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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

11 SERGIO HERNANDEZ, as an individual on
12 behalf of himself and on behalf of all others
13 similarly situated,

14 Plaintiff,

15 v.

16 THE KLINGBEIL COMPANY, an Ohio
17 Corporation; KLINGBEIL CAPITAL
18 MANAGEMENT, LTD., AN OHIO
19 LIMITED LIABILITY COMPANY, an Ohio
20 Limited Liability Company; and DOES 1-100,
21 inclusive,

22 Defendants.

Case No.: CIVSB2208148

Assigned for all Purposes to:
Hon. Joseph T. Ortiz
Dept. S-17

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

[Filed concurrently with Notice of Motion and
Motion; Declarations of Nikki Trenner and
William Argueta; [Proposed] Order]

Date: July 21, 2023
Time: 1:30 p.m.
Dept.: S-17

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Sergio Hernandez seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 162 individuals
4 who worked for Defendants The Klingbeil Company and Klingbeil Capital Management, Ltd.
5 (together “TKC” or “Defendant”) in the State of California as hourly non-exempt employees at
6 any time during the Class Period of April 21, 2018 through November 30, 2022. The proposed
7 \$355,000 total settlement provides about \$161,453 in cash payments to the Class, with an average
8 award of about \$1,000, plus additional amounts payable under PAGA. The remaining balance
9 will cover a modest service award to Plaintiff, settlement administration costs, civil penalties to
10 the state, and reasonable attorney’s fees and costs. The parties and their counsel finalized the
11 settlement after extensive and difficult arms-length negotiations overseen by an experienced and
12 highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved
13 the settlement on February 15, 2023. Since then, the Court-approved notice form was mailed to
14 the Class Members on March 16, 2023, and they reacted very favorably to the settlement. There
15 are no objections, and only one class member requested exclusion.

16 Class Counsel secured an excellent settlement with Defendant after some two
17 years of investigation, litigation, and settlement negotiation and administration, all
18 without any compensation for services rendered or costs expended. The class notice duly
19 informed the class members that Class Counsel would request attorney’s fees not to
20 exceed 33.33% of the Gross Settlement Amount, or \$118,333.00, along with
21 reimbursement of no more than \$20,000 for actual costs incurred litigating this matter.
22 As of the filing of this motion, *not one Class Member objected* to the proposed fee award.
23 Consistent with the Settlement and notice, Plaintiff now respectfully requests the Court
24 award Class Counsel's fees in the amount of \$118,333.00 and costs in the amount of
25 \$15,214.34, as described in the Declaration of Nikki Trenner (“Trenner Decl.”), filed
26 herewith. The requested attorney’s fees are well within the range of reasonableness,
27 especially considering the complex and risky nature of this litigation, the contingent risk
28

1 assumed, the three-plus year delay in payment and, when subjected to a lodestar
2 crosscheck, result in a base lodestar that is slightly higher than the actual fee request.

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

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

7 The details of the procedural and factual background of this matter were outlined in
8 the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about
9 January 10, 2023). To re-familiarize the Court with this litigation, TKC is a real estate business
10 that builds, operates, and develops real estate properties throughout California and the United
11 States. It offers renovation, rehabilitation, project finance, low floater debt, niche properties, office
12 and residential condominium conversions, and medical office buildings. Plaintiff was employed
13 by TKC as a non-exempt maintenance technician from July to September 2021. Plaintiff typically
14 worked out of TKC's Copperwood, Claremont, and Rancho Cucamonga properties. During his
15 employment, Plaintiff generally worked eight-hour shifts, five days per week. [Trenner Decl., ¶ 2.]

16 Plaintiff alleges a number of wage and hour violations by Defendant. First, he alleges TKC
17 required Class Members to record their time entries at the beginning of each shift (i.e., per
18 schedule) and not actual hours worked and, as a result, the time records do not reflect all hours
19 worked by Class Members. He also claims TKC required Class Members to remain on duty during
20 meal breaks to respond to emergencies, but failed to pay Class Members for this time, and that
21 TKC failed to pay Class Members at the correct overtime and sick pay rates by failing to
22 incorporate non-discretionary pay into the regular rate of pay. Plaintiff next alleges TKC has non-
23 compliant meal break policies that fail to relieve Class Members of all duties during meal breaks
24 and fail to provide for second meal breaks in shifts over 10 hours. He next alleges Class Members
25 are required to remain available to receive deliveries (which would typically be delivered during
26 the lunch hour) and respond to their phone for emergencies during their meal breaks. Similarly, he
27 claims class members had to remain available via phone during their rest breaks as well, and that
28 TKC never paid break premiums of any kind. Finally, Plaintiff alleges TKC required Class

1 Members to supply their own tools (required for their daily work activities), use their own
2 cellphones to communicate with TKC (including photograph their work to document the work
3 status and submit to TKC), use their own vehicles to travel between the shop to TKC's different
4 properties, and maintain their own uniforms, all without reimbursement. [Trenner Decl., ¶ 3.]

5 Based on these allegations, on April 21, 2022, Plaintiff filed a class action complaint
6 against TKC in this Court, alleging claims for TKC's failure to provide legally compliant meal
7 and rest breaks; failure to pay all minimum and overtime wages; inaccurate record keeping;
8 unreimbursed business expenses; inaccurate wage statements; failure to pay all wages at
9 termination of employment; and violation of the Unfair Competition Law. That same day he also
10 filed a separate action under PAGA based on the same alleged Labor Code violations. [Trenner
11 Decl., ¶ 4.]

12 TKC has at all times denied Plaintiff's allegations and maintained its payroll policies and
13 procedures comply with California law, that it paid the class members all wages due, and that its
14 compensation plan properly compensates the class members for all hours worked. TKC also
15 argues its meal and rest break policies are fully compliant, and that it provided class members with
16 the opportunity to take all required breaks, including an hour for lunch, and therefore met its
17 obligations under California law. TKC also alleges employees are offered company phones and
18 provided with all necessary tools and uniforms. Defendant also strongly contends the case cannot
19 be maintained as any kind of class or representative action, arguing determining the amount of any
20 alleged off the clock work, or the number of de facto missed breaks, for each class member would
21 result in individualized issues predominating and that a trial on a representative basis would be
22 unmanageable. [Trenner Decl., ¶ 5.]

23 Since Plaintiff filed his complaint, the Parties engaged in substantial informal discovery.
24 Ultimately, the Parties agreed to mediation, and engaged the Hon. Leo Papas (Ret.), a retired
25 federal magistrate and respected mediator with extensive wage and hour class action experience.
26 In September 2022, the Parties participated in a full day mediation with Judge Papas that resulted
27 in this settlement. [Trenner Decl., ¶¶ 6-7.] This Court preliminarily approved the settlement on
28 February 15, 2023.

1 Class Notices were mailed to class members on March 16, 2023, with a 45-day
2 window (to May 1, 2023) for class members to opt out or object to the proposed settlement.
3 [Declaration of William Argueta (“Argueta Decl.”), ¶ 7.]

4 **III. THE PROPOSED SETTLEMENT TERMS**

5 Under the settlement, TKC will pay \$355,000 into a common fund, the Gross Settlement
6 Amount (“GSA”). Attorney’s fees of up to \$118,333.00 (33.33% of the GSA), litigation costs of
7 up to \$20,000 (only \$15,214.34 is requested), settlement administration costs of no more than
8 \$15,000, a service award to Plaintiff of no more than \$10,000, and \$35,000 for alleged civil penalties
9 under PAGA,¹ all will be paid from the GSA. The remainder of around \$161,453 will be allocated
10 pro rata among the Class Members based on their total weeks worked during the Class Period. No
11 portion of the GSA will revert to TKC. [Trenner Decl., ¶ 8.]

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

13 The Court conditionally certified a settlement class including all current and former non-
14 exempt employees of TKC in California during the Class Period, which runs from April 21, 2018
15 through November 30, 2022. The Settlement Administrator ultimately mailed class notices to
16 162 individuals identified as members of the Class. [Argueta Decl., ¶ 7.] Nothing has
17 changed to require reconsideration of the Court’s certification of the Settlement Class.

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

19 As noted, the settlement obligates TKC to pay \$355,000 to resolve the claims of the
20 Settlement, inclusive of attorney’s fees and costs. A minimum of approximately \$161,453 from
21 the GSA will be distributed to the Participating Class Members. This is a cash settlement that
22 does not require Participating Class Members to submit a claim form to receive their settlement
23 share. Participating Class Members will receive their settlement checks automatically via First
24 Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the
25 remaining eighty percent will be allocated to penalties and interest, which allocation is consistent
26

27 ¹ Per PAGA, this will be allocated \$26,250 (75%) to the Labor & Workforce Development Agency, and the
28 remaining \$8,750 (25%) will go to the Aggrieved Employees (as defined in the Settlement Agreement).
There are 162 individuals employed during the PAGA period of February 15, 2020 to November 30, 2022.
[Argueta Decl., ¶ 10.]

1 with TKC's potential liability as discussed below. TKC will pay any and all applicable employer-
2 side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any
3 amounts not claimed (because a class member does not cash a settlement check) will be forwarded
4 to the California State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 9.]

5 Each participating Class Member will receive a share of the Net Settlement Amount based
6 on his or her total weeks worked for TKC during the Class Period while employed in a non-
7 exempt position. Thus, each individual Settlement Payment will be calculated using criteria
8 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
9 missed meal and rest breaks, and potential statutory penalties under applicable law. These methods
10 will ensure each Class Member receives a portion of the settlement funds corresponding to the
11 relative value of his or her potential claims. The proposed allocation provides a reasonable way to
12 compensate Class Members based on their tenure with TKC and the number of instances they
13 allegedly missed a meal break and/or rest break, were not provided compensation in lieu of such
14 missed breaks, or lost pay due to improper timekeeping and payroll policies. [Trenner Decl., ¶ 10.]

15 The average class payment will be approximately \$1,003, based on 10,660 work weeks.
16 The maximum class payment will be about \$3,632. The average PAGA payment will be about
17 \$54, based on 5,471 pay periods. [Argueta Decl., ¶¶ 12-13.]

18 **C. Settlement Administration**

19 CPT Group, Inc., as the Court-approved Settlement Administrator, mailed the Notice
20 Packet to the Class members after making all reasonable effort to ascertain the best mailing
21 address, including running each address through the National Change of Address database
22 and "skip-tracing" any Notice Packets returned as undeliverable. [Argueta Decl., ¶¶ 3-9.]
23 The Class Notice, previously approved by the Court, duly informed Class Members of the
24 settlement terms, including the estimated relief each Class Member will receive, the amounts
25 to be requested for attorney's fees and the class representative enhancement awards, and the
26 right to opt out of or object to the settlement. [Argueta Decl., Exh. A.] CPT mailed 162
27 Notice Packets on March 16, 2023. [Argueta Decl., ¶ 7.] Ultimately, 3 Notice Packets were
28 deemed undeliverable, representing a 98% success rate. [Argueta Decl., ¶ 9.] The 45-day

1 response window for opting out of or objecting to the settlement expired on May 1, 2023.
2 [Argueta Decl., ¶ 7.] As of the filing of this motion, CPT has received one (1) request for
3 exclusion (for a 99.4% participation rate), and zero objections to the settlement. No disputes
4 have been submitted regarding class member settlement shares. [Argueta Decl., ¶ 10.]

5 **D. Release of Claims**

6 All Participating Class Members will release TKC from all claims alleged in the operative
7 complaint, or that could have been brought based on the factual allegations in the operative
8 complaint, including PAGA claims, during the Class Period. The release is limited to the claims
9 that were actually pleaded or could have been pleaded based on the alleged facts in the operative
10 complaint. [Trenner Decl., ¶ 11.]

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

12 The Parties allocated \$35,000 of the GSA to payment of civil penalties under PAGA, as
13 addressed below, and respectfully request the Court approve that amount. Under PAGA, 75% of
14 the penalties, \$26,250.00, will go to the LWDA, and the remaining 25%, or \$8,750.00, will be
15 distributed to the 162 individuals eligible for a PAGA payment. Per Labor Code section 2699(l)(2),
16 Plaintiff gave notice of the settlement and the approval hearing to the LWDA via its online portal.
17 [Trenner Decl., ¶ 12; Exh. 1.]

18 **IV. ARGUMENT**

19 The law favors settlement, particularly in class actions where substantial resources can
20 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
21 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
22 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
23 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
24 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
25 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
26 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
27 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
28 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 discovery
16 are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in
17 similar litigation; and (4) the percentage of objectors is small. Dunk, 48 Cal.App.4th at 1802;
18 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 over 99% of Class Members
24 are participating the settlement, as there is only 1 opt out from 162 class members.

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

26 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
27 was reached following arm's-length negotiations presided over by the Hon. Leo Papas (Ret.), a
28 highly respected and well-known mediator with extensive experience mediating wage and hour

1 class actions. [Trenner Decl., ¶ 7.] Moreover, Plaintiff and his counsel were well-informed about
2 the facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Nikki Trenner have years
3 of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are
4 well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
5 [Trenner Decl., ¶¶ 29-35.] Defendant likewise was represented by highly-qualified and
6 experienced defense counsel. Both sides advocated vigorously for their clients, and nothing
7 was "left on the table."

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

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

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

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

26 Prior to mediation, the parties engaged in informal discovery to facilitate settlement
27 discussions. Thus, Plaintiff reviewed documents and information regarding TKC's payroll
28 practices, a random sampling of pay stubs and time records for sampling of class members,

1 applicable compensation plans, etc., and information from Defendant regarding class size and
2 breakdown, work weeks/pay periods, rates of pay, and other relevant information. Plaintiff then had
3 that information analyzed by a consulting expert to assist in determining potential violation rates
4 and other data used to formulate a damages model. Plaintiff's counsel are confident they obtained
5 sufficient information to understand the law and facts of this case and make an informed decision
6 regarding the proposed settlement. [Trenner Decl., ¶¶ 6, 13.]

7 Using that data, Plaintiff estimated TKC's likely maximum exposure on the class claims at
8 approximately \$3,012,000, including approximately \$123,000 on the off the clock claims, \$81,000
9 for the regular rate/underpaid overtime and sick time claims, \$971,000 on the meal period claim,
10 \$988,000 on the rest break claim, \$273,000 on the expense reimbursement claims, \$128,000 in
11 statutory penalties on the wage statement claim, and \$448,000 in waiting time penalties for the
12 alleged failure to pay wages on separation of employment. [Trenner Decl., ¶ 14.] These numbers
13 represent the maximum amounts achievable if Plaintiff is able to shoot the moon and win outside
14 liability on all wage and non-PAGA penalty claims, which outcomes, as discussed below, are
15 unlikely and carry significant, tangible risks. Plaintiff's counsel thus substantially discounted the
16 value of these claims in light of the multiple and considerable risks posed by proceeding with the
17 litigation, as Defendant raised numerous defenses and vigorously defended against these claims.

18 On the unpaid wages issue, Plaintiff claims that he and class members were not paid for all
19 hours worked because TKC required "off the clock" work by forcing employees to "record" their
20 time at the beginning of a shift with the scheduled hours rather than accurately tracking the actual
21 hours worked, and by requiring de facto "on duty" meal periods. Additionally, Plaintiff alleges
22 TKC underpaid overtime and sick pay by failing to include non-hourly pay in the regular rate
23 calculation. In response, TKC argued its timekeeping and payroll practices comply with California
24 law, that it properly and accurately tracked hours worked, and that it properly calculated and paid
25 overtime. It further noted all bonuses were completely discretionary and therefore did not have to
26 be included in the regular rate calculation. Additionally, it argued any "off the clock" work was
27 done against company policy and without the knowledge or consent of management, and
28

1 innumerable individual inquiries would be necessary to resolve those allegations thereby
2 rendering class certification impossible. [Trenner Decl., ¶ 15.]

3 On the meal period claims, Plaintiff alleged Defendant's policies were deficient because they
4 did not properly inform employees when meal periods should be taken, did not mention second meal
5 breaks, and did not emphasize meal breaks should be free from all duties. Further, review and
6 analysis of the time records produced showed large numbers of de facto violations for missed, late
7 and short meal periods, particularly for second meal periods of shifts longer than 10 hours. Thus,
8 even if Defendant establishes legally compliant written meal and rest break policies, Plaintiff
9 believes the employer's own records will establish significant de facto liability. Lastly, Plaintiff
10 alleges meal periods were "on duty" because of the need to be available to receive deliveries and be
11 available by phone in case of emergencies. [Trenner Decl., ¶ 16.]

12 Defendant proffered multiple potential defenses against this claim. For instance, it argued
13 all written policies are fully compliant, that it always provided the class members/aggrieved
14 employees with the opportunity to take their meal breaks and thus met the requirements imposed by
15 California law, and that it provided one hour meal periods to ensure employees received a fully
16 compliant lunch. Per Defendant, if individuals did not take a meal period, if a meal period was
17 taken late in a shift, or lasted less than the required 30 minutes, it was in violation of company policy
18 and a multitude of individual inquiries would be necessary to determine if the potential violation
19 occurred due to an employee's personal choice or for some other reason. Thus, per Defendant, class
20 certification would be impossible on this claim, and any trial under PAGA completely
21 unmanageable. Similarly, TKC argued employees were relieved of all duty for their meal periods
22 and there was no de facto policy mandating availability during breaks. [Trenner Decl., ¶ 17.]

23 Plaintiff's theory of Defendant's rest period liability is similar, as he argues the policy is
24 non-compliant because it only allows for 2 breaks per shift regardless of the number of hours
25 worked, and he also alleges de facto violations where class members missed rest breaks due to work
26 constraints and didn't receive the mandated premium wage. On the other hand, as with meal breaks,
27 Defendant argued the written policies complied with California law and authorized and permitted
28 employees to take all required rest breaks. Defendant further contended that, since it is not required

1 to maintain a record of rest periods, any evidence of a failure to authorize rest periods and/or
2 discouragement from taking rest periods would be purely anecdotal and since individual issues
3 would predominate and class certification would be impossible. Defendant also may contend that
4 it is only liable if Plaintiff can prove, on a shift-by-shift basis, employees actually did not take a rest
5 break. This arguably would make a proof of damages more difficult since the number of instances
6 a Class Member was denied a rest period specifically due to the absence of a compliant policy, as
7 opposed to some other reason, is impossible to reliably quantify since employers are not required to
8 maintain records of rest periods. Thus, it is entirely possible a jury or the Court could decline to
9 award any amounts for missed or non-compliant rest periods. [Trenner Decl., ¶ 18.]

10 On the expense reimbursement claims, Plaintiff alleges TKC failed to provide
11 reimbursement to employees for the business use of their cell phones, tools, uniforms, and use of
12 their personal vehicles. In response, TKC argued that all employees are offered use of a company
13 phone for work purposes, and that it provided all necessary tools and uniforms. Thus, if any
14 employee used their own phone or their own tools, it was purely for personal convenience and was
15 not necessary to perform their job duties. Trenner Decl., ¶ 19.]

16 The claims under Labor Code sections 201, *et seq.* (waiting time penalties) and 226
17 (inaccurate wage statements) are derivative of the primary unpaid wage claims, and accordingly are
18 subject to the same risks and uncertainties plus additional risks posed by the need to take into
19 account the discretionary nature of such awards and the “good faith” and other defenses available
20 to Defendants. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-4 (employer did
21 not willfully fail to pay wages under Labor Code § 203 even though class prevailed on underlying
22 claim for failure to pay living wages). Thus, these claims also are subject to additional defenses,
23 and all of these considerations resulted Plaintiff applying in substantial discounts to the value of
24 these claims. [Trenner Decl., ¶ 20.]

25 As far as potential PAGA liability, the theoretical penalties totaled at least \$800,000 should
26 Plaintiff prevail on all claims and establish the alleged Labor Code violations for all pay periods at
27 issue. [Trenner Decl., ¶ 21.] As with the class claims, Plaintiff discounted the potential PAGA
28 penalties for the multi-layered defenses proffered by Defendant on the merits, and further

1 discounted these claims since the Court possesses wide discretion to reduce such penalties even if
2 Plaintiff ultimately prevailed. Labor Code § 2699(e)(2); Fleming v. Covidien (C.D. Cal. 2011)
3 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by over 82% after a
4 bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a bench trial, the trial
5 court awarded penalties of just \$5 per pay period, a 90% reduction, which decision was upheld on
6 appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis
7 48557 (PAGA penalties denied after trial).

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

20 Thus, Defendant raised various defenses to each of Plaintiff's claims, any one of which, if
21 successful, could have decimated Plaintiff's case. Overall, Plaintiff faced risky issues going
22 forward with this litigation, and given the need to secure class certification, try the case, and deal
23 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff's
24 counsel discounted the value of the class claims consistent with the risks discussed above, and
25 carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation
26 continued. Plaintiff and counsel concluded – in light of these very real and substantial risks –
27 settlement on the proposed terms and without prolonged and costly litigation was in the best
28 interests of the class. The overall \$355,000 recovery represents a significant percentage of

1 Defendant's potential exposure and given these risks addressed above, a total recovery for the
2 class of \$355,000, with an average award of some \$1,000, is a fair result within the range of
3 reasonableness considering all potential outcomes. [Trenner Decl., ¶¶ 22-24.]

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

24 **V. PLAINTIFF'S ENHANCEMENT AWARD**

25 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
26 \$10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable
27 given the risks he undertook on behalf of the Class Members. By contacting and retaining
28 counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent

1 Class Members, while shouldering the risk of being liable for Defendant's litigation costs.
2 Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit
3 (discoverable even through a simple google search) for the benefit of other employees, placing
4 himself at risk of discrimination by future prospective employers. As set forth in more detail in
5 his declaration submitted with the preliminary approval motion, among taking many other
6 actions assisting in the successful litigation of this case, Plaintiff provided substantial factual
7 information and documents to counsel, attended numerous meetings/phone conferences with
8 counsel to discuss the case, and kept abreast of all significant developments. [Declaration of
9 Sergio Hernandez, ¶¶ 2-9; Trenner Decl., ¶ 25.] Finally, there are no class member objections
10 submitted with respect to the amounts Plaintiff proposes to receive. [Argueta Decl., ¶ 10.]
11 Accordingly, the requested enhancement payments to Plaintiff is appropriate and justified as
12 part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases
13 awarding class representatives service and incentive payments ranging from \$2,000 to \$25,000).

14 **VI. SETTLEMENT ADMINISTRATION COSTS**

15 The settlement provides for a payment to CPT for its services as the Settlement
16 Administrator. As set forth in the Declaration of William Argueta, CPT has performed and will
17 continue to perform its required duties through final distribution of the settlement funds and
18 incurred \$15,000 in fees and expenses. [Argueta Decl., ¶ 14.] Accordingly, Plaintiff respectfully
19 requests the Court approve payment of \$15,000 to CPT from the GSA. [Trenner Decl., ¶ 26.]

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

21 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be** 22 **Approved**

23 This Court has discretion over the amount of attorneys' fees awarded and court
24 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
25 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
26 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
27 marketplace for cases involving significant contingent risk, such as this one. Deposit
28 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.

1 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
2 private bargaining, if it were truly possible, might have reached" in determining a reasonable
3 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
4 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
5 justified by the work performed, the benefits obtained, and the contingent risk assumed.

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

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 \$1,000, and with a maximum award of over \$3,600. Importantly as
16 well, the Class Members have been overwhelmingly supportive of the Settlement as there are
17 no objections and only one opt out to the settlement. [Argueta Decl., ¶ 10.]

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

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

1 As part of the Settlement, TKC agreed not to object to an award of no more than
2 33.33% of the GSA for attorney's fees, or \$118,333.00, and up to \$20,000 in reimbursement
3 for litigation costs and expenses (only \$15,214.34 is requested). Such a fee is commensurate
4 with what the market would provide for similar services and the Court therefore can most
5 certainly enforce the agreement. As California's Court of Appeal has instructed:

6 Given the unique reliance of our legal system on private litigants to enforce substantive
7 provisions of law through class and derivative actions, attorneys providing the essential
8 enforcement services must be provided incentives roughly comparable to those negotiated
9 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. [Trenner Decl., ¶ 27.]
13 The requested fee and cost award was a product of these arms-length negotiations and fairly
14 reflects the marketplace value of the services rendered by Class Counsel in this case. As a
15 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
using the percentage-of-the-common-fund method in another wage-and-hour case:

23 The recognized advantages of the percentage method-including relative ease of
24 calculation, alignment of incentives between counsel and the class, a better
25 approximation of market conditions in a contingency case, and the encouragement it
26 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.

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

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

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

16 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
17 this action of no more than 33.33% percent of the GSA, or \$118,333.00. The percentage
18 requested is justified for the reasons set forth further below, and comports with fee awards
19 calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements
20 shows that courts have historically awarded fees in the range of 20 to 50 percent, depending
21 upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y.
22 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range
23 from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14
24 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund
25 in order to assure that the fees do not consume a disproportionate part of the recovery
26 obtained for the class, although somewhat larger percentages are not unprecedented.").

27 ////

28 ////

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

2 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
3 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
4 an objective measure of the work performed into the calculation of a reasonable attorney fee."
5 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 165.8 hours of time on this matter,
6 resulting in a modest and very reasonable lodestar of \$120,070.00.

7 As is fully detailed in the Trenner Declaration, Class Counsel's efforts included: (1)
8 extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal
9 research, research into similar claims and claims against other employers in the same industry, and
10 attempts to locate and contact other employees of the Defendant; (2) drafting a PAGA notice
11 letter; (3) drafting the initial complaint and related documents; (4) case management, including
12 communications with defense counsel, meeting and conferring/preparing case management
13 statements, etc.; (6) lengthy discussions with defense counsel regarding settlement/mediation and
14 informal discovery needed for meaningful settlement discussions; (7) engaging in substantial
15 informal discovery, including propounding informal discovery "requests" and reviewing
16 documents and other information produced; (8) working with a consulting expert on the analysis
17 of Defendant's production; (9) drafting a mediation brief and accompanying damages model after
18 review and analysis of defendant's formal and informal discovery production; (10) attending an
19 all-day mediation; (11) negotiating and drafting the settlement agreement and related documents;
20 (14) drafting the motion for preliminary approval, and attending the hearing; (12) administration
21 of the settlement, including communications with the Settlement Administrator and settlement
22 class members; (13) drafting the motion for final approval and attorney's fees, and attending the
23 final approval hearing; and (14) extensive communications with the Plaintiff regarding case status,
24 case investigation and document review, mediation, and settlement terms. Additionally, Class
25 Counsel will incur additional time following final approval to, inter alia, respond to class member
26 inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on
27 the compliance hearing and amended judgment. [Trenner Decl., ¶ 28, Exh. 2.]
28

1 In pursuing this matter, Class Counsel incurred total attorney's fees of \$120,070.00,
2 the lodestar is based on an eminently reasonable number of hours (165.8) worked to litigate this
3 matter to a successful conclusion over the course of the past four years, and the requested attorney
4 hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar
5 experience in this practice area in California. [Trenner Decl., ¶¶ 29-40.] On a lodestar basis, the
6 fee request of \$118,333.00 results in a base lodestar that is higher than the fees requested on
7 percentage of the recovery basis, and therefore there is no request for a lodestar enhancement.
8 Class Counsel submits the lodestar crosscheck operates to show that the percentage fee
9 request is reasonable considering the fees requested are lower than the actual value of the
10 services rendered when valued via traditional hourly billing.

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

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

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

26 **1. The Results Achieved.**

27 Class Counsel obtained an excellent result in this case for the Class Members. The
28 Settlement provides real monetary benefits to the Class Members, and the Settlement is

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

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

14 At the time of filing the complaint, Class Counsel recognized that they would have to
15 expend a substantial amount of time and advance significant costs to prosecute a statewide
16 class action suit with no guarantee of compensation or reimbursement, in the hope of
17 prevailing against a sophisticated company represented by first-rate attorneys. Despite
18 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
19 of class certification and the ability to prove class-wide and individual damages. In light of
20 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would
21 dig in and attempt to bury their small firms in work. Given the small size of Class Counsel's
22 respective firms, not receiving any compensation for several years while simultaneously
23 advancing litigation costs posed considerable risk and difficulty. [Trenner Decl., ¶¶ 41-42.]

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

25 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
26 experience. The issues presented in this case required more than just a general appreciation of
27 wage and hour law and class action procedure. This Settlement was possible only because
28 counsel persuaded Defendant that Plaintiff and the putative class had a realistic chance of

1 prevailing on their claims despite Defendant's contrary arguments, and that the case
2 would be pursued through class certification and trial if necessary. In successfully
3 navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a risky
4 and difficult case.

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

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

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

24 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
25 the investment of unnecessary time in a case, and the adverse resolution of any one of several
26 difficult issues present in this matter could have doomed the entire effort. As discussed, the
27 attorney's fees in this case were not only contingent but fairly risky, and there was always a
28 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.

1 [Trenner Decl., ¶¶ 15-21, 41-42.] Accordingly, the contingent nature of the fee and the
2 financial burdens on Class Counsel and Plaintiff also support the fee requested.

3 **5. Awards in Other Cases**

4 As discussed, the attorney's fees requested by Class Counsel are within the range of
5 fees awarded in comparable cases, as California courts regularly approve class action fee
6 awards amounting to 1/3 of a common fund. Additionally, review of class action settlements
7 over the past 10 years shows that the courts have historically awarded fees in the range of 20
8 to 50 percent, depending upon the circumstances of the case. In re Warner Communications
9 Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in
10 common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d
11 ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award
12 from a common fund in order to assure that the fees do not consume a disproportionate part of
13 the recovery obtained for the class, although somewhat larger percentages are not
14 unprecedented."). Class Counsel's requested fees equal to slightly less than 33.3% of the gross
15 amount recovered on behalf of the class and are well within the range of reasonableness under
16 either the percentage of the recovery or the lodestar method in light of the contingent risk
17 assumed, the delay in payment, the result achieved, and the overall quality of the
18 representation.

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

20 Plaintiff's counsel also requests reimbursement of actual out-of-pocket expenses incurred
21 to prosecute this action. These expenses were incidental and necessary to the effective
22 representation of the employees, and Plaintiffs' counsel is permitted to recover litigation costs and
23 expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d at 35
24 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County of San
25 Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund "[o]f
26 necessity, and for precisely the same reasons discussed above with respect to the recovery of
27 attorneys' fees by ... [Plaintiffs'] attorneys"). Plaintiff's counsel also is entitled to recover "those
28

1 out-of-pocket expenses that would normally be charged to a fee-paying client.” Harris v.
2 Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

3 As explained in the Trenner Declaration, Class Counsel incurred a total of
4 \$15,214.34 in expenses incurred in connection with this litigation. These expenses include
5 the amounts paid for court filing fees, service of process, expert fees, postage, and
6 mediation fees, all of which are costs normally billed to and paid by the client. These
7 costs were reasonably incurred in the prosecution of this matter, and should be
8 reimbursed in full. [Trenner Decl., ¶¶ 43-44.]

9 **VIII. CONCLUSION**

10 For all the foregoing reasons, Plaintiff Sergio Hernandez respectfully requests that the
11 Court grant this motion and grant final approval of the proposed class action settlement and
12 approve the payment of PAGA penalties to the State. Plaintiff further requests the Court approve
13 payment of the Settlement Administrator’s fees and expenses, approve the requested class
14 representative enhancement payment, approve the award of attorney’s fees and costs as requested,
15 and enter judgment in this action. Finally, Plaintiff request the Court set a final compliance
16 hearing for July 17, 2024, or a later date convenient for the Court.

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18 Dated: June 23, 2023

CROSNER LEGAL, P.C.

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20 Zachary Crosner

21 Jamie Serb

22 Nikki Trenner

23 Attorneys for Plaintiff Sergio Hernandez
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