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11 **SUPERIOR COURT OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF SACRAMENTO**

13 RENE VILLAGOMEZ, on behalf himself,
14 the State of California, and others similarly
situated and aggrieved,

15 Plaintiff,

16 vs. BAYER U.S., LLC, a Delaware limited
17 liability company, BAYER
18 CORPORATION, a Delaware corporation,
19 BAYER CROPSCIENCE LP, a Delaware
limited partnership, and DOES 1 to 100,
inclusive,

20 Defendants.

CASE NO. 34-2021-003114259

Assigned for All Purposes to:
Hon. Lauri A. Damrell
Dept. 28

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

[Filed concurrently with Notice of Motion and
Motion; Declarations of Jamie K. Serb, Rene
Villagomez, and Jarrod Salinas; [Proposed]
Order]

Date: July 14, 2023
Time: 9:00 a.m.
Dept.: 28

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1 **I. INTRODUCTION**

2 Plaintiff Rene Villagomez seeks final approval of a non-reversionary class action
3 settlement resolving wage and hour claims on behalf of 315 individuals employed as non-exempt
4 employees by Defendants Bayer CropScience, L.P., Bayer R&D Services, and Monsanto Company
5 (together “Bayer” or “Defendants”) at any time during the period of January 21, 2018 to September
6 6, 2022. The proposed \$835,000 total settlement provides about \$490,824 in cash payments to
7 the Class, with an average award of about \$1,563, plus additional amounts payable under
8 PAGA. The remaining balance will cover a modest service award to Plaintiff, settlement
9 administration costs, civil penalties to the state, and reasonable attorney’s fees and costs. The
10 parties and their counsel finalized the settlement after extensive and difficult arms-length
11 negotiations overseen by an experienced and highly-regarded mediator. The Court
12 conditionally certified the Class and preliminarily approved the settlement on March 27, 2023.
13 Since then, the Court-approved notice form was mailed to the Class Members on May 1, 2023,
14 and they reacted very favorably to the settlement. Only one class member opted out of the
15 settlement, and there are no objections.

16 Further, Class Counsel secured an excellent settlement with Defendants after some
17 four years of investigation, litigation, and settlement negotiation and administration, all
18 without any compensation for services rendered or costs expended. The class notice duly
19 informed the class members that Class Counsel would request attorney’s fees not to
20 exceed 1/3 of the Total Maximum Settlement Amount, or \$850,000.00, along with
21 reimbursement of no more than \$20,000 for actual costs incurred litigating this matter.
22 As of the filing of this motion, *not one Class Member objected* to the proposed fee award.
23 Consistent with the Settlement and notice, Plaintiff now respectfully requests the Court
24 award Class Counsel's fees in the amount of \$278,333.33 and costs in the amount of
25 \$12,842.65, as described in the Declaration of Jamie K. Serb (“Serb Decl.”) filed
26 herewith. The requested attorney’s fees are well within the range of reasonableness,
27 especially considering the complex and risky nature of this litigation, the contingent risk
28

1 assumed, and the nearly two-year delay in payment and, when subjected to a lodestar
2 crosscheck, result in a very modest lodestar enhancement of 1.07.

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

6 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

7 The details of the procedural and factual background of this matter were outlined in
8 the Plaintiff's Motion for Preliminary Approval of Class Action Settlement (filed on or about
9 November 14, 2022). To refamiliaze the Court, Defendants all are part of the well-known
10 worldwide conglomerate Bayer. Plaintiff has been employed by Bayer as a full-time, non-exempt
11 employee for the past 30 years, and was employed as a Seed Tech Crew Leader at Bayer's warehouse
12 facility in Oxnard, California. His job duties included handling both the physical and electronic
13 movement of Bayer's seed-packaging operations. He typically worked 8-12 hour shifts, five days per
14 week. [Serb Decl., ¶ 2.]

15 Plaintiff alleges a number of wage and hour violations by Defendants. First, he claims that
16 he and class members were not paid for all hours worked in that time spent waiting in line for
17 wellness screenings before entering the work facilities was not counted or paid for. He further
18 alleges Bayer failed to pay overtime and meal/rest period premiums at the correct rate because it did
19 not incorporate "Short Time Incentive" payments and shift differentials into the regular rate of pay
20 calculations. Next, Plaintiff also alleges Defendants failed to maintain a proper written policy meal
21 break policy, failed to provide compliant first and second meal periods, and did not pay premiums for
22 meal break violations despite its own records indicating violations occurred. Plaintiff also alleges
23 he had to use his personal vehicle to commute to off site locations for Covid testing and also had to
24 use his personal cell phone for work purposes, all without reimbursement. Finally, alleges Bayer did
25 not provide accurate, itemized wage statements, including failing to list the name of the legal
26 employer. [Serb Decl., ¶ 3.]

27 Based on these allegations, on January 21, 2021, Plaintiff filed a class action lawsuit
28 against Defendants asserting claims for (1) failure to pay minimum wages, (2) failure to pay

1 overtime, (3) failure to provide meal periods, (4) failure to provide rest periods, (5) failure to
2 provide reimbursement for business expenses; (6) failure to provide accurate wage statements, (7)
3 waiting time penalties, and (8) unfair competition under Bus. & Prof. Code sections 17200, et seq.
4 Plaintiff also brought a claim under the Private Attorneys General Act based on the same alleged
5 Labor Code violations. [Serb Decl., ¶ 4.]

6 Bayer has at all times denied Plaintiff's allegations and maintained its payroll policies and
7 procedures comply with California law, that it paid the class members all wages due, and that its
8 compensation plan properly compensates the class members for all hours worked. Bayer argued
9 further its meal and rest break policies are fully compliant, that it provided employees with all
10 required breaks, and that there was no need for any employee to incur expenses in the performance
11 of their job duties. Defendants also strongly contend the case cannot be maintained as any kind of
12 class or representative action, arguing determining the number of potential off the clock hours
13 worked by each class member, or the number of de facto meal period violations, etc., would result
14 individualized issues predominating and that a trial on a representative basis would be
15 unmanageable. [Serb Decl., ¶ 5.]

16 After agreeing to attempt an early global mediation, the Parties engaged in significant
17 informal discovery to facilitate an exchange of information necessary to engage in a meaningful
18 mediation. The Parties then engaged Jill Sperber, Esq., a respected mediator with extensive wage
19 and hour class action experience and, in June 2022, participated in a full day mediation with Ms.
20 Sperber that ultimately resulted in the proposed settlement. [Serb Decl., ¶¶ 6-7.] This Court
21 preliminarily approved the settlement on March 27, 2023.

22 Class notices were mailed to class members on May 1, 2023, with a 45-day window (to
23 June 15, 2023) for class members to opt out of or object to the proposed settlement.
24 [Declaration of Jarrod Salinas ("Salinas Decl."), ¶¶ 5, 8-9.]

25 **III. THE PROPOSED SETTLEMENT TERMS**

26 Under the settlement, Bayer will pay \$835,000 into a common fund, the Total Settlement
27 Amount ("TSA"). Attorney's fees of up to \$278,333.33 (1/3 of the TSA), litigation costs of up to
28 \$25,000 (only \$12,842.65 is requested), settlement administration costs of no more than \$8,000, a

1 service award to Plaintiff of no more than \$10,000, and \$35,000 for alleged civil penalties under
2 PAGA,¹ all will be paid from the TSA. The remainder of around \$490,824 will be allocated pro
3 rata among the Class Members based on their total weeks worked during the Class Period. No
4 portion of the TSA will revert to Bayer. [Serb Decl., ¶ 8.]

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

6 The Court conditionally certified a settlement class defined to include all current and
7 former non-exempt employees of Bayer employed in California between January 21, 2018 through
8 September 6, 2022. The Settlement Administrator ultimately mailed class notices to 315
9 individuals identified as members of the Class. [Salinas Decl., ¶ 5.] Nothing has changed to
10 require reconsideration of the Court's certification of the Settlement Class.

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

12 As noted, the settlement obligates Bayer to pay \$835,000 to resolve the claims of the
13 Settlement, inclusive of attorney's fees and costs. A minimum of approximately \$490,824 from
14 the TSA will be distributed to the Participating Class Members. This is a cash settlement that does
15 not require Participating Class Members to submit a claim form to receive their settlement share.
16 Participating Class Members will receive their settlement checks automatically via First Class
17 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining
18 eighty percent will be allocated to penalties and interest, which allocation is consistent with
19 Bayer's potential liability as discussed below. Bayer will pay any and all applicable employer-side
20 payroll taxes separately and in addition to the TSA. Subject to the Court's approval, any amounts
21 not claimed (because a class member does not cash a settlement check) will be forwarded to the
22 State Controller's Unclaimed Property Fund. [Serb Decl., ¶ 9.]

23 Each participating Class Member will receive a share of the Net Settlement Amount based
24 on his or her total weeks worked for Bayer during the Class Period while employed in a non-
25 exempt position. Thus, each individual settlement payment will be calculated using criteria
26 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
27

28 ¹ Per PAGA, this will be allocated \$26,250 (75%) to the Labor & Workforce Development Agency, and the remaining \$8,750 (25%) will go to eligible Class Members.

1 missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under
2 applicable law. These methods will ensure each Class Member receives a portion of the settlement
3 funds corresponding to the relative value of his or her potential claims. The proposed allocation
4 provides a reasonable way to compensate Class Members based on the amount of time they
5 worked for Bayer and the number of instances they allegedly missed a meal break and/or rest
6 break, were not provided compensation in lieu of such missed breaks, lost hours worked due to
7 alleged off the clock work, or did not receive expense reimbursement. [Serb Decl., ¶ 10.]

8 The average class award is approximately \$1,563, and class awards range from \$48 to
9 \$2,478. The average PAGA award is approximately \$27.23. [Salinas Decl., ¶¶ 13-14.]

10 **C. Settlement Administration**

11 Phoenix Settlement Administrators, as the Court-approved Settlement Administrator,
12 mailed the Notice Packet to the Class members after making all reasonable effort to ascertain
13 the best mailing address, including running each address through the National Change of
14 Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Salinas
15 Decl., ¶¶ 3-6.] The Class Notice, previously approved by the Court, duly informed Class
16 Members of the settlement terms, including the estimated relief each Class Member will
17 receive, the amounts to be requested for attorney's fees and the class representative
18 enhancement awards, and the right to opt out of or object to the settlement. [Salinas Decl., Exh.
19 A.] Phoenix mailed 315 Notice Packets on May 1, 2023. [Salinas Decl., ¶ 5.] Ultimately, 3
20 Notice Packets were deemed undeliverable, representing a 99% success rate. [Salinas Decl., ¶
21 7.] The 45-day response window for responding to the settlement expired on June 15, 2023.
22 [Salinas Decl., ¶¶ 8-10.] As of the filing of this motion, Phoenix has received one request for
23 exclusion (for a 99.7% participation rate), and no objections to the settlement. No class
24 members disputed the information used to calculate their individual settlement share. [Salinas
25 Decl., ¶¶ 8-10.]

26 **D. Release of Claims**

27 All Participating Class Members will release Bayer from all claims alleged in the operative
28 complaint, or that could have been brought based on the factual allegations in the operative

1 complaint, including PAGA claims, during the Class Period. The release is limited to the claims
2 that were actually pleaded or could have been pleaded based on the alleged facts in the operative
3 complaint. [Serb Decl., ¶ 11.]

4 **E. PAGA Claims and Notice to the LWDA**

5 As noted, the Parties allocated \$35,000 from the TSA to resolution of Plaintiff's claims under
6 PAGA, and respectfully request that the Court approve that amount as fair, reasonable and adequate.
7 Consistent with PAGA, \$26,250 of this amount will be paid to the LWDA as the state's share
8 of the civil penalties, and the remainder of \$8,750 will be distributed to the 235 individuals
9 eligible to receive a PAGA payment. [Salinas Decl., ¶ 14.] As required by Labor Code section
10 2699(1)(2), Plaintiff notified the LWDA of the settlement and the final approval hearing via its
11 online portal. [Serb Decl., ¶ 12; Exh. 1.]

12 **IV. ARGUMENT**

13 **A. Standards for Final Approval**

14 The law favors settlement, particularly in class actions where substantial resources can
15 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
16 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
17 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
18 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
19 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
20 compromised, the settlement of a class action requires court approval. Cal. Rule of Court 3.769;
21 Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer (2001)
22 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud or
23 collusion, and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01;
24 Newberg, at §§ 11.22, *et seq.* Review is accomplished through a two-step process intended to
25 determine whether, under the totality of circumstances, the settlement is fair, reasonable and
26 adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

27 On a motion for final approval, the trial court is charged with determining whether, in
28 light of the total circumstances of the action and the response of the class members to the

1 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
2 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
3 determination and may consider a number of relevant factors, including: the strength of
4 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
5 further litigation; the amount offered in settlement; the extent of discovery and stage of the
6 proceedings; the experience and opinion of counsel; and the reaction of class members to the
7 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
8 courts generally apply a presumption of fairness to a proposed class action settlement when:
9 (1) the settlement is reached through arm's-length bargaining; (2) investigation and discovery
10 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
11 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;
12 Wershba, 91 Cal.App.4th at 245.

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

14 The proposed settlement of this action warrants final approval under the standards
15 summarized above. The settlement is fair, reasonable and adequate, and represents a favorable
16 resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by
17 the class members, as there was only one blank objection form submitted, and only one class
18 members requested exclusion, for a 99.7% participation rate.

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

20 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
21 was reached following arm's-length negotiations presided over by Jill Sperber, Esq., a highly
22 respected and well-known mediator with extensive experience mediating wage and hour class
23 actions. [Serb Decl., ¶ 7.] Plaintiff and his counsel were well-informed about the facts and the
24 law, and counsel Zachary M. Crosner and Jamie Serb have years of litigation experience, including
25 litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks
26 and benefits of pursuing further litigation or settling the matter. [Serb Decl., ¶¶ 27-36.] All
27 Defendants likewise were represented by highly-qualified and experienced defense counsel.
28 Both sides advocated vigorously for their clients and nothing was "left on the table."

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

2 The settlement was well-received by the class. As of the filing of this motion, there are
3 no objections, and only one Class Member requested exclusion out of 315 settlement class
4 members. [Salinas Decl., ¶¶ 8-9.] As many courts recognize, class member reaction to the
5 settlement is one of the most important factors to consider in determining if final approval should
6 be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also
7 In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (“It is well-
8 settled that the reaction of the class to the settlement is perhaps the most significant factor to be
9 weighed in considering its adequacy”) (internal quotation marks omitted).

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

12 The proposed settlement involves a substantial sum of money that, when distributed,
13 will confer meaningful monetary benefits on the Class members. As described above, each
14 individual award will be based on an allocation consistent with the nature of the claims asserted
15 and will fairly and equitably allocate the available funds in relation to the degree of damage
16 each Class member incurred. While class members who worked for only a short period of time
17 will receive relatively small sums, those with longer tenures and who worked more hours and
18 shifts throughout the class period will receive appropriately larger awards.

19 Prior to settlement, the parties engaged in informal discovery to facilitate settlement
20 discussions. Thus, Plaintiffs reviewed documents and information regarding Defendants’ respective
21 payroll practices, a random sampling of pay stubs and time records from class members, applicable
22 compensation plans, meal and rest break policies, etc., and information from Defendants regarding
23 class size and breakdown, work weeks/pay periods, rates of pay, and other information used to
24 formulate a damages model. Plaintiff then had that information analyzed by a consulting expert to
25 assist in determining potential violation rates and other data used to formulate a damages model.
26 Plaintiff’s counsel are confident they obtained sufficient information to understand the law and facts
27 of this case and make an informed decision regarding the proposed settlement and whether it is fair
28 and reasonable. [Serb Decl., ¶¶ 6, 13.]

1 Using that data, Plaintiff ran calculations and estimated Bayer's likely maximum exposure
2 on the class claims at approximately \$4,262,000, including about \$465,515 on the unpaid
3 minimum wage/off the clock claims, about \$184,000 on the underpaid overtime/sick pay/regular
4 rate issue, approximately \$1,759,165 on the meal break claims, approximately \$237,780 on the
5 expense reimbursement claims, approximately \$808,700 on the wage statement claims, and
6 approximately \$806,875 on the waiting time penalty claims. [Serb Decl., ¶ 14.] Plaintiff's
7 counsel substantially discounted the value of these claims, however, in light of the multiple and
8 considerable risks posed by proceeding with the litigation, as Defendants raised numerous
9 defenses and vigorously defended against these claims.

10 On the unpaid minimum wage/off the clock claim, Plaintiff contends he and the class
11 members had to undergo a "wellness check" before starting work, and these were conducted before
12 clocking in. Since employees frequently had to wait in line for the wellness check, they oftentimes
13 spent some 10 minutes either waiting their turn and/or undergoing the actual process, without
14 compensation even though they were subject to employer control. In response, Bayer argued to the
15 extent wellness checks occurred off the clock it was against policy and without the company's
16 knowledge, and thus individualized inquiries would be required to determine if any such time was
17 compensable. Bayer further argued the wellness checks were extremely brief and any time lost
18 would be de minimis in any event. [Serb Decl., ¶ 15.]

19 Plaintiff also contends that he and the class members received shift differential pay and other
20 non-discretionary, non-hourly compensation that Bayer failed to incorporate into the "regular rate
21 of pay" as required under California law and Ferra v. Loews Hollywood Hotel, LLC (2021) 11 Cal.
22 5th 858. As a result, per Plaintiff, Bayer underpaid overtime hours and sick pay because it did
23 calculate the correct regular rate. In response, Defendants took the position that its time keeping
24 policies are legally compliant, that it paid employees for all hours worked at the correct rates
25 consistent with those policies. [Serb Decl., ¶ 16.]

26 On the meal period claims, Plaintiff alleges Defendants' policies were deficient because they
27 did not inform employees (1) when meal periods should be taken, (2) the number of meal periods
28 they were entitled to receive; and, (3) what they should do when a meal period is not provided.

1 Further, regardless of the legitimacy of the applicable written policies, Plaintiff argued Defendants’
2 own records show a large number of de facto violations for missed, untimely, short, and otherwise
3 non-compliant breaks. In fact, Plaintiff’s review of the sampling of time records suggests substantial
4 de facto violations for late and short meal and rest periods, including an approximate 31.8%
5 violation rate on meal periods. In response, Defendants argued the break policies were fully
6 compliant with California law, and that it provided all required meal periods and thereby met its
7 obligations under the Labor Code and applicable Wage Order. Further, Defendants argued to the
8 extent employees missed a break or took a non-compliant break, any such discrepancies were
9 aberrational and against company policy and a myriad of individual issues would be required to
10 determine whether the potential violation resulted from employee choice or some other reason.
11 Consequently, per the Defendants, individualized inquiries would dominate on this issue and render
12 class certification inappropriate. [Serb Decl., ¶ 17.]

13 Plaintiff based the expense reimbursement claim on the need to use personal mobile devices
14 for company business, primarily communicating with management both during shifts, and use of
15 personal automobiles to travel to and from mandatory covid testing, for which he and the class
16 members were not reimbursed as required by Labor Code section 2802 and Cochran v. Schwan’s
17 Home Serv., Inc. (2014) 228 Cal.App.4th 113 (2014). On the other hand, Defendants argued to the
18 extent employees used their personal phones for work-related communications, it was purely for
19 personal preference, was not “necessary,” and therefore not compensable. [Serb Decl., ¶ 18.]

20 Finally, Plaintiff alleged claims under Labor Code § 226 (alleged inaccurate wage statement
21 violations), both directly for failing to identify the name of the legal entity that employed the clas
22 members and derivatively, and derivative claims under Labor Code §§ 201-203 (waiting time
23 penalties). On a derivative basis, these claims were both based on the failure to properly record and
24 pay for all hours worked, and pay all overtime owed, and these claims will rise or fall along with
25 the primary claims, in addition to being subject to “good faith” and other defenses available to
26 Defendants. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding
27 employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed
28 on the merits on the underlying claim for failing to pay living wages). Accordingly, Plaintiff

1 discounted the derivative claims significantly in light of these multiple potential defenses. [Serb
2 Decl., ¶ 19.]

3 As far as potential PAGA liability, the theoretical penalties totaled at least \$6 million
4 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
5 at issue for every single eligible pay period. [Serb Decl., ¶ 20.] As with the class claims, Plaintiff
6 discounted the potential PAGA penalties for the multi-layered defenses proffered by Defendants
7 on the merits, and further discounted these claims since the Court possesses wide discretion to
8 reduce such penalties even if Plaintiff ultimately prevailed. Labor Code § 2699(e)(2); Fleming v.
9 Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential
10 penalties by over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th
11 504 (after a bench trial, the trial court awarded penalties of just \$5 per pay period, a 90%
12 reduction, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D.
13 Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

14 Accordingly, the Parties allocated \$35,000 to PAGA penalties, which amount is reasonable
15 and in line with comparable settlements in other class actions in California. Van Kempen v.
16 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
17 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
18 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
19 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
20 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
21 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
22 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
23 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
24 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
25 not objected to the settlement").

26 Thus, Defendants raised various and multi-layered defenses to each of Plaintiff's claims,
27 anyone of which, if successful, could have decimated Plaintiff's case. And Defendants vowed to
28 raise all these defenses in opposition to class certification and at trial. Accordingly, Plaintiff faced

1 risky issues going forward with this litigation, and given the need to certify the class, maintain
2 certification through trial, try the case on the merits, and deal with post-trial appeals, it would have
3 taken years to realize any recovery in this action. [Serb Decl., ¶¶ 21-22.]

4 Plaintiff and counsel discounted the value of these claims consistent with the risks discussed
5 above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the
6 litigation continued. They concluded – in light of these very real and substantial risks – settlement
7 on the proposed terms and without prolonged and costly litigation was in the best interests of the
8 class. The overall \$835,000 recovery represents a significant percentage of Defendants’ potential
9 exposure and, given the risks addressed above, a total recovery for the class of \$835,000 with an
10 average award of some \$1,563 per class member (plus additional amounts payable under PAGA),
11 is a fair result within the range of reasonableness considering all potential outcomes and will provide
12 direct awards to all Class Members without further delay. [Serb Decl., ¶ 22.]

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

1 Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at
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 his counsel submit the settlement is
4 within the “range of reasonableness,” and is fair and adequate for the Class.

5 **V. PLAINTIFF’S ENHANCEMENT**

6 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
7 \$10,000.00 for his service in bringing these claims on behalf of the Class, he also will receive a
8 payment of \$3,500.00 as compensation for the loss of his employer-sponsored Health Savings
9 Account after some 30 years of employment, which amount will be paid separately from the TSA.
10 The request is reasonable given the risks each Plaintiff took on behalf of the Class Members. By
11 contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement
12 possible for the absent Class Members, while shouldering the risk of being liable for Defendants’
13 respective litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a
14 public lawsuit (discoverable even through a simple google search) for the benefit of other
15 employees, placing him at risk of discrimination by future prospective employers. As set forth in
16 more detail in his declarations submitted herewith, among taking many other actions assisting in
17 the successful litigation of this case, Plaintiff provided substantial factual information and
18 documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the
19 case, and kept abreast of all significant developments. [Declaration of Rene Villagomez, ¶¶ 2-9;
20 Serb Decl., ¶ 23.] Finally, there are no class member objections submitted with respect to the
21 amounts Plaintiff proposes to receive. [Salinas Decl., ¶ 9.] Accordingly, the requested
22 enhancement payments to Plaintiff is appropriate and justified as part of the settlement. Staton v.
23 Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service
24 and incentive payments ranging from \$2,000 to \$25,000).

25 **VI. SETTLEMENT ADMINISTRATION COSTS**

26 The settlement provides for a payment to Phoenix for its services as the Settlement
27 Administrator. As set forth in the Declaration of Jarrod Salinas, Phoenix has performed and will
28 continue to perform its required duties through final distribution of the settlement funds, and

1 incurred \$8,000.00 in fees and expenses. [Salinas Decl., ¶ 16; Exh. B.] Plaintiff respectfully
2 requests the Court approve payment of \$8,000 to Phoenix from the TSA. [Serb Decl., ¶ 24.]

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

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

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

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

24 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
25 obtain, and the settlement provides substantial cash payments to Class Members, with an
26 average award of about \$1,563, and with a maximum award of over \$2,400. Importantly as
27 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
28

1 filing of this motion, there are no objections to the settlement and only one individual opted
2 out. [Salinas Decl., ¶¶ 8-9.]

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

4 The United States Supreme Court has ruled the parties to a class action properly may
5 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
6 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
7 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
8 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
9 should not result in a second major litigation. Ideally, of course, litigants will settle the
10 amount of a fee." The United States Supreme Court has reemphasized this policy and further
11 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
12 (1984) 465 U.S. 886, 902 n.19.

13 As part of the Settlement, Defendants agreed not to object to an award of no more than
14 1/3 of the GSA for attorney's fees, or \$278,333.33, and up to \$25,000 in reimbursement for
15 litigation costs and expenses (although only \$12,842.65 is requested). Such a fee is
16 commensurate with what the market would provide for similar services and the Court
17 therefore can most certainly enforce the agreement. As California's Court of Appeal has
18 instructed:

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

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

24 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
25 arms-length bargaining regarding relief to the Class was completed. [Serb Decl., ¶ 25.]
26 The requested fee and cost award was a product of these arms-length negotiations and fairly
27 reflects the marketplace value of the services rendered by Class Counsel in this case. As a
28 result, the fee agreed to by the parties should be approved.

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

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

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

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

16 Indeed, both California and federal courts have long recognized an appropriate method
17 for determining the award of attorney's fees is based on a percentage of the total value of
18 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
19 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
20 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
21 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
22 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

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

1 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
2 this action of no more than 1/3 of the total amount recovered by the Class via the lawsuit, or
3 \$278,333.33. The percentage requested is justified for the reasons set forth further below,
4 and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review
5 of class action settlements shows that courts have historically awarded fees in the range of 20
6 to 50 percent, depending upon the circumstances of the case. In re Warner Communications
7 Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in
8 common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d
9 ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award
10 from a common fund in order to assure that the fees do not consume a disproportionate part of
11 the recovery obtained for the class, although somewhat larger percentages are not
12 unprecedented.").

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

14 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
15 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
16 an objective measure of the work performed into the calculation of a reasonable attorney fee."
17 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 339.5 hours of time on this matter,
18 resulting in a modest and very reasonable lodestar of \$259,860.00.

19 As is fully detailed in the Serb Declaration, Class Counsel's efforts included: (1)
20 extensive pre-lawsuit investigation of Plaintiff's claims, including legal research, research into
21 similar claims and claims against other employers in the same industry, and attempts to locate and
22 contact other employees of Defendants; (2) drafting a PAGA notice letter; (3) drafting the initial
23 complaint and related documents; (4) extensive case management in both cases, including
24 communications with separate defense counsel, meeting and conferring/preparing case
25 management statements, etc.; (5) propounding initial written discovery, (6) lengthy discussions
26 with defense counsel regarding settlement/mediation and informal discovery needed for
27 meaningful settlement discussions; (7) engaging in substantial informal discovery, including
28 propounding informal discovery "requests" and reviewing documents and other information

1 produced; (8) drafting a mediation brief and accompanying damages model after review and
2 analysis of Defendants' informal discovery production; (9) attending an all-day mediation and
3 participating in several months of additional settlement negotiations; (10) negotiating and drafting
4 the settlement agreement and related documents; (11) drafting the motion for preliminary
5 approval, and attending the hearing; (12) drafting amendments to the settlement documents per the
6 Court's tentative; (12) administration of the settlement, including communications with the
7 Settlement Administrator and settlement class members; (13) drafting the motion for final
8 approval and attorney's fees, and attending the final approval hearing; and (14) extensive
9 communications with the Plaintiff regarding case status, case investigation and document review,
10 mediation, and settlement terms. Additionally, Class Counsel will incur additional time following
11 final approval to, inter alia, respond to class member inquiries, work with the Settlement
12 Administrator on the distribution of settlement funds, and on the compliance hearing. [Serb Decl.,
13 ¶ 26, Exh. 2.]

14 In pursuing this matter, Class Counsel incurred total attorney's fees of \$259,860.00,
15 based on 339.5 attorney hours. The lodestar is based on an eminently reasonable number of
16 hours worked to litigate this matter to a successful conclusion attorney hours, and the requested
17 attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with
18 similar experience in this practice area in California. [Serb Decl., ¶¶ 27-40.] On a lodestar basis,
19 the fee request of \$278,333.33 results in a multiplier of 1.07, which is a modest enhancement
20 entirely in line with California law. [Serb Decl., ¶ 40.] Indeed, California courts routinely
21 approve multipliers in the in the 2-4 range to compensate for the time and risk of class action
22 cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award
23 including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can
24 range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d
25 78, 85 (affirming a multiplier of 2.34.) Class Counsel submits that the requested 1.07
26 multiplier effectively operates to show that the percentage fee request is reasonable
27 considering the challenges presented in this contingency fee matter, and appropriately
28 compensates Class Counsel for the contingent risk assumed and delay in payment during the

1 2+ years Crosner Legal has represented Plaintiff. [Serb Decl., ¶¶ 40-41.] Thus, the multiplier
2 results in a fee constituting a fair return on the contingency.

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

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

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

18 **1. The Results Achieved.**

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

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

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

6 At the time of filing the complaint, Class Counsel recognized that they would have to
7 expend a substantial amount of time and advance significant costs to prosecute a statewide
8 class action suit with no guarantee of compensation or reimbursement, in the hope of
9 prevailing against a sophisticated company represented by first-rate attorneys. Despite
10 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
11 of class certification and the ability to prove class-wide and individual damages. In light of
12 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendants and
13 their big firm counsel would dig in and attempt to bury their small firms in work. Given the
14 small size of Class Counsel's firm, not receiving any compensation for several years while
15 simultaneously advancing litigation costs posed considerable risk and difficulty. [Serb Decl.,
16 ¶¶ 15-20, 42-43.]

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
21 counsel persuaded all Defendants that Plaintiff and the putative class had a realistic
22 chance of prevailing on their claims despite Defendants' many contrary arguments, and
23 that the case would be pursued through class certification and trial if necessary. In
24 successfully navigating these hurdles, Class Counsel displayed appropriate skill while
25 pursuing a risky and difficult case.

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

27 There is a substantial difference between the risk assumed by attorneys being paid
28 by the hour and attorneys working on a contingent fee basis. The attorney being paid by

1 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
2 1256. The attorney working on a contingent basis can only log hours while working
3 without pay towards a result that will hopefully entitle him to a market fee considering
4 the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee
5 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this
6 risk in this all or nothing contingent fee case wherein the necessity and financial burden
7 of private enforcement makes the requested award appropriate.

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

17 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
18 the investment of unnecessary time in a case, and the adverse resolution of any one of several
19 difficult issues present in this matter could have doomed the entire effort. As discussed, the
20 attorney's fees in this case were not only contingent but fairly risky, and there was always a
21 palpable chance Plaintiffs' counsel would receive nothing for any number of reasons. [Serb
22 Decl., ¶¶ 42-43.] Accordingly, the contingent nature of the fee and the financial burdens on
23 Class Counsel and Plaintiffs also support the fee requested.

24 5. Awards in Other Cases

25 As discussed, the attorney's fees requested by Class Counsel are within the range of
26 fees awarded in comparable cases, as California courts regularly approve class action fee
27 awards amounting to 1/3 or more of a common fund. Additionally, review of class action
28 settlements over the past 10 years shows that the courts have historically awarded fees in the

1 range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner
2 Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that
3 percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on
4 Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a
5 reasonable fee award from a common fund in order to assure that the fees do not consume a
6 disproportionate part of the recovery obtained for the class, although somewhat larger
7 percentages are not unprecedented."). Class Counsel's requested fees equal thirty percent of
8 the gross amount recovered on behalf of the class and are well within the range of
9 reasonableness under either the percentage of the recovery or the lodestar method in light of
10 the contingent risk assumed, the delay in payment, the result achieved, and the overall quality
11 of the representation.

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

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

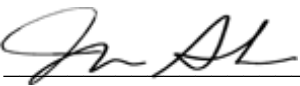
23 As explained in the Serb Declaration, Class Counsel incurred a total of \$12,842.65
24 in expenses incurred in connection with this litigation. These expenses include the
25 amounts paid for court filing fees, service of process, expert fees, postage, and mediation
26 fees, all of which are costs normally billed to and paid by the client. These costs were
27 reasonably incurred in the prosecution of this matter and it is respectfully requested that
28 the Court authorize they be reimbursed in full. [Serb Decl., ¶¶ 44-45.]

1 **VIII. CONCLUSION**

2 For all the foregoing reasons, Plaintiff Rene Villagomez respectfully requests that the Court
3 grant this motion and grant final approval of the proposed class action settlement and approve the
4 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
5 the Settlement Administrator's fees and expenses, approve the requested class representative
6 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
7 judgment in this action. Finally, Plaintiff requests the Court set a final compliance hearing for July
8 12, 2024, or a later date convenient for the Court.

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10 Dated: June 21, 2023

CROSNER LEGAL, P.C.

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12 _____
13 Zachary Crosner
14 Jamie K. Serb
15 Attorneys for Plaintiff
16 RENE VILLAGOMEZ
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