

1 Zachary M. Crosner (Bar No. 272295)
2 zach@crosnerlegal.com
3 **CROSNER LEGAL, PC**
4 9440 Santa Monica Blvd., Ste. 301
5 Beverly Hills, CA 90210
6 Tel: (866) 276-7637
7 Fax: (310) 510-6429

8 Attorneys for Plaintiff Evan Reed

9 **HAIG B. KAZANDJIAN LAWYERS, APC**
10 Haig B. Kazandjian, Bar No. 278622
11 haig@hbklawyers.com
12 Cathy Gonzalez, Bar No. 310625
13 cathy@hbklawyers.com
14 801 North Brand Boulevard, Suite 970
15 Glendale, California 991203
16 Phone: (818) 696-2306
17 Fax: (818) 696-2307

18 Attorneys for Plaintiff Christine Souci

19
20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **FOR THE COUNTY OF SAN FRANCISCO**
22

23 EVAN REED, as an individual on behalf of
24 himself and on behalf of all others similarly
25 situated and Aggrieved Employees;
26 CHRISTINE SOUCI, individually and on
27 behalf of all other Aggrieved Employees,

28 Plaintiff,

29 vs.

30 WILLIAMS-SONOMA STORES, INC., a
31 California corporation; WILLIAMS-
32 SONOMA, INC., a Delaware corporation,
33 and DOES 1 - 100, inclusive,

34 Defendants.

Case No.: CGC-22-598118

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS AND
REPRESENTATIVE ACTION SETTLEMENT,
AND REQUEST FOR ATTORNEYS' FEES
AND COSTS

[Filed concurrently with Memorandum of Points
and Authorities; Declarations of Zachary M.
Crosner, Haig B. Kazandjian, Evan Reed,
Christine Souci, and Makenna Snow; [Proposed]
Order]

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1 **I. INTRODUCTION**

2 Plaintiffs and Class Representatives Evan Reed and Christine Souci seek final approval of
3 a non-reversionary class and representative action settlement (“Settlement”) resolving wage and
4 hour claims on behalf of 5,593 individuals who were employed by Williams-Sonoma Stores, Inc.
5 (collectively with its parent company Williams-Sonoma, Inc. “Williams Sonoma” or
6 “Defendants”) as hourly non-exempt retail store employees in California (individually, “Class
7 Member;” collectively the “Settlement Class” or “Class Members”) during the class period of
8 February 1, 2020 through October 26, 2022 (“Class Period.”) The proposed \$850,000 total
9 settlement (“Total Maximum Settlement Amount”) provides about \$416,940 in cash payments to
10 the Settlement Class, with an average award of about \$74, plus additional amounts payable under
11 PAGA. The remaining balance will cover service awards to Plaintiffs, settlement administration
12 costs, civil penalties to the state, and reasonable attorneys’ fees and costs. The parties and their
13 counsel finalized the Settlement after extensive and difficult arms-length negotiations overseen by
14 an experienced and highly-regarded mediator. The Court conditionally certified the Class and
15 preliminarily approved the Settlement on February 7, 2023. Since then, the Court-approved class
16 notice form (“Class Notice”) was mailed to the Class Members on March 21, 2023, and they
17 reacted very favorably to the Settlement. Only 5 Class Members requested exclusion (or 0.09%),
18 and there are no objections.

19 Class Counsel secured an excellent Settlement with Defendants after extensive
20 investigation, litigation, and settlement negotiation and administration, all without any
21 compensation for services rendered or costs expended. The Class Notice duly informed
22 the Class Members that Class Counsel would request attorneys’ fees not to exceed 1/3 of
23 the Total Maximum Settlement Amount, or \$283,333.33, along with reimbursement of no
24 more than \$25,000 for actual costs incurred litigating this matter. As of the filing of this
25 motion, *not one Class Member objected* to the proposed fee award. Consistent with the
26 Settlement and Class Notice, Plaintiffs now respectfully request the Court award Class
27 Counsel's fees in the amount of \$283,333.33 and actual costs in the amount of \$9,725.87,
28 as described in the Declarations of Zachary M. Crosner (“Crosner Decl.”) and Haig B.

1 Kazandjian (“Kazandjian Decl.”) filed herewith. The requested attorneys’ fees are well
2 within the range of reasonableness, especially considering the complex and risky nature
3 of this litigation, the contingent risk assumed, the nearly two-plus year delay in payment
4 and, when subjected to a lodestar crosscheck, result in a very modest lodestar
5 enhancement of 1.11.

6 Accordingly, on behalf of themselves and the Settlement Class, Plaintiffs respectfully
7 request the Court grant this motion, give full and final approval to the Settlement, grant Class
8 Counsel’s request for attorneys’ fees and costs, and enter judgment accordingly.

9 **II. BACKGROUND**

10 The details of the procedural and factual background of this matter were outlined in
11 the Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (filed on or about
12 January 18, 2022). To re-familiarize the Court with this litigation, Williams-Sonoma is a well-
13 known owner/operator of retail luxury home goods stores such as Williams-Sonoma, Pottery Barn,
14 Pottery Barn Kids, Pottery Barn Teens, West Elm, Rejuvenation, and associated outlet stores.
15 Plaintiff Evan Reed worked for Defendant Williams-Sonoma Stores, Inc. as an hourly paid, non-
16 exempt employee at the Williams Sonoma retail store in San Luis Obispo from December 2020
17 through May 2021. He was a stock associate tasked with maintaining the stock room, maintaining
18 inventory records and assisting the sales team. Plaintiff Christine Souci worked for Defendant
19 Williams-Sonoma Stores, Inc. as an hourly-paid, non-exempt Design Specialist from October
20 2017 through September 2021. [Crosner Decl., ¶ 2.]

21 On February 14, 2022, Plaintiff Reed, on behalf of himself and all others similarly situated,
22 filed a class action complaint against Defendants in this Court seeking damages for several alleged
23 violations of the Labor Code and IWC Wage Orders. First, he contended that Defendants failed to
24 pay for all hours worked, including minimum and overtime wages, with resulting unpaid wage
25 violations. Plaintiff alleged that during the COVID-19 pandemic, Defendants required non-exempt
26 employees to undergo a “wellness check” before starting work, which involved answering several
27 questions and having their temperature checked. Reed alleged that this occurred before clocking
28 in for the day and took approximately 3 minutes per wellness check that went uncompensated.

1 Next, Reed alleged meal and rest break violations, and contended that Defendants did not always
2 compensate him and other non-exempt employees for documented meal and rest break violations,
3 and further that other violations occurred as well for missed, short, and late breaks. Plaintiff Reed
4 also alleged that he and other non-exempt employees had to use their personal cell phones for
5 business purposes but did not receive any reimbursement. He also alleged that Defendants did not
6 timely pay final wages upon separation of employment. Lastly, Reed contended that Defendants
7 failed to provide Reed and other non-exempt employees with accurate wage statements, including
8 that the wage statements did not correctly identify the correct legal entity that actually employed
9 the Class Members, in addition to derivative violations based on alleged off the clock work.

10 [Crosner Decl., ¶ 3.]

11 Based on these allegations, Reed’s initial class action complaint against Defendants
12 asserted causes of action for: (1) failure to pay all minimum and overtime wages due; (2) failure to
13 provide all required meal periods or compensation in lieu thereof; (3) failure to provide all
14 required rest periods or compensation in lieu thereof; (4) failure to provide accurate, itemized
15 wage statements; (5) failure to pay all wages due upon termination of employment; (6) failure to
16 reimburse business expenses, and (7) violation of the Unfair Competition Law, Bus. & Prof. Code
17 sections 17200, *et seq.* On May 16, 2022, Reed filed a First Amended Class Action Complaint
18 adding a claim under the Private Attorneys General Act of 2004 (“PAGA”) based on the same
19 underlying alleged Labor Code violations. [Crosner Decl., ¶ 4.]

20 On April 26, 2022, Plaintiff Souci filed a representative action complaint against Defendants in
21 Los Angeles County Superior Court, Case No. 22SMCV00589 (“Souci Action”), alleging a single
22 cause of action under PAGA predicated on alleged wage and hour violations for (1) failure to provide
23 employment records; (2) failure to pay overtime and double time wages; (3) failure to provide meal
24 and rest breaks; (4) failure to pay minimum wages; (5) failure to keep and provide itemized wage
25 statements; (6) failure to pay reporting time; (7) failure to pay split shift premiums; (8) failure to pay
26 wages during employment; (8) failure to timely pay wages upon termination; and (9) failure to
27 reimburse necessary business-related expenses. The parties then agreed to consolidate both matters
28 before this Court by filing a Second Amended Complaint adding Souci as a party-Plaintiff and adding

1 all claims Plaintiff Souci had alleged in the Souci Action. On September 13, 2022, the Los Angeles
2 Superior Court issued an Order Staying the Souci Action pending preliminary approval of the
3 Settlement in this action. Accordingly, on October 21, 2022, Plaintiffs filed their consolidated Second
4 Amended Complaint (“Operative Complaint”) in this action. [Crosner Decl., ¶ 5.]

5 Williams-Sonoma has at all times denied Plaintiffs’ collective allegations and maintained
6 its wage and hour policies, procedures and practices comply with California law, that it provided
7 the Settlement Class with required meal and rest breaks, that it paid Plaintiffs and the Settlement
8 Class all wages due, that it strictly prohibits “off the clock” work, and that any use of personal cell
9 phones was not required or necessary. Additionally, Williams-Sonoma strongly contends that this
10 case cannot be maintained as any kind of class or representative action, arguing that to the extent
11 the Settlement Class missed, took late or short meal and/or rest breaks they did so voluntarily and
12 failed to report their non-compliant meal and rest breaks as required by company policy, that to
13 the extent any Settlement Class Member worked “off the clock,” they did so in violation of
14 company policy and procedure, and failed to report all time worked, that to the extent any
15 Settlement Class Member used their personal cell phones for work purposes, they were never
16 required to do so and had alternative options, and that intermittent or infrequent evidence of any
17 alleged violations would be purely anecdotal. Thus, Defendants contend that individual issues
18 predominate and class certification would be inappropriate. [Crosner Decl., ¶ 6.]

19 Both before and after Plaintiffs filed their respective complaints, the Parties engaged in
20 meet and confer discussions regarding discovery, potential law and motion, and the merits of the
21 case, and ultimately agreed to attempt early global mediation. They then engaged in significant
22 informal discovery to facilitate an exchange of information necessary to engage in a meaningful
23 mediation. The parties then engaged Louis Marlin, Esq., a respected mediator with extensive
24 wage and hour class action experience and, in June 2022, participated in a full day mediation with
25 Mr. Marlin that resulted in the proposed settlement. [Crosner Decl., ¶¶ 7-8.] This Court
26 preliminarily approved the Settlement on February 7, 2023.

27 Class Notices were mailed to Settlement Class on March 21, 2023, with a 45-day
28 window (to May 5, 2023) for any Settlement Class Member to opt out or object to the

1 proposed Settlement. [Declaration of Makenna Snow (“Snow Decl.”), ¶¶ 7, 11-13.]

2 **III. PROPOSED SETTLEMENT TERMS**

3 Under the Settlement, Defendants will pay \$850,000.00 into a common fund, the Total
4 Maximum Settlement Amount or TMSA. Class Counsel’s Attorneys’ Fees of up to one-third of
5 the TMSA (\$283,333.33) and actual litigation costs of up to \$25,000 (only \$9,725.87 is
6 requested), Named Plaintiff Awards of \$5,000 each for the named Plaintiffs (*i.e.*, \$10,000 total),
7 Settlement Administration Costs of \$30,000, and a \$100,000 PAGA Payment for alleged civil
8 penalties under PAGA,¹ will be paid from the Total Maximum Settlement Amount. The
9 remainder of \$416,940 will be allocated among the Participating Class Members (defined as
10 Settlement Class Members who do not submit a timely and valid Request for Exclusion) based on
11 their total workweeks worked during the Class Period. No portion of the TMSA will revert to
12 Defendants. [Crosner Decl. ¶ 9.]

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

14 The Court conditionally certified a Settlement Class defined to include including all
15 current and former hourly non-exempt retail store employees employed by Williams-Sonoma
16 Stores, Inc. in California during the Class Period. The Settlement Administrator ultimately
17 mailed Class Notices to 5,593 individuals identified as members of the Settlement Class.
18 [Snow Decl., ¶ 7.] Nothing has changed to require reconsideration of the Court’s
19 certification of the Settlement Class.

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

21 As noted, the Settlement obligates Defendants to pay \$850,000 to resolve the Settlement
22 Class’s claims, inclusive of Class Counsel’s Attorneys’ Fees and Costs Payment, Named Plaintiff
23 Awards, the PAGA Payment to the LWDA and PAGA Group, and the Settlement Administrator
24 payment. Approximately \$416,940 from the TMSA (“Net Settlement Sum”) will be distributed to
25 the Participating Class Members. This is a cash Settlement that does not require Participating
26 Class Members to submit a claim form to receive their Individual Settlement Payment, as they will
27

28 ¹ Consistent with PAGA, \$75,000 of the PAGA Payment will go to the Labor & Workforce Development Agency, and the remaining \$25,000 will be distributed pro rata to the PAGA Group.

1 receive checks for their Individual Settlement Payments automatically via First Class U.S. Mail.
2 One-third of each Individual Settlement Payment will be allocated to wages and the remaining
3 two-thirds will be allocated to penalties and interest. Defendants will pay any and all applicable
4 employer-side payroll taxes separately and in addition to the TMSA. Subject to the Court's final
5 approval, any amounts not claimed (because a Participating Class Member does not cash his or her
6 Individual Settlement Payment), will be forwarded to the California State Controller's Unclaimed
7 Property Fund. [Crosner Decl., ¶ 10.]

8 Each Participating Class Member will receive a share of the Net Settlement Sum based on
9 his or her total workweeks worked for Williams-Sonoma in California during the Class Period
10 while employed in a non-exempt hourly retail store position. Thus, each Participating Class
11 Member's Individual Settlement Payment will be calculated using criteria typically used in
12 determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and
13 rest breaks, and potential statutory penalties under applicable law. These methods are intended to
14 ensure each Participating Class Member receives a portion of the available settlement funds
15 corresponding to the relative value of his or her potential claims. The proposed allocation provides
16 a reasonable way to compensate Participating Class Members based on the amount of time they
17 worked for Williams-Sonoma and the number of instances they allegedly may have missed a meal
18 and/or rest break and were not provided compensation in lieu of such alleged missed breaks, or
19 allegedly lost wages due to the alleged off the clock work, etc. [Crosner Decl., ¶ 11.]

20 The average overall award currently is estimated to be approximately \$74, with a
21 maximum award of over \$300. The average award to the PAGA Group Members will be about
22 \$7.17. [Snow Decl., ¶ 15.]

23 **C. Settlement Administration**

24 ILYM Group, Inc., as the Court-approved Settlement Administrator, mailed the Class
25 Notice to the Settlement Class after making all reasonable effort to ascertain the best mailing
26 address, including running each address through the National Change of Address database
27 and "skip-tracing" any Class Notice returned as undeliverable. [Snow Decl., ¶¶ 3-10.] The
28 Class Notice, previously approved by the Court, duly informed the Settlement Class of the

1 Settlement terms, including the estimated relief each Settlement Class Member will receive,
2 the amounts to be requested for attorney's fees and costs, and the Named Plaintiff Awards,
3 and the right to opt out of or object to the Settlement. [Snow Decl., ¶ 7, Exh. A.] ILYM
4 mailed 5,593 Class Notices on March 21, 2023. [Snow Decl., ¶ 7.] Ultimately, 146 Class
5 Notices were deemed undeliverable, representing a 97.4% success rate. [Snow Decl., ¶ 10.]
6 The 45-day response window for objecting to or opting out of the Settlement expired on May
7 5, 2023. [Snow Decl., ¶¶ 11-13.] As of the filing of this motion, ILYM has received five (5)
8 requests for exclusion (for a 99.91% participation rate), and zero objections to the Settlement.
9 No disputes have been submitted regarding the information used to calculate any Participating
10 Class Member's Individual Settlement Payment. [Snow Decl., ¶¶ 11-13.]

11 **D. Release of Claims**

12 All Participating Class Members will be deemed to have released and/or waived all
13 Released Claims (as defined below) against Defendants Williams-Sonoma Stores, Inc. and
14 Williams-Sonoma, Inc., including their past or present successors and predecessors in interest,
15 acquirers, subsidiaries, affiliates, parents, officers, directors, shareholders, employees, agents,
16 principals, representatives, accountants, auditors, consultants, insurers and reinsurers ("Released
17 Parties") from February 1, 2020 through October 26, 2022, as follows:

18 Released Claims: all claims, demands, rights, liabilities, and causes of action during
19 the Class Period against the Released Parties, whether known or unknown, that were
20 or could have been asserted (whether statutory, tort, contract, or otherwise) for
21 violations of law arising out of, or relating to, the facts and allegations pled in the
22 Operative Complaint, including that Defendants failed to pay all wages due
23 (including minimum, straight and overtime wages), failed to provide legally-
24 compliant meal breaks, failed to pay meal premium pay, failed to provide legally-
25 compliant rest breaks, failed to pay rest premium pay, failed to provide timely and/or
26 accurate final paychecks, failed to provide accurate itemized wage statements, failed
27 to reimburse for business expenses, and engaged in unfair competition and business
28 practices as alleged in the operative Second Amended Complaint, and for penalties
under the Private Attorneys General Act as alleged in the operative Second Amended
Complaint. The PAGA claims and allegations released include that Defendants failed
to pay all wages due (including minimum, straight and overtime wages), failed to
provide legally-compliant meal breaks, failed to pay meal premium pay, failed to
provide legally-compliant rest breaks, failed to pay rest premium pay, failed to
provide timely and/or accurate final paychecks, failed to provide accurate itemized
wage statements, failed to reimburse for business expenses, committed recordkeeping
violations, failed to provide suitable resting facilities, failed to provide suitable
seating, refused to make payment, engaged in statutory wage violations, failed to
provide standard conditions under the wage orders, engaged in unlawful agreements

1 and unlawful criminal history inquiries, failed to comply with the California paid sick
2 leave laws, failed to pay reporting time pay and failed to pay split shift premiums.

3 Additionally, Plaintiffs Reed and Souci agree to a general release of any and all claims, whether
4 known or unknown, which exist or may exist on their behalf as of the date of the Settlement, and a
5 waiver of California Civil Code section 1542. [Crosner Decl., ¶ 12.]

6 **E. PAGA and Notice to the LWDA**

7 The Parties allocated \$100,000 to payment of civil penalties under PAGA for such claims
8 against Defendants (“PAGA Payment”), and Plaintiffs respectfully request the Court approve that
9 amount as fair, reasonable, and adequate. As required by Labor Code section 2699(l)(2), Plaintiffs
10 gave notice of the Settlement and the final approval hearing to the LWDA via its online portal.
11 [Crosner Decl., ¶ 13; Exh. 1.]

12 **IV. ARGUMENT**

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

27 On a motion for final approval, the trial court is charged with determining whether, in
28 light of the total circumstances of the action and the response of the class members to the
proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at

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

12 **A. The Settlement Merits Final Approval**

13 The Settlement of this action warrants final approval under the standards summarized
14 above. The Settlement is fair, reasonable and adequate, and represents a favorable resolution
15 of highly disputed claims. Further, the Settlement was overwhelmingly approved by the
16 Settlement Class, as there were no objections and only 5 out of 5,593 Settlement Class
17 Members requested exclusion, for a 99.91% participation rate.

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

19 The Settlement is not the result of fraud or collusion. Rather, the proposed Settlement
20 was reached following arm's-length negotiations presided over by Louis Marlin, Esq., a highly
21 respected and well-known mediator with extensive experience mediating wage and hour class
22 actions. [Crosner Decl., ¶ 8.] Moreover, Plaintiffs and their counsel were well-informed about
23 the facts and the law, and counsel Zachary Crosner and Haig Kazandjian have years of litigation
24 experience, including litigating wage and hour class actions. Plaintiffs' counsel are well-qualified
25 to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Crosner Decl.,
26 ¶¶ 29-38; Kazandjian Decl., ¶¶ 2-4.] Defendants likewise are represented by highly-qualified and
27 experienced defense counsel. Both sides advocated vigorously for their clients and nothing was
28 "left on the table."

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

2 The Settlement was well-received by the Settlement Class. As of the filing of this
3 motion, no objections have been filed, and only 5 Settlement Class Members requested exclusion
4 out of 5,593 Settlement Class Members. [Snow Decl., ¶ 11.] As many courts recognize, class
5 member reaction to the settlement is one of the most important factors to consider in determining if
6 final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th
7 Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y.
8 2001) (“It is well-settled that the reaction of the class to the settlement is perhaps the most significant
9 factor to be weighed in considering its adequacy”) (internal quotation marks omitted).

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

12 The Settlement involves a substantial sum of money that, when distributed, will confer
13 meaningful monetary benefits on the Settlement Class. As described above, each individual
14 award will be based on an allocation consistent with the nature of the claims asserted and will
15 fairly and equitably allocate the available funds in relation to the degree of alleged damage each
16 Settlement Class Member incurred. While Settlement Class Members who worked for only a
17 short period of time will receive relatively small sums, those with longer tenures and who
18 worked more hours and shifts throughout the Class Period will receive appropriately larger
19 awards.

20 Prior to settlement, the parties engaged in extensive informal discovery to facilitate
21 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding
22 Defendants’ payroll practices, pay stubs and time records for a sampling of Settlement Class
23 Members, wage and hour policies, etc., and information from Defendants regarding the class size
24 and breakdown, workweeks, rates of pay, and other information used to formulate a damages model
25 with the assistance of a consulting expert. Plaintiffs’ counsel is confident they obtained sufficient
26 information to enable them to understand the law and facts of this case and make an informed
27 decision regarding the settlement and whether it is in the best interests of the Settlement Class.
28 [Crosner Decl., ¶¶ 7, 14.]

1 Using that data Defendants produced, Plaintiffs ran various calculations and estimated
2 Defendants' likely maximum exposure on the class claims at approximately \$4,639,000 on the
3 primary "damages" claims, including \$416,000 on the unpaid wage/off the clock claims, \$840,000
4 on the meal break claim, \$2,943,000 on the rest break claim, and \$440,000 on the expense
5 reimbursement claim. The "penalty" claims then added another \$16,901,000 in theoretical
6 liability, including \$4,662,000 on the wage statement claim and \$12,239,000 on the waiting time
7 penalty claim. [Crosner Decl., ¶ 15.] Plaintiffs' counsel substantially discounted the value of
8 these claims, however, in light of the multiple and considerable risks posed by proceeding with the
9 litigation.

10 On the unpaid wage claims, Plaintiffs argued that Defendants' managers required
11 employees to undergo COVID-19 "wellness checks" before they clocked in for a shift, which
12 procedures took about 3 minutes on average and should have been compensated. Defendants
13 argued that its written policies and procedures specified the wellness checks were to be done after
14 employees clocked in and that employees performed the checks on the clock, and that employees
15 were strictly prohibited from working off the clock and required to record all time worked. Thus,
16 per Defendants, if there were any failures to follow the policy and procedure, at a minimum,
17 individualized inquiries would predominate, thereby rendering class certification impossible.
18 [Crosner Decl., ¶ 16.]

19 For meal period violations, Plaintiffs argued Defendants' own records showed that it only
20 paid meal period premiums for about one-half of documented violations, and further that
21 employees' lunch periods frequently lasted less than 30 minutes due to issues with Defendants'
22 electronic time keeping system. In response, Defendants argued its meal break policies and
23 practices were fully compliant with California law, that it provided meal periods on a compliant
24 basis, that it paid meal premiums regardless of the reason for the meal break policy violation, and
25 that it thereby met its obligations under the Labor Code and Wage Order, and paid meal period
26 premiums when required. [Crosner Decl., ¶ 17.]

27 For the rest break claim, Plaintiffs argued that Defendants frequently provided non-
28 compliant rest breaks, as the Class Members often had to skip rest breaks or received shortened

1 rest breaks due to the hectic nature of the work. As with meal breaks, Defendants argued its rest
2 break policies and practices complied with California law and that Defendants authorized and
3 permitted employees to take all required rest breaks and had a policy to provide rest break
4 premiums in the event that the company failed to authorize and permit a rest break. Defendants
5 further contended that, in light of the fact that it is not required to maintain a record of rest breaks,
6 any evidence of failure to authorize and permit rest breaks and/or discouragement from taking rest
7 breaks would be purely anecdotal and individual issues would predominate on liability. [Crosner
8 Decl., ¶ 18.]

9 Plaintiffs' based their expense reimbursement claim on employees' need to use their
10 personal mobile devices for company business, such as helping customers look up items or
11 checking advertised prices for which they were not reimbursed as required by Labor Code section
12 2802 and Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113 (2014) ("We hold that
13 when employees must use their personal cell phones for work-related calls, Labor Code section 2802
14 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited
15 minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone
16 bills."). Per Plaintiffs, this was necessary because Defendants' computer systems were extremely
17 slow and unreliable. On the other hand, Defendants argued that they provided employees with all
18 electronics needed to assist customers and that employees were not required to use their phones for
19 work and that any use of employee phones was purely for personal convenience and therefore not
20 reimbursable, and that there was not an issue with Defendants' computer systems that required
21 employees to use cell phones. [Crosner Decl., ¶ 19.]

22 Finally, Plaintiffs also alleged claims under Labor Code § 226 (alleged inaccurate wage
23 statement violations) and §§ 201-203 (waiting time penalties). On the wage statement claim,
24 Plaintiffs alleged that Defendants' pay stubs did not correctly identify their actual employer, as
25 they listed "Williams Sonoma Stores, Inc." as the employer when, per Plaintiffs, they were hired
26 by "Williams Sonoma, Inc." Further, the wage statements failed to accurately reflect hours
27 worked and pay earned due to the "off the clock" work described above. Thus, these claims
28 partially are based on the "off the clock" unpaid wage claim and will rise or fall along with that

1 primary claim, in addition to being subject to “good faith” and other defenses available to
2 Defendants. E.g., Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding
3 employer did not willfully fail to pay wages under Labor Code § 203 even though the class
4 prevailed on the merits on the underlying claim for failing to pay living wages). Defendants
5 argued that the wage statements accurately stated the employer and accurately contained all
6 required information, including for all the reasons specified above. Accordingly, Plaintiffs
7 discounted the derivative claims significantly in light of these multiple potential defenses.
8 [Crosner Decl., ¶ 20.]

9 As far as potential PAGA liability, the theoretical penalties totaled around \$20 million
10 should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code sections
11 at issue for every single eligible pay period. [Crosner Decl., ¶ 21.] As with the class claims,
12 Plaintiffs discounted the potential PAGA penalties for the multi-layered defenses proffered by
13 Defendants on the merits, and further discounted these claims since the Court possesses wide
14 discretion to reduce such penalties even if Plaintiffs ultimately prevailed. Fleming v. Covidien
15 (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by
16 over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a
17 bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction, which
18 decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016)
19 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial). Accordingly, the Parties
20 allocated \$100,000 to PAGA Payment for alleged PAGA penalties, which amount is reasonable
21 and in line with comparable settlements in other class actions in California. Van Kempen v.
22 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
23 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
24 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
25 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
26 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
27 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
28 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,

1 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
2 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
3 not objected to the settlement").

4 Thus, Defendants raised various defenses to each of Plaintiffs' claims, any one of which, if
5 successful, could have derailed Plaintiffs' case. Accordingly, Plaintiffs faced risky issues going
6 forward with this litigation, and given the need to secure class certification, try the case, and deal
7 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiffs
8 and counsel discounted the value of the class claims consistent with the risks discussed above, and
9 carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation
10 continued. Plaintiffs and their counsel concluded – in light of these very real and substantial risks
11 – settlement on the proposed terms and without prolonged and costly litigation was in the best
12 interests of the Settlement Class. [Crosner Decl., ¶¶ 22-24; Kazandjian Decl., ¶¶ 5-14.]

13 The overall recovery represents a significant percentage of Defendants' potential exposure
14 and, given the risks addressed above, a total recovery for the Settlement Class of \$850,000, which
15 will result in average awards of some \$74 per Participating Class Member, is a significant result
16 well within the range of reasonableness considering all potential outcomes, and will provide direct
17 monetary awards to all Participating Class Members without further delay. [Crosner Decl., ¶ 24.]

18 Importantly, the mere fact that a settlement does not provide the same recovery as might be
19 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
20 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the
21 settlement process...even if the relief afforded by the proposed settlement is substantially
22 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
23 settlement because the public interest may indeed be served by a voluntary settlement in which
24 each side gives ground in the interest of avoiding litigation"); Lane v. Facebook, Inc. (9th Cir.
25 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is
26 different from the question whether the settlement is perfect in the estimation of the reviewing
27 court"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
28 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery

1 does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
2 disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d
3 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented
4 99% discount off the maximum value of the claims). Importantly as well, the proposed Settlement
5 is non-reversionary and will provide timely benefits to the Class Members without a claims
6 process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action
7 Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at [http://](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf)
8 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
9 claims process may indicate lack of fairness). Plaintiffs and their counsel submit the Settlement is
10 within the “range of reasonableness,” and is fair and adequate for the Settlement Class.

11 **V. NAMED PLAINTIFF AWARDS**

12 Pursuant to the terms of the settlement, Plaintiffs each seek an incentive award of \$5,000
13 (i.e. \$10,000 total) for their service in bringing these claims on behalf of the Settlement Class. The
14 requests are reasonable given the risks they undertook on behalf of the Settlement Class. By
15 contacting and retaining counsel to pursue these claims, Plaintiffs helped make this settlement
16 possible for the absent Settlement Class Members, while shouldering the risk of being liable for
17 Defendants’ litigation costs. Plaintiffs also exposed themselves to unwanted notoriety related to
18 filing a public lawsuit (discoverable even through a simple google search) for the benefit of other
19 employees, placing themselves at risk of discrimination by future prospective employers. As set
20 forth in more detail in their respective declarations submitted herewith, among taking many other
21 actions assisting in the successful litigation of this case, Plaintiffs provided substantial factual
22 information and documents to counsel, attended numerous meetings/phone conferences with
23 counsel to discuss the case, and kept abreast of all significant developments. [Declaration of Evan
24 Reed, ¶¶ 2-9; Declaration of Christine Souci, ¶¶ 2-12; Crosner Decl., ¶ 25; Kazandjian Decl., ¶¶
25 20-26.] Finally, there are no Settlement Class Member objections submitted with respect to the
26 amounts Plaintiffs propose to receive. [Snow Decl., ¶ 12.] Accordingly, the requested Named
27 Plaintiff Awards to Plaintiffs are appropriate and justified as part of the settlement.

28 **VI. SETTLEMENT ADMINISTRATION COSTS**

1 The Settlement provides for a payment to ILYM for its services as the Settlement
2 Administrator. As set forth in the Declaration of Makenna Snow, ILYM has performed and will
3 continue to perform its required duties through final distribution of the settlement funds and
4 incurred \$30,000 in fees and expenses. [Snow Decl., ¶ 16] Accordingly, Plaintiffs respectfully
5 request the Court approve payment of \$30,000 to ILYM from the TMSA. [Crosner Decl., ¶ 26.]

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

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

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

20 As addressed in detail above, at the time the parties reached the tentative settlement
21 success for Plaintiffs and the putative Settlement Class was far from certain. Plaintiffs faced a
22 real risk that some or all the claims would not be certified for class treatment, as Defendants
23 had strong arguments that their compensation policies were legal and properly compensated
24 the Settlement Class. Even if Plaintiffs certified some or all of the claims and ultimately
25 prevailed on the merits, it undoubtedly would have taken several years to realize any recovery
26 while they pursued class certification, trial, and any appeals. [Crosner Decl., ¶¶ 16-21.]

27 Nonetheless, Plaintiffs succeeded and expeditiously obtained the relief they set out to
28 obtain, and the Settlement provides substantial cash payments to all Participating Class

1 Members, with an average award of about \$74, and with a maximum award of over \$300.
2 Importantly as well, the Settlement Class has been overwhelmingly supportive of the
3 Settlement – as there are no present objections to the settlement and only five opt outs. [Snow
4 Decl., ¶¶ 11, 13.]

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

6 The United States Supreme Court has ruled the parties to a class action properly may
7 negotiate not only the settlement of the action itself but also the payment of attorneys' fees.
8 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
9 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorneys' fee
10 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
11 should not result in a second major litigation. Ideally, of course, litigants will settle the
12 amount of a fee." The United States Supreme Court has reemphasized this policy and further
13 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
14 (1984) 465 U.S. 886, 902 n.19.

15 As part of the settlement, Defendants agreed not to object to an award of no more than
16 1/3 of the TMSA for attorneys' fees, or \$283,333.33, and up to \$25,000 in reimbursement for
17 actual litigation costs and expenses. Such a fee is commensurate with what the market would
18 provide for similar services and the Court therefore can most certainly enforce the agreement.
19 As California's Court of Appeal has instructed:

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

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

25 Here, the parties did not negotiate the inclusion of attorneys' fees until after extensive
26 arms-length bargaining regarding relief to the Settlement Class was completed. [Crosner
27 Decl., ¶ 27.] The requested fee and cost award was a product of these arms-length
28

1 negotiations and fairly reflects the marketplace value of the services rendered by Class
2 Counsel in this case. As a result, the fee agreed to by the parties should be approved.

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

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

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

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

16 Indeed, both California and federal courts have long recognized an appropriate method
17 for determining the award of attorneys' fees is based on a percentage of the total value of
18 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
19 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
20 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
21 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
22 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

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

1 individual claims in relation to the enormous time and cost associated with class action
2 litigation.

3 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
4 this action of no more than 1/3 of the Total Maximum Settlement Amount recovered by the
5 Class via the lawsuit, or \$283,333.33. The percentage requested is justified for the reasons
6 set forth further below, and comports with fee awards calculated on a percentage-of-the-
7 benefit basis. Indeed, review of class action settlements shows that courts have historically
8 awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case.
9 In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50
10 (concluding that percentage fees in common fund cases range from 20 to 50 percent);
11 Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is
12 the upper limit on a reasonable fee award from a common fund in order to assure that the fees
13 do not consume a disproportionate part of the recovery obtained for the class, although
14 somewhat larger percentages are not unprecedented.").

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

16 To ensure the fairness of an attorneys' fee award, courts frequently conduct a lodestar
17 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
18 an objective measure of the work performed into the calculation of a reasonable attorney fee."
19 Laffitte, 1 Cal.5th at 504. Here, Class Counsel collectively spent 346.21 hours of time on this
20 matter, resulting in a modest and very reasonable lodestar of \$255,112.

21 As is fully detailed in the Crosner and Kazandjian Declarations, Class Counsel's
22 efforts included, among other things: (1) extensive pre-lawsuit investigation of the claims of
23 Plaintiffs and the putative Settlement Class, including legal research, research into similar claims
24 and claims against other employers in the same industry, and attempts to locate and contact other
25 Williams Sonoma employees; (2) drafting a PAGA notice letters; (3) drafting initial complaints
26 and related documents; (4) case management, including communications with defense counsel,
27 meeting and conferring/preparing case management statements, etc.; (5) lengthy discussions with
28 defense counsel regarding settlement/mediation and informal discovery needed for meaningful

1 settlement discussions; (6) engaging in substantial informal discovery, including propounding
2 informal discovery “requests” and reviewing documents and other information produced; (7)
3 drafting a mediation brief and accompanying damages model after review and analysis of the
4 informal discovery production; (8) attending an all-day mediation; (9) negotiating and drafting the
5 settlement agreement and related documents; (10) drafting the consolidated amended complaint;
6 (11) drafting the motion for preliminary approval, and attending the hearing; (12) administration
7 of the settlement, including communications with the Settlement Administrator and the Settlement
8 Class ; (13) drafting the motion for final approval and motion for attorneys’ fees, and attending the
9 final approval hearing; and (14) extensive communications with the Plaintiffs regarding case
10 status, case investigation and document review, mediation, and settlement terms. Additionally,
11 Class Counsel will incur additional time following final approval to, inter alia, respond to
12 Settlement Class Member inquiries, work with the Settlement Administrator on the distribution of
13 settlement funds, and on the compliance hearing. [Crosner Decl., ¶ 28, Exh. 2; Kazandjian Decl.,
14 ¶¶ 17-18; Exh. 1.]

15 In pursuing this matter, Class Counsel incurred total attorneys’ fees of \$255,112, the
16 lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a
17 successful conclusion (346.21) attorney hours, and the requested attorney hourly rates are
18 reasonable and comport with hourly rates charged by other attorneys with similar experience in
19 this practice area in California. [Crosner Decl., ¶¶ 29-43; Kazandjian Decl., ¶¶ 17-18.] On a
20 lodestar basis, the fee request of \$283,333.33 results in a multiplier of 1.11, which is a modest
21 enhancement entirely in line with California law. Indeed, California courts routinely approve
22 multipliers in the in the 2-4 range to compensate for the time and risk of class action cases.
23 Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award
24 including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can
25 range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d
26 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the requested 1.11
27 multiplier effectively operates to show that the percentage fee request is reasonable
28 considering the challenges presented in this contingency fee matter, and appropriately

1 compensates Class Counsel for the contingent risk assumed and delay in payment during the
2 time Counsel has been representing Plaintiffs. Thus, the multiplier results in a fee
3 constituting a fair return on the contingency.

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

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

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

20 **1. The Results Achieved.**

21 Class Counsel obtained an excellent result in this case for the Settlement Class . The
22 Settlement provides real monetary benefits to the Settlement Class, and the Settlement is
23 particularly advantageous to the Settlement Class because the proceeds will be distributed
24 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
25 Considering many individual claims would be very modest and would not be cost-effective to
26 pursue successfully, the Settlement provides them with fair compensation for their claims.
27 Moreover, the absence of any objection to either the Settlement or the attorneys' fees request
28 bolsters the excellent results. Indeed, the approval of the Settlement Class is overwhelming as

1 indicated by the fact that less than 1/10 of 1% of the class members opted out. Additionally,
2 the settlement amounts to a substantial percentage of the maximum value of the amount the
3 Settlement Class might have obtained if it had tried the case and recovered on all theories
4 seeking recovery of wages and penalties. "It is well-settled law that a cash settlement
5 amounting to only a fraction of the potential recovery does not per se render the settlement
6 inadequate or unfair." In re Omnivision Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036,
7 1042.

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

9 At the time of filing the complaint, Class Counsel recognized that they would have to
10 expend a substantial amount of time and advance significant costs to prosecute a statewide
11 class action suit with no guarantee of compensation or reimbursement, in the hope of
12 prevailing against a sophisticated company represented by first-rate attorneys. Despite
13 their belief in the validity of Plaintiffs' claims, they also knew they faced substantial risks
14 of class certification and the ability to prove class-wide and individual damages. In light of
15 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendants
16 would dig in and attempt to bury their small firms in work. Given the small size of Class
17 Counsel's firm, not receiving any compensation for several years while simultaneously
18 advancing litigation costs posed considerable risk and difficulty. [Crosner Decl., ¶¶ 44-45;
19 Kazandjian Decl., ¶¶ 15-16.]

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

21 Practice in the narrow area of wage and hour litigation requires skill, knowledge and
22 experience. The issues presented in this case required more than just a general appreciation of
23 wage and hour law and class action procedure. This Settlement was possible because of
24 counsel's diligent efforts, as discussed above. In successfully navigating those hurdles,
25 Class Counsel displayed appropriate skill while pursuing a risky and difficult case.

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

27 There is a substantial difference between the risk assumed by attorneys being paid
28 by the hour and attorneys working on a contingent fee basis. The attorney being paid by

1 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
2 1256. The attorney working on a contingent basis can only log hours while working
3 without pay towards a result that will hopefully entitle him to a market fee considering
4 the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee
5 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this
6 risk in this all or nothing contingent fee case wherein the necessity and financial burden
7 of private enforcement makes the requested award appropriate.

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

17 Here, the contingent fee practices of Plaintiffs' counsel simply do not accommodate
18 the investment of unnecessary time in a case, and the adverse resolution of any one of several
19 difficult issues present in this matter could have doomed the entire effort. As discussed, the
20 attorneys' fees in this case were not only contingent but fairly risky, and there was always a
21 palpable chance Plaintiffs' counsel would receive nothing for any number of reasons.
22 [Crosner Decl., ¶¶ 44-45.] Accordingly, the contingent nature of the fee and the financial
23 burdens on Class Counsel and Plaintiffs also support the fee requested.

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25 ////

26 5. Awards in Other Cases

27 As discussed, the attorneys' fees requested by Class Counsel are within the range of
28 fees awarded in comparable cases, as California courts regularly approve class action fee

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

14 **F. Class Counsels' Costs and Expenses are Reasonable**

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

25 As explained in the Crosner and Kazandjian Declarations, Class Counsel incurred
26 a total of \$9,725.87 in actual expenses incurred in connection with this litigation. These
27 expenses include the amounts paid for court filing fees, service of process, expert fees,
28 postage, and mediation fees, all of which are costs normally billed to and paid by the

1 client. These costs were reasonably incurred in the prosecution of this matter, and
2 Plaintiffs request they be reimbursed in full. [Crosner Decl., ¶¶ 46-47; Kazandjian Decl.,
3 ¶ 19; Exh. 2.]

4 **VIII. CONCLUSION**

5 For all the foregoing reasons, Plaintiffs Evan Reed and Christine Souci respectfully request
6 that the Court grant this motion and grant final approval of the class and representative action
7 Settlement and approve the PAGA Payment to the State. Plaintiffs further request the Court
8 approve payment of the Settlement Administrator's fees and expenses, approve the requested
9 Named Plaintiff Awards, approve the award of attorneys' fees and costs as requested, and enter
10 judgment in this action. Finally, Plaintiffs request the Court set a final compliance hearing for
11 May 15, 2024, or a later date convenient for the Court.

12
13 Dated: May 31, 2023

CROSNER LEGAL, P.C.

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16 By: 
17 Zach Crosner
18 Attorneys for Plaintiff Evan Reed
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