

1 J. KIRK DONNELLY (SBN 179401)
2 LAW OFFICES OF J. KIRK DONNELLY, APC
2173 Salk Avenue, Suite 250
3 Carlsbad, CA 92008
Tel. (760) 209-5894
4 kdonnelly@jkd-law.com

5 Counsel for Plaintiff Marisol Rios
6
7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF ALAMEDA**
10

11 MARISOL RIOS, on behalf of all others
12 similarly aggrieved,

13 Plaintiff,

14 vs. AMI FOODS, INC., a California
corporation, ALI IQBAL, an individual, and
15 DOES 1 through 10, inclusive,

16 Defendants.
17
18
19
20
21

CASE NO. 22CV005381

Assigned for All Purposes to:
Hon. Brad Seligman
Dept. 22

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

Date: October 1, 2023
Time: 3:00 p.m.
Dept. 22

CRS #: A-05381-002

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	FACTUAL BACKGROUND AND PROCEDURAL POSTURE	3
III.	THE PROPOSED SETTLEMENT TERMS.....	5
A.	Certification of the Settlement Class.....	6
B.	The Benefit Conferred on the Settlement Class	6
C.	Settlement Administration.....	7
D.	Release of Claims.....	8
E.	PAGA Claims and Notice to the LWDA	8
IV.	ARGUMENT	8
A.	The Proposed Settlement Merits Final Approval	9
1.	The Settlement Is the Product of Arm's-Length, Informed Negotiations	9
2.	The Class Reacted Favorably to the Settlement.....	10
3.	The Settlement Is Fair and Reasonable Considering the Benefits Conferred, the Case Value, and Significant Litigation Risks	10
V.	PLAINTIFF'S ENHANCEMENT AWARD.....	14
A.	The Attorney's Fees Requested Are Fair and Reasonable and Should Be Approved	15
B.	The Requested Fee Award Is Reasonable and Appropriate	15
C.	Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund	17
D.	A Lodestar Cross-Check Also Supports Class Counsel's Fee Request.....	19

1	E. The Award is Supported By 1) the Results Achieved; 2) the Risk, 3) the Skill Required, 4)	
2	the Contingent Nature of the Fee and 5) Awards in Similar Cases.	21
3	1. The Results Achieved.....	22
4	2. Class Counsel Bore Considerable Risk.	22
5	3. The Skill Required and the Quality of Work.....	23
6	4. The Contingent Nature of the Fee and Risk Assumed	23
7	5. Awards in Other Cases	24
8		
9	F. Class Counsel’s Costs and Expenses are Reasonable	24
10		
11	VIII. CONCLUSION	25
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

Page(s)

Cases

<u>7-Eleven Owners for Fair Franchising v. Southland Corp.</u> (2000) 85 Cal.App.4th 1135.....	12
<u>Amaral v. Cintas Corp. No. 2</u> (2008) 163 Cal.App.4th 1157.....	10
<u>In re: American Bank Note Holographics,</u> 127 F.Supp.2d 418 (S.D.N.Y. 2001).....	8
<u>Blum v. Stenson</u> (1984) 465 U.S. 886	15
<u>Boeing Co. v. Van Gernert</u> (1980) 444 U.S. 472	16
<u>Carrington v. Starbucks Corp.</u> (2018) 30 Cal.App.5th 504.....	11
<u>Cazares v. Saenz</u> (1989) 208 Cal.App.3d 279.....	21
<u>Class Plaintiffs v. City of Seattle</u> (9th Cir. 1992) 955 F.2d 1268, <u>cert. denied</u> , 506 U.S. 953	6
<u>Cochran v. Schwan’s Home Serv.</u> (2014) 228 Cal.App.4th 1137.....	10
<u>Deposit Guaranty Nat’l Bank, Jackson, Miss. v. Roper</u> (1980) 445 U.S. 326, <u>rehg. den.</u> 446 U.S. 947	14
<u>Dunk v. Ford Motor Co.</u> (1996) 48 Cal.App.4th 1794.....	6, 7
<u>Evans v. Jeff D.</u> (1986) 475 U.S. 717	15
<u>Garcia v. Superior Court</u> (2022) 80 Cal.App.5th 63.....	2
<u>Harris v. Marhoefer</u> (9th Cir. 1994) 24 F.3d 16.....	22
<u>Hensley v. Eckerhart</u> (1983) 461 U.S. 424	15

1	<u>Hernandez v. Restoration Hardware, Inc.</u>	
2	(2018) 4 Cal.5th 260.....	16
3	<u>Int'l Bhd. of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.</u>	
4	(9th Cir. 2021) 986 F.3d 841 (California meal and rest break requirements	
5	preempted by federal law for certain truck drivers).....	2
6	<u>Jennings v. Open Door Mktg. Inc.</u>	
7	(N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356.....	11
8	<u>Ketchum v. Moses</u>	
9	(2001) 24 Cal.4th 1122.....	21
10	<u>Laffitte v. Robert Half Int'l., Inc.</u>	
11	(2016) 1 Cal.5th 480.....	16, 17, 19
12	<u>Lane v. Facebook, Inc.</u>	
13	(9th Cir. 2012) 696 F.3d 811	12
14	<u>Lealao v. Beneficial Cal., Inc.</u>	
15	(2000) 82 Cal.App.4th 19.....	14, 15
16	<u>Levy v. Toyota Motor Sales, U.S.A.</u>	
17	(1992) 4 Cal.App.4th 807.....	14
18	<u>Mandujano v. Basic Vegetable Prods., Inc.,</u>	
19	541 F.2d 832 (9th Cir. 1976).....	8
20	<u>McKittrick v. Gardner</u>	
21	(4th Cir. 1967) 378 F.2d 872.....	21
22	<u>In re Omnivision Techs., Inc.,</u>	
23	559 (N.D. Cal. 2008).....	19
24	<u>Paul, Johnson, Alston & Hunt v. Graulity</u>	
25	(9th Cir. 1989 886 F.2d 268, 272).....	19
26	<u>Potter v. Pacific Coast Lumber Co.</u>	
27	(1951) 37 Cal.2d 592.....	6
28	<u>Powers v. Eichen</u>	
	(9th Cir. 2000) 229 F.3d 1249.....	20
	<u>Rider v. County of San Diego</u>	
	(1992) 11 Cal.App.4th 1410.....	22
	<u>Serrano v. Priest</u>	
	(1977) 20 Cal.3d 25.....	16, 22
	<u>Slavkov v. First Water Heater Partners I</u>	
	(N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303	11

1	<u>Staton v. Boeing</u>	
2	(9th Cir. 2003) 327 F.3d 938	13
3	<u>In re Taco Bell Wage and Hour Actions</u>	
4	(E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557	11
5	<u>Van Bronkhorst v. Safeco Corp.</u>	
6	(9th Cir. 1976) 529 F.2d 943,950	6
7	<u>Van Kempen v. Matheson Tri-Gas, Inc.</u>	
8	(N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182	11
9	<u>Vincent v. Hughes Air West, Inc.</u>	
10	(9th Cir. 1977) 557 F.2d 759	16
11	<u>In re Warner Communications Sec. Litig.</u>	
12	(S.D.N.Y. 1985) 618 F.Supp. 735	17, 21
13	<u>Wershba v. Apple Computer</u>	
14	(2001) 91 Cal.App.4th 224.....	6, 7, 12, 16
15	<u>White v. Experian Information Solutions, Inc.</u>	
16	(C.D. Cal. 2011) 803 F.Supp.2d 1086.....	12, 13

1	Statutes	
2	Cal. Rule of Court 3.769	6, 14
3	Labor Code sections	11
4	Labor Code § 203	10
5	Labor Code § 226	10
6	Labor Code § 226 and §§ 201-203	10
7	Labor Code § 2699(e)(2)	11
8	Labor Code section 2699(l)(2)	6
9		
10	Other Authorities	
11	<u>Attorney Fee Awards</u> (2d ed. 1993) § 104	16
12	Unfair Competition Law, Bus. & Prof. Code sections 17200, et seq.	3
13	<u>Managing Class Action Litigation: A Pocket Guide for Judges</u> (3d ed. 2010), available at http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf	13
14		
15	<u>Newberg on Class Actions</u> (4th ed. 2002), § 11.41	6
16	Newberg, <u>Newberg on Class Actions</u> (3d ed.) § 14.03	17, 21
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Marisol Rios seeks final approval of a non-reversionary
3 class action settlement resolving wage and hour claims on behalf of 834 individuals who worked
4 for one or more of seventeen Dominos Pizza restaurants owned and operated by Defendant Ali
5 Iqbal, and including named defendant AMI Foods, Inc. and its related entities PK Foods, Inc.,
6 RYK Foods, Inc., IS Foods, Inc., ISR Foods, Inc. ISR Foods, Inc., AM Foods, Inc., GSR Foods,
7 Inc., AMIS Foods, Inc., Team SJ, Inc., 3 Star Foods, Inc., 5 Star Foods, Inc., MR Foods, Inc., MB
8 Foods, Inc., Tri Valley Foods, Inc., SUB Foods, Inc. IMY Foods, Inc., and LIT Foods, Inc.
9 (collectively the “Settling Parties”) in California during the period of November 20, 2020 to
10 October 1, 2023. The proposed \$500,000 total settlement provides about \$283,058 in cash
11 payments to the Class, with an average award of about \$331, plus additional amounts payable
12 under PAGA. The remaining balance will cover a modest service award to Plaintiff, settlement
13 administration costs, civil penalties to the state, and reasonable attorney’s fees and costs. The
14 parties and their counsel finalized the settlement after extensive and difficult arms-length
15 negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally
16 certified the Class and preliminarily approved the settlement on January 22, 2024. Since then, the
17 Court-approved notice form was mailed to the Class Members on June 26, 2024, and they reacted
18 very favorably to the settlement. There are no objections, and only one class member requested
19 exclusion.

20 Class Counsel secured an excellent settlement with the Settlement Parties after
21 extensive investigation, litigation, and settlement negotiation and administration, all
22 without any compensation for services rendered or costs expended. The class notice duly
23 informed the class members that Class Counsel would request attorney’s fees not to
24 exceed one-third of the Gross Settlement Amount, or \$166,666.67, along with
25 reimbursement of no more than \$17,500 for actual costs incurred litigating this matter.
26 As of the filing of this motion, *not one Class Member objected* to the proposed fee
27 award. Consistent with the Settlement and notice, Plaintiff now respectfully requests the
28 Court award Class Counsel's fees in the amount of \$166,666.67 and costs in the amount

1 of \$14,275.28, as described in the Declaration of J. Kirk Donnelly (“Donnelly Decl.”)
2 filed herewith. The requested attorney’s fees are well within the range of reasonableness,
3 especially considering the complex and risky nature of this litigation, the contingent risk
4 assumed, the over three year delay in payment and, when subjected to a lodestar
5 crosscheck, result in a modest 1.55 enhancement over the base lodestar .

6 Accordingly, on behalf of herself and the Settlement Class, Plaintiff respectfully
7 requests the Court grant this motion, give full and final approval to the settlement, grant
8 Class Counsel’s request for attorney’s fees and costs, and enter judgment accordingly.

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

10 The details of the procedural and factual background of this matter were outlined in
11 the Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (filed on or about
12 September 28, 2023). To re-familiarize the Court with this litigation, on January 13, 2022,
13 Plaintiff filed a complaint under the Private Attorneys General Act, Labor Code section 2698, *et*
14 *seq.*, seeking civil penalties against Defendants AMI Foods, Inc. and Ali Iqbal for several alleged
15 violations of the Labor Code and IWC Wage Orders. Plaintiff filed her PAGA claims on behalf of
16 individuals who worked for Settling Parties as non-exempt employees in California during the
17 relevant time frame. Settling Parties are a conglomerate of some seventeen Dominos Pizza
18 franchises operating in and around the South and East Bay areas. They operate as an integrated
19 operation with a uniform set of employment policies applicable to all class members, and the
20 Settling Parties share employees as many of the class members worked for multiple entities and at
21 multiple restaurant locations, frequently during the same work week and/or pay period. Plaintiff
22 Marisol Rios worked primarily for AMI Foods as a non-exempt employee from approximately
23 July to October 2021. Like the majority of the class members, Plaintiff was a part-time employee
24 and typically worked around 25-30 hours per week. [Donnelly Decl., ¶ 2.]

25 Plaintiff alleged she and other employees were entitled to receive their meal breaks as
26 required under the Labor Code and IWC Wage Orders and information obtained from Plaintiff, in
27 conjunction with review of payroll and time records and other information received from Settling
28 Parties, suggests they did not receive all of the required meal breaks, or did not record having

1 taken meal breaks, especially as to second meal breaks on shifts exceeding 10 hours. Plaintiff also
2 contends meal periods frequently were provided late and did not start until after the fifth hour of
3 work. Plaintiff further alleges Settling Parties failed to provide all required rest breaks. Likewise,
4 Plaintiff contends Settling Parties never paid an extra hour of premium pay in lieu of a missed or
5 non-compliant break. [Donnelly Decl., ¶ 3.]

6 Plaintiff further alleges the Settling Parties failed to pay all wages due, as employees
7 worked “off the clock” and also lost overtime pay when they worked at two locations during the
8 same work week because their time was recorded separately for each location, i.e., if they worked
9 25 hours at location A and 25 hours at location B, they were paid 50 hours of straight time rather
10 than receiving 10 hours of overtime. Lastly, Plaintiff alleged claims for failing to provide proper
11 itemized wage statements and payment of all wages due on separation of employment. [Donnelly
12 Decl., ¶ 4.]

13 Settling Parties have at all times denied Plaintiff’s allegations and maintained their meal
14 break and payroll policies and procedures comply with California law, that they provided
15 employees with required meal and rest breaks, that they properly tracked employee time and paid
16 Plaintiff and all other employees all wages due and at the correct hourly rate. Additionally,
17 Settling Parties strongly contend the case cannot be maintained as any kind of class or
18 representative action, arguing that to the extent class members missed meal breaks, that such
19 breaks were non-compliant, or that any unpaid “off the clock” work occurred, it was intermittent
20 and infrequent and evidence of such violations would be purely anecdotal, and therefore
21 individualized issues predominate and trial would be unmanageable. [Donnelly Decl., ¶ 5.]

22 After Plaintiff filed her complaint, she served initial written discovery, to which
23 Defendant served responses and produced documents. Thereafter, the Parties engaged in
24 substantial meet and confer discussions regarding discovery, potential law and motion, and other
25 case management issues, and ultimately agreed to attempt mediation. Importantly, as the Parties
26 were in the process of scheduling the mediation, the Settling Parties underwent a wage and hour
27 audit by the federal Department of Labor in early 2023. In April 2023, they entered into a
28 settlement agreement with the DoL that obligated them to pay a total of approximately \$538,000

1 in back wages and liquidated damages in resolution of alleged violations of the federal Fair Labor
2 Standards Act. The Settling Parties paid the DoL settlement in quarterly installments through
3 April 2024. [Donnelly Decl., ¶ 6.]

4 Nevertheless, the Parties agreed to move forward with the mediation in order to attempt to
5 separately resolve the pending state law claims. The Parties accordingly engaged in additional
6 informal discovery, and the also Settling Parties produced certain financial information to
7 Plaintiff, which Plaintiff had reviewed by an accounting expert to assist with evaluating the
8 Entities ability to continue business operations while simultaneously addressing both the DoL
9 settlement and any settlement in this matter. The Parties then engaged the Hon. Carl J. West
10 (Ret.) a highly respected mediator with extensive wage and hour class action experience and, on
11 August 2, 2023, participated in a full day mediation with Judge West, and were able to reach
12 agreement on all major issues. [Donnelly Decl., ¶¶ 7-8.]

13 Class Notices were mailed to class members on June 26, 2024, with a 60-day window
14 (to August 26, 2024) for class members to opt out or object to the proposed settlement.
15 [Declaration of Jeremy Romero (“Romero Decl.”), ¶ 7.]

16 **III. THE PROPOSED SETTLEMENT TERMS**

17 Under the settlement, the Settling Parties will pay \$500,000.00 into a common fund, the
18 Gross Settlement Amount (“GSA”), no later than April 1, 2025, which is the earliest date the
19 Parties agreed the Settling Parties can pay that amount after fully funding the DoL settlement
20 while continuing to be able to operate the businesses. Reasonable attorney’s fees of up to one-
21 third of the GSA, or \$166,666.67, actual litigation costs of up to \$17,500 (only \$14,275.28 is
22 requested), a modest enhancement award of up to \$2,500 for plaintiff, settlement administration
23 costs of no more than \$11,000, and a payment of \$30,000 for alleged civil penalties under PAGA
24 (of which \$22,500 will go to the Labor and Workforce Development Agency for its share of the
25 PAGA penalties, with the remaining \$7,500 to the Aggrieved Employees), all will be paid from
26 the GSA. The remainder of approximately \$283,058 will be allocated among the Participating
27 Class Members based on their total weeks worked during the Class Period. No portion of the
28 GSA will revert to the Settling Parties. [Donnelly Decl., ¶ 9.]

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

2 The Court conditionally certified a settlement class defined to include including all
3 individuals who worked for Settling Parties as a non-exempt employee during the Class Period,
4 which runs from November 20, 2020 to October 1, 2023. The Settlement Administrator
5 ultimately mailed class notices to 834 individuals identified as members of the Class.
6 [Romero Decl., ¶ 7.]

7 Plaintiff notes the Settlement Class initially was estimated to have about 581 individuals
8 at mediation and preliminary approval, based on the information provided by the Settling Parties
9 prior to mediation and Plaintiff's experts' analysis and extrapolation. As noted, the final count as
10 determined by the Settlement Administrator turned out to be 834 class members. Importantly,
11 however, the number of work weeks **decreased** substantially, from an estimate of about 22,000 at
12 mediation to a final count of 16,639, thereby increasing the net per work week amount from about
13 \$12.36 to about \$17.01 per work week. Plaintiff submits that, in light of the significant increase in
14 the per work week amount, the settlement is even more fair, reasonable and adequate as not only
15 will benefit more individuals but also will provide a greater than anticipated pay out to the Class
16 Members. Accordingly, there is need to reconsider of the Court's certification of the
17 Settlement Class despite the increase in the class size. [Donnelly Decl., ¶ 11.]

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

19 As noted, the settlement obligates Settling Parties to pay \$500,000 to resolve the
20 Settlement Class's claims, inclusive of attorney's fees and costs. About \$283,058 from the GSA
21 will be distributed to the Participating Class Members. This is a cash settlement that **does not**
22 require Participating Class Members to submit a claim form to receive their settlement share.
23 Participating Class Members will receive their settlement checks automatically via First Class
24 U.S. Mail. One-third of each settlement share will be allocated to wages and the remaining two-
25 thirds percent will be allocated to expenses, penalties and interest. Settling Parties will pay any
26 and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to
27 the Court's approval, any amounts not claimed (because a class member does not cash his or her
28 settlement check) will be forwarded to the East Bay Community Law Center as *cy pres*

1 beneficiary. [Donnelly Decl., ¶ 11.]

2 Each Class Member's Individual Settlement Payment will be calculated using criteria
3 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
4 missed meal breaks, and potential statutory penalties under applicable law. These methods are
5 intended to ensure each Class Member receives a portion of the available settlement funds
6 corresponding to the relative value of his or her potential claims. The proposed allocation
7 provides a reasonable way to compensate Class Members based on the particulars of their job
8 position and job duties, the amount of time they worked for Stone, and the number of instances
9 they missed a break, were not provided compensation in lieu of such missed breaks, or lost wages
10 due to off the clock work on unpaid overtime. [Donnelly Decl., ¶ 12.]

11 The average class award will be approximately \$331, and class awards will range from
12 \$16 to over \$4,300. The average PAGA award will be about \$9, and PAGA awards will range
13 from \$0.45 and \$117. [Romero Decl., ¶ 13.]

14 **C. Settlement Administration**

15 CPT Group, Inc. as the Court-approved Settlement Administrator, mailed the Notice
16 Packet to the Class members after making all reasonable effort to ascertain the best mailing
17 address, including running each address through the National Change of Address database
18 and "skip-tracing" any Notice Packets returned as undeliverable. [Romero Decl., ¶¶ 3-8.]
19 The Class Notice, previously approved by the Court, duly informed Class Members of the
20 settlement terms, including the estimated relief each Class Member will receive, the amounts
21 to be requested for attorney's fees and the class representative enhancement awards, and the
22 right to opt out of or object to the settlement. [Romero Decl., ¶ 7, Exh. A.] CPT mailed 834
23 Notice Packets on June 26, 2024. [Romero Decl., ¶ 7.] Ultimately, 54 Notice Packets were
24 deemed undeliverable, representing a 93.5% success rate. [Romero Decl., ¶ 9.] The 60-day
25 response window for objecting to the settlement expired on August 26, 2024. [Romero
26 Decl., ¶ 7.] As of the filing of this motion, CPT has received one request for exclusion (for a
27 99.88% participation rate), and zero objections to the settlement. No disputes have been
28

submitted regarding the information used to calculate class member settlement shares.
[Romero Decl., ¶ 10.]

D. Release of Claims

All Participating Class Members will be deemed to release Ali Iqbal, AMI Foods, Inc., PK Foods, Inc., RYK Foods, Inc., IS Foods, Inc., ISR Foods, Inc. ISR Foods, Inc., AM Foods, Inc., GSR Foods, Inc., AMIS Foods, Inc., Team SJ, Inc., 3 Star Foods, Inc., 5 Star Foods, Inc., MR Foods, Inc., MB Foods, Inc., Tri Valley Foods, Inc., SUB Foods, Inc. IMY Foods, Inc., and LIT Foods, Inc., from all claims alleged in the operative First Amended Complaint, or that could have been brought based on the allegations in the FAC, including PAGA claims, from November 20, 2020 through October 1, 2023. The release is limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the FAC. [Donnelly Decl., ¶ 13.]

E. PAGA Claims and Notice to the LWDA

The Parties allocated \$30,000 to payment of civil penalties under PAGA for such claims against Settling Parties, which amount Plaintiff submits is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. As required by Labor Code section 2699(l)(2), Plaintiff gave notice of the settlement and final approval hearing to the LWDA via its online portal. [Donnelly Decl., ¶ 14; Exh. 1.]

IV. ARGUMENT

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly compromised, the settlement of a class action requires court approval. Cal. Rule of Court 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48

1 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
2 two-step process intended to determine whether, under the totality of circumstances, the
3 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
4 Cal.App.4th at 245.

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

19 **A. The Proposed Settlement Merits Final Approval**

20 The proposed settlement of this action warrants final approval under the standards
21 summarized above. The settlement is fair, reasonable and adequate, and represents a
22 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly
23 approved by the class members, as there were no objections and only one Class Member
24 requested exclusion, for a 99.88% participation rate.

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

27 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
28 was reached following arm's-length negotiations presided over by the Hon. Carl West (Ret.),

1 a highly respected and well-known mediator with extensive experience mediating wage and
2 hour class actions. [Donnelly Decl., ¶ 8.] Moreover, Plaintiff and her counsel were well-
3 informed about the facts and the law, and counsel J. Kirk Donnelly has years of litigation
4 experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified
5 to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Donnelly
6 Decl., ¶¶ 27-30.] Settling Parties likewise were represented by highly-qualified and
7 experienced defense counsel. Both sides advocated vigorously for their clients, and nothing
8 was "left on the table."

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

10 The settlement was well-received by the class. As of the filing of this motion, no
11 objections have been filed, and only one out of 834 Class Members requested exclusion.
12 [Romero Decl., ¶ 10.] As many courts recognize, class member reaction to the settlement is one
13 of the most important factors to consider in determining if final approval should be granted.
14 Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re:
15 American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled
16 that the reaction of the class to the settlement is perhaps the most significant factor to be weighed
17 in considering its adequacy") (internal quotation marks omitted).

18 3. **The Settlement Is Fair and Reasonable Considering the Benefits** 19 **Conferred, the Case Value, and Significant Litigation Risks**

20 The proposed settlement involves a substantial sum of money that, when distributed,
21 will confer meaningful monetary benefits on the Class members. As described above, each
22 individual award will be based on an allocation consistent with the nature of the claims
23 asserted and will fairly and equitably allocate the available funds in relation to the degree of
24 damage each Class member incurred. While Class members who worked for only a short
25 period of time will receive relatively small sums, those with longer tenures and who worked
26 more hours and shifts throughout the class period will receive appropriately larger awards.
27 Prior to mediation, the parties engaged in extensive informal discovery to facilitate settlement
28 discussions.

1 Prior to mediation, the parties engaged in both formal and informal discovery to facilitate
2 settlement discussions. As a result, Plaintiff reviewed documents and information regarding
3 Settling Parties' payroll practices, pay stubs and time records for essentially all of the class
4 members, meal and rest break policies, etc., and information from Settling Parties regarding class
5 size and breakdown of job positions, work weeks, rates of pay, and other information used to
6 formulate a damages model. Plaintiff had this extensive information analyzed by a consulting
7 expert to look for meal and rest break violation rates, overtime pay lost, and other issues relevant
8 to liability and damages. Settling Parties also provided financial information such as profit and
9 loss statements and balance sheets, which were reviewed by a financial expert, to help the Parties
10 navigate Settling Parties' ability to pay in light of the DoL Settlement. Plaintiff's counsel are
11 confident they obtained sufficient information to enable them to understand the law and facts of
12 this case and make an informed decision regarding the proposed settlement and whether it is in
13 the best interests of the class. [Donnelly Decl., ¶¶ 7, 15.]

14 Using that data, Plaintiff ran various calculations and estimated Settling Parties' likely
15 maximum exposure on the class claims at approximately \$4,090,500, including about \$313,500
16 on the unpaid wage/off the clock claims, \$526,000 on the meal break claims, \$582,000 on the rest
17 break claims, \$1,093,000 on the wage statement claims, and \$1,576,000 on the waiting time
18 penalty claims. [Donnelly Decl., ¶ 16.] Plaintiff and her counsel substantially discounted the
19 value of these claims, however, in light of the multiple and considerable risks posed by
20 proceeding with the litigation.

21 First, on the meal and rest break claims, Plaintiff argued Settling Parties' meal and rest
22 break policy was not fully compliant with California law and, regardless, that Plaintiff's review
23 of the time and payroll records provided suggested numerous de facto violations, such as late and
24 short meal breaks. In response, Settling Parties argued its policies were fully compliant and that
25 they met the obligation to provide employees with all required meal and rest periods. Per Settling
26 Parties, many class members waived meal periods when appropriate and also that, in light of the
27 compliant policies, whether a class member missed a meal period, received a late meal period, or
28 missed a rest break would have been aberrational and against company policy. Thus, per Settling

1 Parties, these issues are not amenable to class or representative treatment since their resolution
2 would require individualized inquiries as to why a break was missed or non-compliant. [Donnelly
3 Decl., ¶ 17.]

4 On the unpaid wage claims, Plaintiff alleged she and other employees frequently worked
5 off the clock, and came a few minutes before the start of shift to do prep work, or had to work
6 through a meal break due to the press of business and insufficient staffing. On the other hand,
7 Settling Parties argued their time keeping policy accurately captured and paid for all time worked,
8 and that off the clock work was strictly against company policy. Per Settling Parties, any off the
9 clock work was unauthorized and done without the employer's knowledge and therefore not
10 compensable. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (the
11 employer must have actual or constructive knowledge of the off the clock work). On the overtime
12 claims, Defendant emphasized such claims were resolved via the DoL Settlement, and even if
13 Plaintiff prevailed on that claim under state law then the damages would be minimal in light the
14 substantial amounts already paid. [Donnelly Decl., ¶ 18.]

15 The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid
16 wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks
17 posed by the need to take into account the discretionary nature of such awards and the "good
18 faith" and other defenses available to Settling Parties. Amaral v. Cintas Corp. No. 2 (2008) 163
19 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203
20 even though class prevailed on underlying claim for failure to pay living wages). Thus, while
21 these claims largely are derivative of the unpaid wage claim, they also are subject to additional
22 defenses. [Donnelly Decl., ¶ 19.]

23 As far as potential PAGA liability, the allegedly aggrieved employees theoretically are
24 entitled to penalties totaling about \$3.9 million in civil penalties should Plaintiff prevail on all
25 claims and establish violations of the multiple Labor Code sections at issue. [Donnelly Decl.,
26 ¶ 20.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on
27 Stone's various defenses on the merits and also accounted for the Court's wide discretion to
28 reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington

1 v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of \$5 per pay period
2 after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour
3 Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after
4 trial). Accordingly, the Parties allocated \$30,000 to PAGA penalties, and Plaintiff submits this
5 amount is reasonable under the circumstances and in line with comparable settlements in other
6 wage and hour class actions in California. *E.g.*, Van Kempen v. Matheson Tri-Gas, Inc. (N.D.
7 Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of \$5,000 PAGA
8 penalty from \$370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water
9 Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a \$7,500
10 PAGA payment reasonable when measured against the overall settlement of \$345,000 and the
11 possible weaknesses in Plaintiffs' case, or 2.2 percent of total settlement). Additionally, the
12 LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to
13 weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S.
14 Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where
15 "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not
16 objected to the settlement.

17 Thus, Settling Parties raised various defenses to each of Plaintiff's claims, any one of
18 which, if successful, could have derailed Plaintiff's case. Accordingly, Plaintiff faced risky issues
19 going forward with this litigation, and given the need to secure class certification, try the case,
20 and deal with post-trial appeals, it would have taken years to realize any recovery in this action.
21 Plaintiff and her counsel discounted the value of the class claims consistent with the risks
22 discussed above, and carefully weighed the likelihood of the class receiving substantially greater
23 benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and
24 substantial risks – settlement on the proposed terms and without prolonged and costly litigation
25 was in the best interests of the class. [Donnelly Decl., ¶¶ 21-22.]

26 The overall recovery represents a significant percentage of Defendant's potential exposure
27 and, given the risks addressed above, a total recovery for the class of \$500,000 is a significant
28 result well within the range of reasonableness considering all potential outcomes, and it will

1 provide direct awards to all Class Members. [Donnelly Decl., ¶ 22.]

2 Importantly, the mere fact that a settlement does not provide the same recovery as might
3 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
4 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
5 settlement process...even if the relief afforded by the proposed settlement is substantially
6 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
7 settlement because the public interest may indeed be served by a voluntary settlement in which
8 each side gives ground in the interest of avoiding litigation”); Lane v. Facebook, Inc., 696 F.3d
9 811, 819 (9th Cir. 2012) (“[T]he question whether a settlement is fundamentally fair . . . is
10 different from the question whether the settlement is perfect in the estimation of the reviewing
11 court”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
12 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential
13 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
14 should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803
15 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it
16 represented 99% discount off the maximum value of the claims). Importantly as well, the
17 proposed settlement is non-reversionary and will provide immediate benefits to the Class
18 Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center,
19 Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at
20 <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf> (reversionary provisions and/or
21 cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the
22 settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

23 **V. PLAINTIFF’S ENHANCEMENT AWARD**

24 Under the terms of the settlement, Plaintiff seeks a modest incentive award of \$2,500 for
25 her service in bringing these claims on behalf of the Class. The request is reasonable given the
26 risks she undertook on behalf of the Class Members. By contacting and retaining counsel to
27 pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members,
28 while shouldering the risk of being liable for Defendant’s litigation costs. Plaintiff also exposed

1 herself to unwanted notoriety related to filing a public lawsuit (discoverable even through a
2 simple google search) for the benefit of other employees, placing herself at risk of discrimination
3 by future prospective employers. As set forth in more detail in her declaration submitted with the
4 preliminary approval motion, among taking many other actions assisting in the successful
5 litigation of this case, Plaintiff provided substantial factual information and documents to
6 counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and
7 kept abreast of all significant developments. [Declaration of Marisol Rios, ¶¶ 2-9; Donnelly
8 Decl., ¶ 23.] Finally, there are no class member objections submitted with respect to the amounts
9 Plaintiff proposes to receive. [Romero Decl., ¶ 10.] Accordingly, the requested enhancement
10 payment to Plaintiff is appropriate and justified as part of the settlement.

11 **VI. SETTLEMENT ADMINISTRATION COSTS**

12 The settlement provides for a payment to CPT for its services as the Settlement
13 Administrator. As set forth in the Declaration of Jeremy Romero, CPT has performed and will
14 continue to perform its required duties through final distribution of the settlement funds and
15 incurred \$11,000.00 in fees and expenses. [Romero Decl., ¶ 14.] Accordingly, Plaintiff
16 respectfully requests the Court approve payment of \$11,000 to CPT from the GSA. [Donnelly
17 Decl., ¶ 24.]

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

19 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be** 20 **Approved**

21 This Court has discretion over the amount of attorneys' fees awarded and court
22 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
23 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
24 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
25 marketplace for cases involving significant contingent risk, such as this one. Deposit
26 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
27 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
28 private bargaining, if it were truly possible, might have reached" in determining a reasonable

1 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
2 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
3 justified by the work performed, the benefits obtained, and the contingent risk assumed.

4 As addressed in detail above, at the time the parties reached the tentative settlement
5 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
6 some or all the claims would not be certified for class treatment, as Defendant had strong
7 arguments that its compensation policies were legal and properly compensated the class
8 members, that the class might not be sufficiently numerous, and that many putative class
9 members previously waived the claims at issue. Even if Plaintiff certified some or all of the
10 claims and ultimately prevailed on the merits, it undoubtedly would have taken several years
11 to realize any recovery while they pursued class certification, trial, and an almost certain
12 appeal. [Donnelly Decl., ¶¶ 17-22.]

13 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to
14 obtain, and the settlement provides substantial cash payments to Class Members, with an
15 average award of about \$331, and with a maximum award of over \$4,300. Importantly as
16 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
17 filing of this motion, there are no objections to the settlement and only one opt out. [Romero
18 Decl., ¶ 10.]

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

20 The United States Supreme Court has ruled the parties to a class action properly may
21 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
22 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
23 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
24 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
25 should not result in a second major litigation. Ideally, of course, litigants will settle the
26 amount of a fee." The United States Supreme Court has reemphasized this policy and further
27 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
28 (1984) 465 U.S. 886, 902 n.19.

1 As part of the Settlement, Settling Parties agreed not to object to an award of no more
2 than 1/3 of the GSA for attorney's fees, or \$166,666.67, and up to \$17,500 in reimbursement
3 for litigation costs and expenses (although only \$14,275.28 is requested). Such a fee is
4 commensurate with what the market would provide for similar services and the Court
5 therefore can most certainly enforce the agreement. As California's Court of Appeal has
6 instructed:

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

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

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

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

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

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

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

1 Indeed, both California and federal courts have long recognized an appropriate
2 method for determining the award of attorney's fees is based on a percentage of the total
3 value of benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20
4 Cal.3d 25, 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air
5 West, Inc. (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the
6 common fund recovered operates to "spread litigation costs proportionately among all the
7 beneficiaries so that the active beneficiary does not bear the entire burden alone." Vincent,
8 557 F.2d at 769.

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

17 Moreover, in analyzing attorney fee awards in wage and hour cases, this Court has
18 recognized that, when there is a delay between agreeing to a settlement, and payment of the
19 attorneys' fees on the settlement, the Court should increase the value of the settlement by 7% per
20 annum for purposes of the percentage of recovery analysis. Helmick v. AJR Methods Corp., No.
21 RG13-665373, 2020 WL 7090367 (Alameda Co. Super. Ct., Oct. 18, 2020) (Smith, J.). In
22 Helmick, in analyzing an attorneys' fee request, Judge Smith wrote:

23 The partial settlement in mid-2018 was for \$4,273,845.63, **but counsel will not be**
24 **paid till late 2020. The court increases the value of the partial settlement by**
25 **7% per annum. (Cal. Const, Art XV, sec 1.) For purposes of the percentage of**
recovery analysis, the partial settlement has a value of \$4,273,845.63 x 1.175,
which is \$5,021,768.

26 Id. at *3. Thus, the Court should increase the value of the settlement by 7 percent annually for
27 purposes of calculating the percentage of recovery sought by counsel.

28 Applying Helmick here, the requested fee of \$166,666.67 constitutes only 29.85% of the

1 adjusted settlement value, due to the 20-month¹ delay between the date the settlement was agreed
2 to and the date the settlement will be funded and disbursed. Plaintiff respectfully submits the
3 Court should follow Helmick and apply the 7% interest rate to adjust the percentage of recovery
4 calculation to account for the long delay that counsel face before they receive any fees in this
5 matter.

6 Here, Class Counsel seek a fee award for their successful prosecution and resolution
7 of this action of no more than 1/3 of the total amount recovered by the Class via the lawsuit,
8 or \$166,666.67. The percentage requested is justified for the reasons set forth both above
9 and further below, and comports with fee awards calculated on a percentage-of-the-benefit
10 basis. Indeed, not only did the California Supreme Court approve a 1/3 fee as appropriate in
11 Lafitte, review of class action settlements shows that courts have historically awarded fees in
12 the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner
13 Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that
14 percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on
15 Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a
16 reasonable fee award from a common fund in order to assure that the fees do not consume a
17 disproportionate part of the recovery obtained for the class, although somewhat larger
18 percentages are not unprecedented.").

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

20 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
21 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for
22 bringing an objective measure of the work performed into the calculation of a reasonable
23 attorney fee." Lafitte, 1 Cal.5th at 504. Here, Class Counsel spent 136.4 hours of time on
24 this matter, resulting in a modest and very reasonable lodestar of \$107,555.

25 _____
26 ¹ The delay from the August 2, 2023 mediation to the distribution (which will be on or about April 11,
27 2025) is 20 months. Seven percent simple interest on \$500,000 is \$35,000 annually, or \$2,916.67 monthly.
28 The total interest, for purposes of the percent of recovery calculation, will be \$58,533.40 (see Helmick,
2020 WL 7090367 at *3), and the settlement should be valued at an adjusted total of \$558,533.40 for
purposes of the percentage of the recovery analysis.

As is fully detailed in the Donnelly Declaration, Class Counsel's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal research, obtaining Plaintiff's employment records, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other individuals employed by the Settling Parties; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related documents, and drafting a first amended complaint; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, attending the initial CMC, etc.; (5) propounding extensive written discovery and review and analysis of the responses; (6) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (7) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (8) reviewing the DoL settlement and related documentation; (9) working with Plaintiff's consulting experts on reviewing and analyzing information from the Settling Parties regarding liability and damages; (9) working with Plaintiff's accounting expert to review and analyze Settling Parties' financial stauts (10) drafting a mediation brief and accompanying damages model after review and analysis of defendant's informal discovery production; (9) attending an all-day mediation; (10) negotiating and drafting the settlement agreement and related documents; (11) drafting the motion for preliminary approval; (12) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (13) drafting the motion for final approval and motion for attorney's fees, and attending the final approval hearing; and (14) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on the compliance hearing and amended judgment. [Donnelly Decl., ¶ 26, Exh. 2.]

In pursuing this matter, Class Counsel incurred total attorney's fees of \$107,555, the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a

successful conclusion (136.4 attorney and paralegal hours), and the requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. [Donnelly Decl., ¶¶ 27-35; Exh. 3.] On a lodestar basis, the fee request of \$166,666.67 results in a very reasonable 1.55 modifier over the base lodestar, which is entirely in line with California precedent. [Donnelly Decl., ¶¶ 34-35.] Indeed, California courts routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the requested 1.55 multiplier effectively operates to show that the percentage fee request is reasonable considering the challenges presented in this contingency fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and delay in payment during the approximately 3.5 years counsel will have been representing Plaintiff by the time of disbursement. Thus, the multiplier results in a fee constituting a fair return on the contingency.

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

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

Courts apply a five-part test in calculating a reasonable percentage fee in common

1 fund cases: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the
2 quality of work; (4) the contingent nature of the fee and the financial burden carried by the
3 plaintiffs; and (5) awards made in similar cases. Laffitte, 1 Cal.5th at 489.

4 **1. The Results Achieved.**

5 Class Counsel obtained an excellent result in this case for the Class Members. The
6 Settlement provides real monetary benefits to the Class Members, and the Settlement is
7 particularly advantageous to the Class Member because the proceeds will be distributed
8 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
9 Considering many individual claims would be very modest and would not be cost-effective
10 to pursue successfully, the Settlement provided them with fair compensation for their claims.
11 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
12 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
13 by the fact that not only one class member opted out. Additionally, the settlement amounts to
14 a substantial percentage of the maximum value of the amount the Class might have obtained
15 if it had tried the case and recovered on all theories seeking recovery of wages and penalties.
16 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
17 recovery does not per se render the settlement inadequate or unfair." In re Omnivision
18 Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

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

20 At the time of filing the complaint, Class Counsel recognized that they would have to
21 expend a substantial amount of time and advance significant costs to prosecute a statewide
22 class action suit with no guarantee of compensation or reimbursement, in the hope of
23 prevailing against a sophisticated company represented by first-rate attorneys. Despite
24 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
25 of class certification and the ability to prove class-wide and individual damages. In light of
26 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant
27 would dig in and attempt to bury their small firm in work. Given the small size of Class
28 Counsel's firm, not receiving any compensation for several years while simultaneously

1 advancing litigation costs posed considerable risk and difficulty. [Donnelly Decl., ¶¶ 36-37.]

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

3 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
4 experience. The issues presented in this case required more than just a general appreciation
5 of wage and hour law and class action procedure. This Settlement was possible only
6 because counsel persuaded Settling Parties that Plaintiff and the putative class had a
7 realistic chance of prevailing on their claims despite Settling Parties' contrary
8 arguments, and that the case would be pursued through class certification and trial if
9 necessary. In successfully navigating these hurdles, Class Counsel displayed appropriate
10 skill while pursuing a risky and difficult case.

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

12 There is a substantial difference between the risk assumed by attorneys being paid
13 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
14 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d
15 1249, 1256. The attorney working on a contingent basis can only log hours while
16 working without pay towards a result that will hopefully entitle him to a market fee
17 considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the
18 contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected
19 themselves to this risk in this all or nothing contingent fee case wherein the necessity
20 and financial burden of private enforcement makes the requested award appropriate.

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

1 Cal.App.3d 279, 287.

2 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
3 the investment of unnecessary time in a case, and the adverse resolution of any one of several
4 difficult issues present in this matter could have doomed the entire effort. As discussed, the
5 attorney's fees in this case were not only contingent but fairly risky, and there was always a
6 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
7 [Donnelly Decl., ¶¶ 36-37.] Accordingly, the contingent nature of the fee and the financial
8 burdens on Class Counsel and Plaintiff also support the fee requested.

9 **5. Awards in Other Cases**

10 As discussed, the attorney's fees requested by Class Counsel are within the range of
11 fees awarded in comparable cases, and review of class action settlements over the past 10
12 years shows that the courts have historically awarded fees in the range of 20 to 50 percent,
13 depending upon the circumstances of the case. In re Warner Communications Sec. Litig.
14 (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund
15 cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03,
16 pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a
17 common fund in order to assure that the fees do not consume a disproportionate part of the
18 recovery obtained for the class, although somewhat larger percentages are not
19 unprecedented."). Class Counsel's requested fees equal 1/3 of the gross amount recovered on
20 behalf of the class and are well within the range of reasonableness under either the
21 percentage of the recovery or the lodestar method in light of the contingent risk assumed, the
22 delay in payment, the result achieved, and the overall quality of the representation.

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

24 Plaintiff's counsel also requests reimbursement of actual out-of-pocket expenses incurred
25 to prosecute this action. These expenses were incidental and necessary to the effective
26 representation of the employees, and Plaintiffs' counsel is permitted to recover litigation costs
27 and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d
28 at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County

1 of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund
2 “[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of
3 attorneys’ fees by ... [Plaintiffs’] attorneys”). Plaintiffs’ counsel also is entitled to recover “those
4 out-of-pocket expenses that would normally be charged to a fee-paying client.” Harris v.
5 Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

6 Per the Donnelly Declaration, Class Counsel incurred a total of \$14,275.28 in
7 expenses in connection with this matter. These expenses include amounts paid for court
8 filing fees, service of process, expert fees, postage, and mediation fees, all of which are
9 costs normally billed to and paid by the client. These costs were reasonably incurred in
10 the prosecution of this matter, and should be reimbursed in full. Plaintiff respectfully
11 requests that the Court authorize reimbursement of counsel’s costs in the amount of
12 \$14,275.28. [Donnelly Decl., ¶¶ 38-39.]

13 **VIII. CONCLUSION**

14 For all the foregoing reasons, Plaintiff Marisol Rios respectfully requests that the Court
15 grant this motion and grant final approval of the proposed class action settlement and approve the
16 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
17 the Settlement Administrator’s fees and expenses, approve the requested class representative
18 enhancement payment, approve the award of attorney’s fees and costs as requested, and enter
19 judgment in this action. Finally, Plaintiff request the Court set a final compliance hearing for
20 January 6, 2026, or a later date convenient for the Court.

21 Dated: September 6, 2024

LAW OFFICES OF J. KIRK DONNELLY, APC

23
24 
25 J. Kirk Donnelly
26 Attorneys for Plaintiff Marisol Rios
27
28