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Attorneys for Plaintiff RONALD BROWNING

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO

RONALD BROWNING, as an individual and on behalf of all others similarly situated,

Plaintiff,

v.

TEC Equipment, Inc., an Oregon Corporation; TEC OF CALIFORNIA, INC., a California Corporation; and DOES 1-100, inclusive,

Defendants.

Case No. CIVSB2202461

Assigned for All Purposes to:
Hon. Joseph B. Widman
Dept. S36

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

Date: August 13, 2026
Time: 9:00 a.m.
Dept.: S36

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I. INTRODUCTION

Plaintiff Ronald Browning seeks final approval of a non-reversionary class action settlement resolving wage and hour claims on behalf of 59 individuals who are Defendants TEC Equipment, Inc. and TEC of California, Inc.'s (together "TEC" or "Defendants") former non-exempt employees that worked at any location in California at any time during the Class Period (January 31, 2018, through April 23, 2025) and had unpaid sick pay as a result of a miscalculation of their regular rate of pay. The proposed $198,429.20 escalated total settlement provides about $87,950 in cash payments to the Class, with an average award of about $1,490. The remaining balance will cover settlement administration costs, a modes enhancement award to Plaintiff, civil penalties to the state, and reasonable attorney's fees and costs. The parties and their counsel finalized the settlement after extensive and difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved the settlement on March 5, 2026. Since then, the Court-approved notice form was mailed to the Class Members on May 29, 2026, and they reacted very favorably to the settlement. As of the date of this motion, zero class members have opted out of the settlement and there are no objections.

Further, Class Counsel secured an excellent settlement with Defendants after some four years of investigation, litigation, and settlement negotiation and administration, all without any compensation for services rendered or costs expended. The class notice duly informed the class members that Class Counsel would request attorney's fees not to exceed 1/3 of the initial Gross Settlement Amount, or $58,333.33, along with reimbursement of no more than $30,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not one Class Member objected* to the proposed fee award. Consistent with the Settlement and Notice, Plaintiff now respectfully requests the Court award Class Counsel's fees in the amount of $58,333.33 and costs in the amount of $19,835.88, as described in the Declaration of Brandon Brouillette ("Brouillette Decl.") filed herewith. The requested attorney's fees are well within the range of reasonableness, especially considering the complex and risky nature of this litigation, the contingent risk assumed, and the four year delay in payment and, when subjected to a lodestar crosscheck, results in fee request that is smaller than the base lodestar.

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

II. BACKGROUND/LITIGATION HISTORY

Defendants own and operate a full-service heavy-duty truck dealership. Defendants lease, rent, and sell trucks and trailers, and also provide parts and service/repairs. TEC operates in Oregon, Washington, Nevada, Arizona, Nebraska, Iowa, South Dakota, and has 11 California locations. Plaintiff worked for TEC in a "Parts Counter Sales" position at TEC's Fontana, California location. He worked for TEC for about 7 years, from 2014 to July 2021. [Brouillette Decl., ¶ 2.]

Plaintiff alleged TEC violated California wage and hour law in several respects. First, he alleged Defendants failed to pay for sick pay at the correct regular rate of pay. Next, Plaintiff alleged TEC failed to provide compliant rest periods as rest periods frequently were not fully compliant due to various "de facto" violations and that rest breaks regularly were missed, untimely, or cut short. He also claimed Defendants did not reimburse business expenses incurred by Class Members for the use of their personal cellular phones or personal vehicles. Lastly, he alleged Defendants failed to provide accurate, itemized wage statements and failed to pay all wages owed upon the separation of employment. Based on these general allegations, Plaintiff filed a class action complaint against TEC on January 31, 2022. After notice to the LWDA and Defendants, and exhausting administrative remedies, Plaintiff amended his complaint on May 17, 2022 to add a cause of action under PAGA. [Brouillette Decl., ¶ 3]

TEC has at all times denied Plaintiff's allegations and maintained its meal and rest break and payroll policies and procedures comply with California law, and that it provided the class members with the opportunity to take all required meal and rest breaks or paid the required premiums when necessary. Additionally, TEC contended its timekeeping and payroll policies accurately track and pay for all hours worked, and for sick pay, by its employees and at the correct rates of pay. TEC similarly argued that there was no need for employees to use their cell phones or personal vehicles for work purposes and accordingly no reimbursement is warranted. It also strongly contended the case cannot be maintained as any kind of class or representative action, arguing for example that to the extent class members missed rest breaks, or that such breaks were non-compliant, it was intermittent and infrequent and evidence of such missed breaks would be purely anecdotal, and therefore individualized issues predominate and trial on a representative basis would be unmanageable. [Brouillette Decl., ¶ 4.]

Since Plaintiff filed the initial complaint, the Parties initiated discovery and, after extensive meeting and conferring on discovery issues, case management, and potential law and motion, the Parties ultimately agreed to mediation. They further agreed to additional informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. The Parties then engaged the Hon. Steven Denton (Ret.), who has extensive experience mediating wage and hour class actions and, in August 2023, participated in a full day mediation with Judge Denton, but were unable to reach an agreement. The Parties continued litigating and eventually agreed to a second mediation with Daniel Turner, Esq., another highly respected wage and hour class acton mediator. The Parties mediated with Mr. Turner in April 2025 and, after a second full day of negotiations, finally reached agreement on all major issues and thereafter jointly prepared the Settlement Agreement. [Brouillette Decl., ¶¶ 5-6.] The Court granted preliminary approval to the Settlement on March 5, 2026.

Class notices were mailed to class members on May 29, 2026, with a 45-day window (to July 13, 2026) for class members to opt out of or object to the proposed settlement. [Declaration of Lluvia Islas ("Islas Decl."), ¶¶ 5, 7-9.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement and after application of the Settlement Agreement's Escalator Clause,[1] TEC will pay the increased Gross Settlement Amount of $198,429.20 into a common fund. Reasonable attorney's fees of up to $58,333.33 (1/3 of the initial GSA), litigation costs of up to

[1] Upon receipt of the class data, the Settlement Administrator determined that the settlement's Escalator Clause was triggered and operated to increase the GSA as a result. [Islas Decl., ¶ 11.]

$30,000 (only $19,835.88 is requested), a modest enhancement award to Plaintiff of up to $10,000, settlement administration costs of $4,500, and $10,000 for civil penalties under PAGA (of which 75%, or $7,500, will go to the Labor & Workforce Development Agency, and 25%, or $2,500 will go to the PAGA Members) all will be paid from the Gross Settlement Amount. The remainder of approximately $87,950 will be allocated among the Participating Class Members based on their total weeks worked during the Class Period. No portion of the Gross Settlement Amount will revert to TEC. [Brouillette Decl., ¶ 7.]

A. Certification of the Settlement Class

The Court conditionally certified a settlement class defined to include all former non-exempt employees that worked for Defendants at any location in California at any time during the Class Period (January 31, 2018, through April 23, 2025) and had unpaid sick pay as a result of a miscalculation of their regular rate of pay. The Settlement Administrator ultimately mailed a total of 59 class notices on May 29, 2026. [Islas Decl., ¶ 5.] Nothing has changed to require reconsideration of the Court's certification of the Settlement Class.

B. The Benefit Conferred on the Settlement Class

This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to expenses reimbursement, penalties and interest. TEC will pay any and all applicable employer-side payroll taxes separately and in addition to the Gross Settlement Amount. Subject to the Court's approval, any amounts not claimed (because a class member does not cash his or her settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. [Brouillette Decl., ¶ 8.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked for TEC during the Class Period while employed in a non-exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of alleged unpaid sick wages and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. [Brouillette Decl., ¶ 9.]

The average class award will be approximately $1,490, and the awards will range from about $195 on the low end to about $3,424 on the high end. The average PAGA award will be about $42, and PAGA awards will range from about $5.94 to about $96. [Islas Decl., ¶¶ 13-14.]

C. Settlement Administration

Phoenix Settlement Administrators, as the Court-approved Settlement Administrator, mailed the Notice Packet to the Class Members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Islas Decl., ¶¶ 3-6.] The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms, including the estimated relief each Class Member will receive, the amounts to be requested for attorney's fees and the class representative enhancement awards, and the right to opt out of or object to the settlement. [Islas Decl., ¶ 5, Exh. A.] Phoenix mailed 59 Notice Packets on May 29, 2026. [Islas Decl., ¶ 5.] As of the filing of this motion, zero Notice Packets were deemed undeliverable, for a 100% success rate. [Islas Decl., ¶ 6.] The response window for opting out, objecting to the settlement, or submitting a dispute, expired on July 13, 2026. [Islas Decl., ¶¶ 7-9.] As of the filing of this motion, Phoenix has received zero requests for exclusion (for a 100% participation rate), zero objections to the settlement, and no disputes regarding the information used to calculate class member settlement shares. [Islas Decl., ¶¶ 7-9.]

D. Release of Claims

All Participating Class Members will release TEC from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the operative complaint during the Class Period. Plaintiff and the LWDA will release those PAGA claims alleged in the PAGA notice to the extent alleged in the operative complaint. The Class and PAGA releases are limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint, and PAGA notice for the PAGA claims. Only Plaintiff is entering into a full general release of all claims and waiver of Civil Code § 1542. [Brouillette Decl., ¶ 10.]

E. PAGA Penalties and Notice to the LWDA

As noted, the Parties allocated $10,000 from the GSA to resolution of Plaintiff's alleged claims for PAGA civil penalties, and Plaintiff submits that amount is fair, reasonable and adequate, and furthers PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiff gave notice of the settlement and the final approval hearing to the LWDA via its online portal. [Brouillette Decl., ¶ 11; Exh. 1.]

IV. ARGUMENT

A. Standards For Approval

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

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

B. The Proposed Settlement Merits Final Approval

The proposed settlement of this action warrants final approval under the standards summarized above. The settlement is fair, reasonable and adequate, and represents a favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by the class members as there are no objections and no class member has requested exclusion.

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

The settlement is not the result of fraud or collusion. The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediators the Hon. Steven Denton (Ret.) and Daniel Turner, Esq., both of whom have extensive experience mediating wage and hour class action cases. [Brouillette Decl., ¶ 6.] Plaintiff’s counsel Brandon Brouillette and Zach Crosner, and Crosner Legal, P.C., have years of experience litigating wage and hour class actions, and are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Brouillette Decl., ¶¶ 25-38.] Defendants likewise were represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients and nothing was "left on the table."

2. The Class Reacted Favorably to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and no Class Member has requested exclusion, for a 100% participation rate. [Islas Decl., ¶¶ 7-8.] As many courts recognize, class member reaction to the settlement is one of the most important factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc. (9th Cir. 1976) 541 F.2d 832, 837 ; *see also* In re: American Bank Note Holographics (S.D.N.Y. 2001) 127 F.Supp.2d 418, 425 ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy") (internal quotation marks omitted).

C. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation

Prior to mediation, the parties engaged in informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding TEC's payroll practices, a sampling of pay stubs and time records for about 20% of the putative class, meal and rest break policies, employee handbooks, etc., and information from Defendants regarding class size and breakdown, work weeks, rates of pay, and other information used to formulate a damages model. Plaintiff's counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Brouillette Decl., ¶¶ 5, 12.]

Using that data, Plaintiff ran various calculations under different theories of liability and estimated TEC's maximum exposure on the class claims at approximately $1,252,900, including approximately $46,650 on the underpaid sick time/regular rate claims, $662,320 on the rest break claims, $47,460 on the expense reimbursement claims, $192,000 on the wage statement claims, and $304,475 on the waiting time penalty claims. [Brouillette Decl., ¶ 13.] Plaintiff substantially discounted the value of these claims, however, in light of the multiple and considerable risks posed by proceeding with the litigation.

First, on the unpaid wage claims, Plaintiff alleged TEC failed to pay for sick time pay at the employees' "regular rate of pay" as required under California law. Labor Code § 246(*l*)(1) ("Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek."). Here, Class Members received various forms of extra compensation such as performance-based bonuses and, during pay periods where additional compensation was paid and sick pay was used, and Plaintiff alleged Defendants failed to factor in the non-discretionary remuneration into the regular rate of pay. Flores v. Dart Container Corp. (E.D. Cal. May 28, 2020) No. 219CV00083WBSEFB, 2020 WL 2770073, at *3 (holding plaintiff stated a claim for unpaid wages where the complaint alleged she was not paid the regular rate for sick leave taken). Accordingly, per Plaintiff, this resulted in Class Members being underpaid for their sick pay. [Brouillette Decl., ¶ 14.]

Plaintiff next alleged TEC failed to provide required rest breaks on a fully compliant basis.[2] Here, Plaintiff argued that Defendants' "de facto" violations where rest breaks were missed completely or otherwise non-compliant. Defendants denied Plaintiff's contentions, claiming it made rest breaks available to Class Members in compliance with California law. Defendants contended their meal and rest break policies are lawful, that Class Members were frequently reminded they were required to take all meal and rest breaks and that were able to do so, Defendants argued the applicable rest break policies complied with California law, and that it authorized and permitted employees to take all required breaks. Further, per Defendants, in light of the fact that it is not required to maintain a record of rest periods, any evidence of failure to authorize rest periods and/or discouragement from taking rest periods would be purely anecdotal and individual issues would predominate on liability. This arguably would once again make a trial unmanageable since each alleged missed rest break would have to be tested on a case by case basis to determine compliance. [Brouillette Decl., ¶ 15.]

On the expense reimbursement claim, Plaintiff alleged that employees were required to use their personal cell phones in order to communicate with supervisors and other employees during work hours. However, Defendants did not reimburse Plaintiff and the class members for this expense. Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113. Plaintiff also contended class members occasionally had to drive their personal vehicles on company business, such as picking up truck parts for service/repair orders, without reimbursement. Gattuso v. Harte-

[2] While Plaintiff's complaint alleged meal break violations, discovery and investigation suggested minimal violations, and further that Defendants paid thousands in premium pay for any violations that may have occurred. Accordingly Plaintiff allocated only nominal value to this claim for settlement purposes. [Brouillette Decl., ¶ 15.]

Hanks Shoppers, Inc. (2007) 42 Cal.4th 554. On the other hand, Defendants argued there would be no conceivable need for employees to use either their phones or vehicles for work purposes, and that any use of employee phones, or personal vehicles, was purely for personal convenience and therefore not reimbursable as a "reasonable and necessary" expense. [Brouillette Decl., ¶ 16.]

Plaintiff also alleged derivatively that, as a result of the above alleged violations, Defendants failed to provide accurate wage statements and failed to timely pay all wages that were due and owing upon separation of employment. Thus, should the primary claims fail, Plaintiff's derivative claims would also fail. Defendants also contended they would not be liable for waiting time penalties because a "good faith dispute" exists over the payment of past wages. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201. Further, Defendants contended Plaintiff would have to prove that Defendants "willfully" failed to pay Class Members appropriate wages due upon separation of employment. Defendants argued that any failure to pay wages upon separation was not willful. [Brouillette Decl., ¶ 17.]

As far as potential PAGA liability, the PAGA Members theoretically are entitled to penalties totaling upwards of $1.3 million should Plaintiff prevail on all claims and establish violations of the multiple Labor Code violations alleged for every single pay period at issue. [Brouillette Decl., ¶ 18.] As with the class claims, Plaintiff discounted the potential PAGA penalties since the Court possesses wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).

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

The settlement obviates the significant risk that this Court may find any kind of class resolution unachievable or might deny certification of all or some of Plaintiff's claims. Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued litigation would be expensive as the parties pursued merits discovery, a probable motion to decertify, as well as trial and possible appeals, and would substantially delay any recovery by the class with no assurance of recovering significantly more than the proposed settlement. While Plaintiff is confident in the merits of his claims, a legitimate controversy exists as to each cause of action. Plaintiff also recognizes proving the amount of wages and penalties due each Class Member would be an expensive and uncertain proposition. [Brouillette Decl., ¶ 19.]

Plaintiff and counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $198,429.20 recovery represents a significant percentage of Defendants' potential exposure and, given the risks addressed above, a total recovery for the class of $198,429.20, which will result in average award of some $1,490 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Brouillette Decl., ¶ 20.]

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

V. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Phoenix, Inc. for its services as the Settlement Administrator. As set forth in the Declaration of Lluvia Islas, Phoenix performed and will continue to perform its required duties through final distribution of the settlement funds and incurred $4,500 in fees and expenses. [Islas Decl., ¶ 16; Exh. B.] Plaintiff accordingly requests the Court approve payment of $4,500 to Phoenix from the GSA. [Brouillette Decl., ¶ 21.]

VI. PLAINTIFF'S ENHANCEMENT AWARD

Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of $10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable given the risks he undertook on behalf of the Class Members, and by contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendants' litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing himself at risk of discrimination by future prospective employers. As set forth in more detail in his declaration filed with the preliminary approval motion, among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Declaration of Ronald Browning, ¶¶ 2-9 (filed February 4, 2026; Brouillette Decl., ¶ 22.] Accordingly, the requested enhancement payment to Plaintiff is appropriate and justified as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collectingcases awarding class representatives service and incentive payments ranging from $2,000 to $25,000).

VII. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED

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

Here, Class Counsel's request for attorney's fees and costs is reasonable and justified by the work performed, the benefits obtained, and the contingent risk assumed. As addressed in detail above, at the time the parties reached the tentative settlement success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that some or all the claims would not be certified for class treatment, as Defendants had strong arguments that its compensation policies were legal and properly compensated the class members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the merits, it undoubtedly would have taken several years to realize any recovery while he pursued class certification, trial, and an almost certain appeal. [Brouillette Decl., ¶¶ 13-18.]

Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about $1,490, and with a maximum award of over $3,400. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – there are no objections and no opt outs to the settlement. [Islas Decl., ¶¶ 7-8.]

A. <u>The Requested Fee Award Is Reasonable and Appropriate</u>

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

As part of the Settlement, Defendants agreed not to object to an award of no more than 1/3 of the GSA for attorney's fees, or $58,333.33, and up to $30,000 in reimbursement for litigation costs and expenses (only $19,835.88 is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

> Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential 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.

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

Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. [Brouillette Decl., ¶ 23.] The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

B. Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund

In approving fee applications, courts typically apply either a percentage-of-recovery method or the lodestar method. Laffitte v. Robert Half Int'l., Inc. (2016) 1 Cal.5th 480, 489; Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 254, disapproved on other grounds, Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260. The California 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:

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

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

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

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

Here, Class Counsel seek a fee award for their successful prosecution and resolution of this action of no more than 1/3 of the GSA, and specifically $58,333.33. The percentage requested is justified for the reasons set forth further below, and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

Indeed, in addition to the California Supreme Court's approval of a 1/3 fee in Lafitte, other courts in California likewise routinely approve fees of 1/3 of the gross settlement. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"). "Under the percentage method, California has recognized that most fee awards based on either a lodestar or percentage calculation are 33 percent . . . ." Smith v. CRST Van Expedited, Inc. (S.D. Cal. 2013) 2013 WL 163293, at *5. *See also* Bickley v. Schneider Nat'l Carriers, Inc. (N.D.Cal. Oct. 13, 2016) 2016 WL 6910261, at *4 (awarding attorney's fees of one-third of the recovery); Barbosa v. Cargill Meat Solutions Corp. (E.D. Cal. 2013) 297 F.R.D. 431, 449-450 (one-third of the settlement); Garcia v. Gordo Trucking, Inc. (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575 (approving attorney's fees of one-third of the common fund); Vasquez v. Coast Valley Roofing (E.D. Cal. 2010) 266 F.R.D. 482 (approving award of attorney's fees of one-third of the amount recovered by the class); Stuart v. RadioShack Corp.

(N.D. Cal. 2010) 2010 WL 3155645 (awarding attorney's fees of recovery and noting the one-third award was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits.").

C. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 169.7 hours of time on this matter, resulting in a modest and very reasonable lodestar of $133,205.00.

Over the four plus years this matter has been pending, Crosner Legal's efforts have included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal research, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other employees of the Defendants; (2) drafting a PAGA notice letter; (3) drafting the initial class complaint and related documents, and drafting the PAGA complaint (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (6) drafting and filing a first amended complaint; (7) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (8) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (9) drafting a two mediation briefs and accompanying damages models after review and analysis of Defendants' formal and informal discovery production; (10) attending two all-day mediations; (11) negotiating and drafting the settlement agreement and related documents; (12) drafting motion for preliminary approval, and attending the hearing; (13) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (14) final approval and attorney's fees, and attending the final approval hearing; and (15) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. [Brouillette Decl., ¶ 24, Exh. 2.] Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, attend to distribution of settlement funds, and on the compliance hearing.

In pursuing this matter, Class Counsel incurred total attorney's fees of $133,205, and the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a successful conclusion (169.7 attorney hours). [Brouillette Decl., ¶¶ 25-43, Exh. 2.] 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. On a lodestar basis, the fee request of $58,333.33 is actually less than the base lodestar and accordingly there is no request to apply a lodestar enhancement. This does, however, show the reasonableness of the requested fees, as the value of the fee request on a percentage basis is less than the value of the fees when valued via traditional hourly billing.

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

1. The Results Achieved.

Class Counsel obtained an excellent result in this case for the Class Members. The

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

2. Class Counsel Bore Considerable Risk.

At the time of filing the initial complaints Class Counsel recognized that they would have to expend a substantial amount of time and advance significant costs to prosecute a statewide class action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against a sophisticated company represented by first-rate attorneys. Despite their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks of class certification and the ability to prove class-wide and individual damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendants would dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's firm, not receiving any compensation for several years while simultaneously advancing litigation costs posed considerable risk and difficulty. [Brouillette Decl., ¶¶ 44-45.]

3. The Skill Required and the Quality of Work.

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

4. The Contingent Nature of the Fee and Risk Assumed

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

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

Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate the investment of unnecessary time in a case, and the adverse resolution of any one of several difficult issues present in this matter could have doomed the entire effort. As discussed, the attorney's fees in this case were not only contingent but fairly risky, and there was always a distinct possibility Plaintiff's counsel would receive nothing for any number of reasons. Indeed, Class Counsel has, on multiple occasions, ultimately recovered no fee in several wage and hour class action cases despite investing substantial attorney time and out-of pocket costs. [Brouillette Decl., ¶¶ 44-45.] Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel also support the fee requested.

5. Awards in Other Cases

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

E. Class Counsel's Costs and Expenses are Reasonable

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

As explained in the Brouillete Declaration, Class Counsel incurred a total of $19,835.88, in expenses incurred in connection with this litigation. These expenses include the amounts paid for court filing fees, service of process, expert fees, postage, and mediation fees, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter, and were necessary for the successful prosecution of the case and accordingly Plaintiff's counsel request reimbursement for costs in the amount of $19,835.88. [Brouillette Decl., ¶¶ 46-47.]

VIII. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this motion and grant final approval of the proposed class action settlement and approve the payment of PAGA penalties to the State and PAGA Aggrieved Employees. Plaintiff further requests the Court approve payment of the Settlement Administrator's fees and expenses, approve the requested class representative enhancement payments, approve the award of attorney's fees and costs as requested, and enter judgment in this action. Finally, Plaintiff requests the Court set a hearing regarding settlement compliance for August 12, 2027, or a later date convenient for the Court.

DATED: July 22, 2026 CROSNER LEGAL, P.C.

By: ______________________

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