

1 Adam Rose (210880)
adam@frontierlawcenter.com
2 Manny Starr (319778)
manny@frontierlawcenter.com
3 Theodore Tang (313294)
theodore@frontierlawcenter.com
4 FRONTIER LAW CENTER
23901 Calabasas Road, #1084
5 Calabasas, California 91302
6 Telephone: (818) 914-3433
Facsimile: (818) 914-3433

7
8 Attorneys for Plaintiff
Wendy Navarro Garcia
9
10

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF ORANGE**

13 WENDY NAVARRO GARCIA, on behalf of
14 herself and all similarly situated individuals and
aggrieved employees,

15 Plaintiff,

16 v.

17 WIDDICOMBE ENTERPRISES, INC., and
18 DOES 1 to 100,

19 Defendants
20
21
22

CASE NO. 30-2021-01235358-CU-OE-CXC

**PLAINTIFF WENDY NAVARRO GARCIA'S
NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF ADAM ROSE;
DECLARATION OF YAMI BURNS;
DECLARATION OF WENDY NAVARRO
GARCIA: PROPOSED ORDER AND
JUDGMENT**

Date.: January 5, 2024
Time: 1:30 p.m.
Dept: CX103

23 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**
24

25 **PLEASE TAKE NOTICE** that on January 5, 2024 at 1:30 p.m., or as soon thereafter as
26 may be heard before the Honorable Lon Hurwitz, judge presiding, in Department CX103 of the
27 above referenced Court located at 751 W. Santa Ana Blvd., Santa Ana, CA 92701, Plaintiff Wendy
28 Navarro Garcia, ("Plaintiff") will move the Court for an order for final approval of the class action

1 and PAGA settlement with Defendant Widdicombe Enterprises, Inc. (“Defendant”). Through this
2 Motion, Plaintiff seeks further entry of an Order:

- 3 (1) Approving the parties’ class and representative action settlement in the amount of \$1.2
4 million (the “Gross Settlement Amount”);
5 (2) Approving the Class Representative Service Payment of \$5,000;,
6 (3) Approving the payment of \$400,000 to Class Counsel as attorney’s fees;
7 (4) Approving the payment of up to \$12,000 to Class Counsel for reimbursement of
8 incurred litigation expenses;
9 (5) Approving the payment of \$14,500 to the Settlement Administrator, Phoenix Class
10 Action Settlement Solutions, for its services in administering the settlement;
11 (6) Approving the PAGA allocation of \$100,000, \$75,000 of which is to be paid to the
12 Labor & Workforce Development Agency, and \$25,000 paid to the Aggrieved
13 Employees on a pro rata basis.

14 The motion is based upon this Notice of Motion, the Memorandum of Points and
15 Authorities, the supporting Declaration of Adam Rose, the Declaration of Settlement Administrator
16 Yami Burns, and the declaration of Wendy Navarro Garcia, as well as all pleadings and documents
17 filed in this action, and any other matters as may be presented at the fairness hearing.

18
19 Date: December 21, 2023

FRONTIER LAW CENTER

20
21 /s/ Adam Rose
22 Attorney for Plaintiff
23 Wendy Navarro Garcia
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE SETTLEMENT TERMS.....	2
III.	FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE	3
A.	The Kullar Factors Weigh in Favor of Approval	4
1.	Strength of Case	4
2.	Risks of Further Litigation.....	7
3.	Risk of Maintaining Class Action Status Through Trial	7
4.	The Amount Offered in Settlement	7
5.	Extent of Discovery Completed and Stage of Proceedings	8
6.	Experience and Views of Counsel	8
7.	Presence of a Governmental Participant	8
8.	Reaction of Class Members to the Settlement	8
IV.	THE REQUESTED ATTORNEYS’ FEES, COSTS, AND ENHANCEMENT PAYMENT ARE APPROPRIATE	9
A.	Class Counsel is Experienced and Endorses the Settlement.....	9
B.	The Class Representative Service Award is Reasonable and Should Be Awarded..	9
C.	The Request for Attorneys’ Fees and Costs Should be Approved.....	10
D.	The Request for Attorneys’ Fees as a Percentage of the Recovery Should be Approved Because This is a Common Fund Case.....	11
E.	The Court Should Approve the Request for Reimbursement of Costs Up to \$12,000 13	
F.	Disclosure of Fee Splitting Arrangements	13
G.	Proposed Compliance Date	13
V.	CONCLUSION.....	13

TABLE OF AUTHORITIES

Cases

<i>Balderas v. Massage Envy Franchising, LLC</i> , (N.D. Cal. July 21, 2014) No. 12–cv–06327 NC	8
<i>Basurco v. 21st Century Ins. Co.</i> (2003) 108 Cal.App.4th 110	7
<i>Bellinghausen v. Tractor Supply Co.</i> , (N.D. Cal. Mar. 20, 2015) No. 13-CV-02377-JSC	6
<i>Boeing Co. v. Van Gemert</i> (1980) 444 U.S. 472	11
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F.Supp.610	9
<i>Brinker Restaurant Corp. v. Superior Court</i> (2012) 53 Cal. 4th 1004	4, 7
<i>Cellphone Termination Fee Cases</i> (2010) 186 Cal. App. 4th 1380	9
<i>Choate v. Celite Corp.</i> (2013) 215 Cal.App.4 th 1460	6
<i>Clark v. American Residential Services LLC</i> (2009) 175 Cal. App.4th 785	9
<i>Cotter v. Lyft, Inc.</i> (N.D. Cal. 2016) 176 F.Supp.3d, 390	7
<i>Duran v. U.S. Bank Nat’l Ass’n.</i> (2014) 59 Cal.4th 1	4
<i>Ellis v. Naval Air Rework Facility</i> (N.D. Cal. 1980) 87 F.R.D.15	9
<i>Fisher Bros. v. Cambridge-Lee Industries, Inc.</i> , (E.D. Pa. 1985) 630 F.Supp.482, 488	9
<i>Greko v. Diesel U.S.A., Inc.</i> , (N.D. Cal. Apr. 26, 2013) No. 10–cv–02576 NC	6
<i>Harris v. Vector Mktg. Corp.</i> (N.D. Cal. 2009) 656 F. Supp. 2d 1128	5
<i>In re Mego Fin. Corp. Secs. Litig.</i> , (9th Cir.2000) 213 F.3d 454	6
<i>Kirby v. Immoos Fire Protection, Inc.</i> (2012) 53 Cal.4th 1244	5
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal.App.4 th 116	4
<i>Laffitte v. Robert Half International Inc.</i> (2016) 1 Cal.5th 480	11
<i>Lealao v. Beneficial Calif., Inc.</i> (2000) 82 Cal.App.4th 19	12
<i>Ma v. Covidien Holding, Inc.</i> , (C.D. Cal. Jan. 31, 2014) No. 12– 02161, 2014	6, 8
<i>Schaffer v. Litton Loan Servicing, LP</i> (C.D. Cal. Nov. 13, 2012) No. 05- 07673- MMM... ..	10
<i>Serrano v. Priest</i> (1977) 20 Cal.3d 25	11, 12
<i>Staton v. Boeing</i> (9 th Cir. 2003) 327 F.3d 938	11
<i>Stovall-Gusman v. W.W. Granger, Inc.</i> (N.D. Cal. June 17, 2015) No. 13-CV-02540-HSG ..	8
<i>Villegas v. J.P. Morgan Chase & Co.</i> , (N.D. Cal. Nov. 21, 2012) No. CV 09-00261 SBA EMC	6

1	<i>Vincent v. Hughes Air West, Inc.</i> (9 th Cir. 1977) 557 F.2d 759	11
2	<i>Wershba v. Apple Computer, Inc.</i> (2001) 91 Cal.App.4 th 224.....	3
3	<i>Woods v. Vector Mktg. Corp.</i> , (N.D. Cal. May 22, 2015) 2015 U.S. Dist. LEXIS 67303	5
4	Statutes	
5	Lab. Code, § 226.7	5
6	Lab. Code, § 226.....	5, 7
7	Rules	
8	Rule of Court 3.769.....	3
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff worked as non-exempt employee for Widdicombe Enterprises, Inc. at its
4 McDonald's franchise location in Anaheim; Widdicombe Enterprises, Inc. operated McDonald's
5 franchises in and around central Orange County.

6 Plaintiff alleges that Defendant, as a matter of its policy and procedure, violated the Labor
7 Code by its policies of: (1) failing to provide off-duty meal and rest breaks (and failing to pay
8 premium pay thereon); (2) failing to pay minimum and/or overtime wages for all hours worked; (3)
9 failing to provide accurate and complete wage statements; (4) failing to pay all wages due and
10 payable within the appropriate time after termination. As a result, Plaintiff alleged she and the
11 members are entitled to unpaid wages and penalties.

12 Prior to the settlement of this action, Plaintiffs and Defendant (the "Parties") engaged in the
13 exchange of discovery and a thorough study of the legal principles applicable to the claims
14 asserted. Defendant produced Plaintiff's personnel file, relevant company policies and handbooks,
15 and a 20% sampling of time and payroll records. With the assistance of experienced mediator Chris
16 Barnes, the Parties were ultimately able to reach the settlement. The terms of the settlement provide
17 that Defendant shall pay a Gross Settlement Amount of One Million Two Hundred Thousand
18 Dollars (\$1,200,000). The settlement is non-revisionary, and the class members did not need to do
19 anything to participate in the settlement.

20 The Parties believe that this amount is fair, adequate, and reasonable, especially given the
21 risks. Further, notice of the settlement was provided to the class by Phoenix Class Action
22 Administration Solutions in the manner approved by the Court, and not a single objection or opt-
23 out was received, suggesting approval by the Class as a whole. Therefore, the Plaintiff respectfully
24 requests that the Court grant Final Approval.

25 ///

26 ///

27 ///

1 **II. THE SETTLEMENT TERMS**

2 Defendant will fund the Settlement within 30 days of the judgment becoming final.
3 Phoenix will then calculate Defendant's share of taxes due on the wage portion of the Individual
4 Settlement Payments and provide the same to counsel for review and approval. Within fourteen
5 (14) calendar days of Phoenix receiving the funds, Phoenix will mail Individual Settlement
6 Payments, less applicable taxes and withholdings, to participating Settlement Class members, as
7 well as make all other payments contemplated by the Settlement.

8 According to the concurrently filed declaration of Yami Burns, the total settlement
9 administration costs were \$14,500.00. The total costs of Class Counsel for moving the case forward
10 are \$15,148.09, of which Class Counsel requests the maximum \$12,000.00 as contemplated in the
11 settlement. Plaintiff requests a class representative service award of \$5,000.00.¹ Next, class counsel
12 requests attorney fees of \$400,000.

13 Finally, \$100,000 is allocated to PAGA. This means that 75% or \$75,000 will be paid to the
14 LWDA and 25% or \$25,000 will be distributed among the Aggrieved Employees. (See Settlement,
15 § 3.2.5.) This leaves a net settlement amount of \$668,500.

16 Class members' individual settlement payments are calculated based on the number of
17 workweeks during the class period. Relying on the personnel records maintained by Defendant,
18 Phoenix will calculate the number of workweeks each Class member worked, divide that number
19 by the total number of workweeks worked by all Class Members, and multiply the result by the Net
20 Settlement Amount. (See Settlement, § 3.2.4.)

21 For tax purposes, settlement payments will be allocated as twenty percent (20%) for wages
22 (taxable) and eighty percent (80%) for penalties and interest (nontaxable). Defendant's share of
23 payroll taxes on the wages will be paid separately by Defendant. (See Settlement, § 3.1.)
24

25
26
27 ¹ The Settlement contemplates \$10,000. However, pursuant to the Court's Order Granting
28 Preliminary Approval of only \$5,000, Plaintiff only requests \$5,000. The difference shall be added
back into the Net Settlement Amount to be distributed to the Class. (Settlement, § 3.2.1.)

1 With the net settlement of \$668,500, on average each class member would receive roughly
2 \$539.98 (\$668,500 divided by 1,238 class members). The actual amounts will, of course, depend
3 on the length of each person's employment.
4

5 **III. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

6 Pursuant to Rule of Court 3.769(g), the court conducts a final approval hearing to inquire
7 into the fairness of a settlement. There is a presumption of fairness when the following exist: 1) the
8 settlement was reached through arm's-length bargaining, 2) investigation and discovery are
9 sufficient to allow counsel to act intelligently, 3) counsel is experienced in similar litigation, and 4)
10 the percentage of objectors is small. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
11 245.) All the factors are present here. The settlement is the product of significant work and effort
12 by the parties and their counsel.

13 In advance of the mediation and as a result of the voluntary exchange of informal discovery,
14 Defendant produced data relating to the number of Class Members, and a sampling of data relating
15 to Class Members' time and pay information. The data allowed Plaintiff's counsel to perform a
16 damages analysis in preparation for mediation. Thereafter, the settlement was reached after a full
17 day mediation on December 12, 2022 with experienced mediator Chris Barnes.

18 On September 15, 2023, the Court granted Preliminary Approval. The Court also approved
19 the Notice Packet to be sent to the class members. The Notice Packet was sent to the Class
20 Members, and the Objection and Opt-out deadlines have passed. The Settlement Administrator has
21 received zero objections, and zero requests to opt out, and zero disputes regarding the number of
22 workweeks. Thus, the procedural requirements leading up to final approval have been met.

23 Further, Frontier Law Center has significant experience with representing employees in
24 wage and hour cases. Thus, under *Wershba* the settlement is fair. To provide further substance for
25 the settlement's fairness, Plaintiff will analyze the *Kullar* factors below.

26 ///

27 ///

28 ///

A. The Kullar Factors Weigh in Favor of Approval

In applying the presumption of fairness, the court examines the following factors: 1) strength of the case, 2) risk, expense, complexity, and likely duration of further litigation, 3) risk of maintaining class action status through trial, 4) amount offered in settlement, 5) extent of discovery completed and the stage of proceedings, 6) experience and views of counsel, 7) presence of a governmental participant, and 8) reaction of the class members to the settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

1. Strength of Case

The test is not the maximum amount a plaintiff might have obtained at trial, but whether the settlement was reasonable under the circumstances.

Although Plaintiff's counsel believes the claims are meritorious, they are experienced and pragmatic, and understand the possibility of non-certification on one or more of the theories alleged. Plaintiff's counsel further recognizes that the outcome of a trial, and the outcome of any appeals that could follow if Plaintiff prevailed, are inherently uncertain in terms of both outcome and duration. These risks on class certification are highlighted by the California Supreme Court's holding in *Duran v. U.S. Bank Nat'l Ass'n.* (2014) 59 Cal.4th 1 (vacating a class verdict based on statistical data where Defendant was not permitted to present evidence outside the sample). Each of the theories are discussed below.

Meal and Rest Break Violations

Employers must allow employees to take 30-minute meal periods for every 5 hours of work. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1037-1038.) The meal periods must be unfettered — i.e., when taking such meal periods, ***the employee must be "relieved of all duty"*** during the entire 30-minute meal period. IWC Wage Order No. 5 § 11(A) (emphasis added). Indeed, this was affirmed by *Brinker, supra*, 53 Cal. 4th at pp. 1040-41 n. 19 ("The employer that refuses to relinquish control over employees during an owed meal period violates the duty to provide the meal period and owes compensation"). Labor Code section 226.7 provides for an additional hour of pay for each meal period missed and/or day in which a rest break was denied, also called premium pay.

1 Here, Plaintiff alleged that Defendant failed to provide off-duty meal periods and rest
2 breaks to Class Members. Plaintiff further alleged that Defendant maintained a practice of
3 understaffing its restaurant locations such that it impacted the opportunity to take breaks, while at
4 the same time maintaining facially complaint policies. Plaintiff alleged that the missed break rate
5 recorded in the records tends to show that Defendant in fact did not permit Class Members to
6 accurately report missed breaks.

7 Further, Plaintiff must prove that Defendant **required** employees to work during a meal or
8 rest period mandated by the Wage Order. (Lab. Code, § 226.7(b); *Kirby v. Immoos Fire Protection,*
9 *Inc.* (2012) 53 Cal.4th 1244, 1255 -“When an employee sues for a violation of section 226.7, he or
10 she is suing because an employer has allegedly ‘require[d] [the] employee to work during [a] meal
11 or rest period mandated by an applicable order....”)

12 Defendant could have disputed that meal and rest period claims were suitable for class
13 certification. Under *Brinker*, an employer need only provide meal and rest periods and not ensure
14 that they are taken. Therefore, Defendant may have argued that to prevail on liability, Plaintiff must
15 prove that Defendant provided no opportunity to all Class Members. Further, Defendant owned
16 multiple restaurants in different locations, with differing staffing levels and different levels of
17 business, varying according to the shifts. Accordingly, Plaintiff might have faced challenges
18 certifying a break class in the face of potential individualized issues.

19 **Wage Statement Violations**

20 The risk with the wage statement violations is Defendant could maintain that any alleged
21 omission of information from the wage statements was not a “knowing and intentional failure” to
22 comply with Labor Code section 226(a). (See *Harris v. Vector Mktg. Corp.* (N.D. Cal. 2009) 656 F.
23 Supp. 2d 1128, 1145--46 (summary adjudication warranted on Section 226(e) claim where dispute
24 existed as to whether plaintiff was independent contractor or employee and record lacked evidence
25 that conduct was knowing or willful); *Woods v. Vector Mktg. Corp.*, (N.D. Cal. May 22, 2015)
26 2015 U.S. Dist. LEXIS 67303, at *8-*9, *12-*14 (finding that when the defendant made a good
27 faith claim that the employee was properly classified as exempt its failure to provide accurate wage
28 statements was not knowing and intentional).)

1 **Waiting Time Penalties**

2 The risk with the waiting time penalties is Defendant could maintain that even if Plaintiff
3 were able to prove liability for this theory, Defendant acted in good faith and paid employees what
4 it believed it owed them. Labor Code section 203 imposes penalties upon employers only when the
5 employer willfully fails to pay wages. A good faith dispute as to whether wages were owed is a
6 potential defense to a claim for waiting time penalties. (See *Choate v. Celite Corp.* (2013) 215
7 Cal.App.4th 1460, 1468.)

8 **Maximum Liability**

9 Based on the class data provided by Defendant and analyzed by Plaintiff's economics
10 expert, the maximum liability was \$9,272,868. Correspondingly, the settlement of \$1.2 million is
11 about 12.9% of the total estimated liability, which is consistent with other class settlements and
12 within the range of reasonableness.

13 Numerous courts have held that gross settlements approximating between 8 and 25% of the
14 potential exposure are fair and reasonable. (See, e.g., *In re Mego Fin. Corp. Secs. Litig.*, (9th
15 Cir.2000) 213 F.3d 454, 459 (holding that class action settlement recovering 16% of potential
16 exposure was fair and reasonable).)

17 The fairness and the adequacy of the settlement should be assessed relative to risks of
18 pursuing the litigation to judgment; whether the settlement is fair and adequate depends on "the
19 difficulties in proving the case." (*Bellinghausen v. Tractor Supply Co.*, (N.D. Cal. Mar. 20, 2015)
20 No. 13-CV-02377-JSC, 2015 WL 1289342, at *6 (holding that class action settlement recovering
21 between 8.5% and 25% of the defendant's potential exposure was fair); *Van Ba Ma v. Covidien*
22 *Holding Inc.*, (C.D. Cal. Jan. 31, 2014) No. 8:12-cv-02161 (court granted preliminary approval of
23 wage and hour class settlement which obtained only 9.1% of projected damages, given the risks of
24 continued litigation) *Villegas v. J.P. Morgan Chase & Co.*, (N.D. Cal. Nov. 21, 2012) No. CV 09-
25 00261 SBA EMC, 2012 WL 5878390, at *6 (holding that gross class action settlement of
26 approximately 15% of the potential recovery was fair and reasonable); *Greko v. Diesel U.S.A., Inc.*,
27 (N.D. Cal. Apr. 26, 2013) No. 10-cv-02576 NC, 2013 WL 1789602, at *5 (24% of maximum
28 value was reasonable).)

1 **2. Risks of Further Litigation**

2 As set forth above, the risks included that Defendant could successfully argue that: (1)
3 Plaintiff could not show Defendant *required* Plaintiff and the Class to work through their meal
4 and/or rest periods; (2) the claims for meal and rest period violations are not suitable for class
5 certification; (3) the failure to provide accurate wage statements was not a knowing and intentional
6 violation of Labor Code section 226; and (4) the failure to pay all wages due at time of termination
7 was not willful within the meaning of Labor Code section 203. Given the above risks, Plaintiff's
8 counsel believes the settlement is a fair, reasonable, and adequate result.

9 **3. Risk of Maintaining Class Action Status Through Trial**

10 The primary risk of maintaining class action status through trial is the risk hinging on the
11 predominance/commonality requirement. On one hand, if the defendant's liability can be
12 determined by facts common to all members of the class, a class will be certified even if the
13 members must individually prove their damages.” (*Brinker, supra*, 53 Cal.4th at p. 1022.) On the
14 other hand, a class action cannot be maintained where the existence, cause, and the extent of
15 damage must be determined on a case-by-case basis, even if there are some common questions.
16 (*Basurco v. 21st Century Ins. Co.* (2003) 108 Cal.App.4th 110, 119.)

17 While Plaintiff maintains there is commonality, there were risks. For example, the Class
18 Members are restaurant employees at five sites, working a variety of shifts. The variety of work
19 sites and shifts means that there is an argument that the staffing levels and levels of work varied
20 from site to site and from shift to shift, requiring too many individual questions to support
21 commonality. This is another risk that was considered in reaching the settlement.

22 **4. The Amount Offered in Settlement**

23 “In determining whether the proposed settlement falls within the range of reasonableness,
24 perhaps the most important factor to consider is Plaintiff’s expected recovery balanced against the
25 value of the settlement offer.” (*Cotter v. Lyft, Inc.* (N.D. Cal. 2016) 176 F.Supp.3d, 390, 395.) This
26 determination requires evaluating the relative strengths and weaknesses; it may be reasonable to
27 settle a weak claim for relatively little, while it is not reasonable to settle a strong claim for the
28 same amount. (*Cotter, supra*, 176 F. Supp. at p. 936.)

1 The risks described above support that the settlement of 12.9% of the total maximum
2 liability is within the range of reasonableness. (See *Stovall-Gusman v. W.W. Granger, Inc.* (N.D.
3 Cal. June 17, 2015) No. 13-CV-02540-HSG, 2015 WL 3776765, at *4 (concluding that a
4 settlement which provided 10 percent of the potential recovery was “within the range of
5 reasonableness in light of the risks and costs of litigation”); *Ma v. Covidien Holding, Inc.*, (C.D.
6 Cal. Jan. 31, 2014) No. 12– 02161, 2014 WL 360196, at *5 (finding a settlement worth 9.1% of the
7 total value of the action “within the range of reasonableness”); *Balderas v. Massage Envy*
8 *Franchising, LLC*, (N.D. Cal. July 21, 2014) No. 12–cv–06327 NC, 2014 WL 3610945, at *5
9 (granting preliminary approval of a net settlement amount representing 5% of the projected
10 maximum recovery at trial).

11 **5. Extent of Discovery Completed and Stage of Proceedings**

12 In advance of the mediation, Defendant produced Plaintiff’s personnel file and wage and
13 time punch information, data relating to the number of Class Members, and a 20% sampling of
14 punch and wage information. The data allowed Plaintiff’s counsel to perform a comprehensive
15 damage analysis in preparation for mediation. The decision to proceed to mediation was made after
16 Plaintiff served sets of written discovery.

17 Moreover, the Parties engaged in research and communication prior to mediation; these
18 efforts allowed the Parties to reach a fair and reasonable agreement through arm’s length
19 negotiations at mediation with employment law mediator Chris Barnes on December 12, 2022.

20 **6. Experience and Views of Counsel**

21 Class counsel are experienced in complex wage and hour class and PAGA cases, and
22 believe this settlement is a reasonable compromise given the strengths, risks and value.

23 **7. Presence of a Governmental Participant**

24 There are no governmental participants, however the motion for preliminary approval and
25 the settlement were uploaded to the LWDA website.

26 **8. Reaction of Class Members to the Settlement**

27 There were no objections or requests for exclusion. This also weighs heavily in favor of
28 final approval.

1 **IV. THE REQUESTED ATTORNEYS' FEES, COSTS, AND ENHANCEMENT**
2 **PAYMENT ARE APPROPRIATE**

3 Having obtained an excellent result for the class, Frontier Law Center seeks Attorneys' Fees
4 of \$400,000, out-of-pocket costs of up to \$12,000, expenses for claims administration of \$14,500,
5 and \$5,000.00 for the enhancement payment to Plaintiff.

6 **A. Class Counsel is Experienced and Endorses the Settlement**

7 The view of the attorneys actively conducting the litigation is "entitled to significant
8 weight." (*Fisher Bros. v. Cambridge-Lee Industries, Inc.*, (E.D. Pa. 1985) 630 F.Supp.482, 488; *see*
9 *also, Ellis v. Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D.15, 18; *Boyd v. Bechtel Corp.*
10 (N.D. Cal. 1979) 485 F.Supp.610, 616-17.) This settlement is an excellent result for the 1,238 class
11 members as it results in a gross non-reversionary net settlement of **\$668,500.00**, and the class
12 representative and attorneys' requests should be granted.

13 **B. The Class Representative Service Award is Reasonable and Should Be Awarded**

14 Plaintiff's service award of \$5,000 was preliminarily approved, and Class counsel strongly
15 urges the Court to approve the service award. The enhancement takes into consideration the time,
16 effort and risks incurred by the Plaintiff in coming forward to litigate this matter on behalf of all
17 class members. Ms. Navarro Garcia faced the possibility of risking future employability and
18 primary source of income to bring this lawsuit.

19 Ms. Navarro Garcia made herself available for a full-day mediation, discussed the case facts
20 beforehand, and provided information regarding Defendant's policies and day to day practices.

21 Incentive awards "are fairly typical in class action cases." (*Cellphone Termination Fee*
22 *Cases* (2010) 186 Cal. App. 4th 1380, 1393 (affirming incentive awards of \$10,000). Incentive
23 awards are intended to compensate class representatives for work done on behalf of the class, to
24 make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to
25 recognize their willingness to act as a private attorney general and "the rationale for making
26 enhancement or incentive awards to named plaintiffs is that they should be compensated for the
27 expense or risk they have incurred in conferring a benefit on other members of the class." (*Clark v.*
28 *American Residential Services LLC* (2009) 175 Cal. App.4th 785, 806).

1 The incentive award is fair and reasonable compensation for Ms. Navarro Garcia's efforts
2 in bringing the action, assisting counsel with case facts, and regularly conferring on the status of
3 the case and the strategies for prosecuting her claims. Plaintiff deserves the requested incentive
4 award because she "remained fully involved and expended considerable time and energy during the
5 course of the litigation." (*See Schaffer v. Litton Loan Servicing, LP* (C.D. Cal. Nov. 13, 2012) No.
6 05- 07673- MMM, 2012 U.S. Dist. LEXIS 189830, *61, citation omitted.) Absent the incentive
7 award, Plaintiff will recover no more than other Class Members, despite undergoing personal risks
8 in bringing this suit on behalf of the Class.

9 The requested incentive award is fair, reasonable, and adequate compensation for Plaintiff's
10 services on behalf of the Class and for the risks and personal sacrifices she assumed and endured.
11 The enhancement should be awarded for the commitment and dedication to the litigation and for
12 their work performed. Furthermore, this litigation has resulted in a valuable benefit to the 1,238
13 Class Members who are participating because of Ms. Navarro Garcia.

14 Additionally, Plaintiff risked a potential judgment if the matter were unsuccessful. Few
15 individuals are willing to take this risk, and Plaintiff championed of others' cause with potential
16 monetary risks which were potentially significant. Accordingly, the request is fair and reasonable
17 and should be awarded.

18 **C. The Request for Attorneys' Fees and Costs Should be Approved**

19 Plaintiff seeks court approval of attorneys' fees in the sum of \$400,000, which equals one
20 third of the total settlement of \$1.2 million, plus costs up to the total sum of \$12,000. The court
21 should grant the request for the following reasons:

- 22 1. Class counsel obtained an extremely favorable settlement for the class members as
23 evidenced by the following:
 - 24 a. 100% of the \$1,200,000 gross settlement fund will be paid
 - 25 b. There were no objections or opt outs.
 - 26 c. The percentage of recovery method for determining attorneys' fees is the preferred
 - 27 method in a common fund case.
 - 28

d. One third of the common fund results in \$400,000, a reasonable fee request under the circumstances.

2. A Lodestar cross-check also supports the fee request.

D. The Request for Attorneys' Fees as a Percentage of the Recovery Should be Approved Because This is a Common Fund Case

Class Counsel's request for attorneys' fees of one-third of the settlement created on behalf of the Class is fair and reasonable, as the results achieved for the Class Members are excellent. Class Counsel respectfully requests that the Court enter an Order to that effect. Class Counsel seeks a fee award calculated as a percentage of the total value of settlement, for the successful prosecution and resolution of this action. California state and federal courts have recognized that an appropriate method for determining award of attorneys' fees is based on a percentage of the total value of benefits to Class Members by the settlement. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)

In *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 503, the California Supreme Court affirmed that trial courts may grant attorneys' fees in a common fund case based on a percentage of the recovery. The *Laffitte* court explained:

We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation...—convince us the percentage method is a valuable tool that should not be denied our trial courts. (*Id.*)

“Put another way, in common fund cases, a variant of the usual rule applies and the winning party pays his or her own attorneys' fees; in fee-shifting cases, the usual rule is rejected and the losing party covers the bill.” (*Staton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 967.)

1 When a litigant’s efforts create or preserve a fund from which others derive benefits, the
2 court may spread litigation costs proportionally among all the beneficiaries to compensate those
3 who created the fund. Such ‘fee spreading’ assures that all those benefited by the litigation pay
4 their fair share of obtaining the recovery. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th
5 19, 26-27 “Percentage fees have traditionally been allowed in such common fund cases”.)

6 The most extensive Court of Appeal discussion of class fee awards appears in *Lealao*.
7 (*Lealao, supra*, at p. 27). *Lealao* applied a lodestar analysis in favor of a percentage of the
8 settlement recovery but did not disapprove of percentage fee awards. Since *Serrano*, there has been
9 a “groundswell of support for mandating the percentage-of-the-fund approach in common fund
10 cases.” (*Id.*)

11 Thus, California cases, including the California Supreme Court ruling in *Laffitte*, have
12 affirmed the continued validity of percentage fee awards in class action cases. Under these
13 principles, a percentage of the common fund fee award is based on the total settlement value.

14 The present case is a classic common fund case. Here, Plaintiff’s counsel created a non-
15 reversionary settlement fund of \$1,200,000 for the benefit of the class members. The fund was
16 created by counsel’s efforts. (See *Serrano, supra*, 20 Cal.3d at p. 35). Also, the value of the fund is
17 easily calculable. (*Id.*)

18 Nonetheless, even under the lodestar method the requested fees are reasonable. The
19 declaration of Adam Rose shows the lodestar amount for work on the case totals \$251,085.
20 Applying a multiplier of 1.6, the amount would equal \$400,000 with 347 hours worked. Under
21 *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 50, court-awarded attorneys' fees
22 should approximate what counsel could get on the free market for the same services; if the Court
23 sets fees under a lodestar, a multiplier should consider what counsel would have earned on the free
24 market. The free market is determined by the percentage of the common fund, not the lodestar
25 amount. (*Id.*)

26 For whichever method is used to set fees, the Court should look to what the free market
27 would bear. In other words, no firm would have taken (or did take) this case on a contingent fee for
28 anything other than a percentage of any recovery.

1 Thus, if the lodestar method were used, the fees should be adjusted by a multiplier to reflect
2 the percentage of the fund. (*Lealao*, supra at p. 19 and 50.) As stated above, in common fund cases
3 the fee award is based upon a percentage of the fund; while attorneys' fees under fee-shifting
4 statutes are determined under the lodestar method. (*Apple Computer, Inc. v. Superior Court* (2005)
5 126 Cal. App. 4th 1253, 1270.) Nevertheless, "the ultimate goal is the award of a 'reasonable'
6 fee to compensate counsel for their efforts, irrespective of the method of calculation." (*Id.*)
7

8 **E. The Court Should Approve the Request for Reimbursement of Costs Up to \$12,000**

9 The request for reimbursement of costs is fair and reasonable. Plaintiff's' counsels' total
10 costs are detailed in the attached declaration of Adam Rose.
11

12 **F. Disclosure of Fee Splitting Arrangements**

13 There is no other office involved in this case, so there is no fee splitting arrangement.
14

15 **G. Proposed Compliance Date**

16 Plaintiff proposes a compliance date in approximately seven months, such as August 16,
17 2024 or August 23, 2024.
18

19 **V. CONCLUSION**

20 Based on the above, Plaintiff submits that the settlement is fair, reasonable, and adequate.
21 Plaintiff respectfully requests the court to grant final approval and to enter judgment.
22

23 Date: December 21, 2023

FRONTIER LAW CENTER

25 *Adam Rose*

26 Adam Rose
27 Attorney for Plaintiff
28 Wendy Navarro Garcia