completed. The requested fee and cost
21 award was a product of these arms-length negotiations and fairly reflects the marketplace value of
22 the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties
23 should be approved.

24
25 **C. Class Counsel's Fees are Justified When Calculated as a Percentage of the Common**
26 **Fund**

27 In approving fee applications, courts typically apply either a percentage-of-recovery method or
28 the lodestar method. *Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 489; *Wershba v.*

1 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 254, disapproved on other grounds; *Hernandez*
2 *v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260. The California Supreme Court recognized the
3 advantages and equities of calculating attorney's fees using the percentage-of-the-common-fund
4 method in another wage-and-hour case:

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

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

12 Indeed, both California and federal courts have long recognized an appropriate method for
13 determining the award of attorney's fees is based on a percentage of the total value of benefits
14 afforded to class members by the settlement. *Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing*
15 *Co. v. Van Gernert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977)
16 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund recovered operates
17 to "spread litigation costs proportionately among all the beneficiaries so that the active beneficiary
18 does not bear the entire burden alone." *Vincent*, 557 F.2d at 769.

19 In determining a reasonable common fund fee award, courts should also consider the fact
20 that fees serve as an economic incentive for lawyers to bring class action litigation to achieve
21 increased access to the judicial system for meritorious claims and to enhance deterrents to
22 wrongdoing. Conte, *Attorney Fee Awards* (2d ed. 1993) § 104. Without prosecution on a
23 contingent basis and use of the class action mechanism, the courthouse door would effectively be
24 closed to most class members due to the relatively small size of their individual claims in relation
25 to the enormous time and cost associated with class action litigation.

26 Here, Class Counsel seek a fee award for their successful prosecution and resolution of this action
27 of no more than 33.33% of the total amount recovered by the Class via the lawsuit, or
28 \$795,426.99. The percentage requested is justified for the reasons set forth further below, and
comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class
action settlements shows that courts have historically awarded fees in the range of 20 to 50

1 percent, depending upon the circumstances of the case. *In re Warner Communications Sec. Litig.*
2 (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases
3 range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14
4 (“Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in
5 order to assure that the fees do not consume a disproportionate part of the recovery obtained for
6 the class, although somewhat larger percentages are not unprecedented.”).

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

8 To ensure the fairness of an attorney’s fee award, courts frequently conduct a lodestar cross
9 check of counsel’s fees. “A lodestar cross-check thus provides a mechanism for bringing an
10 objective measure of the work performed into the calculation of a reasonable attorney fee.”
11 *Laffitte*, 1 Cal.5th at 504. Here, Class Counsel spent 372.40 hours of time on this matter, resulting
12 in a lodestar of \$280,574.20, and Class Counsel’s work performed and time expended are detailed
13 in Class Counsel’s declaration and billing records filed herewith. (Hawkins Dec. ¶¶ 43-48, 52-53;
14 Ex. 2). Additionally, Class Counsel will incur additional time following final approval to, *inter*
15 *alia*, respond to class member inquiries, work with the Settlement Administrator on the
16 distribution of settlement funds, and on the compliance hearing.

17 The above lodestar is based on an eminently reasonable number of hours worked to litigate
18 this matter to a successful conclusion, and the requested attorney hourly rates are reasonable and
19 comport with hourly rates charged by other attorneys with similar experience in this practice area
20 in California. On a lodestar basis, the fee request of \$795,426.99 results in a base lodestar with a
21 reasonable upward modifier of 2.83, which is entirely in line with California precedent. Indeed,
22 California courts routinely approve multipliers in the in the 2-4 range to compensate for the time
23 and risk of class action cases. *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 (affirming
24 attorneys' fee award including an upward multiplier of 2.5); *Wershba*, 91 Cal.App.4th at 255
25 (“Multipliers can range from 2 to 4 or even higher.”); *City of Oakland Oakland Raiders* (1988)
26 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the requested
27 multiplier effectively operates to show that the percentage fee request is reasonable considering
28 the challenges presented in this contingency fee matter, and appropriately compensates Class

1 Counsel for the contingent risk assumed and delay in payment during the 2+ years counsel have
2 been representing Plaintiff. Thus, the multiplier results in a fee constituting a fair return on the
3 contingency.

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

6 What has now emerged in most fee award decisions is the recognition that fee
7 determinations in both common fund and statutory fee situations are incapable of mathematical
8 precision because of the intangible factors that must be resolved in the court's discretion based on
9 the circumstances of each particular case. Conte, § 207, p. 44. In determining an appropriate fee in
10 a common fund case, a Court must decide, based on the unique posture of each case, what
11 percentage of the common fund would most reasonably compensate Class Counsel given the
12 nature of the litigation and the performance of counsel. *Paul, Johnson, Alston & Hunt v. Gaulty*
13 (9th Cir. 1989 886 F.2d 268, 272) (the benchmark percentage fee may be adjusted to account for
14 the circumstances involved in a case).

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

19 **1. The Results Achieved.**

20 Class Counsel obtained an excellent result in this case for the Class Members. The
21 Settlement provides real monetary benefits to the Class Members, and the Settlement is
22 particularly advantageous to the Class Member because the proceeds will be distributed shortly as
23 opposed to waiting additional years for a similar, or possibly, less favorable result. Considering
24 many individual claims would be very modest and would not be cost-effective to pursue
25 successfully, the Settlement provided them with fair compensation for their claims. Moreover, the
26 absence of any objection to either the Settlement or the attorney's fee request bolsters the
27 excellent results. Indeed, the approval of the Class is overwhelming as indicated by the fact that
28 only four class members opted out. Additionally, the settlement amounts to a substantial

1 percentage of the maximum value of the amount the Class might have obtained if it had tried the
2 case and recovered on all theories seeking recovery of wages and penalties. “It is well-settled law
3 that a cash settlement amounting to only a fraction of the potential recovery does not per se render
4 the settlement inadequate or unfair.” *In re Omnivision Techs., Inc.*, 559 (N.D. Cal. 2008)
5 F.Supp.2d 1036, 1042.

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

7 At the time of filing the complaint, Class Counsel recognized that they would have to
8 expend a substantial amount of time and advance significant costs to prosecute a statewide class
9 action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against
10 a sophisticated company represented by experienced attorneys. Despite their belief in the validity
11 of Plaintiff’s claims, they also knew they faced substantial risks of class certification and the
12 ability to prove class-wide and individual damages. In light of the highly uncertain nature of this
13 suit, Class Counsel also bore the risk that Defendant would dig in and attempt to bury Class
14 Counsel in work. Given the modest size of Class Counsel’s firm compared to Defendant’s
15 counsel, not receiving any compensation for several years while simultaneously advancing
16 litigation costs posed considerable risk and difficulty.

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

18 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
19 experience. The issues presented in this case required more than just a general appreciation of
20 wage and hour law and class action procedure. This Settlement was possible only because counsel
21 persuaded Defendant that Plaintiff and the putative class had a realistic chance of prevailing on
22 their claims despite Defendant’s contrary arguments, and that the case would be pursued through
23 class certification and trial if necessary. In successfully navigating these hurdles, Class Counsel
24 displayed appropriate skill while pursuing a risky and difficult case.

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

26 There is a substantial difference between the risk assumed by attorneys being paid by the
27 hour and attorneys working on a contingent fee basis. The attorney being paid by the hour can go
28 to the bank with his fee. *Powers v. Eichen* (9th Cir. 2000) 229 F.3d 1249, 1256. The attorney

1 working on a contingent basis can only log hours while working without pay towards a result that
2 will hopefully entitle him to a market fee considering the risk and other factors of the undertaking.
3 *Id.* at 1257. Otherwise, the contingent fee attorney receives nothing. *Id.* In this case, Class Counsel
4 subjected themselves to this risk in this all or nothing contingent fee case wherein the necessity
5 and financial burden of private enforcement makes the requested award appropriate.

6 Counsel retained on a contingency fee basis, whether in private matters or in class action
7 litigation, is entitled to a premium beyond their standard, hourly, non-contingent fee schedule to
8 compensate for both the contingent risk assumed and the delay in payment. The simple fact is that
9 despite the most vigorous and competent of efforts, success is never guaranteed. *McKittrick v.*
10 *Gardner* (4th Cir. 1967) 378 F.2d 872, 875. Indeed, if counsel is not adequately compensated for
11 the risks inherent in difficult class actions, competent attorneys will be discouraged from
12 prosecuting similar cases. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-33; *Cazares v. Saenz*
13 (1989) 208 Cal.App.3d 279, 287.

14 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate the
15 investment of unnecessary time in a case, and the adverse resolution of any one of several difficult
16 issues present in this matter could have doomed the entire effort. As discussed, the attorney's fees
17 in this case were not only contingent but fairly risky, and there was always a palpable chance
18 Plaintiff's counsel would receive nothing for any number of reasons. Accordingly, the contingent
19 nature of the fee and the financial burdens on Class Counsel and Plaintiff also support the fee
20 requested.

21 **5. Awards in Other Cases**

22 As discussed, the attorney's fees requested by Class Counsel are within the range of fees
23 awarded in comparable cases, as review of class action settlements shows that the courts have
24 historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of
25 the case. *In re Warner Communications Sec. Litig.* (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50
26 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg,
27 Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper
28 limit on a reasonable fee award from a common fund in order to assure that the fees do not

1 consume a disproportionate part of the recovery obtained for the class, although somewhat larger
2 percentages are not unprecedented.”). Class Counsel’s requested fees equal to 33.33% of the gross
3 amount recovered on behalf of the class and are well within the range of reasonableness under
4 either the percentage of the recovery or the lodestar method in light of the contingent risk
5 assumed, the delay in payment, the result achieved, and the overall quality of the representation.

6 **F. Class Counsel’s Costs and Expenses are Reasonable**

7 Plaintiff’s counsel also request reimbursement of actual out-of-pocket expenses incurred to
8 prosecute this action. These expenses were incidental and necessary to the effective representation
9 of the employees, and Plaintiff’s counsel is permitted to recover litigation costs and expenses
10 under the common fund doctrine and the Settlement Agreement. *Serrano*, 20 Cal.3d at 35
11 (common fund doctrine permits recovery of fees and costs from the fund); *Rider v. County of San*
12 *Diego* (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund “[o]f
13 necessity, and for precisely the same reasons discussed above with respect to the recovery of
14 attorneys’ fees by ... [Plaintiff’s] attorneys”). Plaintiff’s counsel also is entitled to recover “those
15 out-of-pocket expenses that would normally be charged to a fee-paying client.” *Harris v.*
16 *Marhoefer* (9th Cir. 1994) 24 F.3d 16, 19.

17 Class Counsel incurred a total of \$13,399.58 in expenses incurred in connection with this
18 litigation. These expenses include the amounts paid for court filing fees, service of process, expert
19 fees, and mediation fees, all of which are costs normally billed to and paid by the client. These
20 costs were reasonably incurred in the prosecution of this matter and it is respectfully requested
21 that the Court authorized they be reimbursed in full.

22 **VII. CONCLUSION**

23 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this
24 motion and grant final approval of the proposed class action settlement and approve the payment
25 of PAGA penalties to the State. Plaintiff further requests the Court approve payment of the
26 Administration Expenses Payment, approve the Class Representative Service Payment, approve ///

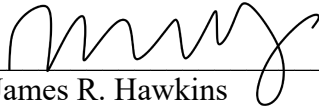
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1 the Class Counsel Fees Payment, approve the Class Counsel Litigation Expenses Payment, all as
2 requested, and enter judgment in this action.

3
4 Dated: 08/08/2025

JAMES HAWKINS APLC

5 

6 James R. Hawkins

Christina M. Lucio

7 Mitchell J. Murray

8 Attorneys for Plaintiff and the Settlement Class
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