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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ROCIO J. MAYA GONZZALEZ, individually, and
on behalf of all others similarly situated,

Plaintiff,

vs.

NATIONAL ENGINEERING AND
CONSULTING GROUP, INC, a California
corporation; and DOES 1 through 10, inclusive,

Defendants

Case No.: 21STCV40584

CLASS AND REPRESENTATIVE ACTION

Assigned for All Purposes to the Honorable
Kenneth R. Freeman, Department 14

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS AND PAGA ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES**

*[Filed with (1) the Declaration of Kane Moon, (2)
the Declaration of Plaintiff, (3) the Declaration of
Lluvia Islas, (4) [Proposed] Final Approval
Order, and (5) [Proposed] Judgment]*

FINAL APPROVAL HEARING:

Date: December 10, 2024

Time: 11:00 a.m.

Dept.: 14

Action Filed: November 4, 2021

Trial Date: Not set

1 **TO THE COURT, AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that on December 10, 2024 at 11:00 a.m. in Department 14 of this Court,
3 located at the Spring Street Courthouse, 312 North Spring Street, Los Angeles, California 90012, pursuant
4 to California Code of Civil Procedure section 382 and California Rules of Court 3.769, *et seq.*, Plaintiff
5 Rocio J. Maya Gonzzalez (“Plaintiff”) will, and hereby does, move the Court for a Final Approval Order
6 and Judgment approving the proposed class and representative action settlement between Plaintiff and
7 Defendant National Engineering and Consulting Group, Inc.

8 Specifically, Plaintiff moves for a Final Approval Order and Judgment:

- 9 1. Certifying a Class, for settlement purposes only;
- 10 2. Approving the Settlement as fair, reasonable, and adequate as to Class Members;
- 11 3. Finding Class Members were given, in a reasonable manner under the circumstances, due and
12 adequate notice of the proposed Settlement and advised of their right to participate in, object
13 to, or exclude themselves from the Settlement;
- 14 4. Directing consummation of the terms and provisions of the Settlement;
- 15 5. Confirming the appointment of Plaintiff as the Class Representative, for settlement purposes
16 only, and approving an enhancement payment in the amount of \$5,000.00 to her, in addition
17 to the amount she is eligible to receive as a Class Member, in recognition for her role and
18 service as the Class Representative, for the risks and work attendant to that role, and for her
19 general release of claims;
- 20 6. Confirming the appointment of Plaintiff’s counsel Kane Moon and Lilit Ter-Astvatsatryan of
21 Moon Law Group, PC, as Class Counsel, for settlement purposes only, and approving a
22 payment of \$33,333.33 for reasonable attorneys’ fees and \$12,537.12 for reimbursement of
23 litigation costs actually incurred;
- 24 7. Confirming the appointment of Phoenix Class Action Administration Solutions as the
25 Settlement Administrator, finding the Settlement Administrator fulfilled its initial notice and
26 reporting duties under the Settlement, and approving a payment of \$3,000.00 for the costs of
27 administration;
- 28 8. Approving payment of \$3,750.00 to the California Labor and Workforce Development

Agency and \$1,250.00 to the Eligible Aggrieved Employees in settlement and release of claims for civil penalties under PAGA, and barring further claims for PAGA penalties during the PAGA Period notwithstanding the submission of any Request for Exclusion from the Settlement;

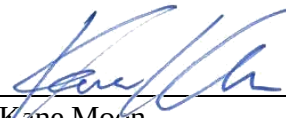
9. Directing the clerk of the Court to enter Judgment;
10. Directing the Settlement Administrator to provide notice of Judgment to Class Members by posting an electronic copy on a website maintained by the Settlement Administrator for no less than ninety (90) calendar days following entry thereof; and
11. Without affecting the finality of the Judgment, pursuant to California Code of Civil Procedure section 664.6, the Court shall have continuing jurisdiction over the Action for purposes of: (1) enforcing the Settlement; (2) addressing settlement administration matters; and (3) addressing such post-Judgment matters as may be appropriate under Court rules and applicable law.

The foregoing motion will be based upon this notice, the attached memorandum of points and authorities, the declarations filed herewith and exhibits attached thereto, the records and files in this action, and any other further evidence or argument that the Court may properly receive at or before the hearing.

Respectfully submitted,

Dated: October 14, 2024

MOON LAW GROUP, PC

By: 

Kane Moon

Lilit Ter-Astvatsatryan

Attorneys for Plaintiff

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In re Activision Securities Litigation (N.D. Cal. 1989) 723 F.Supp.1373 16

In re Continental Illinois Securities Litigation (7th Cir. 1992) 962 F.2d 566 19

In re Lifelock, Inc. Marketing & Sales Practices Litigation (D. Ariz. Aug. 31, 2010)

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In re Pacific Enterprises Securities Litigation (9th Cir. 1995) 47 F.3d 373 16

Officers for Justice v. Civil Service Commission of City & County of San Francisco

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Pedroza v. PetSmart, Inc. (C.D. Cal. June 14, 2012)

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Rodriguez v. West Publishing Corp. (9th Cir. 2009) 563 F.3d 948 19

Staton v. Boeing Co. (9th Cir. 2003) 327 F.3d 938 19

Van Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F.Supp. 294 16

Viceral v. Mistras Group, Inc. (N.D. Cal. Oct. 11, 2016)

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26	Hilary Hehman, <i>Findings of the Study of California Class Action Litigation, 2000-2006</i> (March 2009),	
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a wage and hour class action and representative action for alleged Labor Code violations and claims for civil penalties pursuant to the California Private Attorneys General Act, Labor Code sections 2698, *et seq.* (“PAGA”). Plaintiff Rocio J. Maya Gonzzalez (“Plaintiff”) seeks final approval of a proposed \$100,000.00 non-reversionary settlement with Defendant National Engineering and Consulting Group, Inc. (“Defendant”) (together with Plaintiff, the “Parties”). The Settlement will provide substantial monetary payments to 51 Class Members, which accounts for the single opt-out and consists of any and all persons who are or were employed by Defendant in the position of “Staff Geologist” or “Technician” in California during the time period from November 4, 2017, through November 28, 2022 (the “Class Period”), for various alleged violations of the California Labor Code. As set forth more fully below, the proposed Settlement satisfies all criteria for approval under California law. The Settlement was reached after extensive investigation, discovery, and arm’s-length negotiations. Thus, the Settlement is fair, reasonable, and adequate and is in the best interests of the Class.

Likewise, the requests for attorneys’ fees in the amount of \$33,333.33 and reimbursement of actual litigation costs in the total amount of \$12,537.12 to Moon Law Group, PC as Class Counsel, a class representative enhancement payment in the amount of \$5,000.00 to Plaintiff, payment for settlement administration costs in the amount of \$3,000.00 to Phoenix Class Action Administration Solutions, and a PAGA Payment of \$5,000.00, distributed as \$3,750.00 to the California Labor Workforce and Development Agency (the “LWDA”) and \$1,250.00 to the Eligible Aggrieved Employees, are fair, reasonable, and adequate. Only one Class Member requested exclusion from the Settlement, and no Class Members objected to the Settlement. Accordingly, Plaintiff respectfully requests the Court grant final approval and enter the [Proposed] Final Approval Order and [Proposed] Judgment submitted herewith.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

Defendant provides full environmental services including Site Investigation and Regulatory Compliance to construction sites and any client who requires investigation to the lead and asbestos

1 levels in their buildings/facilities. (Declaration of Kane Moon in Support of Motion for Final
2 Approval of Class Action and PAGA Settlement [“Moon Decl.”], ¶ 3.) Defendant employed
3 Plaintiff and other putative Class Members in California during the putative Class Period. (*Id.*)
4 Plaintiff worked for Defendant during the statutory period as a Site Monitor from July 2020 to
5 November 2020. (Declaration of Plaintiff Rocio J. Maya Gonzzalez in Support of Motion for Final
6 Approval of Class and PAGA Action Settlement [“Plaintiff Decl.”], ¶ 3.) Plaintiff was misclassified
7 as an exempt employee under the administrative exemption and was subjected to the same unlawful
8 labor practices as her coworkers. (*Id.* at ¶¶ 4–9.)

9 Plaintiff’s claim for unpaid wages stems, in part, from Defendant’s misclassification of
10 employees as exempt from overtime under the administrative exemption. (Moon Decl., ¶ 4.)
11 Additionally, Defendant failed to maintain any meal period and rest period policies. (*Id.*) Also,
12 Defendant failed to reimburse Plaintiff and class members for their out-of-pocket business
13 expenses. (*Id.*) Furthermore, Plaintiff brings derivative claims against Defendant for wage
14 statement violations, unfair business practices and PAGA. (*Id.*) Because of Defendant’s alleged
15 violations of various provisions of the Labor Code, Plaintiff filed this class and representative
16 action on November 4, 2021 which, in its amended form, alleges that Defendant systematically: (1)
17 failed to pay minimum wages, (2) failed to pay overtime wages, (3) failed to provide meal periods,
18 (4) failed to authorize and permit rest periods, (5) failed to reimburse necessary business
19 expenses, (6) failed to timely pay all wages to terminated employees, (7) failed to furnish
20 accurate wage statements, (8) engaged in unfair business practices, and (9) violated civil penalty
21 provisions recoverable as PAGA penalties pursuant to Labor Code section 2698, *et seq.* (*Id.* at ¶
22 5.)

23 Defendant denies Plaintiff’s allegations and opposes the merits of this case. (Moon Decl.,
24 ¶ 6.) Defendant maintains that Plaintiff and the putative class members were properly classified
25 and have been paid all wages owed. (*Id.*) Defendant argues that it complied with all its meal and
26 rest period obligations, and that Plaintiff and the putative class members were provided with the
27 opportunity to take all meal and rest periods to which they were entitled. (*Id.*) Additionally,
28 Defendant claims that Plaintiff and the putative class members have been reimbursed for business-

1 related expenses, have been paid timely wages upon termination of employment, and have been
2 provided with accurate itemized wage statements. (*Id.*) Moreover, to the extent that Plaintiff
3 received wage statements that were allegedly inaccurate, Defendant asserts that Plaintiff suffered
4 no actual damage or harm as a result. (*See, e.g., Angeles v. U.S. Airways, Inc.* (N.D. Cal. Feb. 19,
5 2013) No. C 12-05860 CRB, 2013 WL 622032, at *10 [“A plaintiff must adequately plead an
6 injury arising from an employer’s failure to provide full and accurate wage statements, and the
7 omission of the required information alone is not sufficient.”]; Moon Decl., ¶ 6.) With respect to
8 Plaintiff’s claim for waiting time penalties, Defendant alleges that its good-faith belief that it paid
9 all wages precluded the imposition of waiting time penalties since Plaintiff could not prove that
10 Defendant’s alleged failure to pay all final wages at the time of separation was “willful.” (Moon
11 Decl., ¶ 6; *see, e.g., Pedroza v. PetSmart, Inc.* (C.D. Cal. June 14, 2012) No. ED CV 11–298 GHK
12 (DTBx), 2012 WL 9506073, *5.) For these reasons, Defendant claims that it did not engage in any
13 unfair business practices and denied liability under PAGA. (Moon Decl., ¶ 6.) Defendant also
14 maintains that Plaintiff’s claims are improper for class treatment. (*Id.*)

15 **A. Discovery and Investigation**

16 The Parties agreed to mediate the instant action and scheduled mediation with Michael
17 Young, Esq. on September 28, 2022. (*Id.* at ¶ 7.) To facilitate an effective mediation, the Parties
18 agreed on and adhered to a protocol for exchanging documents and information before the mediation.
19 (*Id.*) Defendant produced a sample of time and pay records for class members, as well as policy manuals
20 in effect during the statutory period, and additional documents. (*Id.*) Defendant also provided information
21 regarding the total number of current and former employees in its informal discovery responses. (*Id.*)

22 After reviewing documents regarding Defendant’s wage and hour policies and practices, and
23 analyzing Defendant’s time and pay records, Class Counsel were able to evaluate the probability of class
24 certification, success on the merits, and Defendant’s maximum monetary exposure for all claims. (*Id.* at ¶
25 8.) Class Counsel reviewed these records and prepared a damage analysis prior to mediation. (*Id.*) Class
26 Counsel also investigated the applicable law regarding the claims and defenses asserted in the litigation.
27 (*Id.*) Moreover, Class Counsel retained an expert to analyze the records produced. (*Id.*) Thus, Plaintiff and
28 her counsel’s familiarity with the facts of the case and the legal issues raised by the pleadings allowed them

1 to act intelligently in negotiating the settlement. (*Id.*)

2 **B. Settlement Negotiations**

3 On September 28, 2022, the Parties participated in private mediation with Michael
4 Young, Esq., an experienced wage-and-hour class action mediator. (*Id.* at ¶ 9.) The settlement
5 negotiations were at arm’s length and, although conducted in a professional manner, were
6 adversarial. (*Id.*) The parties went into the mediation willing to explore the potential for a
7 settlement of the dispute, but each side was also prepared to litigate its position through trial and
8 appeal if a settlement had not been reached. (*Id.*) After extensive negotiations and discussions
9 regarding the strengths and weaknesses of Plaintiff’s claims and Defendant’s defenses, a
10 settlement was reached by the Parties, the material terms of which are encompassed within the
11 Settlement. (*Id.* at ¶¶ 2, 9, Exh. 1 [the “Settlement”].) The proposed Settlement has been submitted
12 to the LWDA, and to date, the LWDA has not objected thereto. (*Id.* at ¶ 10, Exh. 2.) The LWDA
13 was provided an original notice of the alleged Labor Code violations by Class Counsel on
14 November 4, 2021, before Class Counsel pursued the PAGA cause of action. (*Id.* at ¶ 11, Exh. 3.)
15 To date, the LWDA has not indicated any intent to investigate the allegations or intervene in this
16 Action. (*Id.*)

17 Class Counsel have conducted a thorough investigation into the facts of this case. (*Id.* at ¶
18 16.) Based on the foregoing discovery and their own independent investigation and evaluation,
19 Class Counsel are of the opinion that the Settlement is fair, reasonable, and adequate. (*Id.*)
20 Furthermore, in light of all known facts and circumstances, the risk of significant delay, trial risk,
21 appellate risk, the defenses that could be asserted by Defendant both to certification and on the
22 merits, the settlement is in the best interests of the Settlement Class Members. (*Id.*)

23 **C. Key Terms of the Proposed Settlement**

24 Under the Settlement, Defendant will pay a non-reversionary, all-inclusive Total
25 Consideration (“TC”) of \$100,000.00 to resolve this litigation, in addition to Defendant’s share of
26 employer payroll taxes owed for the portion of Individual Settlement Shares allocated to wages.
27 (Settlement, § IV.A.) The Settlement’s key terms include:
28

1 1. Class Members and Class Period: The proposed Class contains 51 members who worked 4,629
2 Workweeks and is defined as: Any and all persons who are or were employed by Defendant in the position
3 of “Staff Geologist” or “Technician” in California during the Class Period (November 4, 2017, through
4 November 28, 2022). (*Id.* at § I.E; Declaration of Lluvia Islas of Phoenix Settlement Administrators in
5 Support of Motion for Final Approval of Class Action Settlement [“Lluvia Decl.”], ¶ 13.) Excluded from
6 the Class are any Class Members who opted out of the Settlement by sending the Settlement Administrator
7 a valid and timely request to exclude themselves. (*See id.* at § I.CC.)

8 2. Eligible Aggrieved Employees and PAGA Period: The Class contains 43 Eligible Aggrieved
9 Employees who worked 1,184 pay periods. (Islas Decl., ¶ 14.) “Eligible Aggrieved Employee” is defined
10 as: All individuals who are or were employed by Defendant in the position of “Staff Geologist” or
11 “Technician” in California from November 4, 2020, through November 28, 2022 (“PAGA Period”).
12 (Settlement, § I.S.)

13 3. Funding: No later than seventy-five (75) calendar days after the Effective Date, Defendant
14 shall deposit the entire TC by wiring the funds to the Settlement Administrator. (*Id.* at § IV.I.9.a)

15 4. Net Settlement Amount or NSA: The total amount of money available for payout to
16 Participating Class Members, which is the TC less the Attorney Fee Award, the Cost Award,¹ the Class
17 Representative Enhancement Payment, the PAGA Payment paid to the LWDA and Eligible Aggrieved
18 Employees, and Administration Costs.² (*Id.* at § I.X.) The NSA is the portion of the TC that will be
19 distributed to Class Members who do not request exclusion from the Settlement. (*Id.*)

20 5. Individual Settlement Share(s): refers to the pro-rata share of the Net Settlement Amount
21 paid to each Participating Class Member, as calculated by the Settlement Administrator according to
22 the number of weeks worked by Participating Class Members during the Class Period. (*Id.* at § IV.F.)
23
24

25 ¹ Current litigation expenses total \$12,537.12, which are slightly higher than as reported at the time
26 of the Motion for Preliminary Approval filing (\$12,217.81). (Moon Decl., ¶ 14, n.1.) This increase in costs
27 is due to necessary and reasonable expenses, including for filing and service of court documents as are
normally incurred between preliminary and final approval. (*Id.*)

28 ² T The Administrator’s final costs, which includes fees and costs incurred to-date as well as anticipated
fees and costs for completion of the settlement administration, has not changed. (Islas Decl., ¶ 15, Exh. B.)

1 6. PAGA Payment: The PAGA Payment consists of Five Thousand Dollars and Zero Cents
2 (\$5,000.00) of the TC allocated to satisfy the PAGA claim as alleged in the Class Action. (*Id.* at § I.AA.)
3 Seventy-five percent (75%) of which, Three Thousand Seven Hundred Fifty Dollars and Zero Cents
4 (\$3,750.00), shall be paid to the LWDA, and (25%) of which, One Thousand Two Hundred Fifty Dollars
5 and Zero Cents (\$1,250.00), shall be distributed to Eligible Aggrieved Employees, on a pro rata basis. (*Id.*)

6 7. No Claim Form. No claim form is required for Participating Class Members and/or Eligible
7 Aggrieved Employees to receive any individual shares. (*Id.* at § I.V.)

8 8. Tax Treatment: Each Individual Settlement Share will be allocated 10% to wages and 90% to
9 non-wage statutory damages and interest; and Eligible Aggrieved Employees' portion of the PAGA
10 Payment will be allocated as 100% non-wage damages. (*Id.* at § IV.F.2.)

11 9. Released Parties: Defendant and each of their current and former owners, operators, officers,
12 members, directors, shareholders, partners, affiliated companies, parent companies, subsidiary companies,
13 holding companies, predecessors, successors, insurers, assigns, trustees, principals, DBAs, franchisors,
14 franchisees, payroll service providers, legal representatives, accountants, employees, independent
15 contractors, lessors, and agents. (*Id.* at § I.HH.)

16 10. Release by Plaintiff and Participating Class Members: Upon Effective Final Settlement Date
17 the claims that Plaintiff and the other Participating Class Members are releasing in exchange for the
18 consideration provided for by this Agreement are all known and unknown claims, rights, demands,
19 damages, liabilities and causes of action, in law or in equity, arising at any time during the Class Period
20 alleged in the Complaint, or that could have been alleged based on the facts pleaded, including but not
21 limited to California Labor Code §§ 201-203, 204, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1197,
22 1197.1, 1198, 2802, and the related applicable IWC Wage Orders. Released Claims include, but are not
23 necessarily limited to, claims based on theories of misclassification as exempt from overtime, "off-the-
24 clock" work, or automatically deducted meal periods; meal and rest breaks; failure to maintain accurate
25 employment records; wage statement violations; separation pay violations; failure to reimburse business
26 expenses; and unfair business practices. (*Id.* at § I.GG.A.)

27 11. Release by Class Members Who Are Aggrieved Employees and Plaintiff: All Class Members
28 who are Aggrieved Employees and Plaintiff are deemed to release, on behalf of themselves and their

1 respective former and present representatives, agents, attorneys, heirs, administrators, successors, and
2 assigns, the Released Parties from all claims for PAGA penalties during the PAGA Period that were alleged,
3 or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA
4 Notice. (*Id.* at § I.GG.B.)

5 12. Uncashed Checks: Participating Class Members must cash or deposit their Individual
6 Settlement Share checks within one hundred eighty (180) calendar days after the checks are mailed to them.
7 (*Id.* at § IV.I.10.) If any checks are not redeemed or deposited within that period they shall be distributed to
8 the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil
9 Code section 1500 *et seq.*, for the benefit of that Participating Class Member and/or Eligible Aggrieved
10 Employee, as applicable. (*Id.*) The Parties agree that this disposition results in no “unpaid residue” under
11 California Code of Civil Procedure section 384, as the entire NSA will be paid out to the Participating Class
12 Members and the Eligible Aggrieved Employees. (*Id.*)

13 13. Class Notice: The Class Notice—which was translated, mailed, and sent to all 52 Class
14 Members—set forth, in plain terms, a statement of case, the terms of the Settlement, the approximate
15 amounts of attorneys’ fees, costs, penalties, and service payments being sought, and an explanation of how
16 the settlement allocations are calculated. (Islas Decl., ¶ 5, Exh. A.) The Notice explained the procedure for
17 disputing the number of weeks worked and/or PAGA pay periods, opting out, or objecting. (*Id.*) The
18 Settlement Administrator undertook its best efforts to ensure the Class Notice was provided to the current
19 address of each Class Member, including conducting a national change of address search and re-mailing the
20 notice to updated addresses. (*Id.* at ¶ 4.) Ultimately, of the 52 Notices mailed, only 1 was undeliverable
21 despite the Settlement Administrator’s attempts to locate an updated mailing address. (*Id.* at ¶ 7.) The
22 Response Deadline has passed, and the Settlement Administrator has received one Request for Exclusion
23 and no objections or disputes. (*Id.* at ¶¶ 8-10.)

24 14. Notice of Judgment: Notice of Judgment will be given to the Class by the Settlement
25 Administrator, who will post an electronic copy on a website maintained by the Settlement
26 Administrator for no less than ninety (90) calendar days following entry thereof. The address of that
27 website was included in the Class Notice. (See Islas Decl., Exh. A.)
28

III. THE SETTLEMENT MERITS FINAL APPROVAL

The law favors the settlement of lawsuits, particularly in class actions and other complex cases. (*See, e.g., Neary v. Regents of Univ. of Cal.* (1992) 3 Cal.4th 272, 277–81.) To prevent fraud, collusion, or unfairness to the class, the settlement of a class action requires court approval. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800–01 [citing authority omitted].) To approve a settlement, the Court must find “the settlement is fair, adequate, and reasonable.” (*Id.*) The Court has wide discretion in making this determination. (*Mallick v. Super. Ct.* (1979) 89 Cal.App.3d 434, 438.) Fairness, adequacy, and reasonableness are presumed, as here, when: “(1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” (*Dunk*, 48 Cal.App.4th at p. 1802 [citing Newberg, *Newberg on Class Actions* (3rd ed. 1992) § 11.41].) In evaluating a settlement, the trial court considers the following factors: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the settlement amount offered; (5) the extent of discovery completed and the stage of the proceedings; (6) counsel’s experience and views; (7) the presence of a governmental participant; and (8) the class members’ reaction to the proposed settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.) In order to approve a class action settlement, “the court must satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Id.* at p. 133.) The record need not contain an explicit statement of the maximum theoretical recovery. (*Munoz v. BCI Coca-Cola Bottling Co. of L.A.* (2010) 186 Cal.App.4th 399, 408–09 [holding that *Kullar* does not require “an explicit statement of the maximum amount the plaintiff class could recover if it prevailed on all its claims,” but instead, only an “understanding of the amount that is in controversy and the realistic range of outcomes of the litigation”].)

As discussed below, Class Counsel have provided materials and information exceeding the threshold required for this Court to conclude the Settlement is fair, reasonable, and adequate.

A. The Settlement Amount Provides a Realistic Value for the Claims

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arm’s-length negotiations between the Parties. (Moon Decl., ¶ 9.) Class Counsel performed an extensive

1 investigation into the facts, claims, and defenses at issue, including by reviewing the governing law,
2 analyzing Defendant's written policies, financial records, and a sampling of time/pay data for the Class, and
3 retaining a statistics expert to prepare a damage analysis regarding Defendant's potential liability. (*Id.* at ¶¶
4 7-8.) Class Counsel used the foregoing in settlement negotiations with Defendant's counsel and discussions
5 regarding the strengths and weaknesses of the claims and defenses, which resulted in the proposed
6 Settlement. (*Id.* at ¶ 9.)

7 According to the data Defendant provided at the time of mediation,³ there are 56 class members,
8 approximately 5,001 workweeks, 23,505 shifts, and the weighted average hourly rate is \$25 per hour. (*Id.*
9 at ¶ 17.) Based on Defendant's payroll data, there are 24 former employees who fall within the 3-year
10 statute of limitations period for Labor Code § 203 penalties, and 45 employees that fall within the 1-year
11 statute of limitations period for penalties under Labor Code § 226. (*Id.*) Additionally, there are 823 pay
12 periods within the 1-year statute of limitations period for PAGA penalties. (*Id.*) Accordingly, Defendant's
13 **estimated realistic exposure** (adjusted for risks at certification and proof on the merits) for the claims was
14 calculated as follows: **\$40,789.40** (85% discount) for unpaid wages claim; **\$34,552.50** (85% discount) for
15 meal period violations; **\$34,552.50** (85% discount) for rest period violations; **\$7,974.49** (85% discount) for
16 unreimbursed business expenses; **\$7,200.00** (95% discount) for waiting time penalties; **\$4,002.50** (95%
17 discount) for inaccurate wage statements; and **\$4,115.00** (95% discount) for PAGA penalties. (*Id.* at ¶¶ 17–
18 22.)

19 Using these estimated figures, Plaintiff predicted **the realistic maximum recovery for all claims,**
20 **including penalties, would be \$133,186.39.** (*Id.* at ¶¶ 17, 23.) **This means the \$100,000.00 settlement**
21 **figure represents roughly 75.08% of the realistic recovery.** (*Id.* at ¶ 23.) The percentage of liability
22 exposure recovered in this case exceeds percentages routinely approved by courts. (*See, e.g., Visceral v.*
23

24 ³ Following preliminary approval, the Settlement Administrator processed the Class List and
25 determined there are **52 Class Members** (51 when accounting for the single opt-out) who cumulatively
26 worked **4,629 weeks**; and **43 Eligible Aggrieved Employees** who cumulatively worked **1,184 pay periods**.
27 (Admin Decl., ¶¶ 13-14.) The differences between the numbers previously estimated and the actual
28 numbers are slight and are reasonable considering the metrics provided for settlement negotiations were
estimates. (Moon Decl., ¶ 17, n.3.) Moreover, there are less Class Members and Eligible Aggrieved
Employees than initially estimated, meaning the actual average Individual Settlement Share and average
individual share of the PAGA Payment are more favorable to Class Members and Eligible Aggrieved
Employees. (*Id.*)

1 *Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016) No. 15-cv-02198-EMC, 2016 WL 5907869, *7–8 [approving
2 wage and hour class action settlement amounting to 8.1% of potential damages]]; *Dunleavy v. Nadler* (9th
3 Cir. 2000) 213 F.3d 454, 459 [approving settlement which represented “roughly one-sixth of the potential
4 recovery”].) Given the litigation risks involved, the Settlement is well within the realm of being fair,
5 reasonable, and adequate.

6 Among those matters considered during the course of settlement negotiations were the strength of
7 Plaintiff’s case versus the amounts offered in settlement; the risks, expenses, and length of further litigation,
8 including class certification and the appeals process; the present state of the law as it applies to wage and
9 hour class actions; the present value of a settlement versus the long wait necessitated by any potential
10 judgment in Class Members’ favor; the burden of proof necessary to establish liability against Defendant;
11 and Defendant’s defenses to the action. (*Id.* at ¶¶ 6, 18–27.)

12 While Plaintiff is confident in the merits of her claims, a legitimate controversy exists as to each
13 cause of action. (*Id.* at ¶ 24.) Plaintiff also recognizes that proving the amounts of wages owed to each Class
14 Member would be an expensive, time-consuming, and uncertain proposition. (*Id.*) Class Counsel are also
15 of the opinion that because the issues here are fairly contested, there is a possibility of the Court not awarding
16 the PAGA penalties even if Plaintiff prevailed on the merits due to the largely discretionary nature of
17 awarding PAGA penalties. (*Id.* at ¶ 25.) Indeed, under Labor Code section 2699, subdivision (e)(2), a Court
18 can reduce PAGA penalties “if, based on the facts and circumstances of the particular case, to do otherwise
19 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code § 2699(e)(2).)
20 In other words, were this matter to go to trial, any award granted would be at the discretion of the Court and
21 subject to a substantial reduction. (Moon Decl., ¶ 25.)

22 The Settlement obviates the significant risk that this Court may deny certification of all or some of
23 Plaintiff’s claims. (*Id.* at ¶ 26.) Notably, the assigned certification probabilities far exceed the rate of
24 certification in contested motions in California over the past five years, based upon data available through
25 the California Courts website. (See Hilary Hehman, Findings of the Study of California Class Action
26 Litigation, 2000-2006, at C11 (March 2009), available at [https://www.courts.ca.gov/documents/class-](https://www.courts.ca.gov/documents/class-action-lit-study.pdf)
27 [action-lit-study.pdf](https://www.courts.ca.gov/documents/class-action-lit-study.pdf) [finding that only 21.4% of all class actions were certified either as part of a settlement
28 or as part of a contested certification motion].) In other words, well under 20% of all class actions are

certified by way of contested motion. Furthermore, even if Plaintiff was able to pursue her claims on a class-wide basis and obtain certification of all or some of the claims, continued litigation would be expensive, involving a trial and possible appeals, and would substantially delay and reduce any recovery by the Class. (Moon Decl., ¶ 26.) This Settlement avoids the risks, burdens, and the accompanying expense of further litigation. (*Id.* at ¶ 27.) Although the Parties have engaged in a significant amount of investigation, discovery, and class-wide data analysis, they have not conducted expert discovery or taken depositions. (*Id.*) Moreover, preparation for class certification and a trial would remain for the Parties as well as the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or any summary judgment ruling. (*Id.*) As a result, the Parties would incur considerably more attorneys' fees and costs through trial. (*Id.*) The foregoing factors all indicated that the interests of Class Members are best served by a settlement of this action in the manner and upon the terms set forth in the Settlement.

B. The Settlement Reflects a Reasonable Compromise

The Settlement, of course, reflects a compromise—the TC takes into account all the litigation risks related to obtaining class certification and proving Defendant's liability and amounts of damages. (*Id.* at ¶ 16.) Considering the risks with certification and proof on the merits, this Settlement is an excellent result for the Class, particularly because Class Members will receive timely, guaranteed relief and will avoid the risk of not being able to recover anything. (*Id.* at ¶ 23.) Considering all the defenses asserted by Defendant which posed substantial litigation risks, a compromise effectively awarding Class Members the realistic maximum value of their core claims is eminently fair and reasonable.

The **Net Settlement Amount** available for settlement payments is currently estimated to be **\$41,129.55** for a Class size of **51 individuals**, which results in an estimated **gross workweek value of roughly \$8.89** based on the total **4,629 weeks worked** during the Class Period.⁴ (*See* Islas Decl., ¶ 13; Moon Decl., ¶ 28.) As a result, it is estimated each Participating Class Member is eligible to receive an average gross benefit of approximately **\$810.99** prior to tax withholdings on the wage portion of payments.

⁴ The estimated Net Settlement Amount is \$100,000.00 less the following: \$33,333.33 for the Attorney Fee Award, \$12,537.12 for the Cost Award, \$5,000.00 for the Class Representative Enhancement Payment, \$5,000.00 for the PAGA Payment, and \$3,000 for Administration Costs. (Islas Decl., ¶ 12.)

(Islas Decl., ¶ 13.) Additionally, there are **43 Eligible Aggrieved Employees** who will each receive an average of **\$29.07** from the 25% share of the PAGA Payment (\$1,250.00), which results in a **pay period value of roughly \$1.06** based on the total **1,184 pay periods** during the PAGA Period. (*See id.* at ¶ 14.) The actual amounts to Participating Class Members and Eligible Aggrieved Employees will vary based on each individual’s duration of work during the Class Period or PAGA Period, respectively; thus, those who worked longer for Defendant during the relevant period will receive a benefit greater than the estimated average. (*Id.* at ¶¶ 13-14; Settlement, §§ IV.F.1-G.6.) According to the Settlement Administrator, the highest gross Individual Settlement Share is estimated to be \$2,016.94, and the lowest is \$106.62; while the highest PAGA Payment to an Eligible Aggrieved Employee is estimated to be \$48.56, and the lowest is \$1.08. (Islas Decl., ¶¶ 13-14)

Although Defendant ultimately must pay less under the Settlement than it might have had to pay if Plaintiff had achieved a judgment through trial and obtained more than the estimated recovery, assuming Plaintiff first obtained class certification, an ideal settlement requiring a defendant to pay the full amount of its potential damages is rarely achieved. As the Ninth Circuit has observed, “the very essence of a settlement is compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” (*Officers for Justice v. Civil Serv. Comm’n of City & Cty. of S.F.* (9th Cir. 1982) 688 F.2d 615, 624.) Thus, a proposed settlement “is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” (*Id.* at p. 625.) A court’s “intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Id.*)

The proposed Settlement therefore represents a substantial recovery when compared to the reasonably forecasted recovery of the Class. (Moon Decl., ¶ 29.) When considering the risks of litigation, the uncertainties involved in continued litigation, the burdens of proof necessary to establish liability, and the probability of appeal, it is clear the TC of \$100,000.00 is within the “ballpark” of reasonableness, and that settlement approval is appropriate. (*Id.*)

1 **C. Class Counsel Have Substantial Class Action Experience**

2 Class Counsel have considerable experience and have demonstrated competence with litigating
3 wage and hour class actions. (*Id.* at ¶¶ 33–46.) Class Counsel have substantial experience in all facets of
4 litigation in state and federal court, including discovery, law and motion, trial, appeals, arbitration, and
5 mediation. (*Id.*) Class Counsel have litigated numerous class actions on behalf of plaintiffs and have been
6 lead counsel or otherwise exercised significant case handling responsibilities in numerous cases resulting in
7 millions of dollars in class action settlements. (*Id.*) Based on their experience as employment and class
8 action attorneys, Class Counsel are eminently qualified to evaluate the strength of Plaintiff’s claims, the
9 strength of Defendant’s defenses against certification and on the merits, and the fairness of the Settlement.
10 (*Id.* at ¶ 47.) Their opinion that final approval of the Settlement is in the best interests of Class Members
11 considering the significant risks of litigation is entitled to great weight. (*See Kullar, supra*, 168 Cal.App.4th
12 at p. 129 [“The court undoubtedly should give considerable weight to the competency and integrity of
13 counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents
14 an arm’s length transaction entered without self-dealing or other potential misconduct”].)

15 **D. The Response to the Settlement Is Overwhelmingly Positive**

16 To ensure the majority of the 52 Class Members—whose identities were known based on
17 Defendant’s business records—received Class Notice, the Settlement Administrator employed reasonable
18 methods, including processing the mailing addresses that were on file in Defendant’s records against a
19 National Change of Address (“NCOA”) database maintained by the U.S. Postal Service, for purposes of
20 updating and confirming their mailing addresses. (Islas Decl., ¶ 4.) Of the 52 Notices mailed out, 7 were
21 initially returned as undeliverable. (*Id.* at ¶ 6.) The Settlement Administrator performed a computerized
22 skip trace on the undeliverable Notices and was thus able to obtain updated addresses for 6 Notices,
23 and promptly remailed those Notices. (*Id.*) Ultimately, only 1 Notice was undeliverable. (*Id.* at ¶ 7.)

24 Additionally, the Response Deadline for Class Members to opt-out, object, or submit a dispute was
25 August 23, 2024. (*Id.* at ¶¶ 8-10.) To date, the Settlement Administrator has received only one Request for
26 Exclusion and no objections or disputes. (*Id.* at ¶¶ 8-10.) Overall, therefore, there is strong support from the
27 Class for final settlement approval. (*See, e.g., In re Lifelock, Inc. Mktg. & Sales Practices Litig.* (D. Ariz.
28 Aug. 31, 2010) No. 08–1977–MHM, 2010 WL 3715138, *6 [finding relatively few objections and requests

1 for exclusion support approval of proposed settlement].)

2 Factors to be considered in evaluating a class action settlement include “the reaction of the class
3 members to the proposed settlement.” (*Kullar, supra*, 168 Cal.App.4th at p. 128.) Here, the reaction is
4 undeniably and overwhelmingly positive. Courts have approved class action settlements in lesser
5 circumstances. (*See, e.g., Hughes v. Microsoft Corp.* (W.D. Wash. March 26, 2001) No. C98–1646C, C93–
6 0178C, 2001 WL 34089697, *8 [finding “class members overwhelmingly support[ed] the settlement”
7 where over 37,000 notices were sent out, 2,745 class members participated in the settlement, 9 objections
8 were submitted, and there were 68 timely opt-outs (less than 1%) and over 20 additional defective or
9 untimely opt-outs, and that “these indicia of the approval of the class of the terms of the settlement support
10 a finding of fairness under Rule 23”] [citing *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027
11 [despite vigorous objections and appeal by objectors, considering “fact that the overwhelming majority of
12 the class willingly approved the offer and stayed in the class presents at least some objective positive
13 commentary as to its fairness,” court did not abuse its discretion in approving settlement]]).)

14 In sum, 51 Class Members (98% of the Class) remain in the Class, there were minimal issues with
15 mailing the Notice as 51 Class Members (roughly 98% of the Class) received Notice, only one Request for
16 Exclusion has been received, and no objections or disputes have been received. (Islas Decl., ¶¶ 7-10.) For
17 the foregoing reasons, the Court should find there is overwhelming support for final approval.

18 **IV. THE COURT SHOULD AWARD THE REQUESTED AMOUNTS OF**
19 **ATTORNEYS’ FEES, COSTS, AND ENHANCEMENT PAYMENT**

20 Subject to the Court’s approval and in line with the Settlement, Class Counsel seek attorneys’ fees
21 in an amount up to one-third (1/3) of the TC (\$33,333.33) and \$12,537.12 for reimbursement of actual
22 litigation costs. (Moon Decl., ¶¶ 49, 57.) In addition, the Settlement Administrator seeks \$3,000.00 for the
23 costs of settlement administration, and Plaintiff seeks an Enhancement Payment of \$5,000.00. (Islas Decl.,
24 ¶ 15; Plaintiff Decl., ¶ 21.) The foregoing amounts were disclosed to Class Members in the Class Notice.
25 (Islas Decl., ¶ 5, Exh. A.)

26 “In general, questions whether a settlement was fair and reasonable, . . . whether certification of the
27 class was proper, and whether the attorney fee award was proper are matters addressed to the trial court’s
28 broad discretion.” (*Wershba v. Apple Comp., Inc.* (2001) 91 Cal.App.4th 224, 234–35.) “Courts recognize

two methods for calculating attorney fees in civil class actions: the lodestar/multiplier method and the percentage of recovery method.” (*Id.* at p. 254; *see also Vincent v. Hughes Air W., Inc.* (9th Cir. 1977) 557 F.2d 759, 769.)

A. Class Counsel Request a Fees Award Based on the “Common Fund” Method

California courts have long awarded attorneys’ fees as a percentage of the benefit created by counsel in pursuing claims on behalf of a class. (*See, e.g., Serrano v. Priest* (1977) 20 Cal.3d 25.) The California Supreme Court has held, “when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.” (*Id.* at p. 34.)

Class Counsel seek an award of attorneys’ fees on the “percentage of recovery/common fund” theory. (Moon Decl., ¶ 49.) The purpose of this approach is to “spread litigation costs proportionately among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.” (*Vincent, supra*, 557 F.2d at p. 769.) In *Quinn v. State of California* (1975) 15 Cal.3d 162, the California Supreme Court stated, “one who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits, may require those passive beneficiaries to bear a fair share of the litigation costs.” (*Id.* at p. 167.) Similarly, in *City and County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, the California Supreme Court recognized that the common fund doctrine has been applied “consistently in California when an action brought by one party creates a fund in which other persons[] are entitled to share.” (*Id.* at pp. 110–11.) The reasons for applying the common fund doctrine include:

fairness to the successful litigant, who might otherwise receive no benefit because his recovery might be consumed by the expenses; correlative prevention of an unfair advantage to the others who are entitled to share in the fund and who should bear their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who will be more willing to undertake and diligently prosecute proper litigation for the protection or recovery of the fund if he is assured that he will be properly and directly compensated should his efforts be successful.

(*Id.* at p. 111.)

Several courts have expressed frustration with the alternative “lodestar” approach for deciding fee awards, which usually involves wading through voluminous and often indecipherable time records.

1 Commenting on the lodestar approach, Chief Judge Marilyn Hall Patel wrote in *In re Activision Securities*
2 *Litigation* (N.D. Cal. 1989) 723 F.Supp.1373:

3 **This court is compelled to ask, “Is this process necessary?” Under a**
4 **cost-benefit analysis, the answer would be a resounding, “No!”** Not
5 only do the *Lindy* and *Kerr–Johnson* analyses consume an undue amount
of court time with little resulting advantage to anyone, but, in fact, it may
be to the detriment of the class members.

6 (*Id.* at p. 1375 [emphasis added].) The percentage approach is preferable to the lodestar because: (1) it aligns
7 the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation
8 by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial
9 resources. (*Id.* at pp. 1378–79.) California Courts now routinely use the percentage of the common fund
10 approach to determine the award of attorney’s fees. (*See, e.g., In re Pac. Enter. Sec. Litig.* (9th Cir. 1995)
11 47 F.3d 373, 378–79 [approving attorneys’ fee award of 33%].)

12 **1. The Requested Fee Award Is in Line with Typical Cases**

13 According to a leading treatise on class actions: “No general rule can be articulated on what is a
14 reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee
15 award from a common fund in order to assure that the fees do not consume a disproportionate part of the
16 recovery obtained for the class, although somewhat larger percentages are not unprecedented.” (Newberg,
17 Newberg on Class Actions (3rd ed. 1992) § 14.03.) Attorneys’ fees that are 50% of the fund are typically
18 considered the upper limit, with 30–40% commonly awarded in cases where the settlement is relatively
19 small. (*Id.*; *see also Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294, 297 [stating
20 that most cases where 30–50% was awarded involved “smaller” settlement funds of under \$10 million].)

21 Here, the request for attorneys’ fees equal to one-third (1/3) of the TC is in line with the prevailing
22 guidelines established under California case law and in academic literature and is consistent with awards in
23 California. (*Compare Settlement*, § I.C. with *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66, n.11
24 [“Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee
25 awards in class actions average around one-third of the recovery.”].) Accordingly, Class Counsel
26 respectfully request the Court approve attorneys’ fees as negotiated by the Parties and requested herein.

27 **2. This Matter Involves a “Fee-Shifting” Provision of the Labor Code**

28 Labor Code sections 218.5, 226, 1194, 2699, and 2802 provide for the recovery of reasonable fees

1 and costs of suit, for the claims made in this action. (Lab. Code §§ 218.5, 226, 1194, 2699(g)(1), 2802(d).)
2 Under these sections, Plaintiff would be permitted to recover her actual attorneys' fees, even if those fees
3 were larger than the total class recovery at the conclusion of this case. (*Id.*) This Settlement is beneficial in
4 that it limits the risk of continued expenses and consumption of time, energy, and resources facing
5 Defendant while at the same time rewarding Class Counsel for their decision to assume risk by taking on
6 Class Counsel, who undertook this matter solely on a contingent basis, with no guarantee of recovery. (*Id.*
7 at ¶¶ 51–58.) Once Counsel undertook this litigation on behalf of the Class, they committed to pursue it to
8 its conclusion, placing their fiduciary duty to the Class ahead of all other concerns. (*Id.* at ¶ 55.)

9 **3. Counsel's Experience, Reputation, and Ability Support the Fee Award**

10 As demonstrated by their past experience in pursuing class actions on behalf of consumers and
11 employees, Class Counsel possess considerable expertise in litigating class actions. (*Id.* at ¶¶ 33–46.) Class
12 Counsel have been involved as lead counsel or co-counsel in several class actions that resulted in millions
13 in recovery. (*Id.* at ¶¶ 33–46.) Class Counsel's experience in wage and hour class actions was integral in
14 evaluating the strengths and weaknesses of the case against Defendants and the reasonableness of the
15 proposed Settlement. (*Id.* at ¶ 47.) Practice in the narrow field of wage and hour litigation requires skill and
16 knowledge concerning the rapidly evolving substantive law (state and federal) as well as the procedural law
17 of class action litigation. (*Id.* at ¶ 45.) Based on these and other factors, Class Counsel have frequently
18 received fee awards of this percentage from the gross recovery for the class. (*See, e.g., id.* at ¶¶ 37, 43.)
19 Because it is reasonable to compensate successful counsel commensurate with their skill, reputation, and
20 experience, Class Counsel's requested fee award is supported here.

21 **B. While the Lodestar Method Is Not Necessary in Common Fund Cases, Courts** 22 **May Perform a Cross-Check to Award Fees**

23 “Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.” (*Lealao*
24 *v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 27.) Courts have criticized the lodestar method as a drain
25 on the judicial system and a disincentive on attorneys to take on high-risk, challenging cases. (*Id.* at p. 29.)
26 Indeed, the lodestar approach: “(1) ‘increases the workload of an already overtaxed judicial system,’ (2) is
27 ‘insufficiently objective and produce[s] results that are far from homogenous,’ (3) ‘creates a sense of
28 mathematical precision that is unwarranted in terms of the realities of the practice of law,’ (4) ‘is subject to

manipulation by judges who prefer to calibrate fees in terms of percentages of the settlement fund or the amounts recovered by the plaintiffs or of an overall dollar amount,’ (5) ‘encourages lawyers to expend excessive hours, and . . . engage in duplicative and unjustified work,’ (6) ‘creates a disincentive for the early settlement of cases,’ (7) deprives trial courts of ‘flexibility to reward or deter lawyers so that desirable objectives, such as early settlement, will be fostered,’ (8) ‘works to the particular disadvantage of the public interest bar,’ and (9) results in ‘confusion and lack of predictability.’” (*Id.* [quoting Third Circuit Task Force, *Court Awarded Attorney Fees* (1985) 108 F.R.D. 237, 246–49].)

Although California Courts support the common fund doctrine, the lodestar method can be used to cross-check fee awards. “It may be appropriate in some cases, assuming the class benefit can be monetized with a reasonable degree of certainty, to ‘cross-check’ or adjust the lodestar in comparison to a percentage of the common fund to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the legal marketplace in comparable litigation.” (*In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557 [quoting *Lealao, supra*, 82 Cal.App.4th at pp. 49–50].) Applying the lodestar method is a two-step process. The first step is to multiply the number of hours reasonably expended by a reasonable hourly rate, and the second step is to apply a multiplier to the lodestar to account for various factors. (*Id.* at p. 556.) “The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services.” (*Id.*) “Under certain circumstances, a lodestar calculation may be enhanced on the basis of a percentage-of-the-benefit analysis.” (*Id.* at pp. 556–57.) Further, “California case law permits fee awards in the absence of detailed time sheets.” (*Wershba, supra*, 91 Cal.App.4th at p. 255.)

Here, Class Counsel’s current lodestar is *no less than* **\$71,470.00**, which is based on **95.9 hours** of attorney time at their customary hourly rates. (Moon Decl., ¶ 50.) Additionally, Class Counsel estimate they will devote a minimum of 10, although likely more, additional hours to this litigation that are not reflected in the foregoing lodestar, including time to obtain and monitor final approval of the Settlement and requested awards, oversee the settlement administration process and distribution of funds, respond to Class Member inquiries, and communicate with Plaintiff. (*Id.* at ¶ 51.) Class Counsel also bear the risk of taking whatever actions are necessary if Defendant fails to pay. (*Id.*) In comparison to the requested amount of **\$33,333.33**

1 for attorneys’ fees, the lodestar represents a **negative multiplier of roughly 0.47**. (*Id.* at ¶ 53(c).) *While not*
2 *requested here*, application of a positive multiplier is reasonable and appropriate based on the contingent
3 risk that Class Counsel incurred, the difficulty of the questions involved, the length of the litigation, the
4 substantial benefit conferred on the Class and State of California as a result of the Settlement, and the skill
5 displayed by Class Counsel. (*Id.*) Accordingly, the request for attorneys’ fees satisfies a lodestar analysis.

6 **C. The Request for Reimbursement of Litigation Costs Is Reasonable**

7 Successful counsel are entitled to recover the out-of-pocket litigation expenses reasonably incurred
8 in investigating, prosecuting, and settling the case. (*Staton v. Boeing Co.* (9th Cir. 2003) 327 F.3d 938, 974.)
9 Here, the Settlement provides for reimbursement of costs of up to \$13,000.00. (Settlement, § I.N.) Counsel
10 seek an award of \$12,537.12 for costs incurred as of the drafting of this motion. (Moon Decl., ¶¶ 14, 57,
11 Exh. 4.) These costs were reasonably and actually incurred in prosecuting this action on behalf of the Class.
12 (*Id.* at ¶ 57.) Moreover, these expenses are below the maximum allocation under the Settlement
13 (\$13,000.00), and thus, the remainder will revert to the Net Settlement to be paid to Participating Class
14 Members. (Settlement, § I.N.) Therefore, the request is reasonable.

15 **D. The Court Should Award Plaintiff the Requested Enhancement Payment**

16 Named plaintiffs in class action lawsuits “are eligible for reasonable incentive payments to
17 compensate them for the expense or risk they have incurred in conferring a benefit on other members
18 of the class.” (*Munoz, supra*, 86 Cal.App.4th at p. 412; *Clark v. Am. Residential Servs. LLC* (2009)
19 175 Cal.App.4th 785, 806; *see In re Cont’l Ill. Sec. Litig.* (7th Cir. 1992) 962 F.2d 566, 571 [“Since
20 without a named plaintiff there can be no class action, such compensation as may be necessary to
21 induce him to participate in the suit could be thought the equivalent of the lawyers’ nonlegal but
22 essential case-specific expenses, such as long-distance phone calls, which are reimbursable.”].)
23 Courts routinely grant approval of class action settlement agreements containing enhancements for
24 the class representatives, which are necessary to provide incentive to represent the class and are
25 appropriate given the benefit the class representatives help to bring about for the class. (*See Rodriguez*
26 *v. W. Publ’g Corp.* (9th Cir. 2009) 563 F.3d 948, 958–59.) “[C]riteria courts may consider in
27 determining whether to make an incentive award include: 1) the risk to the class representative in
28 commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered

1 by the class representative; 3) the amount of time and effort spent by the class representative; 4) the
2 duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class
3 representative as a result of the litigation.” (*In re Cellphone Fee Termination Cases* (2010) 186
4 Cal.App.4th 1380, 1394–95 [holding that trial court did not abuse its discretion in awarding
5 enhancements of \$10,000 to each of the four named plaintiffs].)

6 Service awards are particularly important to plaintiffs in wage and hour cases because they promote
7 the important public policies underlying the wage and hour laws. This strong policy is codified in California
8 Labor Code section 90.5, which provides that “[i]t is the policy of this state to vigorously enforce minimum
9 labor standards in order to ensure employees are not required or permitted to work under substandard
10 unlawful conditions . . .” (Lab. Code § 90.5.) Nonetheless, the California Supreme Court has noted that
11 “retaliation against employees for asserting statutory rights under the Labor Code is widespread,” despite
12 anti-retaliation statutes designed to protect employees. (*Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, 460–
13 61.) In this context, class representatives should be rewarded for assuming the risk of retaliation for the sake
14 of class members. (*See Frank v. Eastman Kodak Co.* (W.D.N.Y. 2005) 228 F.R.D. 174, 187.)

15 Subject to the Court’s approval, Plaintiff seeks to be paid an Enhancement Payment in the amount
16 of \$5,000.00, in addition to the amount she is eligible to receive as a Class Member. (Plaintiff Decl., ¶ 21.)
17 This award is reasonable consideration for Plaintiff executing a general release of claims against
18 Defendant, a release that is broader than any Participating Class Member will provide in consideration
19 for a settlement share. (Settlement, § IV.L.) This payment is also reasonable in consideration for
20 Plaintiff’s actions in conferring a benefit upon the State of California and the Class, for the time and
21 effort Plaintiff put into pursuing and assisting with the litigation, and for assuming the risks inherent in
22 bringing and presenting her claims. (Moon Decl., ¶¶ 30–32.) Plaintiff has devoted a great deal of time and
23 work assisting counsel in the case, estimating she put in roughly 30-35 hours of her own time. (Plaintiff
24 Decl., ¶¶ 20–25.) Moreover, Plaintiff has assumed some long-lasting risk in prosecuting this case, including
25 the potential for difficulties in obtaining future employment. (*Id.* at ¶ 24.) As a direct result of Plaintiff’s
26 time, effort, and risks assumed in volunteering herself as the named Plaintiff and serving as the Class
27 Representative, she has generated substantial benefits for the Class. (*Id.* at ¶ 26; Settlement, § IV.A.) Thus,
28 the requested Enhancement Payment is more than fair and reasonable.

1 Indeed, when compared with the amounts awarded in typical class action cases, the amount
2 requested here is particularly reasonable. A 2006 study examining the average incentive award given
3 to class action plaintiffs from 1993 to 2002 found that the “average award per class representative
4 was \$15,992 and the median award per class representative was \$4,357.” (Eisenberg & Miller,
5 *Incentive Awards to Class Action Plaintiffs: An Empirical Study* (2006) 53 UCLA L. Rev. 1303,
6 1307–08.) The same study found that named plaintiffs in employment discrimination class actions
7 received an average award of \$69,850 and a median award of \$31,081, while named plaintiffs in other
8 employment class actions received an average award of \$12,121 and a median award of \$13,059. (*Id.*
9 at p. 1333.) The authors of the study found that higher awards in employment cases reflected the
10 “courts’ wish to make representative plaintiffs whole by compensating them for the high costs of their
11 service to the class, including risks of stigmatization or retaliation on the job.” (*Id.* at p. 1308.) This
12 line of authority is further support for approving the requested service payment.

13 **V. THE SETTLEMENT DOES NOT INVOKE CCP SECTION 384**

14 In pertinent part, the California Code of Civil Procedure section 384 requires a court to amend
15 judgment:

16 to direct the defendant to pay the sum of the unpaid residue or unclaimed
17 or abandoned class member funds, plus any interest that has accrued
18 thereon, to nonprofit organizations or foundations to support projects that
19 will benefit the class or similarly situated persons, or that promote the law
consistent with the objectives and purposes of the underlying cause of
action, to child advocacy programs, or to nonprofit organizations
providing civil legal services to the indigent.

20 (Code of Civ. Proc. § 384(b).)

21 Here, the Settlement provides that Participating Class Members and Eligible Aggrieved Employees
22 must cash or deposit their settlement share checks within one hundred eighty (180) calendar days after the
23 checks are mailed to them. (Settlement, § IV.I.10.) The Settlement further provides that if any checks are
24 not redeemed or deposited within that period, said checks will be distributed to the Controller of the State
25 of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 *et*
26 *seq.*, for the benefit of that Participating Class Member and/or Eligible Aggrieved Employee, as applicable
27 (*Id.*) This disposition results in no “unpaid residue” under California Code of Civil Procedure section 384,
28 as the entire NSA will be paid out to Participating Class Members and the Eligible Aggrieved Employees.

(Id.) This is further support for final approval of the Settlement.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court grant final approval of the Settlement and enter the [Proposed] Final Approval Order and [Proposed] Judgment filed concurrently herewith.

Respectfully submitted,

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By: _____

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