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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ELMER ESTRADA GONZALEZ, individually, and on behalf of all others similarly situated, Plaintiff, v. HITEX DYEING & FINISHING, INC., a California Corporation, and DOES 1 through 20, inclusive, Defendants.	Case No.: 21STCV39332 [consolidated with Case No. 22STCV00158] Assigned for All Purposes to: Hon. David Cunningham III Dept. SSC-11 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 19, 2025 Time: 10:00 a.m. Dept.: SSC-11

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I. INTRODUCTION

Plaintiffs and Class Representatives Elmer Estrada Gonzalez and Miguel Romero seek final approval of a non-reversionary class action settlement resolving wage and hour claims on behalf of 216 individuals employed by Defendant Hitex Dyeing & Finishing, Inc. ("Hitex" or "Defendant") as current and former non-exempt employees that worked directly or via a staffing agency for Hitex in California during the Class Period of October 22, 2017 to April 2, 2024. The proposed $450,000 total settlement provides about $247,583 in cash payments to the Class, with an average award of about $1,146, plus additional amounts payable under PAGA. The remaining balance will cover modest service awards to the Plaintiffs, settlement administration costs, 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 6, 2025. Since then, the Court-approved notice form was mailed to the Class Members on March 28, 2025, and they have reacted very favorably to the settlement. As of the date of this motion, there are no objections and zero class members opted out.

Further, Class Counsel secured an excellent settlement with Hitex 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 informs the class members that Class Counsel would request attorney's fees not to exceed 33.33% of the Gross Settlement Amount, or $150,000, 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, Plaintiffs now respectfully requests the Court award Class Counsel's fees in the amount of $150,000 and costs in the amount of $10,916.36, as described in the Declarations of Brandon Brouillette ("Brouillette Decl.") and Jonathan LaCour ("LaCour 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-plus year delay in payment and, when subjected to a lodestar crosscheck, result in fee award that is smaller than the base lodestar.

Accordingly, on behalf of themselves and the Settlement Class, Plaintiffs respectfully request 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

Defendant Hitex provides fabric dyeing and finishing services to the clothing and fashion industries. Plaintiff Gonzalez worked for Defendant as a non-exempt machine operator from approximately 2014 until March of 2020. Plaintiff Romero also worked for Defendant as a non-exempt, hourly employee from on or about April 2015 to on or about September 2021. [Brouillette Decl., ¶ 2.]

On October 22, 2021, Plaintiff Gonzalez commenced this action and filed a class action complaint alleging causes of action against Hitex for the alleged failure to pay minimum wages, failure to furnish wage and hour statements, failure to provide meal period and rest break compensation, failure to pay wages in a timely manner, failure to pay overtime compensation, waiting time penalties, and unfair competition. On January 3, 2022, Plaintiff Romero commenced a separate class action by filing a complaint alleging causes of action against Hitex for unpaid minimum wages, unpaid overtime wages, failure to provide meal periods, failure to provide rest periods, failure to furnish accurate itemized wage statements, failure to timely pay all wages due upon separation of employment, failure to reimburse business expenses, and unfair competition. On April 20, 2022, after exhausting administrative remedies, Plaintiff Romero filed a First Amended Complaint adding a cause of action under PAGA based on the same alleged Labor Code violations. The Court subsequently consolidated the two matters. [Brouillette Decl., ¶ 3.]

Once the matter was at issue, the Parties engaged extensive written discovery and litigation, Plaintiffs deposed Defendant's PMQ, and Hitex deposed the Plaintiffs. The Parties then fully briefed a motion for class certification, which was set for hearing in July 2024. [Brouillette Decl., ¶ 4.]

Prior to the class certification hearing, however, the Parties agreed to attempt mediation and engage in a further informal exchange of documents and information to facilitate settlement discussions. Thus, Plaintiffs and counsel reviewed Plaintiffs' personnel, time, and payroll records, as well as time and payroll records for a randomly selected sampling of class members, wage statement exemplars, Defendant's employee handbooks, including Defendant's policies and procedures regarding the payment of wages, the provision of meal and rest breaks, timekeeping policies (including recording hours), issuance of wage statements, and termination wages, expense reimbursement policies, as well as information regarding the number of putative Class Members who are current and former employees, the number of Aggrieved Employees, the number of workweeks throughout the Class Period, and the number of pay periods throughout the PAGA Period. [Brouillette Decl., ¶ 5.]

In April 2024, the Parties participated in a mediation with the Hon. Peter Lichtman (Ret.), a respected wage and hour class action mediator. The mediation lasted a full day and with the mediator's assistance the Parties reached agreement on all major issues. [Brouillette Decl., ¶ 6.] The Court granted preliminary approval of the settlement on March 6, 2025.

Class notices were mailed to class members on March 28, 2025, with a 45-day window (to May 12, 2025) for class members to opt out of or object to the proposed settlement. [Declaration of Lluvia Islas ("Islas Decl."), ¶¶ 5, 8-10.]

III. TERMS OF THE PROPOSED SETTLEMENT

Under the settlement Defendant will pay $450,000 into a common fund, the Gross Settlement Amount (GSA"). Attorney's fees of up to $150,000 (33.33% of the GSA), litigation costs of up to $30,000 (only $10,916.36 is requested), representative service awards of $10,000 to each Plaintiff ($20,000 total), settlement administration costs of $7,500, and $24,000.00 for PAGA civil penalties (of which $18,000 will go to the California Labor & Workforce Development Agency ("LWDA") for the State's share of civil penalties and $6,000 will go to eligible Aggrieved Employees), all will be paid from the GSA. The remainder of around $247,583 will be allocated pro rata to the Class Members based on their weeks worked during the Class Period. No portion of the GSA will revert to Hitex. [Brouillette Decl., ¶ 7.]

A. Certification of the Settlement Class

The Court conditionally certified a settlement class defined to include all current and former non-exempt employees that worked directly or via a staffing agency for Hitex in California during the Class Period of October 22, 2017 to April 2, 2024. The Settlement Administrator ultimately mailed class notices to 216 individuals identified as members of the Class. [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

As noted, the settlement obligates Defendant to pay $450,000 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $247,583 from the GSA will be distributed to the Participating Class Members. 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 non-wage damages, penalties, and interest, which allocation is consistent with Defendant's potential liability as discussed below. Defendant will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash their settlement check) will be forwarded to the California 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 in California as a non-exempt employee during the Class Period. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a settlement award corresponding to the relative value of their potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Defendant and the amount unpaid wages, etc. [Brouillette Decl., ¶ 9.]

The average class award to the Participating Class Members will be approximately $1,146, and awards will range from about $8.50 to a maximum award of over $2,880, while the average PAGA award will be about $40. [Islas Decl., ¶¶ 13-14.]

C. Settlement Administration

Phoenix Settlement Administrators, as the Court-approved Settlement Administrator, mailed the Notice Packets 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., ¶¶ 3-7.] 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 216 Notice Packets on March 28, 2025. [Islas Decl., ¶ 5.] As of the filing of this motion, only ten Notice Packets were deemed undeliverable, for a 95% success rate. [Islas Decl., ¶ 7.] The response window for opting out, objecting to the settlement, or submitting a dispute, expired on May 12, 2025. [Islas Decl., ¶¶ 8-10.] 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 have been submitted regarding the information used to calculate class member settlement shares. [Islas Decl., ¶¶ 8-10.]

D. Release of Claims

Upon final approval and payment of the GSA, Participating Class Members shall forever release the Released Parties for the Released Claims for the Class Period, including all claims pleaded in the Operative Complaint, and which could reasonably have been alleged, based on the Class Period facts, allegations, and/or claims stated in the Operative Complaint, for work performed during the Class Period, and as specifically detailed in Sections 5.2 of the Agreement. (Agreement, § 5.2). Additionally, the Aggrieved Employees will the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the

PAGA Period facts stated in the Operative Complaint, and PAGA Notice, and as more specifically detailed in Section 5.3 of the Agreement. [Brouillette Decl., ¶ 10.]

E. PAGA and Notice to the LWDA

As noted, the Parties allocated $24,000 from the GSA to resolution of Plaintiffs' claims under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and adequate, and consistent with PAGA's underlying purposes. Under PAGA, $18,000 of this amount will be paid to the LWDA as the state's share of the civil penalties, and the remainder of $6,000 will be distributed to the 149 Aggrieved Employees eligible to receive a PAGA payment. [Islas Decl., ¶ 14.] As required by Labor Code section 2699(*l*)(2), Plaintiffs notified the LWDA of the settlement and the final approval hearing 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. Rather, the proposed settlement was reached following arm's-length negotiations presided over by Lynn Frank, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Brouillette Decl., ¶ 6.] Moreover, Plaintiffs and their counsel were well-informed about the facts and the law, and counsel at Employees First Labor Law and Crosner Legal, all have years of litigation experience, including litigating wage and hour class actions. Plaintiffs' counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Brouillette Decl., ¶¶ 24-36; LaCour Decl., ¶¶ 4-14.] Defendant likewise was 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 Favorablv to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and zero Class Members requested exclusion, for a 100% participation rate. [Islas Decl., ¶¶ 8-9.] 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., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("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).

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

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

Prior to settlement, the parties engaged in formal and informal discovery to facilitate settlement discussions. Thus, Plaintiffs reviewed documents and information regarding Hitex's payroll practices, a random sampling of pay stubs and time records from class members, applicable compensation plans, meal and rest break policies, etc., and information from Hitex regarding class size and breakdown, work weeks/pay periods, rates of pay, and other information used to formulate a damages model. Plaintiffs then had that information analyzed by a consulting expert to assist in determining potential violation rates and other data used to formulate a damages model. Plaintiffs' counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable. [Brouillette Decl., ¶¶ 5, 12.]

First, Plaintiffs contend Defendant failed to pay all wages due by only compensating Plaintiffs and Class Members for 8 or 12 hours each workday (depending on the shift for which they were scheduled) even though Class Members regularly worked shifts greater than those hours. In addition, Plaintiffs and Class Members allege they were routinely forced to work off the clock without any compensation due to Defendant's requirement that Plaintiffs and Class Members perform work either prior to clocking in or to perform work after clocking out for the day. For example, Plaintiffs allege that they could not leave their machine until their shifts completely ended but then had to close down their machine, walk to the front, and clock out, all of which took on average 5-10 minutes that was neither accounted nor paid for. Plaintiffs further argued that Defendant likewise "auto deducted" 30 minutes for meal breaks that lasted less than 30 net minutes, resulting in additional lost time in violation of the California Supreme Court's decision in Donohue v. AMN Servs., LLC, (2021) 11 Cal.5th 58. In response, Defendant contended it accurately tracked employee time and paid class members all wages due as required under applicable law. Defendant further argued its policies strictly prohibited any "off the clock" work, and that any such work was unauthorized and aberrational, and done without employer knowledge. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). Without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiffs' calculated Defendant's maximum exposure for this claim to be roughly **$922,340.00** (minimum wage for the hours worked that went unpaid) in liquidated damages for the relevant Class Period using a conservative estimate of 2 unpaid off-the-clock hours worked. [Brouillette Decl., ¶ 13.]

Plaintiffs next contend Defendant failed to provide legally compliant meal and rest breaks. Specifically, as to meal breaks, Plaintiffs allege they were required to work through their meal periods because Defendant's work demands prevented them from taking off-duty meal periods.

Plaintiffs allege supervisors often called employees back to work prior to the 30-minutes being complete but would "auto-deduct" 30 minutes of time for a meal period regardless of how long it lasted. Plaintiffs argued Defendant's time records show many meal periods were untimely and started after the fifth hour work. Plaintiffs claim these issues violate Labor Code sections 512, 226.7, and the applicable IWC Wage Orders, as well as Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004 and Augustus v. ABM Security Serv., Inc. (2016) 2 Cal.5th 257 for failure to provide all required meal periods and within the required time frames. Plaintiffs also contend Defendant failed to provide duty-free rest periods to Class Members for the same reasons. [Brouillette Decl., ¶ 14.]

Defendant denies Plaintiffs' contentions, claiming they made meal and rest breaks available to Class Members in compliance with California law. Hitex contends its meal and rest break policies are lawful and that Class Members were frequently reminded they were required to take all meal and rest breaks. Defendant also contended that time records demonstrate that Class Members took duty-free, timely meal and rest breaks. Defendant further contends the meal and rest break policies and practices comported with the flexibility the *Brinker* court held was integral to California's meal and rest period requirements. Finally, Defendant argued that Plaintiffs' meal and rest break claims are not susceptible to common proof, as the claims would require individualized inquiries, including whether there was an unlawful companywide policy, whether employees had the opportunity to take meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented them from taking meal and rest periods. Accordingly, Hitex contends these claims are vulnerable to a ruling that class treatment is not appropriate. Without taking into consideration any of Defendant's defenses to certification or on the merits, Plaintiffs estimate Hitex faces exposure for about **$2,241,200.00** in meal period and rest break premiums for the relevant Class Period. [Brouillette Decl., ¶ 15.]

As a result of the above alleged violations, Plaintiffs allege Defendant failed to provide accurate wage statements and failed to timely pay all wages that were due and owing upon separation of employment. In response to these derivative claims, Defendant emphasized that, should the primary claims fail, Plaintiffs' claim for wage statement violations and waiting time penalties would also fail. Defendant further argued 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, Defendant contend Plaintiffs would have to prove Defendant “willfully” failed to pay Class Members appropriate wages due upon separation of employment. Without taking into consideration any of Defendant’s defenses to certification or on the merits, Plaintiffs calculated Defendant’s maximum exposure for wage statement violation at about **$544,700.00**, and the exposure for waiting time penalties at about **$415,000** for approximately 133 terminated class members. [Brouillette Decl., ¶ 16.]

As far as potential PAGA liability, the theoretical civil penalties likely are around $1.08 million should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code sections at issue. [Brouillette Decl., ¶ 17.] As with the class claims, Plaintiffs discounted the potential PAGA penalties based on Defendant’s various defenses on the merits and also accounted for the Court’s 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 $24,000 to PAGA penalties.

Plaintiffs submit this amount 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.

Thus, Plaintiffs and their 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. Defendant also provided substantial documentation showing it is in a somewhat precarious financial position and has limited resources to fund a settlement without jeopardizing its ability to continue operations and meet payroll for currently employees, which factor likewise heavily influenced Plaintiffs' evaluation of the case. Plaintiffs 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 $450,000 recovery represents a significant percentage of Defendant's potential exposure. Given Defendant's multi-layered defenses and all other potential risks of continued litigation, a total recovery for the class of $450,000, which will result in average award of around $1,111 per class member, plus additional sums under PAGA, 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., ¶¶ 18-20; LaCour Decl., ¶¶ 27-28.]

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"); 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); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[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"). 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). Plaintiffs and counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. PLAINTIFFS' ENHANCEMENT AWARDS

Pursuant to the terms of the settlement, Plaintiffs seek modest incentive awards of $10,000 each for their service in bringing these claims on behalf of the Class. The requests are reasonable given the risks they undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Hitex's litigation costs. Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, assuming a risk of discrimination by future prospective employers. As set forth in more detail in their respecitve declaration submitted at preliminary approval, among taking many other actions assisting in the successful litigation of this case, Plaintiffs provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, responded to discovery, sat for full-day depositions, and kept abreast of all significant developments. [Brouillette Decl., ¶ 21.] Finally, there are no class member objections submitted with respect to the amounts Plaintiffs propose to receive. [Islas Decl., ¶ 9.] Accordingly, the requested enhancement payments to Plaintiffs are appropriate and justified as part of the settlement.

VI. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Phoenix for its services as the Settlement Administrator. As set forth in the Declaration of Lluvia Islas, Phoenix has performed and will continue to perform its required duties through final distribution of the settlement funds, and incurred $7,500.00 in fees and expenses. [Islas Decl., ¶ 15.] Accordingly, Plaintiffs respectfully request the Court approve payment of $7,500 to Phoenix from the GSA. [Brouillette Decl., ¶ 22.]

VII. ATTORNEY’S FEES AND COSTS

A. The Attorney's Fees Requested Are Fair and 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 Plaintiffs and the putative class was far from certain. Plaintiffs faced a real risk that some or all the claims would not be certified for class treatment, as Hitex had strong arguments that its compensation policies were legal and properly compensated the class members. Even if Plaintiffs certified some or all of the claims and ultimately prevailed on the merits, it undoubtedly would have taken several more years to realize any recovery while they pursued class certification, trial, and an almost certain appeal. [Brouillette Decl., ¶¶ 13-17.]

Nonetheless, Plaintiffs succeeded and expeditiously obtained the relief they set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about $1,146, and with a maximum award of over $2,800. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – as of the filing of this motion, there are no objections to the settlement and zero individuals have opted out. [Islas Decl., ¶¶ 8-10.]

B. The Requested Fee Award Is Reasonable and Appropriate

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. Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (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. Blum v. Stenson (1984) 465 U.S. 886, 902 n.19.

As part of the Settlement, Hitex agreed not to object to an award of no more than 33.33% of the GSA for attorney's fees, or $150,000, and up to $30,000 in reimbursement for litigation costs and expenses. 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., ¶ 22.] 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.

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C. 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 33.33% of the total amount recovered by the Class via the lawsuit, or $150,000. 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.").

D. 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 collectively spent 252.4 hours of time on this matter, resulting in a modest and very reasonable lodestar of $183,535.

As is fully detailed in the Brouillette Declaration, Class Counsel's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiffs 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 Hitex employees; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) drafting a first amended complaint; (6) propounding/responding to written discovery, (7) participating in the depositions of Plaintiffs and Defendant's PMK; (8) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (9) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (10) drafting and filing Plaintiffs' class certification motion; (11) drafting a mediation brief and accompanying damages model after review and analysis of Hitex's informal discovery production; (12) attending an all-day mediation; (13) negotiating and drafting the settlement agreement and related documents; (14) drafting an amended complaint to effectuate the settlement; (15) drafting the motion for preliminary approval, and attending the hearing; (16) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (17) drafting the motion for final approval and motion for attorney's fees, and attending the final approval hearing; and (18) extensive communications with the Plaintiffs regarding case status, case investigation and document review, mediation, and settlement terms. Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on the compliance hearing. [Brouillette Decl., ¶ 23, Exh. 2.]

In pursuing this matter, Class Counsel incurred total attorney's fees of $183,535. The lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a successful conclusion, and the requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. [Brouillette Decl., ¶¶ 24-39; LaCour Decl. ¶¶ 4-25.] On a lodestar basis, the fee request of $150,000 results in a base lodestar that is higher than the fees requested on percentage of the recovery basis. Class Counsel submits the lodestar crosscheck operates to show that the percentage fee request is reasonable considering the fees requested are lower than the actual value of the services rendered when valued via traditional hourly billing.

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

What has now emerged in most fee award decisions is the recognition that fee determinations in both common fund and statutory fee situations are incapable of mathematical precision because of the intangible factors that must be resolved in the court's discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In determining an appropriate fee in a common fund case, a Court must decide, based on the unique posture of each case, what percentage of the common fund would most reasonably compensate Class Counsel given the nature of the litigation and the performance of counsel. Paul, Johnson, Alston & Hunt v. 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, l 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 complaint, 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 Plaintiffs' 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 Hitex would dig in and attempt to bury their small firms 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., ¶¶ 40-41.]

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 Hitex that Plaintiffs and the putative class had a realistic chance of prevailing on their claims despite Hitex's contrary arguments, and that the case would be pursued through class certification and trial if necessary. Indeed, Plaintiffs had to file their class certification motion before finally mediating and settling the case. 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 Plaintiffs' 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 chance Plaintiffs' counsel would receive nothing for any number of reasons. [Brouillette Decl., ¶¶ 40-41.] Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel and Plaintiffs 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 cross-checked against the lodestar method in light of the contingent risk assumed, the delay in payment, the result achieved, and the overall quality of the representation. 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.") This is particularly true in this matter given it was extensively litigated through formal discovery, multiple depositions, and the filing of the class certification motion, before finally resolving via settlement.

F. Class Counsel's Costs and Expenses are Reasonable

Plaintiffs' counsel also request 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 Plaintiffs' 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"). Plaintiffs' 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 Brouillette and LaCour Declarations, Class Counsel collectively incurred a total of $10,916.36 in expenses incurred in connection with this litigation. These expenses include the amounts paid for court filing fees, service of process, expert fees, postage, deposition costs, 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 it is respectfully requested that the Court authorized they be reimbursed in full. [Brouillette Decl., ¶¶ 42-43; LaCour Decl., ¶ 26.]

VIII. CONCLUSION

For all the foregoing reasons, Plaintiffs Elmer Estrada Gonzalez and Miguel Romero 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. Plaintiffs further request 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, Plaintiffs request the Court set a non-appearance compliance hearing for August 18, 2026, or a later date convenient for the Court.

Dated: July 28, 2025

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