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7
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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 DENNIS HERRERA, on behalf of
13 himself, the State of California, and others
similarly situated and aggrieved,

14
15 Plaintiff,

16 v.

17 SIGNATURE FLIGHT SUPPORT LLC, a
18 Delaware limited liability company; and
DOES 1-100, inclusive,

19
20 Defendants.

Case No.: 22STCV18367

Assigned for All Purposes to:
Hon. Robert B. Broadbelt
Dept. 53

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

[Filed concurrently with Notice of Motion and
Motion; Declarations of Sepideh Ardestani and
Laura Singh; [Proposed] Order]

Date: May 30, 2024
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Dept.: 53

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Dennis Herrera seeks final approval of a non-reversionary
3 class action settlement resolving wage and hour claims on behalf of 1,200 individuals employed by
4 Defendant Signature Flight Support LLC (“SFS” or “Defendant”) as non-exempt employees during
5 the period of March 16, 2018 to January 12, 2024. The proposed \$1,185,840 total settlement
6 provides about \$654,060 in cash payments to the Class, with an average award of about \$565, plus
7 additional amounts payable under PAGA. The remaining balance will cover a modest service award
8 to Plaintiff, settlement administration costs, civil penalties to the state, and reasonable attorney’s
9 fees and costs. The parties and their counsel finalized the settlement after extensive and difficult
10 arms-length negotiations overseen by an experienced and highly-regarded mediator. The Court
11 conditionally certified the Class and preliminarily approved the settlement on January 12, 2024.
12 Since then, the Court-approved notice form was mailed to the Class Members on February 8, 2024,
13 and they reacted very favorably to the settlement. Zero Class Members requested exclusion, and
14 there are no objections.

15 Class Counsel secured an excellent settlement with SFS after extensive
16 investigation, litigation, and settlement negotiation and administration, all without any
17 compensation for services rendered or costs expended. The class notice duly informed the
18 class members that Class Counsel would request attorney’s fees not to exceed 33.33% of
19 the Gross Settlement Amount, or \$395,280.00, along with reimbursement of no more
20 than \$13,000 for actual costs incurred litigating this matter. As of the filing of this
21 motion, *not one Class Member objected* to the proposed fee award. Consistent with the
22 Settlement and notice, Plaintiff now respectfully requests the Court award Class
23 Counsel's fees in the amount of \$395,280.00 and costs in the amount of \$13,000.00, as
24 described in the Declaration of Sepideh Ardestani (“Ardestani Decl.”), filed herewith.
25 The requested attorney’s fees are well within the range of reasonableness, especially
26 considering the complex and risky nature of this litigation, the contingent risk assumed,
27 the nearly four year delay in payment and, when subjected to a lodestar crosscheck, result
28 in a base lodestar that is higher than the actual fee request.

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

4 **II. BACKGROUND AND PROCEDURAL POSTURE**

5 The details of the procedural and factual background of this matter were outlined in the
6 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (filed on or about July
7 17, 2023). To re-familiarize the Court with this litigation, Defendant SFS, headquartered in
8 Orlando, Florida, operates the world’s largest network of fixed base operations at airports.
9 Defendant has over 200 locations all over the world providing essential support services for business
10 and private aviation, including refueling, hangarage, maintenance, repair, and overhaul. Plaintiff
11 Herrera worked for SFS as a line service technician from October 2018 to June 2021, when he went
12 on workers compensation leave following a work-related injury. His duties included fueling aircraft,
13 helping passengers with luggage, lavatory services in the airplanes, and towing planes. He typically
14 worked 5 days a week and at least 8 hours per day, and he alleges he regularly worked both overtime
15 and “off the clock” without proper pay. [Ardestani Decl., ¶ 2.]

16 On March 16, 2022, Plaintiff served the Labor & Workforce Development Agency
17 (“LWDA”) and SFS with a PAGA notice. After exhausting his administrative remedies, he filed a
18 PAGA-only complaint against Defendant in Los Angeles County Superior Court on June 3, 2022
19 (the “PAGA Action”) alleging Defendant’s failure to pay all minimum wages, overtime wages,
20 premium wages in lieu of missed and denied meal and rest periods, failure to reimburse business
21 expenses and failure to pay all wages due at separation of employment. He alleged his PAGA
22 claims on behalf of Aggrieved Employees including all non-exempt employees that worked for
23 Defendant in California from March 30, 2021 to the present. [Ardestani Decl., ¶ 3.]

24 On March 16, 2022, Plaintiff also filed a separate class action complaint on behalf of
25 himself and a putative class defined to include all non-exempt individuals who are or previously
26 employed by SFS in California during the class period of March 16, 2018 through the present,
27 based on the same alleged wage and hour violations as the PAGA Action (the “Class Action”). On
28 June 6, 2022, Defendant removed the Class Action to federal court under the Class Action

1 Fairness Act, where it remains pending. [Ardestani Decl., ¶ 4.]

2 After Plaintiff filed his complaints, both Parties propounded and responded to written
3 discovery in the Class Action, and SFS deposed Plaintiff over two days in December 2022 and
4 February 2023. In the PAGA Action, SFS filed a motion to stay the case pending resolution of the
5 Class Action, which this Court denied on November 18, 2022. Eventually, after engaging in several
6 meet and confer discussions regarding discovery, potential law and motion, and other case
7 management issues, the Parties ultimately agreed to attempt mediation in both cases. The Parties
8 also agreed to undertake additional and substantial informal discovery to facilitate an exchange of
9 information necessary to engage in a meaningful mediation. [Ardestani Decl., ¶¶ 5-6.]

10 On May 24, 2023, the Parties participated in a global mediation with Todd Smith, Esq., a
11 respected wage and hour class action mediator and, following a mediator's proposal, the Parties
12 reached agreement on all major issues to resolve both cases. [Ardestani Decl., ¶ 7.] The Court
13 granted preliminary approval on January 12, 2024.

14 Class Notices were mailed to class members on February 8, 2024, with a 60-day window
15 (to April 8, 2024) for class members to opt out or object to the proposed settlement.
16 [Declaration of Laura Singh ("Singh Decl."), ¶ 7.]

17 **III. TERMS OF THE PROPOSED SETTLEMENT**

18 **A. Deductions from the Settlement**

19 The Parties have agreed (subject to the Court's approval) to resolve this matter for the non-
20 reversionary amount of \$1,185,840.00 ("Gross Settlement Amount" or "GSA"), which includes
21 attorney's fees of up to \$395,280.00 (33.33% of the GSA) actual litigation expenses not to exceed
22 \$13,000.00, an enhancement award to Plaintiff not to exceed \$10,000.00, administration costs to
23 CPT Group, Inc. of \$13,500.00, and PAGA Penalties of \$100,000, of which 75% (\$75,000) will go
24 to the LWDA and the remaining 25% (\$25,000.00) will be distributed pro rata to the Aggrieved
25 Employees. Defendant will pay all employer-side payroll taxes separate and apart from the GSA,
26 and no part of the GSA will revert to Defendant. [Ardestani Decl., ¶ 8.]

27 **B. Certification of the Settlement Class**

28 The Court conditionally certified a settlement class defined to include "all current and

1 former hourly paid or non-exempt employees who have worked for Defendant in California from
2 during the Class Period,” which runs from March 19, 2018 to February 24, 2022. The Settlement
3 Administrator ultimately mailed class notices to 1,200 individuals identified as members of
4 the Class. [Singh Decl., ¶ 7.] Nothing has changed to require reconsideration of the
5 Court’s certification of the Settlement Class.

6 **C. The Benefit Conferred on the Settlement Class**

7 As noted, at least \$13,000 from the Gross Settlement Amount will be distributed to the
8 Participating Class Members. This is a cash settlement that does not require Participating Class
9 Members to submit a claim form to receive their settlement share. Participating Class Members will
10 receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each
11 settlement share will be allocated to wages and the remaining eighty percent will be allocated to
12 expenses, penalties and interest, which allocation is consistent with SFS’s potential liability as
13 discussed below, and SFS will pay applicable employer-side payroll taxes with separately from the
14 GSA. Subject to the Court’s approval, any amounts not claimed (because a class member does not
15 cash his or her settlement check) will be forwarded to the California State Controller’s Unclaimed
16 Property Fund. [Ardestani Decl., ¶ 9.]

17 Each Participating Class Member will receive a share of the Net Settlement Amount based
18 on his or her total weeks worked for SFS during the Class Period while employed in a non-exempt
19 position. Thus, each Class Member’s Individual Settlement Payment will be calculated using criteria
20 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
21 missed meal and rest breaks, and potential statutory penalties under applicable law. These methods
22 are intended to ensure each Class Member receives a portion of the available settlement funds
23 corresponding to the relative value of his or her potential claims. The proposed allocation provides
24 a reasonable way to compensate Class Members based on the amount of time they worked for SFS,
25 their job position held, and the number of instances they missed a meal break and/or rest break, were
26 not provided compensation in lieu of such missed breaks, or lost hours worked due to the alleged
27 off the clock work. [Ardestani Decl., ¶ 10.]

1 The average class award will be approximately \$565, and the largest award will be over
2 \$2,250. There are 777 Class Members also eligible to receive a share of the PAGA civil penalties,
3 and their average PAGA award will be about \$20.83. [Singh Decl., ¶ 13.]

4 **D. Settlement Administration**

5 CPT Group, Inc., as the Court-approved Settlement Administrator, mailed the Notice
6 Packet to the Class members after making all reasonable effort to ascertain the best mailing
7 address, including running each address through the National Change of Address database and
8 "skip-tracing" any Notice Packets returned as undeliverable. [Singh Decl., ¶¶ 3-9.] The Class
9 Notice, previously approved by the Court, duly informed Class Members of the settlement
10 terms, including the estimated relief each Class Member will receive, the amounts to be
11 requested for attorney's fees and the class representative enhancement awards, and the right to
12 opt out of or object to the settlement. [Singh Decl., ¶ 7, Exh. A.] CPT mailed 1,200 Notice
13 Packets on February 8, 2024. [Singh Decl., ¶ 7.] Ultimately, only 9 Notice Packets were deemed
14 undeliverable, representing a 99.2% success rate. [Singh Decl., ¶ 9.] The 60-day response
15 window for objecting to the settlement expired on April 8, 2024. [Singh Decl., ¶¶ 7.] As of the
16 filing of this motion, CPT has received zero requests for exclusion (for a 100% participation
17 rate), and zero objections to the settlement. No disputes have been submitted regarding the
18 information used to calculate class member settlement shares. [Singh Decl., ¶¶ 10-11.]

19 **E. Release of Claims**

20 Upon final approval, Participating Class Members shall forever release the Released Parties
21 for the Released Claims for the Class Period, including all claims pleaded in the Operative
22 Complaint, and which could reasonably have been alleged, based on the Class Period facts,
23 allegations, and/or claims stated in the Operative Complaint, for work performed during the Class
24 Period, and as specifically detailed in Section 6.2 of the Agreement. Additionally, the Aggrieved
25 Employees will the Released Parties from all claims for PAGA penalties that were alleged, or
26 reasonably could have been alleged, based on the PAGA Period facts in the Operative Complaint,
27 and PAGA Notice, and as detailed in Section 6.3 of the Agreement. [Ardestani Decl., ¶ 11.]

28 /////

1 **F. PAGA and Notice to the LWDA**

2 As noted, the Parties allocated \$100,000 to payment of alleged civil penalties under PAGA,
3 and Plaintiff requests the Court approve that amount as fair, reasonable and adequate, and consistent
4 with the purposes underlying PAGA. As required by Labor Code section 2699(l)(2), Plaintiff gave
5 notice of the settlement and the final approval hearing to the LWDA via its online portal. [Ardestani
6 Decl., ¶ 12; Exh. 1.]

7 **IV. ARGUMENT**

8 The law favors settlement, particularly in class actions where substantial resources can
9 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
10 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
11 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
12 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
13 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
14 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
15 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
16 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
17 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
18 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
19 two-step process intended to determine whether, under the totality of circumstances, the
20 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
21 Cal.App.4th at 245.

22 On a motion for final approval, the trial court is charged with determining whether, in
23 light of the total circumstances of the action and the response of the class members to the
24 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
25 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
26 determination and may consider a number of relevant factors, including: the strength of
27 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
28 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.

A. 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 were no objections and no Class Members requested exclusion, for a 100% participation rate.

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 Todd Smith, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Ardestani Decl., ¶ 7.] Moreover, Plaintiff and his counsel were well-informed about the facts and the law, and counsel at Crosner Legal have years of experience litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Ardestani Decl., ¶¶ 29-33.] Defendant SFS 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 Favorably to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and zero Class Members requested exclusion. [Singh Decl., ¶¶ 10-11.] 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

1 Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics,
2 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) (“It is well-settled that the reaction of the class to the
3 settlement is perhaps the most significant factor to be weighed in considering its adequacy”)
4 (internal quotation marks omitted).

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

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

14 Prior to mediation, the parties engaged in extensive informal discovery to facilitate
15 settlement discussions. As a result, Plaintiff reviewed documents and information regarding SFS’s
16 payroll practices, pay stubs and time records for a sampling of class members, meal and rest break
17 policies, etc., and information from Defendant regarding class size and breakdown of job positions,
18 work weeks, rates of pay, and other information used to formulate a damages model. This extensive
19 information then was analyzed by a consulting expert to look for meal and rest break violation rates,
20 time lost due to off the clock work, and other issues relevant to liability and damages. Plaintiff’s
21 counsel is confident they obtained sufficient information to enable them to understand the law and
22 facts of this case and make an informed decision regarding the proposed settlement and whether it
23 is in the best interests of the class. Plaintiff substantially discounted the value of these claims in
24 light of the multiple and considerable risks posed by proceeding with the litigation. [Ardestani Decl.,
25 ¶¶ 6, 13.]

26 First, on the meal/rest break claim, Plaintiff contends Defendant failed to provide legally
27 compliant meal and rest breaks, and he contends SFS’s written policies did not comply with California
28 law on their face for at least part of the Class Period. For example, Plaintiff argued the policies didn’t

1 specify that meal periods must be taken before the end of the fifth hour of work and restricting employees
2 from leaving the premises during a lunch break or rest break. Plaintiff also contends employees were
3 required to carry two-way radios and respond to calls during their meal and rest periods. Beyond these
4 infirm policies, Plaintiff's review of the time records produced suggests significant "de facto" meal
5 period violations, with around 35% of all shifts reflecting at least one unique violation, mainly due to
6 being missed or late. Additionally, Plaintiff claims this violates Labor Code sections 512, 226.7, and
7 the applicable IWC Wage Orders, as well as Brinker Restaurant Corp. v. Superior Court (2012) 53
8 Cal.4th 1004 and Augustus v. ABM Security Serv., Inc. (2016) 2 Cal.5th 257 for failure to provide
9 all required meal periods, and within the required time frames, and for failing to relinquish control
10 over how Class Members utilize their meal and rest period times. [Ardestani Decl., ¶ 14.]

11 Defendant denies Plaintiff's contentions, claiming it made meal and rest breaks available to
12 Class Members in compliance with California law. Defendant contends its meal and rest break
13 policies are lawful and that its policies and practices comport with the flexibility the *Brinker* court
14 held was integral to California's meal and rest period requirements. Per SFS, Class Members were
15 frequently reminded to take all meal and rest breaks, and Defendant contends its time records
16 demonstrate that Class Members took duty-free, timely meal and rest breaks. SFS further
17 emphasized it paid millions in meal period premiums for documented violations. Finally, Defendant
18 argues that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims
19 would require individualized inquiry, including whether there was an unlawful companywide
20 policy, whether employees had the opportunity to take meal and rest periods, whether they
21 voluntarily chose to forego their meal and rest periods, and whether Defendant ever prevented them
22 from taking meal and rest periods. Accordingly, Defendant contends these claims are vulnerable to
23 a ruling that class treatment is not appropriate. Without taking into consideration any of Defendant's
24 defenses to certification or on the merits, Plaintiff and his experts estimate SFS faces **\$2,117,000** in
25 damages for meal period violations based on a 100% violation rate less premiums actually paid, and
26 **\$10,051,000** in damages under on the rest period claims, also based on a 100% violation rate.
27 [Ardestani Decl., ¶ 15.]
28

1 Plaintiff further contends Defendant failed to pay all minimum wages due, and alleges
2 employees were uncompensated for working off-the-clock. Plaintiff claims he and the Class
3 Members were required to continue working after clocking out to complete unfinished tasks, and he
4 further alleges Defendant applied a rounding policy to employee time punches that favored SFS and
5 resulted in employees losing substantial amounts of compensable time. Based on Plaintiff's own
6 experience, he worked, on average, one hour off-the-clock per workweek and was required by his
7 supervisors to continue finishing job tasks after clocking out for his workday. This time was
8 certainly not "de minimis" and was also not compensated by Defendant. Based on expert analysis,
9 off-the-clock damages amount to about **\$2,765,000**, assuming one hour of off-the-clock work per
10 shift by each employee during the Class Period. Based on expert analysis of a 5% sampling of time
11 and wage records, rounding occurred during the first part of the Class Period and ended on April
12 10, 2020. During this time frame, employee clock in punches were rounded to the quarter hour
13 which resulted in underpayment of significant minimum wages. Per Plaintiff's experts, the rounding
14 policy resulted in the loss of about 1,800 hours in compensable time and underpayment of wages by
15 about **\$48,000**. [Ardestani Decl., ¶ 16.]

16 SFS employees also worked substantial overtime hours throughout the Class Period but were
17 only paid overtime pay when they worked over forty hours per workweek, as Plaintiff contends SFS
18 failed to pay daily overtime when a Class Member worked over eight hours in one workday. Labor
19 Code section 510 provides that any work in excess of eight hours in one workday **and** any work in excess
20 of 40 hours in any one workweek shall be compensated at the rate of no less than one and one-half times
21 the regular rate of pay for an employee. Based on the sampling provided to Plaintiff's expert, 10.2% of
22 pay periods showed unpaid daily overtime, resulting in the loss of about **\$80,000** in overtime premiums
23 to the Class. [Ardestani Decl., ¶ 17.]

24 SFS denied all of these allegations and contended in properly tracked and paid for all
25 compensable employee hours worked at the correct rates, and that its policies prohibited off the
26 clock work. It further emphasized time rounding policies and/or procedures are permissible under
27 California law if they are "fair and neutral" on their face and "used in such a manner that will not result,
28 over a period of time, in failure to compensate the employees properly for all the time they have actually

1 worked,” See’s Candy Shops, Inc. v. Superior Court (2012) 210 Cal.App.4th 889, and any time rounding
2 complied with this mandated. Finally, Defendant argued the off the clock claims are not susceptible
3 to common proof, as the claims would require individualized inquiry as to whether any employee
4 was asked to work off the clock and whether the company was aware of any such work. Accordingly,
5 Defendant contends these claims are not appropriate for class treatment. [Ardestani Decl., ¶ 18.]

6 On the expense reimbursement claims, Plaintiff claims Defendant failed to reimburse for use
7 of their personal cell phones for work purposes, and also failed to reimburse for certain tools needed
8 to perform the job. Cochran v. Schwan’s Home Serv. (2014) 228 Cal.App.4th 1137, 1144. In
9 response, SFS contended there was no need for employee’s to use their personal phones, and any
10 use of their own phones was purely for personal convenience and not compensable. It likewise
11 contended it provided employees with all equipment required to perform their duties. Without taking
12 into consideration any of Defendant’s defenses to certification or on the merits, Plaintiff’s experts
13 calculated Defendant’s maximum exposure for this claim at about **\$490,000** in damages based on
14 \$20/month in unreimbursed expenses. [Ardestani Decl., ¶ 19.]

15 On the wage statement claim, Plaintiff alleges SFS’s wage statements were inaccurate based
16 on the minimum wage/overtime issues discussed above, and also that the wage statements were
17 inaccurate on their face because they failed to correctly state the total hours worked and failed to
18 accurately list the applicable hourly rates of pay. Specifically, Defendant’s wage statements do not
19 provide accurate overtime rates and accurate overtime hours because instead of multiplying the regular
20 rate of pay by one and one-half, Defendant’s wage statements provide two overtime rate categories (an
21 “overtime” and “overtime premium” category). As such, “the total regular and overtime hours listed in
22 [Defendant’s] wage statements, when added together, do not sum up the total hours worked by the
23 employee during the pertinent time period. Without additional information regarding the wage
24 statement, an employee cannot simply arrive at the sum of hours worked.” McKenzie v. Fed. Express
25 Corp. (C.D. Cal. 2011) 765 F. Supp. 2d 1222, 1229. Plaintiff also derivatively alleges SFS failed to
26 timely pay all wages that were due and owing upon separation of employment. Should the primary
27 claims for unpaid wages fail, Plaintiff’s derivative claims for wage statement penalties and waiting
28 time penalties would also fail. Defendant also contends it would not be liable for waiting time

1 penalties because a “good faith dispute” exists over the payment of past wages. Cal. Code Regs. Tit.
2 8 § 13520; Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant
3 contends Plaintiff would have to prove that Defendant “willfully” failed to pay Class Members
4 appropriate wages due upon separation of employment. Without taking into consideration any of
5 Defendant’s defenses to certification or on the merits, Plaintiff’s experts calculated Defendant’s
6 maximum exposure for wage statement penalties at **\$2,203,000** and based on 673 employees and
7 20,567 pay periods in the applicable limitations period. Based on 617 separated employees during
8 the limitations period, waiting time penalties amount to about **\$3,386,000**. [Ardestani Decl., ¶ 20.]

9 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$8.7 million
10 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at
11 issue. [Ardestani Decl., ¶ 21.] As with the class claims, Plaintiff discounted the potential PAGA
12 penalties based on Defendant’s various defenses on the merits and also accounted for the Court’s
13 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code
14 § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded
15 penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco
16 Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA
17 penalties denied after trial). Accordingly, the Parties allocated \$100,000 to PAGA penalties.

18 Plaintiff submits this amount is reasonable under the circumstances and in line with
19 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
20 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
21 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
22 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
23 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
24 \$345,000 and the possible weaknesses in plaintiffs’ case, or 2.2 percent of total settlement).
25 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
26 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018)
27 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where
28

1 "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not
2 objected to the settlement”).

3 Lastly, SFS emphasized that around 80-85% of the putative class members signed arbitration
4 agreements with both class action and PAGA waivers and accordingly these individuals could be
5 required to arbitrate their claims individually rather than participate in a class action. This
6 development further complicated an already difficult path to class certification and, although
7 Plaintiff believes he has arguments for deeming the arbitrating agreements unconscionable and
8 unenforceable, this factor nevertheless significantly influenced Plaintiff’s evaluation of the case.
9 [Ardestani Decl., ¶ 22.]

10 Thus, Plaintiff and his counsel discounted the value of the class claims consistent with the
11 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
12 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
13 real and substantial risks – settlement on the proposed terms and without prolonged and costly
14 litigation was in the best interests of the class. The overall \$1,185,840 recovery represents a
15 significant percentage of Defendant’s potential exposure, and given Defendant’s multi-layered
16 defenses and all other potential risks of continued litigation, a total recovery for the class of
17 \$1,185,840, which will result in average award of some \$565 per class member, plus additional
18 sums under PAGA, is a significant result well within the range of reasonableness considering all
19 potential outcomes, and it will provide direct monetary awards to all Class Members without further
20 delay. [Ardestani Decl., ¶¶ 23-24.]

21 Importantly, the mere fact that a settlement does not provide the same recovery as might be
22 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
23 Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the settlement
24 process...even if the relief afforded by the proposed settlement is substantially narrower than it
25 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
26 public interest may indeed be served by a voluntary settlement in which each side gives ground in
27 the interest of avoiding litigation”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000)
28 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount to only a fraction of

1 the potential recovery does not, in and of itself, mean that the proposed settlement is grossly
2 inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal.
3 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
4 though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc.
5 (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
6 different from the question whether the settlement is perfect in the estimation of the reviewing
7 court”). Importantly as well, the proposed settlement is non-reversionary and will provide
8 immediate benefits to the Class Members without a claims process. *White*, 803 F.Supp.2d at 1098;
9 c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed.
10 2010) at 20, available at <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf>. (reversionary
11 provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his
12 counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for
13 the Class.

14 **B. The Class Representative Service Award Is Justified Given the Risks and**
15 **Should be Approved**

16 The requested service award is reasonable in light of the benefits Plaintiff
17 conferred upon the entire Class, resulting in a benefit to all Class Members and the State of
18 California, the time spent assisting counsel with the investigation and prosecution of these
19 claims, commitment to responding to discovery, including sitting for his deposition, and
20 consenting to the proposed Agreement. Furthermore, by attaching his name to a lawsuit,
21 Plaintiff also took on the reputational risk that future employers would learn of their
22 participation in this case and unfairly associate them with costly litigation, costing them future
23 employment opportunities. Any future employer could easily perform a simple Google search –
24 an unauthorized simple background check unknown to Plaintiff that can still provide a plethora
25 of information – and conclude Plaintiff are not worth the risk of hiring. This kind of reputational
26 risk that an incentive award is meant to compensate. Furthermore, in pursuing this action on
27 behalf of the Class, Plaintiff risked a judgment for attorney’s fees and costs in the event this
28 matter had been lost. [Ardestani Decl., ¶ 25; Declaration of Dennis Herrera (filed with the

1 preliminary approval motion), ¶¶ 2-9.] For these reasons, an enhancement payment of \$10,000 is
2 fair and reasonable, and in line with awards in prior cases. Staton v. Boeing (9th Cir. 2003) 327
3 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments
4 ranging from \$2,000 to \$25,000).

5 **C. Settlement Administration Costs**

6 The settlement provides for a payment to CPT for its services as the Settlement
7 Administrator. As set forth in the Declaration of Laura Singh, CPT has performed and will
8 continue to perform its required duties through final distribution of the settlement funds and
9 incurred \$13,500 in fees and expenses. [Singh Decl., ¶ 14.] Accordingly, Plaintiff respectfully
10 requests the Court approve payment of \$13,500 to CPT from the GSA. [Ardestani Decl., ¶ 26.]

11 **V. ATTORNEY'S FEES AND COSTS**

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

14 This Court has discretion over the amount of attorneys' fees awarded and court
15 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
16 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
17 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
18 marketplace for cases involving significant contingent risk, such as this one. Deposit
19 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
20 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
21 private bargaining, if it were truly possible, might have reached" in determining a reasonable
22 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
23 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
24 justified by the work performed, the benefits obtained, and the contingent risk assumed.

25 As addressed in detail above, at the time the parties reached the tentative settlement
26 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
27 some or all the claims would not be certified for class treatment, and on the merits as
28 Defendant had strong arguments that its compensation policies were legal and properly

1 compensated the class members. Even if Plaintiff certified some or all of the claims and
2 ultimately prevailed on the merits, it undoubtedly would have taken several years to realize
3 any recovery while they pursued class certification, trial, and an almost certain appeal.

4 [Ardestani Decl., ¶¶ 14-22.]

5 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
6 obtain, and the settlement provides substantial cash payments to Class Members, with an
7 average award of about \$565, and with a maximum award of over \$2,250. Importantly as
8 well, the Class Members have been overwhelmingly supportive of the Settlement – as there
9 are no objections to the settlement and no opt outs. [Singh Decl., ¶¶ 10-13.]

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

11 The United States Supreme Court has ruled the parties to a class action properly may
12 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
13 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
14 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
15 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
16 should not result in a second major litigation. Ideally, of course, litigants will settle the
17 amount of a fee." The United States Supreme Court has reemphasized this policy and further
18 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
19 (1984) 465 U.S. 886, 902 n.19.

20 As part of the Settlement, SFS agreed not to object to an award of no more than
21 33.33% of the GSA for attorney's fees, or \$395,280.00, and up to \$13,000 in reimbursement
22 for litigation costs and expenses. Such a fee is commensurate with what the market would
23 provide for similar services and the Court therefore can most certainly enforce the agreement.
24 As California's Court of Appeal has instructed:

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

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

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

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

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

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

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

22 Indeed, both California and federal courts have long recognized an appropriate method
23 for determining the award of attorney's fees is based on a percentage of the total value of
24 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
25 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
26 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
27 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
28 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

1 achieve increased access to the judicial system for meritorious claims and to enhance
2 deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without
3 prosecution on a contingent basis and use of the class action mechanism, the courthouse door
4 would effectively be closed to most class members due to the relatively small size of their
5 individual claims in relation to the enormous time and cost associated with class action
6 litigation.

7 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
8 this action of no more than 33.33% of the total amount recovered by the Class via the lawsuit,
9 or \$395,280.00. The percentage requested is justified for the reasons set forth further below,
10 comports with fee awards calculated on a percentage-of-the-benefit basis, and is in line with
11 the California Supreme Court's approval of a 1/3 fee award in Lafitte.. Indeed, review of class
12 action settlements shows that courts have historically awarded fees in the range of 20 to 50
13 percent, depending upon the circumstances of the case. In re Warner Communications Sec.
14 Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common
15 fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03,
16 pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a
17 common fund in order to assure that the fees do not consume a disproportionate part of the
18 recovery obtained for the class, although somewhat larger percentages are not
19 unprecedented.").

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

21 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
22 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
23 an objective measure of the work performed into the calculation of a reasonable attorney fee."
24 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 329.7 hours of time on this matter,
25 resulting in a modest and very reasonable lodestar of \$307,315.00.

26 As is fully detailed in the Ardestani Declaration, Class Counsel's efforts included: (1)
27 extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal
28 research, obtaining Plaintiff's employment records, research into similar claims and claims against

1 other employers in the same industry, and attempts to locate and contact other SFS employees; (2)
2 drafting a PAGA notice letter; (3) drafting the initial complaint and related documents, and
3 drafting a first amended complaint; (4) case management, including communications with defense
4 counsel, meeting and conferring/preparing case management statements, attending the initial
5 CMC, etc.; (5) opposing defendant's motion to stay the matter; (6) propounding extensive written
6 discovery and review and analysis of the responses; (7) lengthy discussions with defense counsel
7 regarding settlement/mediation and informal discovery needed for meaningful settlement
8 discussions; (8) defending plaintiff's deposition; (9) engaging in substantial informal discovery,
9 including propounding informal discovery "requests" and reviewing documents and other
10 information produced; (10) drafting a mediation brief and accompanying damages model after
11 review and analysis of defendant's informal discovery production; (11) attending an all-day
12 mediation; (12) negotiating and drafting the settlement agreement and related documents; (13)
13 drafting the motion for preliminary approval; (14) administration of the settlement, including
14 communications with the Settlement Administrator and settlement class members; (15) drafting
15 the motion for final approval and motion for attorney's fees, and attending the final approval
16 hearing; and (16) extensive communications with the Plaintiff regarding case status, case
17 investigation and document review, mediation, and settlement terms. Additionally, Class Counsel
18 will incur additional time following final approval to, inter alia, respond to class member inquiries,
19 work with the Settlement Administrator on the distribution of settlement funds, and on the
20 compliance hearing and amended judgment. [Ardestani Decl., ¶ 28, Exh. 2.]

21 In pursuing this matter, Class Counsel incurred total attorney's fees of \$307,315.00,
22 the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to
23 a successful conclusion (329.7 attorney), and the requested attorney hourly rates are reasonable
24 and comport with hourly rates charged by other attorneys with similar experience in this practice
25 area in California. [Ardestani Decl., ¶¶ 29-42.] On a lodestar basis, the fee request of \$395,280
26 results in a multiplier of 1.29, which is a modest enhancement entirely in line with California
27 law. Indeed, California courts routinely approve multipliers in the in the 2-4 range to
28 compensate for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162

1 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of 2.5);
2 Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); City of
3 Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).)
4 Class Counsel submits the requested 1.29 multiplier effectively operates to show that the
5 percentage fee request is reasonable considering the challenges presented in this contingency
6 fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and
7 delay in payment during the 2 years counsel has been representing Plaintiff. Thus, the
8 multiplier results in a fee constituting a fair return on the contingency.

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

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

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

24 **1. The Results Achieved.**

25 Class Counsel obtained an excellent result in this case for the Class Members. The
26 Settlement provides real monetary benefits to the Class Members, and the Settlement is
27 particularly advantageous to the Class Member because the proceeds will be distributed
28 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.

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

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

12 At the time of filing the complaint, Class Counsel recognized that they would have to
13 expend a substantial amount of time and advance significant costs to prosecute a statewide
14 class action suit with no guarantee of compensation or reimbursement, in the hope of
15 prevailing against a sophisticated company represented by first-rate attorneys. Despite
16 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
17 of class certification and the ability to prove class-wide and individual damages. In light of
18 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would
19 dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's
20 firm, not receiving any compensation for several years while simultaneously advancing
21 litigation costs posed considerable risk and difficulty. [Ardestani Decl., ¶¶ 43-44.]

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

23 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
24 experience. The issues presented in this case required more than just a general appreciation of
25 wage and hour law and class action procedure. This Settlement was possible only because
26 counsel persuaded SFS that Plaintiff and the putative class had a realistic chance of
27 prevailing on their claims despite SFS's contrary arguments, and that the case would be
28 pursued through class certification and trial if necessary. In successfully navigating these

1 hurdles, Class Counsel displayed appropriate skill while pursuing a risky and difficult
2 case.

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

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

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

22 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
23 the investment of unnecessary time in a case, and the adverse resolution of any one of several
24 difficult issues present in this matter could have doomed the entire effort. As discussed, the
25 attorney's fees in this case were not only contingent but fairly risky, and there was always a
26 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
27 [Ardestani Decl., ¶¶ 43-44.] Accordingly, the contingent nature of the fee and the financial
28 burdens on Class Counsel and Plaintiff also support the fee requested.

1 **5. Awards in Other Cases**

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

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

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

27 Per the Ardestani Declaration, Class Counsel incurred a total of \$18,080.85 in
28 expenses in connection with this matter. These expenses include amounts paid for court

1 filing fees, deposition costs, service of process, expert fees, postage, and mediation fees,
2 all of which are costs normally billed to and paid by the client. These costs were
3 reasonably incurred in the prosecution of this matter, and should be reimbursed to the
4 \$13,000 cap provided for in the Settlement Agreement. Plaintiff respectfully requests the
5 Court authorize reimbursement of counsel's costs in the amount of \$13,000. [Ardestani
6 Decl., ¶¶ 45-46.]

7 **VI. CONCLUSION**

8 For all the foregoing reasons, Plaintiff Dennis Herrera respectfully requests that the Court
9 grant this motion and grant final approval of the proposed class action settlement and approve the
10 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
11 the Settlement Administrator's fees and expenses, approve the requested class representative
12 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
13 judgment in this action. Finally, Plaintiff requests the Court set a final compliance hearing for
14 May 29, 2025, or a later date convenient for the Court.

15
16 Dated: May 6, 2024

CROSNER LEGAL, PC

17
18 By: 
19 Jamie K. Serb, Esq.
20 Sepideh Ardestani, Esq.
21 Zachary M. Crosner, Esq.
22 Attorneys for Plaintiff,
23 DENNIS HERRERA
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