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8

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**

12 VIJAY SHETH, as an individual and on
behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 ICON BURGER ACQUISITION LLC, a
Delaware limited liability company;
16 SMASHBURGER ACQUISITION-SO CAL
LLC, a Delaware limited liability company;
17 SMASHBURGER ACQUISITION – SAN
DIEGO LLC, a Delaware limited liability
18 company; SMASHBURGER
ACQUISITION – SACRAMENTO LLC, a
19 Delaware limited liability company; and
DOES 1-100, inclusive,
20

21 and DOES 1-100, inclusive,

22 Defendants.
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25
26
27
28

CASE NO.: 22STCV09093

Assigned for All Purposes to:
Hon. Elaine Lu
Dept SSC-9

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

DATE: April 15, 2025

TIME: 10:00 a.m.

DEPT.: SSC-9

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Vijay Sheth seeks final approval of a non-
3 reversionary class and PAGA action settlement resolving wage and hour claims on behalf of
4 2,485 individuals who worked for Defendants Icon Burger Acquisition LLC, Smashburger
5 Acquisition-So Cal LLC, Smashburger Acquisition - San Francisco LLC, Smashburger
6 Acquisition - San Diego LLC, Smashburger Acquisition - Sacramento LLC (collectively, “Icon”
7 or “Defendants”) as current and former non-exempt hourly employees employed in California
8 during the Class Period of March 14, 2018 to September 1, 2024. The proposed \$989,940 total
9 settlement provides about \$595,496 in cash payments to the Class, with an average award of
10 about \$240, plus additional amounts payable under PAGA. The remaining balance will
11 cover a modest service award to Plaintiff, settlement administration costs, civil penalties to
12 the state, and reasonable attorney’s fees and costs. The parties and their counsel finalized the
13 settlement after extensive and difficult arms-length negotiations overseen by an experienced
14 and highly-regarded mediator. The Court conditionally certified the Class and
15 preliminarily approved the settlement on January 6, 2025. Since then, the Court-approved
16 notice form was mailed to the Class Members on January 28, 2025, and they reacted very
17 favorably to the settlement. As of the filing of this motion, only one class member opted out
18 of the settlement, and there are no objections.

19 Further, Class Counsel secured an excellent settlement with Icon after over two
20 years of investigation, litigation, and settlement negotiation and administration, all
21 without any compensation for services rendered or costs expended. The class notice duly
22 informed the class members that Class Counsel would request attorney’s fees not to
23 exceed 1/3 of the Gross Settlement Amount, or \$329,947, along with reimbursement of
24 no more than \$20,000 for actual costs incurred litigating this matter. As of the filing of
25 this motion, *not one Class Member objected* to the proposed fee award. Consistent with
26 the Settlement and notice, Plaintiff now respectfully requests the Court award Class
27 Counsel's fees in the amount of \$329,947 and costs in the amount of \$14,886.34, as
28 described in the Declaration of Chad Saunders (“Saunders Decl.”) filed herewith. The

1 requested attorney's fees are well within the range of reasonableness, especially
2 considering the complex and risky nature of this litigation, the contingent risk assumed,
3 and the two-plus year delay in payment and, when subjected to a lodestar crosscheck,
4 results in a modest 1.52 upward enhancement from the base lodestar.

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

8 **II. BACKGROUND**

9 Plaintiff addressed the factual and procedural background in his Motion for Preliminary
10 Approval (filed on or about April 15, 2024). To remind the Court, Defendants own and operate
11 Smashburger restaurants, including at least 12 restaurants in California. During the relevant time
12 frame, Defendants employed Plaintiff as a non-exempt Cook and Front of House Manager at a
13 restaurant in Redondo Beach, although Plaintiff occasionally worked at restaurants in Carson,
14 Manhattan Beach, and San Diego as well. (Saunders Decl., ¶ 2.)

15 Plaintiff timely exhausted his administrative remedies with the LWDA by submitting his
16 PAGA notice on March 4, 2022. Plaintiff did not receive notice from the LWDA that it intended to
17 investigate the alleged violations outlined in his PAGA letter. Consequently, Plaintiff filed his class
18 action lawsuit on March 14, 2022, alleging causes of action for unpaid minimum wages, unpaid
19 overtime wages, failure to provide meal and rest breaks, wage statement violations, business
20 expense reimbursements, and unfair competition. Plaintiff filed a separate PAGA lawsuit on May
21 11, 2022, based on the same alleged Labor Code violations. Both matters were consolidated by
22 stipulation on August 8, 2022, and are currently pending before this Court. (Saunders Decl., ¶ 3.)

23 In October 2022, the Parties agreed to pursue an early mediation and to forego formal
24 discovery pending mediation. They also agreed on a protocol for exchanging information necessary
25 for meaningful settlement negotiations, and consequently engaged in informal discovery prior to
26 mediation. The Parties then scheduled a mediation with Todd Smith, Esq., a respected wage and
27 hour class action mediator. The Parties mediated with Mr. Smith in January 2024 and reached
28 agreement on all major issues. (Saunders Decl., ¶¶ 4-5).

1 The Court granted preliminary approval to the settlement on January 6, 2025. The
2 Settlement Administrator mailed notice packets to the Class Members on January 28, 2025, and the
3 45-day window for Class Members to opt out or object expires on March 14, 2025. (Declaration
4 of Bryn Bridley (“Bridley Decl.”), ¶¶ 6, 9-11.)

5 **III. SUMMARY OF THE PROPOSED SETTLEMENT**

6 Under the settlement, Icon will pay \$989,940 into a common fund, the Gross Settlement
7 Amount (“GSA”). Attorney’s fees of up to \$329,947 (one-third of the GSA), litigation costs of up
8 to \$20,000 (only \$14,807.79 is requested), actual settlement administration costs of \$19,610, and a
9 service award to Plaintiff of no more than \$5,000, and \$25,000.00 for PAGA civil penalties (of
10 which \$18,750 will go to the California Labor & Workforce Development Agency (“LWDA”) for
11 the State’s share of civil penalties and \$6,250 will go to eligible Aggrieved Employees), all will be
12 paid from the GSA. The remainder of around \$595,496 will be allocated pro rata to the Class
13 Members based on their weeks worked during the Class Period. No portion of the GSA will revert
14 to Defendants. [Saunders Decl., ¶ 6.]

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

16 The Court conditionally certified a settlement class defined to include all current and
17 former non-exempt hourly employees employed by Defendants in California during the Class
18 Period of March 14, 2018 to September 1, 2024. The Settlement Administrator ultimately
19 mailed class notices to 2,485 individuals identified as members of the Class. [Bridley Decl.,
20 ¶ 6.] Nothing has changed to require reconsideration of the Court’s certification of the
21 Settlement Class.

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

23 As noted, the settlement obligates Defendants to pay \$989,940 to resolve the Settlement
24 Class’s claims, inclusive of attorney’s fees and costs. At least \$595,496.66 from the GSA will be
25 distributed to the Participating Class Members. This is a cash settlement that does not require
26 Participating Class Members to submit a claim form to receive their settlement share.
27 Participating Class Members will receive their settlement checks automatically via First Class
28 U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining

1 eighty percent will be allocated to non-wage premiums, penalties, and interest, which allocation is
2 consistent with Icon's potential liability as discussed below. Defendants will pay any and all
3 applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the
4 Court's approval, any amounts not claimed (because a class member does not cash their
5 settlement check) will be forwarded to the California State Controller's Unclaimed Property fund.
6 [Saunders Decl., ¶ 7.]

7 Each Participating Class Member will receive a share of the Net Settlement Amount based
8 on his or her total weeks worked in California as a non-exempt employee during the Class Period.
9 Thus, each Class Member's Individual Settlement Payment will be calculated using criteria
10 typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for
11 missed meal and rest breaks, and potential statutory penalties under applicable law. These
12 methods are intended to ensure each Class Member receives a settlement award corresponding to
13 the relative value of their potential claims. The proposed allocation provides a reasonable way to
14 compensate Class Members based on the amount of time they worked for Defendants and the
15 amount unpaid wages, etc. [Saunders Decl., ¶ 8.]

16 The average award to the Participating Class Members will be approximately \$240 with a
17 maximum award of over \$2,600, while the average PAGA award will be about \$5.32. [Bridley
18 Decl., ¶¶ 13-14.]

19 **C. Settlement Administration**

20 Atticus Class Action Administration, as the Court-approved Settlement Administrator,
21 mailed the Notice Packet to the Class Members after making all reasonable effort to ascertain
22 the best mailing address, including running each address through the National Change of
23 Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Bridley
24 Decl., ¶¶ 4-8.] The Class Notice, previously approved by the Court, duly informed Class
25 Members of the settlement terms, including the estimated relief each Class Member will
26 receive, the amounts to be requested for attorney's fees and the class representative
27 enhancement awards, and the right to opt out of or object to the settlement. [Bridley Decl.,
28 Exh. A.] Atticus mailed 2,485 Notice Packets on January 28, 2025. [Bridley Decl., ¶ 6.]

1 Ultimately, 54 Notice Packets were deemed undeliverable, representing a 97.83% success
2 rate. [Bridley Decl., ¶ 7.] The 45-day response window for objecting to the settlement expires
3 on March 14, 2025. [Bridley Decl., ¶¶ 9-11.] As of the filing of this motion, Atticus has
4 received one request for exclusion (for a 99.96% participation rate), and zero objections to
5 the settlement. One dispute was submitted regarding the information used to calculate class
6 member settlement shares. [Bridley Decl., ¶¶ 9-11.] Once the notice period has expired,
7 Atticus will submit a supplemental declaration prior to the final approval hearing.

8 **D. Release of Claims**

9 All Participating Class Members will release Defendants from all claims alleged in the
10 operative complaint, or that could have been brought based on the factual allegations in the
11 operative complaint during the Class Period, including PAGA claims. The releases are limited to
12 the claims that were actually pleaded or could have been pleaded based on the alleged facts in the
13 operative complaint. [Saunders Decl., ¶ 9.]

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

15 As noted, the Parties allocated \$25,000 from the GSA to resolution of Plaintiff's claims
16 under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and
17 adequate, and consistent with PAGA's underlying purposes. Per PAGA, \$18,750 of this
18 amount will be paid to the LWDA as the state's share of the civil penalties, and the remainder
19 of \$6,250 will be distributed to the 1,175 Aggrieved Employees eligible to receive a PAGA
20 payment. [Bridley Decl., ¶¶ 5, 14.] As required by Labor Code section 2699(l)(2), Plaintiff
21 notified the LWDA of the settlement and the final approval hearing via its online portal.
22 [Saunders Decl., ¶ 10; Exh. 1.]

23 **IV. ARGUMENT**

24 The law favors settlement, particularly in class actions where substantial resources
25 can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg &
26 A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of
27 Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v.
28 Safeco Corp. (9th Cir. 1976) 529 F.2d 943, 950; Potter v. Pacific Coast Lumber Co. (1951) 37

1 Cal.2d 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
2 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
3 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
4 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
5 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
6 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
7 two-step process intended to determine whether, under the totality of circumstances, the
8 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
9 Cal.App.4th at 245.

10 On a motion for final approval, the trial court is charged with determining whether, in
11 light of the total circumstances of the action and the response of the class members to the
12 proposed settlement, the settlement is fair, reasonable, and adequate. Dunk, 48 Cal.App.4th at
13 1801-02; Wershba, 91 Cal.App.4th at 244-45. The court has broad discretion in making that
14 determination and may consider a number of relevant factors, including: the strength of
15 plaintiff's case; the likelihood of potential recovery; the risk, expense and likely duration of
16 further litigation; the amount offered in settlement; the extent of discovery and stage of the
17 proceedings; the experience and opinion of counsel; and the reaction of class members to the
18 settlement. Id. In light of the strong judicial policy favoring the settlement of class actions,
19 courts generally apply a presumption of fairness to a proposed class action settlement when:
20 (1) the settlement is reached through arm's-length bargaining; (2) investigation and
21 discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is
22 experienced in similar litigation; and (4) the percentage of objectors is small. Dunk, 48
23 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

24 **A. The Proposed Settlement Merits Final Approval**

25 The proposed settlement of this action warrants final approval under the standards
26 summarized above. The settlement is fair, reasonable and adequate, and represents a
27 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly
28 approved by the class members, as there were no objections and only one class member

1 requested exclusion, for a 99.98% participation rate.

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

4 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
5 was reached following arm's-length negotiations presided over by Todd Smith, Esq., a highly
6 respected and well-known mediator with extensive experience mediating wage and hour class
7 actions. [Saunders Decl., ¶ 5.] Moreover, Plaintiff and his counsel were well-informed about
8 the facts and the law, and counsel Zachary M. Crosner and Chad Saunders have years of litigation
9 experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified
10 to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Saunders
11 Decl., ¶¶ 23-31.] Icon likewise was represented by highly-qualified and experienced defense
12 counsel. Both sides advocated vigorously for their clients and nothing was "left on the table."

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

14 The settlement was well-received by the class. As of the filing of this motion, no
15 objections have been filed, and only one Class Member requested exclusion. [Bridley Decl., ¶¶
16 10-11.] As many courts recognize, class member reaction to the settlement is one of the most
17 important factors to consider in determining if final approval should be granted. Mandujano v.
18 Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank
19 Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction
20 of the class to the settlement is perhaps the most significant factor to be weighed in considering its
21 adequacy") (internal quotation marks omitted).

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

24 The proposed settlement involves a substantial sum of money that, when distributed,
25 will confer meaningful monetary benefits on the Class members. As described above, each
26 individual award will be based on an allocation consistent with the nature of the claims asserted
27 and will fairly and equitably allocate the available funds in relation to the degree of damage
28 each Class member incurred. While class members who worked for only a short period of time

1 will receive relatively small sums, those with longer tenures and who worked more hours and
2 shifts throughout the class period will receive appropriately larger awards.

3 Prior to settlement, the parties engaged in informal discovery to facilitate settlement
4 discussions. Thus, Plaintiff reviewed documents and information regarding Defendants' payroll
5 practices, a random sampling of pay stubs and time records from class members, applicable
6 compensation plans, meal and rest break policies, etc., and information from Defendants regarding
7 class size and breakdown, work weeks/pay periods, rates of pay, and other information used to
8 formulate a damages model. Plaintiff then had that information analyzed by a consulting expert to
9 assist in determining potential violation rates and other data used to formulate a damages model.
10 Plaintiff's counsel are confident they obtained sufficient information to understand the law and
11 facts of this case and make an informed decision regarding the proposed settlement and whether it
12 is fair and reasonable. [Saunders Decl., ¶¶ 4, 11.]

13 Plaintiff first asserts Defendants' failed to pay for all hours worked, and particularly that
14 Defendants frequently "edited" employee time punches to reduce hours worked in order to avoid
15 paying overtime and/or meal break premiums. The practice of editing Class Members' actual
16 hours worked systematically underpaid them for both regular and overtime hours. Plaintiff
17 contends the evidence showing unpaid hours worked will be presumed accurate and Defendants'
18 records showing edits made to their time will support that presumption, which Defendants will be
19 unable to rebut. Hernandez v. Mendoza (1988) 199 Cal. App. 3d 721. On the other hand,
20 Defendants argued their time keeping policies fully complied with the law, that they accurately
21 recorded and paid for all hours worked and, that to the extent any changes were made to
22 employee time, it was rare and done for legitimate reasons such as correcting employee errors,
23 correcting instances when employees forgot to clock out, etc. Without considering any of
24 Defendants' defenses to certification or on the merits, and assuming one hour of "off the clock"
25 work per week, Plaintiff's expert calculated Defendants' maximum exposure here at about
26 \$936,900. (Saunders Decl., ¶ 12.)

27 Plaintiff next contends Defendants failed to provide legally compliant meal and rest breaks.
28 Specifically, although employees consistently worked shifts of at least five and a half hours or

1 more, they did not receive legally compliant meal periods for several reasons. For example, the
2 time records show that for 85.1% of shifts between 5-6 hours do not reflect a meal period and
3 Plaintiff contends that not all employees had a signed waiver in place. Plaintiff also contends class
4 members frequently had to work through part or all their meal periods due to understaffing, pressure
5 to complete their job duties before having a meal, and instructions from supervisors to take short
6 meal periods or to skip meal periods completely, and again that Defendants altered time records to
7 avoid paying meal period premiums. (Saunders Decl., ¶ 13.)

8 Defendants deny Plaintiff's contentions, claiming they made meal and rest breaks available
9 to Class Members in compliance with California law. Defendants contend their meal and rest break
10 policies are lawful and that Class Members were frequently reminded via training and supervisors
11 that they were required to take all meal and rest breaks. Defendants also contend that time records
12 demonstrate that Class Members took duty-free, timely meal and rest breaks. They further
13 emphasized all employees had a signed meal period waiver in place and also employees can and
14 did verbally waive meal periods, particularly when working less than a six hour shift. Defendants
15 contend their meal and rest break policies and practices comported with the flexibility the *Brinker*
16 court held was integral to California's meal and rest period requirements. Finally, Defendants argue
17 that Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims would
18 require individualized inquiry, including whether there was an unlawful companywide policy,
19 whether employees had the opportunity to take meal and rest periods, whether they voluntarily
20 chose to waive meal and rest periods, and whether Defendants ever prevented them from taking
21 meal and rest periods. Accordingly, Defendants contend these claims are vulnerable to a ruling that
22 class treatment is not appropriate. Without taking into consideration any of Defendants' defenses
23 to certification or on the merits, Plaintiff calculated Defendants' maximum exposure for the meal
24 and rest break claims as approximately \$926,500. (Saunders Decl., ¶ 14.)

25 Plaintiff also contends Defendants required Plaintiff and the Class Members to use their
26 personal cell phones for work related purposes including communicating with supervisors before
27 and after their shifts. However, Defendants failed to reimburse employees for the use of their
28 personal cell phones Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal.App.4th 1137, it was

1 held that § 2802 requires employers to always reimburse employees who are required to use
2 personal cell phones for work-related calls for a reasonable percentage of their cell phone bills. On
3 the other hand, Defendants argued there was no reason for employees to use their own phones while
4 working, and any other use was purely for personal preference and therefore not reimbursable.
5 Without taking into consideration any of Defendants’ defenses to certification or on the merits,
6 Plaintiff calculated Defendants’ maximum exposure for expense reimbursement as about \$87,500.
7 (Saunders Decl., ¶ 15.)

8 Plaintiff’s claims for inaccurate wage statements and waiting time penalties are derivative
9 of the unpaid wage claims. Should those claims fail, Plaintiff’s claim for inaccurate wage
10 statements and waiting time penalties would also fail. Defendants also contend they would not be
11 liable for waiting time penalties because a “good faith dispute” exists over the payment of past
12 wages. Cal. Code Regs. Tit. 8 § 13520; Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157,
13 1201. Further, Defendants contend Plaintiff would have to prove that Defendants “willfully” failed
14 to pay Class Members appropriate wages due upon separation of employment. Defendants contend
15 that any failure to pay wages upon separation was not willful. Without taking into consideration
16 any of Defendants’ defenses to certification or on the merits, Plaintiff calculated Defendants’
17 maximum exposure for wage statement penalties as \$966,700 and waiting time penalties as
18 \$2,391,600. (Saunders Decl., ¶ 16.)

19 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$5 million
20 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
21 at issue. (Saunders Decl., ¶ 17.) As with the class claims, Plaintiff discounted the potential PAGA
22 penalties based on Defendants’ various defenses on the merits and also accounted for the Court’s
23 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code §
24 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties
25 of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell
26 Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties
27 denied after trial). Accordingly, the Parties allocated \$10,000 to PAGA penalties.

28 Plaintiff submits this amount is reasonable under the circumstances and in line with

1 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
2 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
3 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
4 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
5 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
6 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
7 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
8 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
9 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
10 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
11 not objected to the settlement.

12 Thus, Plaintiff and his counsel discounted the value of the class claims consistent with the
13 risks discussed above, as well as the potential applicability of arbitration agreements signed by
14 many class members. They carefully weighed the likelihood of the class receiving substantially
15 greater benefit if the litigation continued, and concluded – in light of these very real and substantial
16 risks – settlement on the proposed terms and without prolonged and costly litigation was in the best
17 interests of the class. The overall \$989,940 recovery represents a significant percentage of
18 Defendants' potential exposure and, given Defendants' multi-layered defenses and all other
19 potential risks of continued litigation, a total recovery for the class of \$989,940, which will result
20 in average award of some \$240 per class member, plus additional sums under PAGA, is a
21 significant result well within the range of reasonableness considering all potential outcomes, and it
22 will provide direct monetary awards to all Class Members without further delay. [Saunders Decl.,
23 ¶ 18.]

24 Importantly, the mere fact that a settlement does not provide the same recovery as might be
25 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
26 Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement
27 process...even if the relief afforded by the proposed settlement is substantially narrower than it
28 would be if the suits were to be successfully litigated, this is no bar to a class settlement because

the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court”). Importantly as well, the proposed settlement is non-reversionary and will provide immediate benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf> (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

V. PLAINTIFF’S ENHANCEMENT AWARD

Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of \$5,000 for his service in bringing these claims on behalf of the Class. The request is reasonable given the risks he undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Icon’s litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing himself at risk of discrimination by future prospective employers. As set forth in more detail in his declaration submitted with the preliminary approval motion, among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and

1 kept abreast of all significant developments. [Declaration of Vijay Sheth, ¶¶ 2-9 (filed April 15,
2 2024); Saunders Decl., ¶ 19.] Finally, there are no class member objections submitted with
3 respect to the amounts Plaintiff proposes to receive. [Bridley Decl., ¶ 12.] Accordingly, the
4 requested enhancement payment to Plaintiff is appropriate and justified as part of the settlement.

5 **VI. SETTLEMENT ADMINISTRATION COSTS**

6 The settlement provides for a payment to Atticus of no more than \$19,610 for its services
7 as the Settlement Administrator. As set forth in the Declaration of Bryn Bridley, Atticus has
8 performed and will continue to perform its required duties through final distribution of the
9 settlement funds, and incurred \$19,610 in fees and expenses. [Bridley Decl., ¶ 17.] Accordingly,
10 Plaintiff respectfully requests the Court approve payment of \$19,610 to Atticus from the GSA.
11 [Saunders Decl., ¶ 20.]

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

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

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

26 As addressed in detail above, at the time the parties reached the tentative settlement
27 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
28 some or all the claims would not be certified for class treatment, as Icon had strong

1 arguments that its compensation policies were legal and properly compensated the class
2 members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the
3 merits, it undoubtedly would have taken several years to realize any recovery while they
4 pursued class certification, trial, and an almost certain appeal. [Saunders Decl., ¶¶ 12-18.]

5 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to
6 obtain, and the settlement provides substantial cash payments to Class Members, with an
7 average award of about \$240, and with a maximum award of over \$2,600. Importantly as
8 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
9 filing of this motion, there are no objections to the settlement and zero individuals opted out.
10 [Bridley Decl., ¶¶ 10-11, 13.]

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

12 The United States Supreme Court has ruled the parties to a class action properly may
13 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
14 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
15 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
16 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
17 should not result in a second major litigation. Ideally, of course, litigants will settle the
18 amount of a fee." The United States Supreme Court has reemphasized this policy and further
19 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
20 (1984) 465 U.S. 886, 902 n.19.

21 As part of the Settlement, Icon agreed not to object to an award of no more than 1/3
22 of the GSA for attorney's fees, or \$329,947, and up to \$20,000 in reimbursement for
23 litigation costs and expenses (although only \$14,807.79 is requested). Such a fee is
24 commensurate with what the market would provide for similar services and the Court
25 therefore can most certainly enforce the agreement. As California's Court of Appeal has
26 instructed:

27 Given the unique reliance of our legal system on private litigants to enforce substantive
28 provisions of law through class and derivative actions, attorneys providing the essential
enforcement services must be provided incentives roughly comparable to those negotiated

1 in the private bargaining that takes place in the legal marketplace, as it will otherwise be
2 economic for defendants to increase injurious behavior.

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

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

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

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

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

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

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

1 557 F.2d at 769.

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

10 Here, Class Counsel seek a fee award for their successful prosecution and resolution
11 of this action of no more than 1/3 of the total amount recovered by the Class via the lawsuit,
12 or \$329,947. The percentage requested is justified for the reasons set forth further below,
13 and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed,
14 review of class action settlements shows that courts have historically awarded fees in the
15 range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner
16 Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that
17 percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on
18 Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a
19 reasonable fee award from a common fund in order to assure that the fees do not consume a
20 disproportionate part of the recovery obtained for the class, although somewhat larger
21 percentages are not unprecedented.").

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

23 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
24 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for
25 bringing an objective measure of the work performed into the calculation of a reasonable
26 attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 283.9 hours of time on
27 this matter, resulting in a modest and very reasonable lodestar of \$216,905.00.

28 As is fully detailed in the Saunders Declaration, Class Counsel's efforts included:

(1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal research, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other Icon employees; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) drafting a first amended complaint; (7) propounding initial written discovery, (8) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (9) engaging in substantial informal discovery, including propounding informal discovery “requests” and reviewing documents and other information produced; (10) drafting a mediation brief and accompanying damages model after review and analysis of Defendants’ informal discovery production; (11) attending an all-day mediation; (12) negotiating and drafting the settlement agreement and related documents; (13) drafting an amended complaint to effectuate the settlement; (14) drafting the motion for preliminary approval, attending the hearing, and providing supplemental information and briefing; (15) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (16) drafting the motion for final approval and motion for attorney’s fees, and attending the final approval hearing; and (17) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on the compliance hearing and amended judgment. [Saunders Decl., ¶ 22, Exh. 2.]

In pursuing this matter, Class Counsel incurred total attorney’s fees of \$216,905, based on 283.9 attorney hours. The lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a successful conclusion, and the requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. [Saunders Decl., ¶¶ 23-36.] On a lodestar basis, the fee request of \$329,947 results in a multiplier of 1.52, which is a modest enhancement

1 entirely in line with California law. Indeed, California courts routinely approve multipliers in
2 the in the 2-4 range to compensate for the time and risk of class action cases. Chavez v.
3 Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including an
4 upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to
5 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85
6 (affirming a multiplier of 2.34).) Class Counsel submits that the requested 1.52 multiplier
7 effectively operates to show that the percentage fee request is reasonable considering the
8 challenges presented in this contingency fee matter, and appropriately compensates Class
9 Counsel for the contingent risk assumed and delay in payment during the approximately two
10 years counsel has been representing Plaintiffs. Thus, the multiplier results in a fee
11 constituting a fair return on the contingency.

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

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

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

28 /////

1 **1. The Results Achieved.**

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

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

17 At the time of filing the complaint, Class Counsel recognized that they would have to
18 expend a substantial amount of time and advance significant costs to prosecute a statewide
19 class action suit with no guarantee of compensation or reimbursement, in the hope of
20 prevailing against a sophisticated company represented by first-rate attorneys. Despite
21 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
22 of class certification and the ability to prove class-wide and individual damages. In light of
23 the highly uncertain nature of this suit, Class Counsel also bore the risk that Icon would dig
24 in and attempt to bury their small firm in work. Given the small size of Class Counsel's
25 firm, not receiving any compensation for several years while simultaneously advancing
26 litigation costs posed considerable risk and difficulty. [Saunders Decl., ¶¶ 37-38.]

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

28 Practice in the narrow area of wage and hour litigation requires skill, knowledge and

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

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

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

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

27 Here, the contingent fee practice of Plaintiff's counsel simply do not accommodate
28 the investment of unnecessary time in a case, and the adverse resolution of any one of several

1 difficult issues present in this matter could have doomed the entire effort. As discussed, the
2 attorney's fees in this case were not only contingent but fairly risky, and there was always a
3 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.

4 [Saunders Decl., ¶¶ 37-38.] Accordingly, the contingent nature of the fee and the financial
5 burdens on Class Counsel and Plaintiff also support the fee requested.

6 **5. Awards in Other Cases**

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

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

23 Plaintiff's counsel also request reimbursement of actual out-of-pocket expenses incurred
24 to prosecute this action. These expenses were incidental and necessary to the effective
25 representation of the employees, and Plaintiffs' counsel is permitted to recover litigation costs
26 and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d
27 at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County
28 of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund

1 “[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of
2 attorneys’ fees by ... [Plaintiffs’] attorneys”). Plaintiffs’ counsel also is entitled to recover “those
3 out-of-pocket expenses that would normally be charged to a fee-paying client.” Harris v.
4 Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

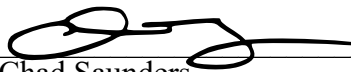
5 As explained in the Saunders Declaration, Class Counsel incurred a total of
6 \$14,886.34 in expenses incurred in connection with this litigation. These expenses
7 include the amounts paid for court filing fees, service of process, expert fees, postage,
8 Case Anywhere charges, and mediation fees, all of which are costs normally billed to
9 and paid by the client. These costs were reasonably incurred in the prosecution of this
10 matter and it is respectfully requested that the Court authorized they be reimbursed in
11 full. [Saunders Decl., ¶¶ 39-40.]

12 **VII. CONCLUSION**

13 For all the foregoing reasons, Plaintiff Vijay Sheth respectfully requests that the Court
14 grant this motion and grant final approval of the proposed class action settlement and approve the
15 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
16 the Settlement Administrator’s fees and expenses, approve the requested class representative
17 enhancement payment, approve the award of attorney’s fees and costs as requested, and enter
18 judgment in this action. Finally, Plaintiff requests the Court set a non-appearance case review re:
19 settlement compliance hearing for April 14, 2026, or a later date convenient for the Court.

20
21 Dated: March 11, 2025

CROSNER LEGAL, P.C.

22
23 

24 Chad Saunders
25 Zachary Crosner
26 Jamie Serb
27 Attorneys for Plaintiff VIJAY SHETH
28