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on behalf of himself and all others and similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

RENEE RAMIREZ, and on behalf of all others similarly situated,

Plaintiff,

v.

AIRGAS SAFETY INC., a Delaware Corporation, and DOES 1-10, inclusive,

Defendants.

Case No. CVRI2200084

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT

[Declarations of Anthony Draper, Renee Ramirez, and Claims Administrator, [Proposed] Order concurrently filed herewith]

Date: July 24, 2025
Time: 08:30 a.m.
Dept.: 1
Judge: Harold W. Hopp

PLEASE TAKE NOTICE THAT on July 24, 2025, in Department 1 of the above-entitled court located at 4050 Main Street, Riverside, CA 92501, Renee Ramirez ("Plaintiff") will and hereby does move the Court (1) granting final approval of the Stipulation of Class and PAGA Action Settlement; 2) approving the gross settlement amount of Two Hundred and Fifty Thousand Dollars ($250,000); (3) approving all settlement payments to Participating Class Members and PAGA Employees; (4) allocating a Class Representative's Enhancement Award of Ten Thousand Dollars ($10,000) to Plaintiff Renee Ramirez; (5) approving Twenty Five Thousand Dollars ($25,000) in PAGA penalties; (6) approving costs of administering the Settlement to the Settlement Administrator, Simpluris, Inc. in the amount of Six Thousand Dollars ($6,000); (7) approving payment Eighty Seven Thousand, Five Hundred Dollars ($87,500) in attorneys' fees and total attorneys' cost of Twenty Thousand Dollars ($20,000).

This unopposed motion is made pursuant to California Rules of Court Rule 3.769, which requires court approval of the settlement of a putative class action. Further, this Motion will be based on the following: the Memorandum of Points and Authorities set forth herein; the Joint Stipulation Re: Class Action Settlement, attached to the Declaration of Anthony Draper as Exhibit 1; the Declarations of Anthony Draper, Renee Ramirez, [Declaration of Anthony Draper previously filed in support of Plaintiff's Motion for Preliminary Approval],and upon the oral arguments of counsel (should there be any) and upon the complete records and file herein..

Dated: July 1, 2025 **JAMES R. HAWKINS, APLC**

By:______________________

James R. Hawkins
Isandra Y. Fernandez
Anthony L. Draper
Attorneys for Plaintiff
Renee Ramirez

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Renee Ramirez ("Plaintiff") seeks final approval of the class action and PAGA settlement agreement reached with Defendant Airgas Safety Inc., (hereinafter "Defendant" and/or "Airgas") (Plaintiff and Defendant collectively, the "Parties").

On November 26, 2024, this Court preliminarily approved the settlement amount of Two Hundred and Fifty Thousand Dollars ($250,000) as being fair, adequate, and reasonable. Further, this Court preliminarily appointed Plaintiff's counsel, James Hawkins, Isandra Fernandez, and Anthony Draper of James Hawkins APLC as Class Counsel, the named Plaintiff Renee Ramirez as Class Representative, and preliminarily certified the Class defined as: All employees who are or were employed by Defendant in the state of California as non-exempt/hourly employees at any time between January 6, 2018 and March 13, 2025. The Court also preliminarily approved Simpluris, Inc. ("Simpluris") as the Settlement Administrator.

On May 16, 2025, the Parties notified the Class Members about the settlement through the Settlement Administrator, Simpluris. (Declaration of Lindsay Romo from Simpluris, Inc. ("Romo Decl." ¶ 8.) The deadline for requests for exclusions from and objections to the Settlement expired June 30, 2025, Forty-Five (45) days after the mailing (Romo Decl., ¶ 10.) As previously set forth in Plaintiff's Motion for Preliminary Approval ("Preliminary Approval Motion"), this is a cash settlement with no reversionary aspect. Every Class Member who has not opted out of the Settlement will automatically be mailed an individual settlement payment.

Most importantly, the Settlement and all its terms received overwhelming support from the Class Members. Specifically, out of the One Hundred and Forty-Five (145) Class Members, there are Zero (0) requests for exclusion and Zero (0) objections to the settlement.[1] (Romo Decl., ¶¶ 11, 12.) Therefore, Plaintiff respectfully requests the Court grant final approval of the Settlement, Class Counsel's requested Attorney Fees and Costs amounts, Class Representative's Enhancement Award payment, Settlement Administrator Costs payment, and the PAGA Penalties

[1] Should any timely objections or request for exclusion arrive after the filing of this motion, the Settlement Administrator will file supplemental

in the amounts preliminarily approved by the Court and as fully disclosed to Class Members.

II. LITIGATION AND SETTLEMENT

A. Pleadings

On January 6, 2022, Plaintiff Renee Ramirez filed her initial class action Complaint in this Action in Riverside County Superior Court. On May 23, 2022, Plaintiff filed a First Amended Complaint, which added two causes of action and modified the first cause of action. On November 15, 2022, Plaintiff filed a Second Amended Complaint, which added an eighth cause of action for civil penalties under the PAGA (Labor Code §§ 2698, *et seq*.).

The Second Amended Complaint is the operative complaint, which alleges California claims for (1) failure to pay lawful wages including overtime; (2) failure to pay correct sick pay; (3) failure to reimburse necessary business expenses; (4) failure to timely pay wages during employment; (5) failure to timely pay wages at termination; (6) failure to provide accurate wage statements; (7) unfair competition, and (8) a request for civil penalties pursuant to the PAGA. (Draper Decl. ¶ 2.)

B. Discovery and Mediation

As discussed in the Preliminary Approval Motion, Class Counsel conducted a thorough investigation into the factual and legal issues implicated by Plaintiff's claims and was able to objectively assess the settlement's reasonableness through exchange of informal discovery. Specifically, through formal and informal discovery, Defendant produced hundreds of pages of information, including handbooks and related policy materials, timecard records and wage reports of putative Class Members (Draper Decl., ¶ 3.) Defendant also provided Plaintiff with comprehensive pay, attestation, and time data for the putative group, wage statements, and information regarding the number of non-exempt employees during the relevant time-period. Plaintiff also utilized an expert for a detailed review the timekeeping and payroll data provided. (*Id.*)

On December 12, 2023, after conducting informal discovery, exchanging relevant information, and engaging in numerous discussions regarding the claims alleged, the Parties participated in a full-day, arms-length mediation before experienced California wage and hour mediator Tripper Ortman, Esq., however the Parties were not able to reach a settlement on that day. However, with the assistance of the mediator, the Parties later reached an agreement on January 9, 2024 (Draper Decl., ¶ 4.) Thereafter, the Parties exchanged multiple drafts of the proposed settlement agreement and class notice documents and engaged in numerous communications regarding the settlement terms. (*Id)* Thereafter, the Parties exchanged multiple drafts of the proposed settlement agreement and class notice documents and engaged in numerous communications regarding the settlement terms (*Id*.) The final terms and provisions of the settlement agreement were approved and executed by all the parties on or about July 2, 2024 (Draper Decl. ¶4; Exhibit 1.- Settlement Agreement)

C. <u>The Preliminarily Approved Settlement</u>

On November 19, 2024, Plaintiff filed the Motion for Preliminary Approval of Class Action and PAGA Settlement scheduled to be heard on January 22, 2025. In advance of the hearing, the Court issued a tentative ruling setting forth issues the Court wanted the Parties to address. As a result, on March 3, 2025, the Parties executed a revised Settlement Agreement and, on March 6, 2025, Plaintiff filed a Supplemental Declaration in Support of the Preliminary Approval Motion addressing the issues set forth by the Court in its tentative. (Draper Decl., ¶ 5.)

On March 13, 2025, the Court entered the Order granting preliminary approval of the Settlement Agreement and preliminarily appointed Class Counsel (James R. Hawkins, Isandra Fernandez and Anthony Draper of James Hawkins APLC), the Class Representative (Renee Ramirez), and the Settlement Administrator (Simpluris, Inc.) The Court also approved the proposed Notice of Class Action Settlement ("Class Notice") Now that administration has been completed, subject to the Court's final approval, the fees and expenses will be paid from the Gross Settlement Amount ("GSA") of $250,000 as follows:

1. Subject to Court approval, Class Counsel shall be paid a maximum of Eighty-Seven Thousand Five Hundred Dollars and Zero Cents ($87,500.00) in attorneys' fees and total costs of Nineteen Thousand Four Hundred and Forty Three Dollars and Ninety Three Cents

($19,433.93) (Settlement Agreement, p. 11, ¶ 49.)

2. Subject to Court approval, the named Plaintiff and Class Representative Renee Ramirez will be paid Ten Thousand Dollars ($10,000) from the Settlement Amount for a general release of her claims and for serving as a Class Representative. (Settlement Agreement, p. 11, ¶ 50.)

3. Subject to Court approval, Simpluris will be paid Six Thousand Dollars ($6,000) for reasonable Settlement administration expenses. (Settlement Agreement, p. 11, ¶ 51.)

4. Subject to Court approval, Twenty-Five Thousand Dollars ($25,000) shall be allocated to PAGA penalties, from which Eighteen Thousand Seven Hundred Fifty Dollars and Zero Cents ($18,750.00) (75%) shall be payable to the LWDA, representing the LWDA's share of PAGA penalties ("PAGA Allocation") and Six Thousand Two Hundred Fifty Dollars and Zero Cents ($6,250.00) (25%) to the PAGA Employees. (Settlement Agreement, p.11, ¶ 52.)

5. Tax allocation of Individual Class Settlement Amount shall be as follows: 40% to unpaid wages, subject to withholding and reported on a W-2 form, and 60% to non-wage compensation which shall be reported on an IRS 1099 without withholdings (Settlement Agreement, p. 19, ¶ 72.)

6. The GSA shall not include Defendant's share of taxes on the wages portion of Individual Class Settlement Amounts, which will be paid by Defendant separately and in addition to the gross settlement amount. (Settlement Agreement, p. 4, ¶ 15)

D. <u>Dissemination of Notice Packet</u>

On April 23, 2025, Defendant's counsel provided Simpluris with the class data file, for 145 individuals containing the names, social security numbers, last known mailing addresses, and the total number of relevant workweeks worked by each Settlement Class Member. (Romo Decl., ¶ 6.) The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database ("NCOA"). (Romo Decl., ¶ 7.) On May 16, 2025, the Class Notice was mailed to all 145 Class Members. (Romo Decl., ¶ 7.) A total of Ten (10) Class Notices were returned by the post office. Simpluris performed an advanced address search (i.e.

skip trace) through which it was able to locate Ten (10) updated addresses and Simpluris mailed a Class Notice to those updated addresses. (Romo Decl., ¶¶ 9.) Ultimately, Zero (0) Class Notices were deemed undeliverable. (Romo Decl., ¶ 9.)

E. <u>The Settlement Provides Reasonable Compensation to the Class Members</u>

Even without the presumption of fairness and reasonableness, the Settlement is clearly well within the range of reasonableness. All Class Members will be paid their portion of the Net Settlement Amount ("NSA"). Subject to Court approval, the NSA available to pay the Class is approximately $101,500. (Romo Decl., ¶ 16.) All 145 Class Members are to be paid Individual Settlement Amounts out of the NSA. (Romo Decl., ¶ 15.) The *highest* estimated Individual Settlement Amount is $2,014.66, the *average* estimated Individual Settlement Amount is $700, and the *lowest* estimated Individual Settlement Amount is $1.56. (Romo Decl., ¶ 17.) These are clearly not nominal amounts especially given the size of the Class. Also, subject to Court approval, the highest estimated individual PAGA payment is $245.88, the estimated *average* individual PAGA payment is $97.66, and the estimated *lowest* individual PAGA share is approximately $0.68. (Romo Decl., ¶ 18.)

The Settlement clearly is within the range of reasonableness as thoroughly discussed in detail in the motion for preliminary approval, and as considered by the Court in granting preliminary approval. As explained at preliminary approval, accounting for the risks of continued litigation, Plaintiff determined that a settlement amounting to $250,000 was fair and reasonable. The specific details of the claims and their valuations addressed in the Motion for Preliminary Approval are set forth in the Declaration of James R. Hawkins filed in support of said Motion. (Hawkins Decl. ¶¶ 10-17.). This is a fair and reasonable recovery far exceeding settlements previously approved by courts. (See, e.g., *In re Warfarin Sodium Antitrust Litigation* (D. Del. 2002) 212 F.R.D. 231, 256–258 [reasonable settlement amount can be 1.6% to 14% of total estimated damages]; *In re Armored Car Antitrust Litigation* (N.D. Ga. 1979) 472 F.Supp. 1357, 1373 [settlements valued at 1% to 8% of estimated total damages approved]; *In re Four Seasons Securities Laws Litigation* (W.D. Okla. 1972) 58 F.R.D. 19, 37 [approving 8% of damages]; *Balderas v. Massage Envy Franchising, LLP*

(N.D. Cal., July 21, 2014, No. 12-cv-06327 NC) 2014 U.S.Dist.LEXIS 88804, *5 [settlement amounting to 8% of maximum recovery "fell within the range of possible initial approval based on the strength of plaintiff's case and the risk and expense of continued litigation"]; *In re Omnivision Technologies, Inc.* (N.D. Cal. 2008) 559 F.Supp.2d 1036, 1042 [approving settlement of 6% to 8% of estimated damages].)[2]

Through her counsel, Plaintiff took into consideration the significant risks that class certification could be denied on the central claim, that the claims would be referred to individual binding arbitration for the majority of the putative class members and/or that a merits decision on the central claim would not favor the Class. (Draper Decl., ¶ 6.) Plaintiff's counsel also considered the expense and length of continued proceedings necessary to continue the Action against Defendant through trial and any possible appeals and the difficulties in establishing the alleged damages. (*Id.*) The settlement is fair, reasonable, and adequate, given the significant risks to Plaintiff and Class Members of prevailing on class certification or at trial, and thus leaving employees with no recovery. *(Id.)*

III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE

The law favors settlement, particularly in class actions and other complex cases in which

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[2] *See also In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys' fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing "8.1% of the full verdict value" with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys' fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where "[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney's fees and costs.").

substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. (*City of Seattle* 955 F.2d at 1276; *Potter v Pacific Coast Lumber Company*, (1951) 37 Cal. 2d. 592, 602-603.; 4 NEWBERG §11.41.) When faced with a motion for final approval of a class action settlement under *Code of Civil Procedure* §382, a court inquires whether the settlement is "fair, adequate, and reasonable." (*See e.g., Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, (2010) 186 Cal. App. 4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company ,*(1996) 48 Cal.App.4th 1794, 1801.)

A. <u>This Court Preliminarily Found This Settlement to be Fair, Adequate and Reasonable and Nothing Has Changed to Disturb That</u>

Before granting final approval of a class action settlement, courts must determine that the proposed settlement is fair, reasonable, and adequate — and not a product of fraud, overreaching, or collusion.(Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor Co.,* supra, 48 Cal.App.4th at 1801.) Courts must presume that a settlement is fair, reasonable, and adequate, and thus appropriate for Final approval when the following three factors are satisfied: (1) the Parties reached settlement via arms-length negotiations; (2) counsel conducted sufficient investigation and discovery to allow themselves and the court to act intelligently; and (3) counsel is experienced in similar litigation (*Id.* at 1802.)(*See also 7-Eleven Owners for Fair Franchising v. Southland Corp.,* (2000) 85 Cal. App. 4th 1135, 1146.) Further, as discussed below, although not determinative, courts consider the percentage of objectors in determining whether a presumption of fairness exists. (*Id*). There is no question that these factors are satisfied here. The Parties conducted a sufficient amount of informal discovery, participated in private mediation, and numerous conferences of counsel that ultimately led to an arms-length settlement that provides for substantial recovery. Moreover, out of 145 Class Members there were 0 requests for exclusion from, and 0 objections to, the Settlement. (Romo Decl., ¶¶ 12-13.)

B. <u>The Settlement Resulted From Non-Collusive, Arms-Length Negotiations</u>

There certainly is no collusion between the Parties. As discussed in the Preliminary Approval Motion and herein, the Parties participated in a full day mediation with Tripper Ortman, Esq. (Draper Decl., ¶ 4.) Armed with all of the relevant information and the help of a highly experienced mediator, counsel for the Parties engaged in lengthy, serious, and meaningful negotiations which has resulted in the Settlement Agreement. The involvement of a neutral third-party mediator is a factor that favors approval and evidences the presumptive fairness of the arms-length negotiations. Indeed, courts should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring themselves that a settlement agreement represents an arms-length transaction entered without self-dealing or other potential misconduct. (*Kullar v. Foot Locker, supra,* 168 Cal. App. 4th at 129.)

C. The Settlement is Supported by Substantial Investigative and Discovery Efforts

As discussed in the preliminary approval papers, supporting declaration and herein, Class Counsel analyzed a significant amount of information that Defendant produced through informal discovery and in preparation for mediation (Draper Decl., ¶¶ 3-4.) The Parties have conducted significant investigation of the facts and law during the prosecution of the Action. Class Counsel's research enabled them to pinpoint the relevant issues and claims and to assess potential liability and damages. These efforts resulted in the Parties achieving a resolution on favorable terms, as was evidenced during mediation and negotiations leading to Settlement.

D. Class Counsel is Experienced in Similar Litigation

The endorsement of qualified and well-informed counsel of the settlement as fair is entitled to significant weight. (*See Dunk, supra*, 48 Cal.App.4th at 1802.) As discussed in the preliminary approval papers and set forth in the declaration of Class Counsel, Class Counsel have represented, mediated, and settled other employee class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims against Defendant and the benefits of the proposed settlement under the circumstances of the case. (Draper Decl., ¶ 7.) Class Counsel contends that the Settlement is fair, adequate, reasonable, and in the best interests of the Class as a whole.

E. Class Members' Positive Reaction to the Settlement Favors Final Approval

Finally, courts look at the reaction of class members to determine if a settlement that directly affects their interests should be approved as fair, adequate, and reasonable. As noted above, out of 145 Class Members, there were 0 requests for exclusion and 0 objections. (Romo Decl., ¶¶ 11-12.)

A court may appropriately infer that a class action settlement is fair, adequate, and reasonable even when class members object to it. Indeed, a court may approve a class action settlement as fair, adequate, and reasonable even over the objections of a significant percentage of class members.(*See Boyd v. Betchel Corp.* (D.C. Cal 1976) 485 F. Supp. 610, 624. *Reed v. General Motors,* (5th Cir. 1983) 703 F.2d 170, 174; *In re Wash. Pub. Power Supply System Sec. Litig.,* (D. Ariz. 1989) 720 F. Supp. 1379, 1394.) In this case, there were no objections to the Settlement. The Court should construe this as a further indication of Class Members' support for the Settlement as fair, adequate, and reasonable.

IV. CLASS REPRESENTATIVE ENHANCEMNT PAYMENT IS REASONABLE

The settlement provides for Class Representative Enhancement to be paid to the named Plaintiff and Class Representative. The purpose is to provide an additional incentive payment, taking into consideration the risks, time and effort in coming forward to fulfill all the duties associated with being a Class Representative. Awarding incentive awards to compensate named plaintiff in class actions has been specifically recognized. (See, e.g., *Clark v. American Residential Services, LLC* (2009) 175 Cal App 4th 785, 804 (incentive awards to named Plaintiffs appropriate for participation in class action); *Bell v Farmers Ins. Exchange* (2004) 115 Cal App 4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing class case).

As stated by the Court of Appeal in the *Cellphone Termination Fee Cases:* incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Cellphone Termination Fee*

Case, (2010) 186 Cal. App. 4th 1380, 1394 (approving an incentive award of $10,000).

The Class Representative Service Enhancement is intended to compensate named Plaintiff Renee Ramirez as Class Representative for her willingness to accept the responsibility of representing the interests of all Class Members. The purpose is to provide an incentive payment, taking into consideration the risks, time, and effort expended by her coming forward to provide invaluable information and to litigate this matter on behalf of all Class Members. (Draper Decl., ¶¶ 6, 13.) The Class Representative Enhancement is ***also in consideration for executing a general release of all her claims against Defendant*** (Declaration of Renee Ramirez ("Ramirez Decl." ¶ 5.)

Plaintiff also risked potential judgment against her if this case had been unsuccessful. In class action losses, class representatives are deemed the losing party that is liable for the prevailing party's costs.(*Earley v. Superior Court* (2000) 79 Cal. App. 4th 1420, 1433-1434.) Finally, Plaintiff also risked this lawsuit having a negative impact on future employment opportunities, as prospective employers may be less inclined to hire an employee who has served as a class representative. (Ramirez Decl., ¶ 6.) (*See, e.g. Staton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 977.) As such, Plaintiff respectfully requests that this Court approve the Class Representative Enhancement in the amounts of $10,000.

V. CLASS COUNSEL'S REQUEST FOR FEES IS REASONABLE

Subject to court approval, this settlement amount of $250,000 includes an allocation of $87,500 in Class Counsel Fees. Plaintiff and class members are entitled to recover their attorneys' fees and costs. (Labor Code §2802; Code Civ. Proc. §1021.5(a); *Earley v. Super. Ct.,* (2000) 79 Cal.App.4th 1420.) A fee award is justified when class benefits are obtained via settlement. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Cty. for Indep. Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.) Fee awards may be based on (1) the percentage-of-the-benefit method; or (2) the lodestar plus multiplier method. (*See Wershba v. Apple Computer Inc.* (2001) 91 Cal. App. 4th 224, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27.) Both methods are proper in California, with courts often only using a lodestar-multiplier method as a check against the reasonableness of a percentage fee award. (*See, e.g.*, *Serrano v. Priest* (*Serano III*), (1977) 20 Cal.3d 25, 48-49 fn. 23; *People ex rel. Dept. of Transportation v. Yuki* 31 (1995) Cal. App. 4th 1754, 1769-1772; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985)172 Cal. App. 3d 914, 954.)

A. <u>**Class Counsels' Requested Fees Are Reasonable Under the Lodestar/Multiplier Analysis**</u>

When fees are allocated by percentage method, courts have discretion to "cross-check" the fees awarded through the lodestar method. However, the Supreme Court in *Laffitte v. Robert Half Internat. Inc.*, 1 Cal. 5th at 505, "emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award."

In determining the outcome of a fee award in a class action matter, one of the main benchmarks to consider is the result for the class. The Supreme Court has said that in an award of attorney's fees the "most critical factor is the degree of success obtained." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 436.) The "benefit obtained for the class" is considered the "foremost" consideration in determining the appropriate fee in a common fund case. (*In Re Bluetooth*, 654 F.3d at 942.)

The lodestar-multiplier method begins with a calculation of time spent and reasonable hourly compensation of each attorney and paralegal who worked on the case. Then to compensate counsel for risk, quality, and result, courts commonly apply a "multiplier" to the lodestar in awarding attorneys' fees. California courts often increase the base lodestar with a multiplier after considering: (1) the continuing obligation of Plaintiff's counsel to devote time and effort to the litigation; (2) the extent to which the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee agreement, both from the point of view of eventual success on the merits and securing an award; (4) the experience, reputation, and ability of the attorneys who performed the services, and the skill they displayed in litigation; (5) the amount involved and the results obtained on behalf of the class by Plaintiff 's counsel; and (6) the reaction of the class members. (*See, e.g. Serrano*, *supra*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co*., *supra,* 48 Cal. App. 4th at 1810 n.21.) However, no rigid formula applies, and each factor should be considered only "where appropriate." (See *Dept. of Transp. v. Yuki,* (1995) 31 Cal. App. 4th 1754, 1771; *See* also *Serrano, supra*, 20 Cal.3d at 49.)

1. Time and Effort

Class Counsel, who are experienced wage and hour class action attorneys, have put a significant number of hours in this case. Class Counsel had to conduct substantial investigation, research numerous issues, review and analyze policies, independently analyze time records, and wage statements, as well as dedicate substantial time to analyze data, time records and payroll records (Draper Decl., ¶¶ 4, 13 .) Those efforts, along with negotiating settlement, attempting to obtain preliminary approval, preparing and filing the final approval papers, required a significant amount of time and labor (*Id.*)

Since on or about August 2022, prior to the inception of the filing of this lawsuit on September 22, 2022, the total amount of attorney time estimated to have been expended thus far, and estimated to be expended in finalizing this matter is 264 hours and Class Counsel's total lodestar is $213,125.00 with an approximate multiplier of 0.41. (Draper Decl., ¶ .)

Similar multipliers have been found to be reasonable (*Moreno v. Pretium Packaging L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB, 2021 [finding a multiplier of 2.57 reasonable "in light of the contingent nature of recovery, the complexity of the issues, and the result obtained"].) Further, courts have defined reasonable multipliers on a lodestar cross-check to "range from 2 to 4 or even higher." (*Wershba v. Apple Computer, Inc*. 91 Cal. App. 4th 224, 255 (2001). Courts have also approved a multiplier over 9. *See Weiss v. Mercedes-Benz of N. Am., Inc*., 899 F. Supp. 1297, 1304 (D.N.J. 1995) (9.3 multiplier), *aff'd*, 66 F.3d 314 (3d Cir. 1995). Here, the tasks and work performed by Class Counsel were reasonable and necessary to the prosecution of this case and justified, particularly in light of the result achieved). Accordingly, Class Counsel's requested multiplier of 0.41, and fee request of $87,500 is reasonable, fair, and should be awarded.

2. Extent Litigation Precluded Other Employment

Inherent to class action litigation is the amount of time and labor required to properly adjudicate the case. From start to settlement, judgment or verdict, class action litigation commands commitment, an extensive amount of time, labor and resources to successfully litigate. Although this litigation did not conclusively preclude other employment it did impact Class Counsels' ability to take on other class action cases. Class Counsel work in a boutique law firm with few attorneys and staff. (Draper Decl., ¶ 9.)

3. Contingent Nature of the Agreement

In *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132, the court noted, the economic rationale for contingency cases has been explained as follows: "A contingent fee must be higher than a fee for the same legal services paid as they are performed. As discussed further below, the contingent fee compensates the lawyer not only for the legal services he renders but also for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans." (Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." *Id*. Here, Class Counsel took the matter on a contingent basis (Draper Decl., ¶ 15.)

4. Experience, Reputation, and Ability of Plaintiff's Counsel

Class Counsel also has considerable experience and has demonstrated competence with litigating wage and hour class actions. (Draper Decl., ¶¶ 7-8.) Class Counsel's skill and experience in litigating wage and hour class actions, in state and federal forums, contributed to the results obtained on behalf of the putative class members (*Id.*)

5. Results Obtained on Behalf of the Class by Plaintiff's Counsel

The award of attorney fees should reflect the successful outcome of the case (*Hensley v.*

Eckerhart, (1983) 461 U.S. 424,440.) As already discussed herein and in the preliminary approval motion, this case involves numerous and difficult issues largely precluding a clear-cut outcome as to liability. There also were significant class certification issues stemming from the fact concerning whether individual issues predominate and whether class member declarations and statistical samplings can support certification. Defendant recognized the uncertainty of Plaintiff's claims and vigorously disputed liability, Class Counsels' ability to obtain certification, and the amount of damages. Nevertheless, despite the obstacles as already discussed in the preliminary approval motion and herein, Class Counsel obtained significant financial compensation for the class members. None of the Class Members opted out of the Settlement. Thus, all 145 Class Members are to be paid Individual Class Settlement Amounts out of the NSA. (Romo Decl., ¶ 14.) The *highest* estimated Individual Settlement Amount is $2,014.66, the *average* estimated Individual Settlement Amount is $700.00, and the *lowest* estimated Individual Settlement Amount is $1.56. (Romo Decl., ¶ 16.)

Despite the complexity of the case, Class Counsel have, through the investment of substantial effort, and the resources of their boutique law firm, been able to secure an excellent Settlement on behalf of the Class Members.

6. <u>Reaction of Putative Class Members</u>

As already discussed herein, the reaction of the Class Members has been positive. Specifically, not one of the Class Members objected to Class Counsel's request for attorneys' fees there were no requested exclusion which also provides compelling evidence that the request is fair, adequate, and reasonable.

In sum, based on the six factors discussed above, Class Counsel's request for attorney's fees amount to less than half of Counsel's lodestar should be approved. Additionally, by settling this case prior to trial rather than continuing to litigate issues that remain somewhat unsettled, counsel obtained exceptional results for the class at far less expense to the parties, the counsel and to this Court. Accordingly, a positive multiplier of Class Counsels' lodestar is further warranted. "Considering that our Supreme Court has placed an extraordinarily high value on settlement, it would seem counsel should be rewarded, not punished, for helping to achieve that goal." (*Lealao*, *supra*, 82 Cal. App. 4th at 52.) Multipliers of two to four are commonplace in California class actions and can range even higher. (*Wershba, supra,* 91 Cal. App. 4th at 255; *In re California Indirect Purchases* (October 22, 1998) WL1031494 at * 10, fn 5.) Again, in this case, as noted above, a multiplier is both necessary and appropriate.

B. Class Counsels' Requested Fees Are Reasonable Under the Percentage of the Benefit Method.

1. Attorney's Fees Should be Based Upon the Total Benefit to the Class.

Under California law, courts have the discretion to award fees under the percentage method when fees are drawn from an ascertainable fund. *See Laffitte v. Robert Half Int'l,* (2016) 1 Cal. 5th 480, 503 ("*Laffitte II*") ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created."). The common fund method "better approximates the workings of the marketplace than the lodestar approach" in setting the price of contingent fees. See *Lealao v. Beneficial Cal. Inc.,* (2000) 82 Cal. App. 4th 19, 48 ("*Lealao"*). The percentage method "provide[s] incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace." (*Id*.)

The primary benefit of the percentage method is that it focuses on the benefit conferred on the class as a result of the efforts of Class Counsel. Awarding Class Counsel fees based on a percentage of the recovery has the advantages of eliminating the incentive for attorneys to increase hours unnecessarily, encouraging early settlement of disputes, and preserving judicial resources otherwise used to monitor attorneys' billable hours. See *In re Activision Sec. Litig.,* (N.D. Cal. 1989) 723 F. Supp. 1373, 1378-79; *MANUAL FOR COMPLEX LITIGATION* 4th ed. §14.121 (2004) ("in practice, the lodestar method is difficult to apply, time consuming to administer, inconsistent in result. . . capable of manipulation,... [and] creates inherent incentive to prolong the litigation"); See also *In re Quantum Health Resources, Inc*. (C.D.Cal. 1997) 962 F.Supp. 1254, 1256 (noting that lodestar "creates an incentive to keep litigation going in order to maximize the number of hours included in the court's lodestar calculation").

The percentage of the fund method survives in California class action cases. *Laffitte v Robert Half Intern, Inc.* (2016) 1 Ca. 4th 480, 506. [*See also*. *Chavez v. Netflix, Inc*., (2008) 162 Cal. App. 4th 43 at 65, 66; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.,* (2005) 127 Cal. App. 4th 387, 397 [the common fund doctrine is "frequently applied in class actions when the efforts of the attorney for the named class representatives produce monetary benefits for the entire class"]; *Wershba v. Apple Computer, Inc*., *supra*, 91 Cal. App. 4th at 254.)

2. The Contingent Nature of Class Counsel's Representation Supports the Requested Fees Based on Percentage of the MSA.

Further, the contingent nature of Class Counsels' representation also warrants the requested attorney fees based on the percentage of the Gross Settlement Amount. The risks in taking on any class action are enormous especially in regards to wage-and-hour class actions because the wage laws are still developing and a change in the law could wipe out a Plaintiff's recovery. Litigating a class action through trial takes years and requires the investment of hundreds of thousands of dollars. Attorneys willing to undertake this risk deserve appropriate compensation. As elaborated by the California Supreme Court in *Graham v. Daimler Chrysler Corp.*, (2008) 34 Cal. 4th 553, 579-580, counsel should be awarded a fee enhancer for taking on contingent cases because a "contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans."

As the California Supreme Court specifically explained:

> A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans.

> A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.

Id. at 580. *(citing Ketchum v. Moses*, (2001*)* 24 Cal. 4th 1122, 1132-33).

In the legal marketplace, an attorney whose compensation is entirely dependent on success – who takes a significant risk – should and does expect a significantly higher fee than an attorney who is paid a market rate as the case goes along, win or lose. (*See, e.g., Rader v. Thrasher,* (1962) 57 Cal. 2d 244, 253 ("'[a] contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable'" (citation omitted); *Salton Bay Marina v. Imperial Irrig. Dist.,* (1985) 172 Cal. App. 3d 914, 955 (contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award).

Class Counsel represented the Class Members in this matter and has borne the entire risk and costs of litigation on a pure contingency basis. To date, Class Counsel has not received any compensation and expended litigation costs on behalf of the class. Class action contingency cases are inherently risky. Upon retention, Class Counsel makes a commitment to litigate the case through trial. These types of cases can take years, hundreds of hours of work and cost an enormous amount of money; these risks are known upon retention. The risks involved coupled with the contingency basis of this case further support Class Counsel's request for attorneys' fees and costs (Draper Decl., ¶ 15.)

3. Additional Factors re: Contingency Market Rate Justify the Requested Fee Award

Further, important public policies underlie a court's determination of a motion for attorneys' fees in class actions. Employees who are wronged by an employer's violation of state and federal labor laws should have access to counsel with the ability and resources necessary to litigate complex cases. (*See e.g., Say-On Drug Stores, Inc. v. Superior Court* (2004) 34 Ca1. 4th 319, 340 (enforcement of labor laws and class action device both matters of public policy); Our legal system places unique reliance on private litigants to enforce substantive provisions of employment law through class actions. (See e.g. *Gentry v. Superior Court* (2007) 42 Cal. 4th 443, 450-6 (confirming the public importance of private enforcement of overtime laws through class actions); *Lealao,* 82 Cal. App. 4th (legal system relies 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 the California Court of Appeal recognized in *Thayer v. Wells Fargo Bank, supra,* 92 Cal. App. 4th at 839: "Adequate fee awards are perhaps the most effective means of achieving [the] salutary goal [of encouraging `private attorney general actions and] [c]ourts should not be indifferent to the realities of the legal marketplace or unduly parsimonious in the calculation of such fees." (*See also Lealao,* 82 Cal. App. 4th at 53 (cautioning against fee awards that are too small and therefore "chill the private enforcement essential to vindication of many rights..."). At a minimum, attorneys providing these substantial benefits should be paid an award equal to the amount negotiated in private bargaining that take place in the legal marketplace.(*Deposit Guaranty Nat. Bank, Jackson, Miss. v. Roper* (1980) 445 U.S. 326, 338; *Lealao,* 82 Cal. App. 4th at 49-50.)

4. Counsel's Requested Fee Award is Within California's Benchmark Awards and Thus Reasonable

In addition to the forgoing, Class Counsel's request for attorneys' fees in the amount of $87,500, or not more than 35% of the $250,000 GSA is within the "zone of reasonableness." The fee amount presently sought is not extraordinary, but actually falls at the "average" fee deemed reasonable under California State court authority, as it is recognized that "courts may award attorney's fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million." (*See e.g. Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). *Birch v. Office Depot, Inc.,* USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a $16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a $3.75 million wage and hour class action settlement).

Moreover, the percentage should be measured against the full fund established by the settlement and not upon the total value of the net settlement fund. (*Williams v. MGM-Pathe Communications Co*., (9th Cir. 1997)129 F.3d 1026, 1027.) This method recognizes that the efforts of class counsel established the entire settlement, including non-monetary benefits, for the benefit of the class (*Id*.) In the Ninth Circuit's decision in *Williams*, the parties settled class action claims in favor of the class for a total settlement fund of $4.5 million, and the district court awarded class counsel attorneys' fees based upon "the class members' claims against that fund. *Williams*, 129 F.3d at 1027. The class counsel in *Williams* contended that the district court erred and should have calculated their fee as one-third of the entire $4.5 million settlement fund. *Id*. The Ninth Circuit agreed with class counsel and determined that the district court's award of a fee based solely upon the claims against the settlement fund was an abuse of its discretion.

Ninth Circuit courts have applied *Williams* in a variety of contexts, including claims made settlements without a minimum or maximum recovery. (*See*, *e.g.*, *Browning v. Yahoo! Inc.*, (N.D. Cal. Nov. 16, 2007) WL 4105971 at *13–14(claims-made settlement with no minimum or maximum recovery); *Young v. Polo Retail,* (N.D. Cal. Mar. 28, 2007) WL 951821 at*14-24 (same); *Lopez v. Youngblood*, (E.D. Cal. Sept. 1, 2011) WL 10483569 at *32–43 (reversionary common fund with maximum recovery only). *Hopson v. Hanesbrands Inc*., (N.D. Cal. Apr. 3, 2009) 09 WL 928133 at *11; *Glass v. UBS Financial Services*, (N.D. Cal. Jan. 26, 2007) WL 221862 at *16) (same). In sum, Class Counsels' request for an award of attorney's fees is reasonable.

VI. <u>CLASS COUNSEL'S REQUESTED COSTS ARE REASONABLE</u>.

The settlement provides for repayment of Class Counsel's actual and reasonable costs of litigation in an amount not to exceed $20,000. Class Counsel incurred reasonable litigation costs in bringing this matter to a resolution before trial. The total costs incurred and to be incurred by Class Counsel in this litigation are $19,443.93 (Draper Decl., ¶ 16; Ex.3.)

VII. THE SETTLEMENT ADMINISTRATOR'S EXPENSES ARE REASONABLE

Simpluris was retained to administer the notice and settlement process. Simpluris' duties included, but were not limited to: (a) printing and mailing the Court Approved Class Notice; (b) receiving undeliverable Notices; (c) receiving any requests for exclusion; (d) answering questions from Class Members. Should the Court grant final approval of this Settlement, Simpluris will be responsible for further duties, including but not limited to: (e) calculating Individual Class Settlement Amounts, (f) calculating Individual PAGA Payments, (g) distributing funds, (h) tax-reporting following final approval; (i) mailing Settlement checks; (j) and for such other tasks as the Parties mutually agree or the Court orders Simpluris to perform (Romo Decl,. ¶ 19.) Plaintiff respectfully requests that, as per the Settlement Agreement, Simpluris be awarded costs in the amount of $6,000. (Settlement Agreement, p. 8, ¶ 35.) (Romo Decl. ¶ 19.)

VIII. CONCLUSION

The Parties have negotiated a fair Settlement of the wage and hour claims that likely would not have been brought, let alone successfully resolved, but for the effort and resolve of the Plaintiff and her counsel. The Class Members' positive response indicates that the Settlement is fair and reasonable. Accordingly, Plaintiff respectfully requests that this Court grant final approval of the Settlement Agreement and enter judgment

Respectfully submitted,

Dated: July 1, 2025

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