

COHELAN KHOURY & SINGER

Isam C. Khoury (SBN 58759)

ikhoury@ckslaw.com

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Marta Manus (SBN 260132)

mmanus@ckslaw.com

Rosemary C. Khoury (SBN 331307)

rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Fax: (619) 595-3000

MAJARIAN LAW GROUP, APC

Sahag Majarian (SBN 146621)

sahagii@aol.com

Garen Majarian (SBN 334104)

garen@majarianlawgroup.com

18250 Ventura Blvd.

Tarzana, CA 91356

Telephone: (818) 609-0807/ Fax: (818) 609-0892

Attorneys for Anthony Morris, on behalf of himself
and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ANTHONY MORRIS, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY, an Indiana
Corporation; LINCOLN NATIONAL
CORPORATION, an Indiana Corporation;
and DOES 1 Through 10, Inclusive,

Defendants.

Case No. 22STCV20426

ASSIGNED FOR ALL PURPOSES TO:

The Honorable Lawrence P. Riff

Department SS7

CLASS AND REPRESENTATIVE ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT**

Hearing Set By November 1, 2023 Order

Date: May 13, 2024

Time: 10:00 a.m.

Dept: SS 7

Judge: Lawrence P. Riff

Complaint filed: June 22, 2022

Trial date: Not set

TABLE OF CONTENTS

		<u>PAGE</u>
1		
2		
3	I. INTRODUCTION AND BACKGROUND.....	1
4	II. THE PARTIES	1
5	A. Plaintiff and Defendants.....	1
6	B. The Class and Aggrieved Employees	1
7	III. PRE-MEDIATION LITIGATION AND INFORMAL DISCOVERY	2
8	IV. MEDIATION	3
9	V. SUMMARY OF PROPOSED SETTLEMENT	4
10	A. Settlement Terms	4
11	B. Preliminary Approval, Notice to the Class, and Its Response	5
12	1. Preliminary Approval and Class Notice.....	5
13	2. The Class’ Response to the Notice.....	5
14	C. Released Class Claims	5
15	VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE.....	6
16	VII. ATTORNEYS’ FEES ARE REASONABLE AND SHOULD BE AWARDED	7
17	A. The Results Achieved Support the Fee Request	7
18	B. A Fee Award Based on a Percentage of the Common Fund is Appropriate.....	7
19	C. One-Third of the Common Fund is a Reasonable Fee	8
20	D. Optional Lodestar Cross-Check Confirms Reasonableness of Fee.....	9
21	E. Counsel’s Hourly Rates Are Reasonable	10
22	F. Class Counsel’s Total Hours are Reasonable.....	11
23	G. A Multiplier of the Lodestar Would Be Awarded	11
24	H. Litigation Expenses Are Reasonable	12
25	VIII. THE PROPOSED PAGA PAYMENT IS REASONABLE	12
26	IX. THE SERVICE AWARD IS REASONABLE AND SHOULD BE AWARDED.....	13
27	X. CONCLUSION	14
28		

TABLE OF AUTHORITIES

PAGE

<i>Barbosa v. Cargill Meat Solutions Corp</i> (E.D. Cal. July 2, 2013) 297 F.R.D.4319.....	10
<i>Beaver v. Tarsadia Hotels</i> (S.D. Cal. Sept. 28, 2017) 2017 U.S. Dist. LEXIS 160214	8
<i>Ceja-Corona v. CVS Pharm., Inc.</i> (E.D. Cal. Jan. 14, 2015) 2015 U.S. Dist. LEXIS 5118.....	13
<i>City and County of San Francisco v. Sweet</i> (1995) 12 Cal.4th 105	8
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal. App. 4th 43	9
<i>Children's Hospital and Med. Center v. Bonta</i> (2002) 97 Cal. App. 4th 740, 783	10
<i>Dennis v. Kellogg Co.</i> (S.D. Cal. Nov. 14, 2013) 2013 U.S. Dist. LEXIS 163118	9
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	5, 6, 8
<i>Earley v. Superior Court</i> (2000) 79 Cal.App.4th 1420	13
<i>Flannery v. California Highway Patrol</i> (1998) 61 Cal. App. 4th 629	10
<i>Franco v. Ruiz Food Prods.</i> (E.D. Cal. Nov. 27, 2012) 2012 U.S. Dist. LEXIS 169057	13
<i>Garcia v. Gordon Trucking</i> (E.D. Cal. 2012) 2012 U.S. Dist. LEXIS 160052	13
<i>Glass v. UBS Fin. Servs.</i> (N.D. Cal. Jan. 26, 2007) 2007 U.S. Dist. LEXIS 8476	9
<i>Hensley v. Eckerhart</i> (1983) 461 U.S. 424	7
<i>Hopson v. Hanesbrands Inc.</i> (N.D. Cal. Apr. 3, 2009) 2009 U.S. Dist. LEXIS 33900	12

PAGE

<i>In re Heritage Bond Litig. v. U.S. Trust Co. of Tex.</i> (C.D. Cal. June 10, 2005) 2005 U.S. Dist. LEXIS 13627.....	7
<i>In re Linerboard Antitrust Litig.</i> (E.D. Pa. June 2, 2004) 2004 U.S. Dist. LEXIS 10532	12
<i>In re Nordstrom Com. Cases</i> (2010) 186 Cal. App. 4th 576	12
<i>Keith v. Volpe</i> (C.D. Cal. 1980) 501 F.Supp.403	12
<i>Ketchum v. Moses</i> (2001) Cal.4th 1122	10, 11
<i>Kullar v. Foot Locker Retail, Inc.</i> (2008) 168 Cal. App. 4th 116	7
<i>Laffitte v. Robert Half International, Inc.</i> (2016) 1 Cal.5th 480	7, 8
<i>Lealao v. Beneficial California, Inc.</i> (2000) 82 Cal.App.4th 19	8, 11, 12
<i>Lopez v. Youngblood</i> (E.D. Cal. Sep. 1, 2011) 2011 U.S. Dist. LEXIS 99289	9
<i>Magadia v. Wal-Mart Assocs.</i> (2019) 384 F. Supp. 3d 1058.....	13
<i>Moore v. Jas. H. Matthews & Co.</i> (9th Cir. 1982) 682 F.2d 830	11
<i>Nen Thio v. Genji, LLC</i> (N.D. Cal. 2014) 14 F. Supp. 3d 1324	13
<i>Norman v. Housing Auth.</i> (11th Cir. 1988) 836 F.2d 1292.....	11
<i>Quinn v. State of California</i> (1995) 15 Cal.3d 162	8
<i>Serrano v. Priest (Serrano III)</i> (1977) 20 Cal.3d 25	4, 10, 11
<i>Smith v. CRST Van Expedited, Inc.</i> (S.D. Cal. Jan. 14, 2013) 2013 U.S. Dist. LEXIS 6049.....	9

	<u>PAGE</u>
<i>SternwestCorp. v. Ash</i> (1986) 183 Cal.App.3d 74.....	12
<i>Vasquez v. Superior Court</i> (1971) 4 Cal. 3d 800	13
<i>Vincent v. Hughes Air West, Inc.</i> (9th Cir. 1977) 557 F.2d 759.....	7, 8
<i>Vizcaino v. Microsoft Corp.</i> (9th Cir. 2002) 290 F.3d 1043.....	12
<i>Wershba v. Apple Computers, Inc.</i> (2001) 91 Cal.App.4th 224	7, 12

STATUTES AND REGULATIONS

	<u>PAGE</u>
<u>California Business & Professions Code</u> §17200, et seq.	2, 6
<u>California Labor Code</u> §201.....	2, 6
§202.....	2, 6
§203.....	2, 6
§204.....	6
§226.....	2, 6
§226.7.....	2, 6
§246.....	2, 6
§510.....	2, 6
§512.....	2, 6
§1174.....	6
§1194.....	2, 6
§1194.2.....	6
§2800.....	2
§2802.....	2, 6
§2804.....	2, 6
§2699 et seq	3
§2699(f)(2)	6

MISCELLANEOUS AUTHORITIES

	<u>PAGE</u>
<u>Reagan W. Silber and Frank E. Goodrich, Common Funds and Common Problems; Fee objections and Class Counsel’s Response, (1998): 7 Rev. Litig 525</u>	9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PAGE

T. Willging, L. Hooper and R. Niemic, Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules, (1996): 9

William Rubenstein, Alba Conte & Herbert Newberg, Newberg on Class Actions (4th ed. 2009) (“Newberg”): § 14.03 11

I. INTRODUCTION AND BACKGROUND

Plaintiff Anthony Morris (“Plaintiff”) seeks final approval of a pre-certification wage and hour class and Private Attorneys General Act (“PAGA”) Settlement of \$500,000.00 with Defendants The Lincoln National Life Insurance Company and Lincoln National Corporation (“Defendants”). Declaration of Marta Manus, (“Manus Decl.”), ¶15.

Support for the Settlement is strong. Not a single Class Member submitted an objection or a request for exclusion; a participation rate of 100%, the highest total Individual Class/PAGA Payment is estimated to be \$6,062.89, and the average total payment is estimated to be \$1,187. Class Representative Anthony Morris is estimated to receive a total payment of \$3,659 (rounded to nearest dollar amount). Manus Decl. ¶¶16, 41, 56; Declaration of Jeremy Talavera on behalf of CPT Group, Inc., (“CPT Decl.”), CPT Decl. ¶¶9-12, 20, 21.

II. THE PARTIES

A. Plaintiff and Defendants

Plaintiff Anthony Morris worked for Defendants from approximately February 19, 2019 through February 2022. From February 19, 2019 through July 5, 2020, Plaintiff worked in the exempt salaried position of “Specialist, Field Operations Sales.” Beginning July 6, 2020, Plaintiff worked in the non-exempt salaried position of “Sr. Administrator, GP Sales Support” until February 4, 2022. Manus Decl. ¶17, Exh. 1- Declaration of Anthony Morris filed May 31, 2023, (“Morris Decl.”), ¶3.

Defendant Lincoln National Corporation (“LNC”) is an Indiana Corporation headquartered in Radnor, Pennsylvania. LNC, through its subsidiaries, operates multiple insurance and retirement businesses in the United States. Defendant Lincoln National Life Insurance Company (“LNCIC”) is an Indiana Corporation headquartered in Fort Wayne, Indiana with operations in California. LNLIC is a subsidiary of LNC. LNLIC is the entity listed as the employer on Plaintiff’s wage statements. Manus Decl. ¶18.

B. The Class and Aggrieved Employees

The proposed Class consists of two classes of employees. Class I includes all exempt and non-exempt employees in California who were required to work from home during the period

1 from June 22, 2018 to May 17, 2023 (“Class Period”). Class II is limited to non-exempt
2 employees in California during the Class Period. Manus Decl. ¶19. “Class” means Class I and
3 Class II, collectively. *Id.*

4 There are 241 total Class Members. Class I Members encompass 241 members, who
5 worked 29,928 Workweeks during the Class Period. Of the 241 Class Members, 73 are members
6 of Class II, who worked 4,962 workweeks during the Class Period. Manus Decl. ¶20; CPT Decl.
7 ¶¶12, 17, 18.

8 A subgroup of the Class, Aggrieved Employees, were employed some time during the
9 period from April 29, 2021 through May 17, 2023 (“PAGA Period”). There are 186 Aggrieved
10 Employees that worked 6,047 Pay Periods during the PAGA Period. Manus Decl. ¶21; CPT Decl.
11 ¶19.

12 **III. PRE-MEDIATION LITIGATION AND INFORMAL DISCOVERY**

13 On June 22, 2022, Plaintiff filed a class action complaint in the Los Angeles County
14 Superior Court alleging Defendants’ failed to (1) reimburse business expenses (Labor Code §§
15 2800, 2802, 2804); (2) pay minimum, regular, and overtime wages (Labor Code §§ 510, 1194;
16 applicable IWC Wage Order, §§ 3, 4); (3) provide meal periods (Labor Code §§ 226.7, 512;
17 applicable IWC Wage Order, § 11); (4) provide rest periods (Labor Code § 226.7; applicable
18 IWC Wage Order, § 12); (5) provide accurate itemized wage statements (Labor Code § 226); (6)
19 provide sick pay (Labor Code § 246); and (7) timely pay wages due upon separation of
20 employment (Labor Code §§ 201, 202, 203). Based on these allegations, Plaintiff alleged unfair
21 business practices in violation of the Unfair Competition Law (Bus. & Prof. Code §§ 17200-
22 17208). Manus Decl. ¶22. On July 27, 2022, Plaintiff filed a First Amended Complaint (“FAC”)¹
23
24
25

26 ¹ Due to a stay on the pleadings, Defendants did not respond to the FAC. At the initial status
27 conference held September 9, 2022, upon being advised of the Parties’ agreement to mediate, the
28 Court continued the stay on the pleadings until the post-mediation status conference. Manus Decl.
¶24.

1 also seeking PAGA civil penalties² pursuant to Labor Code sections 2699, *et seq.*, based on
2 Plaintiff's causes of action. *Id.* at ¶23.

3 In early September 2022, the Parties agreed to mediate and scheduled mediation with Lou
4 Marlin, Esq. for February 16, 2023. Manus Decl. ¶26. On March 8, 2023, Plaintiff filed a Second
5 Amended Complaint ("SAC")³ to allege the factual allegations, claims, and legal theories at issue
6 discussed during mediation, including alleged remote expense issues not expressly referenced in
7 the operative complaint. *Id.* ¶30.

8 **IV. MEDIATION**

9 To prepare for mediation, Plaintiff requested, and Defendants produced key data for the
10 period from that included: (1) total number of Class Members; (2) number of formerly employed
11 Class Members; (3) number of Class Member Pay Periods; (4) number of Class Member Work
12 Weeks; and (5) average hourly rate of pay; and for the PAGA Penalties: (1) total number of
13 aggrieved employees ("Aggrieved Employees"); (2) number of formerly employed Aggrieved
14 Employees; (3) number of PAGA Period Pay Periods; (4) number of PAGA Pay Periods. In
15 addition, Defendants produced excel spreadsheet data containing a 20% random sample of Class
16 Member time and payroll records and exemplar wage statements (through Pay Period ending June
17 19, 2022). Defendants further produced excel spreadsheet data containing reimbursement details,
18 and stipend details. Manus Decl. ¶27.

19 After receipt of the data and information, Plaintiff's Counsel retained the services of a
20 damages' consultant to review the information and data to assess violation rates for short, late, or
21 missed meal periods, unpaid or underpaid expense reimbursements for expenses, the incidence
22 of underpaid overtime wages due to off-the-clock work and failure to use the Class Members'
23 regular rate of pay, the incidence of underpaid sick Pay due to failure to use the Class Members'

24 _____
25 ² Plaintiff served notice on the Labor and Workforce Development Agency ("LWDA") and on
26 Defendants on April 29, 2022. Manus Decl. ¶25, Ex. 2. Through the present, the LWDA has not
communicated any intention to investigate the charges alleged. *Id.*

27 ³ The Parties stipulated to allow Plaintiff to file the SAC, and that Defendants' answer would be
28 due 30 days after service of the SAC. Defendants answered the SAC on April 7, 2023. Manus
Decl. ¶31.

regular rate of pay, and derivative claims for wage statements penalties, waiting time penalties, PAGA civil penalties, and to extrapolate the damages to the Class. Manus Decl. ¶28.

On February 16, 2023, the Parties attended mediation with Lou Marlin, Esq., an experienced and respected wage and hour mediator. The Parties engaged in a day of serious, informed and lengthy arms'-length negotiations, which resulted in a settlement in principle and a memorandum of understanding. Manus Decl. ¶29.

V. SUMMARY OF PROPOSED SETTLEMENT

A. Settlement Terms.

Subject to Court Approval, Defendants will pay the Gross Settlement Amount of \$500,000.00 ("GSA") which includes: (a) attorneys' fees of \$166,650.00 (one-third of the GSA) [apportioned 50% to Cohelan Khoury & Singer / 50% to Majarian Law Group, APC. Manus Decl. ¶34]; (b) Class Counsel's litigation expenses not to exceed \$12,000.00; (c) a Service Payment to Plaintiff Anthony Morris of \$7,500.00; (d) PAGA Payment of \$25,000.00 of which \$18,750.00 (75% of \$25,000.00) will be paid to the LWDA, and \$6,250.00 (25% of \$25,000.00) will be distributed to Aggrieved Employees); and (e) Administration expenses to CPT Group of up to \$9,000.00. In addition to the GSA, Defendants will pay the Employer Tax Obligations. Manus Decl. ¶33; CPT Decl. ¶13.

After Court-approved deductions, the estimated Net Settlement Amount ("NSA") of \$279,850.00 shall be allocated 70% (\$195,895.00) to Class I and 30% (\$83,955.00) of the Net to Class II, and will be distributed pro-rata to Class Members based on the number of Workweeks worked during the Class Period. Manus Decl. ¶35; CPT Decl. ¶¶15-18.

Aggrieved Employees will divide the 25% PAGA payment based on number of Pay Periods worked during the PAGA Period whether they opt out or not. Manus Decl. ¶36; CPT Decl. ¶19.

Settlement payments are allocated 20% to wages, with normal payroll deductions taken and IRS W-2 Forms issued, and, 80% interest and penalties with IRS 1099 Forms issued. Manus Decl. ¶37.

Funds representing Settlement Payment checks uncashed 180 days after issuance will be

1 sent to the California Controller, Unclaimed Property Division for further handling on behalf of
2 the individuals whose checks were voided. Manus Decl. ¶¶38; CPT Decl. ¶22.

3 **B. Preliminary Approval, Notice to the Class, and Its Response**

4 **1. Preliminary Approval and Class Notice**

5 The Settlement was preliminarily approved on November 1, 2023. Manus Decl. ¶¶32, 39.
6 On December 15, 2023, after receiving a data file from Defendant, and searching the National
7 Change of Address database and updating Class Member addresses, the Settlement Administrator
8 mailed a Class Notice to 241 Class Members, informing them of (1) the pendency of the Action;
9 (2) proposed settlement terms; (3) automatic payment of Settlement shares if exclusion not
10 requested; (4) released claims; (5) right to object or request exclusion, and (6) and the date, time
11 and place of the final approval hearing. Manus Decl. ¶40; CPT Decl. ¶¶, Exh. A.

12 **2. The Class' Response to the Notice**

13 The Class response to the Settlement was extremely favorable. No Class Members
14 objections or requests for exclusion were received. Manus Decl. ¶¶16, 41, 56; CPT Decl. ¶¶9-11.

15 The Court determined the first three *Dunk* factors were met when it granted preliminary
16 approval: (1) the settlement was reached through arm's-length bargaining; (2) investigation and
17 discovery allowed counsel and the court to act intelligently; and, (3) counsel was experienced in
18 similar litigation. The fourth factor could not be known until the Class had notice and an
19 opportunity to respond. *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801-1802 (1996).

20 The fourth *Dunk* factor was established when the Class, after receiving notice, and having
21 an opportunity to respond, overwhelmingly approved the Settlement.

22 **C. Released Class Claims**

23 Class Members who do not timely file a Request for Exclusion, on behalf of themselves
24 and their respective former and present representatives, agents, attorneys, heirs, administrators,
25 successors, and assigns, will forever completely release and discharge, to the fullest extent
26 permitted by law, Released Parties from all claims that were alleged, or reasonably could have
27 been alleged, based on the Class Period factual allegations stated in the Operative Second
28 Amended Complaint filed March 8, 2023, and ascertained in the course of the Actions, including,

1) failure to reimburse business expenses, Labor Code Sections 2802, 2804 (Class I Members), 2) failure to pay all wages, Labor Code §§1194, 1194.2, 510 (Class II Members), 3) failure to pay overtime wages, Labor Code §§1194, 510 (Class II Members), 4) meal period violations, Labor Code §§512, 226.7 (Class II Members), 5) rest period violations, Labor Code §226.7 (Class II Members), 6) failure to provide accurate itemized wage statements, Labor Code §226 (Class II Members), 7) failure to provide sick pay, Labor Code §246 (Class II Members), 8) waiting time penalties, Labor Code §§201-203 (Class II Members), and 9) Unfair Competition Law violations, Bus. & Prof. Code §§ 17200, *et seq.* (Class I and Class II Members). Manus Decl. ¶42.

Aggrieved Employees, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, will forever completely release and discharge, to the fullest extent permitted by law, Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period factual allegations stated in the Operative Second Amended Complaint filed March 8, 2023, the April 29, 2022 PAGA Notice, and ascertained in the course of the Actions, including, 1) failure to reimburse business expenses, Labor Code Sections 2802, 2699(f)(2) (Aggrieved Employees), 2) failure to pay all wages, Labor Code §§1194, 510, 2699(f)(2) (Aggrieved Employees), 3) failure to pay overtime wages, Labor Code §§1194, 510, 2699(f)(2) (Aggrieved Employees), 4) meal period violations, Labor Code §§512, 226.7, 2699(f)(2) (Aggrieved Employees), 5) rest period violations, Labor Code §§226.7, 2699(f)(2) (Aggrieved Employees), 6) failure to provide accurate itemized wage statements, Labor Code §§226, 2699(f)(2) (Aggrieved Employees), 7) failure to provide sick pay, Labor Code §246, 2699(f)(2) (Aggrieved Employees), 8) failure to timely pay all wages upon separation and during employment, Labor Code §§201-204, 2699(f)(2) (Aggrieved Employees), and 9) failure to maintain accurate records, Labor Code §§1174, 2699(f)(2) (Aggrieved Employees). Manus Decl. ¶43.

VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The Preliminary Approval Motion analyzed the terms of the Settlement in light of *Dunk's* factors supporting a presumption of fairness, and the factors determining whether a settlement is

1 in the Class’ best interest, and is adequate and reasonable, under *Kullar v. Foot Locker Retail,*
2 *Inc.*, 168 Cal.App.4th 116, 130 (2008). The Court carefully reviewed and ruled on these analyses
3 and they are incorporated here by reference. *See*, Memorandum of Points an Authorities in
4 support Preliminary Approval Motion filed May 31, 2023, at 8:25 – 16:5, and, Supplemental Brief
5 in support of Preliminary Approval Motion filed October 10, 2023, at 1:9 – 3:1.

6 Nothing has changed since Preliminary Approval to negate the presumption of fairness.
7 Class Counsel remains convinced the Settlement is in the Class’ best interest.

8 **VII. ATTORNEYS’ FEES ARE REASONABLE AND SHOULD BE AWARDED**

9 Class Counsel requests attorneys’ fees of \$166,650.00, one-third of GSA, and litigation
10 costs not to exceed \$12,000.00. Counsel have expended 170.8 hours, a \$102,503.50 lodestar.
11 Manus Decl. ¶44, Exh. 3 – Consolidated Class Counsel’s Summary of Time & Costs; Exh. 4(A-
12 E) - Time Records; Exh. 5 – Costs; Declaration of Sahag Majarian II, (“Majarian Decl.”), ¶¶11,
13 12, Exh. 2 – Time Records; Exh. 3 – Costs.

14 **A. The Results Achieved Support the Fee Request**

15 The most important factor to consider in granting a fee award is the success obtained.
16 *In re Heritage Bond Litig. v. U.S. Trust Co. of Tex., N.A.*, No. 02-ML-1475 (RCx), 2005 U.S.
17 Dist. LEXIS 13627, *27 (C.D. Cal. June 10, 2005) (citing *Hensley v. Eckerhart*, 461 U.S. 424
18 (1983)). An excellent result was achieved, ensuring Class benefits despite contested claims.

19 The Class was provided notice of all settlement terms, including Counsel’s request of
20 award of attorneys’ fees up to one-third of the GSA. CPT Decl. ¶3, Exh. A, Section 3.2(A). No
21 Class Member objected to the attorneys’ fees award. *Id.* at ¶9.

22 **B. A Fee Award Based on a Percentage of the Common Fund is Appropriate**

23 The California Supreme Court recognized it is appropriate to award attorneys’ fees based
24 on a percentage of the total value of benefits to Class Members from the settlement, also known
25 as the “common fund” method. *Laffitte v. Robert Half International, Inc.*, 1 Cal.5th 480, 503
26 (2016); *Serrano v. Priest*, 20 Cal.3d 25, 34 (*Serrano III*) (1977); *Vincent v. Hughes Air West, Inc.*
27 557 F.2d 759, 769 (9th Cir. 1977). (California courts look to federal courts analyzing class issues.
28 *Wershba v. Apple Computer, Inc.*, 91 Cal. App. 4th 224, 239-40 (2001)).

1 “[T]he lodestar method is not necessarily utilized in common fund cases.” *Lealao v.*
2 *Beneficial California, Inc.*, 82 Cal.App.4th 19, 27 (2000); *Dunk*, at 1808 (attorneys’ fees may be
3 percentage of common fund where settlement amount is certain or easily calculable).

4 The purpose of the common fund approach is to “spread litigation costs proportionally
5 among all the beneficiaries so that the active beneficiary does not bear the entire burden alone.”
6 *Vincent, supra*, 557 F.2d at 769. “[O]ne who expends attorneys’ fees in winning a suit which
7 creates a fund from which others derive benefits may require those passive beneficiaries to bear
8 a fair share of the litigation costs.” *Quinn v. State of California*, 15 Cal.3d 162, 167 (1995). The
9 common fund doctrine has been applied “consistently in California when an action brought by
10 one party creates a fund in which other persons are entitled to share.” *City and County of San*
11 *Francisco v. Sweet*, 12 Cal.4th 105, 110 (1995).

12 A common fund fee award is especially appropriate here as it spreads the attorneys’ fees
13 among all beneficiaries of the fund; aligns incentives between counsel and the class; better
14 approximates market conditions in a contingency case; and encourages class counsel to seek early
15 settlement and avoid unnecessarily prolonging litigation, which prevents unnecessary use of
16 judicial and party resources, and delay in compensating the class. *Laffitte*, 1 Cal.5th at 503.

17 With the guiding principle that early class action settlements are favored and may not
18 diminish an award of attorneys’ fees, Class Counsel submits the fee request should be awarded,
19 based on the risks and complexities of prosecuting the action, the contingent nature of any fee,
20 their experience in handling cases of this type, fees commonly awarded in these cases, and
21 vindication of the Class’ rights.

22 Class Counsel undertook representation at their own expense, with compensation wholly
23 contingent upon providing a Class benefit. Class Members will receive substantial benefits from
24 the proposed Settlement. Based on the defined and clearly traceable Class benefit, the Court may
25 award a percentage of the common fund as attorneys’ fees.

26 **C. One-Third of the Common Fund is a Reasonable Fee**

27 “California courts routinely award attorneys’ fees of one-third of the common fund.”
28 *Beaver v. Tarsadia Hotels*, 2017 U.S. Dist. LEXIS 160214, *28 (S.D. Cal. Sept. 28, 2017).

Several studies of class action fee awards have found the median common fund fee award is approximately one-third of the total settlement fund. *See, e.g., Chavez v. Netflix, Inc.*, 162 Cal. App. 4th 43, 66, n.11 (2008) (“fee awards in class actions average around one-third of the recovery.”); Reagan W. Silber and Frank E. Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 Rev. Litig. 525, 546 (1998); T. Willging, L. Hooper and R. Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules*, 90 (1996) (attorneys’ fees in class litigation “were generally in the traditional range of approximately one-third of the total settlement”).

Counsel’s request for one-third of the common fund is in the mid-range of awards which commonly range from 20% to 50%, and is fair compensation for undertaking complex, risky, litigation on a contingent basis, and for the result achieved for the Class. Manus Decl. ¶45.

Some courts have found an award of 33% of a common fund is the “benchmark” in California. *Smith v. CRST Van Expedited, Inc.*, No. 10-CV-1116-IEG (WMC), 2013 U.S. Dist. LEXIS 6049, *14 (S.D. Cal. Jan. 14, 2013) (“These percentages compare favorably with” the California (33%) benchmark.); *Dennis v. Kellogg Co.*, No. 09-CV-1786-L (WMc), 2013 U.S. Dist. LEXIS 163118, at *7 (S.D. Cal. Nov. 14, 2013).

Class Counsel’s fee request is consistent with market rates, awards in similar California cases, including to Class Counsel, is reasonable, and should be awarded. Manus Decl. ¶46.

D. Optional Lodestar Cross-Check Confirms Reasonableness of Fee

Courts are not required to cross-check a common fund fee award against a lodestar increased by a risk multiplier, and many Courts decline to do so. *See, Glass v. UBS Financial Services, Inc.*, No. 06-4066-MMC, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. Jan. 26, 2007) (“no need to conduct a lodestar cross-check [as] [c]lass counsel’s prompt action in negotiating a settlement while the state of the law remained uncertain should be fully rewarded”); *Lopez v. Youngblood*, No. 07-0474-DLB, 2011 U.S. Dist. LEXIS 99289 (E.D. Cal. Sep. 1, 2011) (“lodestar cross-check is not required in this circuit, and in a case such as this, is not a useful reference.”)

Even when used, a cross-check “calculation need entail neither mathematical precision nor bean-counting,” is not a “full-blown lodestar inquiry,” and “can be performed with a less

1 exhaustive cataloguing and review of counsel’s hours.” *Barbosa v. Cargill Meat Solutions Corp*,
2 297 F.R.D. 431, 451 (E.D. Cal. July 2, 2013).

3 Under the lodestar method, a base fee is calculated from compilation of time reasonably
4 spent on the case and the reasonable hourly compensation of the attorneys. *Serrano v. Priest*,
5 *supra*, at 48. The court then enhances the lodestar by a “multiplier” to account for a range of
6 factors, such as the novelty and difficulty of the case, its contingent nature, and the degree of
7 success achieved. *Id.*, at 49; see also *Ketchum v. Moses*, Cal.4th 1122, 1132-36 (2001).

8 If the fee award were calculated using lodestar, rather than a common fund percentage, a
9 multiplier of 1.63 would be applied. ($\$166,650.00/\$102,503.50 = 1.63$). Class Counsel’s work
10 was reasonable and necessary and reflected in the excellent result achieved. Manus Decl. ¶47.

11 **E. Counsel’s Hourly Rates Are Reasonable**

12 Class Counsel are entitled to hourly rates charged by attorneys of comparable experience,
13 reputation, and ability for similar litigation. *Ketchum, supra* at, 1133; *Children’s Hospital and*
14 *Med. Center v. Bonta*, 97 Cal. App. 4th 740, 783 (2002) (affirming rates as “within the range of
15 reasonable rates charged by and judicially awarded comparable attorneys for comparable work”).
16 When determining reasonable rates, Courts may consider attorney skill and experience, nature of
17 the work performed, and the relevant area of expertise and the attorney’s customary billing rates.
18 *Flannery v. California Highway Patrol*, 61 Cal. App. 4th 629, 632 (1998).

19 Class Counsel’s skill and experience support their hourly rates and are in line with rates
20 typically approved in California wage and hour class actions and previously awarded to Class
21 Counsel in many courts, including this one. Cohelan Khoury & Singer’s practice is limited to
22 litigating class and representative actions on behalf of employees and consumers, and the firm
23 has been appointed Class Counsel or co-Class Counsel in over 300 such cases. Manus Decl. ¶¶3-
24 14, 46, 52. Majarian Law Group, APC represents California employees in individual actions and
25 class action disputes against their current or former employers, and has been appointed co-class
26 counsel for plaintiffs in numerous wage and hour class actions. Majarian Decl. ¶¶3-6

27 Class Counsel’s skill and experience support their hourly rates: **Cohelan Khoury &**
28 **Singer**: Founding Partner, Isam C. Khoury - \$925; Managing Partner, Michael D. Singer - \$995;

Associate, Marta Manus - \$700; Associate, Rosemary C. Khoury - \$500; Former Associate, Kristina De La Rosa - \$500; **Majarian Law Group, APC:** Sahag Majarian II - \$850; Garen Majarian - \$400. Laffey Matrix would actually provide for a rate increase: Founding Partner, Isam C. Khoury - \$1,057 (20+ years out of law school); Managing Partner, Michael D. Singer - \$1,057 (20+ years out of law school); Associate Attorney, Marta Manus - \$829 (11-19 years out of law school); Former Associate, Kristina De La Rosa - \$829 (11-19 years out of law school); **Majarian Law Group, APC:** Sahag Majarian II - \$1,057 (20+ years out of law school); Garen Majarian - \$437 (1-3 years out of law school). Manus Decl. ¶¶3-14, 53, Exh. 6 - Laffey Matrix; Majarian Decl. ¶¶5-6, Exh. 1 - Laffey Matrix.

F. Class Counsel's Total Hours are Reasonable

Hours are reasonable if, "at the time rendered, [they] would have been undertaken by a reasonable and prudent lawyer to advance or protect his client's interest." *Moore v. Jas. H. Matthews & Co.*, 682 F.2d 830, 839 (9th Cir. 1982). *Norman v. Housing Auth.*, 836 F.2d 1292, 1306 (11th Cir. 1988) ("The measure of reasonable hours is determined by the profession's judgment of the time that may be conscionably billed and not the least time in which it might theoretically have been done").

G. A Multiplier of the Lodestar Would Be Awarded

A lodestar may be enhanced by a multiplier for an appropriate fee award. *Serrano III*, 20 Cal.3d at 48. Factors determining level of enhancement include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. *Lealao* at 49. The list is not exhaustive, and the Court may consider other factors it deems important in setting the multiplier. *Id.* at 40; *Ketchum, supra* at 1139. "Multipliers ranging from one to four frequently are awarded in common fund cases when the lodestar method is applied." (Newberg on Class Actions §14.03 (4th ed. 2009)). Counsel pursued difficult claims, presented them with skill based on experience prosecuting employment class actions, and achieved an excellent result, on a contingent basis.

A 1.63 multiplier is reasonable and in line with those used in other cases, which may range

1 “from 2 to 4 or even higher.” *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. at 255; *In re*
2 *Linerboard Antitrust Litig.*, No. MDL 1261, 2004 U.S. Dist. LEXIS 10532, *16 (E.D. Pa. June 2,
3 2004) (finding the average multiplier awarded in common fund cases from 2001 to 200, was
4 4.35).

5 In *Lealao*, the Court held a trial court’s refusal to enhance the lodestar was an abuse of
6 discretion, opining a multiplier more than 3.5 was reasonable and not ruling out the original
7 request for 8.0. *Lealao*, *supra*, 82 Cal. App. 4th at 24, 52. See *SternwestCorp. v. Ash*, 183
8 Cal.App.3d 74, 76 (1986) (remanded with directions “to enhance the lodestar award by such
9 factor (two, three, four or otherwise) that the court, in its discretion shall deem proper”); *Vizcaino*
10 *v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (multiplier of 3.65); *Keith v. Volpe*, 501
11 F.Supp.403, 414 (C.D. Cal. 1980) (multiplier of 3.5).

12 Although not required, to the extent a lodestar could be used to calculate the fee award, a
13 multiplier is supported by the difficulty of the questions involved, the skill displayed by Class
14 Counsel in addressing them, the statutory employee protections enforced, and the contingent
15 nature of any recovery.

16 **H. Litigation Expenses Are Reasonable**

17 The Settlement allows Class Counsel to recover up to \$12,000.00 in costs. As counsel’s
18 actual costs of \$14,837.64 exceeded this amount, the request remains \$12,000.00. These costs
19 were reasonable and necessary. Manus Decl. ¶154, Exh. 3 – Costs; Majarian Decl. ¶12, Exh. 3 –
20 Costs.

21 **VIII. THE PROPOSED PAGA PAYMENT IS REASONABLE**

22 The Agreement allocates \$25,000.00 to PAGA claims, \$18,750.00 (75%) paid directly to
23 the LWDA, and the remaining \$6,250.00 (25%) to Aggrieved Employees. This was the result of
24 good-faith, mediated negotiations. Where PAGA penalties are negotiated in good faith, with “no
25 indication [the] amount was the result of self-interest at the expense of other Class Members,”
26 they are considered reasonable. *Hopson v. Hanesbrands Inc.*, Case No. 08-00844, (N.D. Cal. Apr.
27 3, 2009) 2009 U.S. Dist. LEXIS 33900, at *24; *see, e.g., In re Nordstrom Com. Cases* (2010) 186
28 Cal. App. 4th 576, 579 (No abuse of discretion approving settlement allocating \$0 to PAGA

claims).

This allocation is within the range, or higher, than other settlements. See *Magadia v. Wal-Mart Assocs.*, 384 F. Supp. 3d at 1101, citing, among others, *Ceja-Corona v. CVS Pharm., Inc.*, 2015 U.S. Dist. LEXIS 5118 (E.D. Cal. Jan. 14, 2015) (\$10,000 PAGA penalties in settlement of \$900,000), recommendation adopted, 2015 U.S. Dist. LEXIS 25730 (E.D. Cal. Mar. 3, 2015); *Nen Thio v. Genji, LLC*, 14 F. Supp. 3d 1324, 1330 (N.D. Cal. 2014) (\$10,000 PAGA, \$1.25m settlement); *Franco v. Ruiz Food Prods.*, 2012 U.S. Dist. LEXIS 169057, *5-6 (E.D. Cal. Nov. 27, 2012) (\$10,000 PAGA, \$2.5m settlement); *Garcia v. Gordon Trucking*, 2012 U.S. Dist. LEXIS 160052 (E.D. Cal. 2012) (\$10,000 PAGA, \$3.7m settlement).

IX. THE SERVICE AWARD IS REASONABLE AND SHOULD BE AWARDED

Service awards “are fairly typical in class action[s]” and “compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action.” *Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1394.

“Modern society seems increasingly to expose men to . . . group injuries for which individually they are in a poor position to seek legal redress, either because they do not know enough or because such redress is disproportionately expensive. If each is left to assert his rights alone if and when he can, there will at best be a random and fragmentary enforcement, if there is any at all. This result is not only unfortunate in the particular case, but it will operate seriously to impair the deterrent effect of the sanctions which underlie much contemporary law. The problem of fashioning an effective and inclusive group remedy is thus a major one.” *Vasquez v. Superior Court*, 4 Cal. 3d 800, 807 (1971).

Enforcement of laws protecting California employees would be “random and fragmentary,” or non-existent, if no one came forward and spent time working on behalf of others, and perhaps most importantly, took risks those others are not willing to bear.

Class action plaintiffs, not class members, risk a judgment for defendant’s costs. “Those who choose to take the risks of litigation should be the ones who bear the cost when they are unsuccessful.” *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1433. The *Earley* court contended this risk was balanced by potential reward.

“While imposition of the entire cost burden on the named plaintiffs may have a chilling effect on the willingness of plaintiffs to bring class action suits, this effect easily may be outweighed by the potential recovery.” *Id.* Plaintiff’s recovery in a class action will always be

1 less than an individual action, take longer to obtain, and have no potential for early settlement.

2 So, if “[t]hose who choose to take the risks of litigation should be the ones who bear the
3 cost when they are unsuccessful,” how can that risk be offset? *Id.* An adequate Service Award.

4 The risk of judgment for Defendants’ costs, alone, is sufficient to support Class
5 Representative Service Award of \$7,500.00 to Plaintiff.

6 It is impossible to know, or intervene, each time a class action plaintiff loses an
7 employment opportunity, making it essential to compensate them at final approval, the only time
8 the risk they took can be at least slightly offset and they can be adequately compensated.

9 Plaintiff more than satisfied his obligation to protect the interests of the Class and place
10 them above his own. Plaintiff accepted the risk of judgment for Defendants’ costs and potential
11 loss of future employment opportunities. Plaintiff had individual claims which he did not pursue,
12 or abandoned, to serve only as a representative of other employees, although, unlike those
13 employees, Plaintiff was required to give a general release of all claims of any kind, including a
14 section 1542 waiver. Manus Decl. ¶55, Exh. 1 – Morris Decl. ¶¶2, 6-13, 15.

15 The Class received notice Plaintiff requested \$7,500.00 “for filing the Action, working
16 with Class Counsel and representing the Class.” CPT Decl. ¶3, Exh. A, Section 3.2(B). No Class
17 Member objected. *Id.* at ¶9; Manus Decl. ¶¶16, 41, 56.

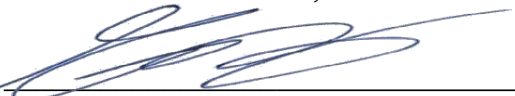
18 **X. CONCLUSION**

19 The Settlement favorably resolves what would otherwise be uncertain and lengthy
20 litigation. Class Counsel respectfully requests the Court grant final approval of the Settlement
21 (including the Settlement of both Class and PAGA claims in the Action), approve the Service
22 Award, attorneys’ fees and costs, and administration expenses as requested.

23 Respectfully submitted,

24 COHELAN KHOURY & SINGER
25 MAJARIAN LAW GROUP, APC

26 Dated: April 16, 2024

27 By: 

Michael D. Singer

Marta Manus

28 Attorneys for Plaintiff Anthony Morris, on behalf
of himself and all others similarly situated

- 14 -