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Timothy Mellen

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO**

VIRGINIA BREW, TONY GROSBEIER,
COURTNEY TOLBERT, D C SNYDER, AND
TIMOTHY MELLEN on behalf of themselves
and all similarly situated persons, and the general
public,

Plaintiffs,

v.

ROCKET MORTGAGE, LLC.; and DOES 1
through 25, inclusive,

Defendants.

CASE NO. 24-CIV-00893

*[Assigned for all purposes to the
Honorable Nancy L. Fineman, Dept. 4]*

**PLAINTIFFS' NOTICE OF MOTION
AND UNOPPOSED MOTION FOR FINAL
APPROVAL OF:**

- **CLASS ACTION AND PAGA
SETTLEMENT;**
- **CLASS REPRESENTATIVE
ENHANCEMENT AWARDS;**
- **ADMINSTRATOR'S EXPENSES;**
- **ATTORNEYS' FEES AND COSTS**

Hearing Date: February 4, 2025

Time: 2:00 p.m.

Dept: 4

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE THAT on February 4, 2025 at 2:00 p.m. in Department 4 of the
3 above-captioned court located at 400 County Center, Redwood City, CA 94063, Plaintiffs Virginia
4 Brew, Tony Grosbeier, Courtney Tolbert, D C Snyder, and Timothy Mellen will, and hereby do, move
5 for an order granting: 1) final approval of the class action and PAGA settlement provisionally
6 approved by this Court on October 14, 2024; 2) class representative enhancement awards; 3)
7 settlement administrator's expenses; 4) attorneys' fees and costs; and 5) entry of final judgment
8 pursuant to Code of Civil Procedure § 382 and California Rule of Court, rule 3.769.

9 This motion is made on the grounds that the settlement is fair, reasonable, and adequate
10 because it is the product of arm's-length, good-faith negotiations after significant litigation, given the
11 relative strengths and weaknesses of the claims and defenses, as well as the risks involved in pursuing
12 further litigation. This motion will be based upon this Notice, the accompanying Memorandum of
13 Points and Authorities, Declaration of Reuben D. Nathan, Declaration of Matthew Righetti,
14 Declaration of John Glugoski, Declaration of Brandon Brouillette, Declaration of Jarrod Salinas on
15 behalf of Phoenix Settlement Administrators, and Declarations of Plaintiffs Virginia Brew, Tony
16 Grosbeier, Courtney Tolbert, D C Snyder, and Timothy Mellen, as well as the pleadings and papers
17 on file herein and upon any other matters that may be presented to the Court at the hearing.

18
19 Dated: December 18, 2024

Respectfully submitted,

20
21 **RIGHETTI GLUGOSKI, P.C.**
NATHAN & ASSOCIATES, APC

22 By: /s/ Matthew Righetti
23 Matthew Righetti
24 Attorney for Plaintiffs
25
26
27
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

3 This case, styled as a class action, asserts a variety of wage and hour and Private Attorney
4 General Act (“PAGA”) claims against Defendant ROCKET MORTGAGE, LLC (“Defendant” or
5 “ROCKET”). Plaintiffs were hired by and worked for ROCKET as non-exempt employees in
6 California during the relevant time period. ROCKET is a privately held mortgage company and
7 residential home lender doing business in California.

8 This case was vigorously litigated – mostly before the Honorable Mark Scarsi in the United
9 States District Court for the Central District of California. The lengthy procedural history and discovery
10 efforts in this case are outlined in both the procedural history below and the Declarations of Reuben D.
11 Nathan (“Nathan Decl.”) ¶¶ 4-25; also see, Declaration of John Glugoski, filed July 3, 2024, in
12 connection with preliminary approval; paras. 8-22.

13 Pursuant to California Rules of Court, rule 3.769, Plaintiffs now ask the Court to grant this
14 unopposed motion for final approval of the Settlement. As explained herein, Plaintiffs believe the
15 Settlement is fair, reasonable and in the best interests of the Class Members.

16 The proposed Settlement before this Court is a full and complete settlement of the claims
17 asserted against Defendant in this action. The proposed Settlement requires Defendant to pay Four
18 Million Five Hundred Thousand Dollars and No Cents (\$4,500,000.00) to settle the claims raised in the
19 operative First Amended Complaint filed by Plaintiffs on June 11, 2024, including payment
20 \$187,500.00 to the California Labor and Workforce Development Agency (i.e., 75% of the \$250,000
21 amount allocated to resolve the PAGA allegations)¹. The Settlement proposes a fair and reasonable
22 allocation of the net settlement proceeds amongst the Class Members comprised of 679 individuals
23 (current and former California based ROCKET employees). Participating Class Members (i.e., those
24

25 _____
26 ¹ PAGA was amended effective July 1, 2024. The amendment provides that penalties are
27 allocated 65% to the LWDA and 35% to the aggrieved employees, increasing the share received by the
28 employees who are taking on the enforcement role, while still funding LWDA’s enforcement efforts. (Lab.
Code, § 2699(m).) Plaintiffs’ PAGA notices were filed before June 19, 2024, therefore, the 75/25 split in
accordance with the Settlement Agreement and the Court’s Second Amended Order Granting Plaintiffs’
Motion for Preliminary Approval applies.

1 who were provided the court approved notice and who do not opt-out) will receive an average net
2 payment of approximately of \$3,348.60 per Class Member. This is an excellent result for the class.

3 On October 14, 2024, this Court entered the Second Amended Order Granting Motion for
4 Preliminary Approval of Class Action and PAGA Settlement (“MPA Order”) and directed Class Notice
5 to be sent to the Class Members. The opt out and objection response deadline is on January 2, 2025.²
6 As set forth below, the settlement is fair, reasonable, and adequate, and Plaintiffs respectfully request
7 granting final approval and approving the requests for costs, attorney fees and class representative
8 enhancements – all as explained below.

9 **II. SUMMARY OF THE CLAIMS**

10 On April 14, 2022, D C Snyder (“Snyder”) (represented by Crosner Legal) submitted a PAGA
11 notice to the California Labor & Workforce Development Agency (“LWDA”) indicating his intent to
12 bring a representative action against Defendant to recover civil penalties under the California Private
13 Attorneys General Act of 2004 (“PAGA”). Snyder subsequently filed a separate unverified lawsuit on
14 June 21, 2022 in the Superior Court of the State of California for the County of Los Angeles alleging
15 a single cause of action against Defendant under PAGA.

16 On April 29, 2022, Snyder filed an unverified Collective and Class Action Complaint against
17 Defendant in the Superior Court of the State of California for the County of Los Angeles, which set
18 forth the following nine causes of action: (1) recovery of unpaid minimum wages and liquidated
19 damages; (2) recovery of unpaid overtime wages; (3) failure to provide meal periods or compensation
20 in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof; (5) failure to furnish
21 accurate itemized wage statements; (6) failure to timely pay all wages due upon separation of
22 employment; (7) failure to reimburse business expenses; (8) violations of the Fair Labor Standards
23 Act (29 U.S.C. sections 201, *et seq.*) (“FLSA”); and (9) unfair competition. On November 14, 2022,
24 after Defendant successfully removed the Snyder’s class action Complaint to federal court, Snyder
25

26
27 ² Pursuant to the Court’s MPA Order, the Parties are ordered to file this motion thirty days after
28 mailing of Notices to Class Members, on December 18, 2024. Class Counsel and the settlement
administrator will file supplemental declarations after the filing of this motion to notify the court of any opt-
outs and/or objections following the 45-day response deadline of January 2, 2025.

1 and Defendant filed a Joint Stipulation to dismiss the Class Action without prejudice pursuant to Fed.
2 R. Civ. P. 41(a)(1), and the federal court docket subsequently reflected the case was terminated as of
3 that date.

4 On June 21, 2023, Plaintiff Courtney Tolbert (“Tolbert”) (represented by Class Counsel,
5 herein) filed a putative class action complaint against Rocket in Riverside County Superior Court
6 (Case No.: CVRI2303158) alleging the following causes of action: (1) unpaid minimum wage; (2)
7 unpaid overtime; (3) improper meal periods; (4) improper rest periods; (5) unlawful deductions; (6)
8 inaccurate wage statements; (7) waiting time penalties; (8) failure to reimburse business expenses; and
9 (9) unfair competition. Rocket subsequently removed Tolbert’s complaint to the United States District
10 Court for the Central District of California (Case No. 5:23-cv-01450 MCS (PVCx)). The parties fully
11 briefed class certification and were set to appear for the hearing on the Motion for Class Certification
12 on March 25, 2024, before the Hon. Mark C. Scarsi.

13 Defendant denies all of Plaintiffs’ claims and deny that any of Plaintiffs’ claims are appropriate
14 for class or representative treatment.

15 **III. RELEVANT PROCEDURAL HISTORY**

16 This case involves consolidated claims from three cases: a) Snyder, b) Tolbert, and c) Brew, et
17 al., which, at the time of this global settlement, were pending in the Los Angeles Superior Court, the
18 United States District Court for the Central District of California and the San Mateo County Superior
19 Court, respectively.

20 **Snyder PAGA-Only Case:** On June 21, 2022, Snyder filed a one cause of action “PAGA-only”
21 complaint against Defendant in Los Angeles County Superior Court (Los Angeles Superior Court Case
22 No.: 22STCV37612). Snyder sought to recovery PAGA penalties seventeen alleged violations of the
23 Labor Code.

24 **Tolbert Class Action:** Thereafter, on June 21, 2023, Plaintiff Courtney Tolbert (“Tolbert”) filed a
25 putative class action complaint against Defendant in Riverside County Superior Court (Case No.:
26 CVRI2303158) alleging eight wage and hour claims, plus one claim for violation of the Unfair
27 Practices Act (B&P Section 17200).

28 **Brew PAGA Case:** On December 1, 2023, Plaintiffs Virginia Brew, Tony Grosbeier, and Timothy

1 Mellen (collectively, the “Brew Plaintiffs”) submitted a notice to the LWDA to advise of their intent
2 to file a civil action against Defendant under PAGA. On February 15, 2024, the Brew Plaintiffs
3 commenced the instant Action by filing a complaint against Defendant in San Mateo County Superior
4 Court alleging a single cause of action under PAGA (Case No.: 22STCV37612). The Brew Plaintiffs’
5 complaint sought to recover PAGA civil penalties based on five alleged violations of the California
6 Labor Code.

7 On July 25, 2023, Rocket removed Tolbert’s complaint to the United States District Court for
8 the Central District of California (Case No. 5:23-cv-01450 MCS (PVCx)) where the case was assigned
9 to the Honorable Mark C. Scarsi. Judge Scarsi then issued a Scheduling Order in *Tolbert* setting January
10 30, 2024, as the deadline for Plaintiff to file a Motion for Class Certification. Judge Scarsi set the
11 Opposition deadline for February 20, 2024, and Plaintiff’s Reply deadline for March 5, 2024. The
12 hearing on the Motion was scheduled to take place on March 25, 2024. Judge Scarsi also set fact/expert
13 discovery deadlines for early 2024. (Tolbert, Case 5:23-cv-01450-MCS-PVC, Dkt. 13) When the
14 parties attempted to jointly request a short modification of the briefing schedule due to scheduling
15 conflicts, Judge Scarsi immediately denied the request without explanation. To meet Judge Scarsi’s
16 discovery and class certification deadlines, Plaintiffs mobilized quickly to obtain necessary fact and
17 expert discovery for class certification and trial.

18 Tolbert and Defendant quickly became embroiled in a series of discovery disputes requiring
19 several hearings before the Hon. Magistrate Pedro V. Castillo. Also, when Defendant’s payroll vendor,
20 Workday, in Pleasanton, California, refused to comply with a records subpoena the FRCP required
21 Tolbert to file a separate case to enforce the subpoena in the Northern District of California. The
22 subpoena enforcement case was assigned to the Hon. Kandis A. Westmore and was eventually resolved
23 with the assistance of Magistrate Judge Castillo in the Central District. Despite the litany of discovery
24 issues, the parties completed 22 depositions and met the deadlines set by Judge Scarsi’s scheduling
25 order. The parties were set to appear at a class certification hearing before Judge Scarsi on March 25,
26 2024.

27 On March 7, 2024, after the motion for class certification was briefed, the parties participated
28 in an all-day mediation in Los Angeles presided over by Steven Mehta, Esq. A resolution was not

1 reached at the mediation. The parties continued discussions. Prior to the class certification hearing, the
2 parties reached a global settlement agreement, which, subject to court approval, intended to fully
3 dispose of all claims alleged in the three actions: a) the instant action, b) the putative representation
4 PAGA action filed in Los Angeles County Superior Court (*D C Snyder v. Rocket Mortgage, LLC*, et
5 al., Case no. 22STCV20293), and c) the putative class action initially filed the Riverside county
6 Superior Court and later removed to the U.S. District Court for the Central District of California
7 (*Courtney Tolbert v. Rocket Mortgage, LLC*, Case No. 5:23-cv-01450-MCS-PVC) (collectively, the
8 “Actions”). Judge Scarsi was advised of the settlement and, with his approval, the case was positioned
9 to proceed through approvals before this Court.

10 **IV. DISCOVERY AND INVESTIGATION**

11 The sheer magnitude and volume of the discovery conducted in the Tolbert matter is evident
12 by the number of depositions taken (22), documents produced and reviewed (13,387) and employment
13 and payroll data produced and reviewed (323 MB). The discovery conducted by Tolbert’s counsels’
14 shows both their commitment to the case and their zealous representation of class claims.

15 **V. TERMS AND CONDITIONS OF THE SETTLEMENT**

16 The material terms and conditions of the Settlement are summarized below.

17 1. Class Definition. The Parties’ Class Action Settlement Agreement and Release
18 (“Settlement Agreement”)³, consistent with the preliminary approval order, provides for a settlement
19 Class defined as:

20 all current and former non-exempt individuals employed by
21 Defendants in California, at any time from June 21, 2019
22 through September 28, 2024.⁴

22 2. Settlement Fund. The settlement fund of Four Million Five Hundred Thousand Dollars

23
24 ³ The Parties’ Settlement Agreement is attached as Exhibit B to the Declaration of John Glugoski
25 in Support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action and PAGA
Settlement.

26 ⁴ As the total workweeks worked by settlement class members during the class period was greater
27 than 10% of the 40,803 workweeks estimated for purposes of mediation, Rocket Mortgage has exercised its
28 discretion pursuant to section 9 of the settlement agreement to cut off the class period as of the date the total
workweeks worked by settlement class members does not exceed 10% of the 40,803 estimate. As a result, the
final day of the class/PAGA/release periods shall be changed from October 13, 2024 (the date of preliminary
approval) to September 28, 2024.

1 (\$4,500,000.00) (the “Gross Settlement Amount” or “Settlement Fund”) is a fixed common fund with
2 no reversion to the Defendants. (Settlement Agreement ¶ 4.1). The Settlement Fund will be used to
3 satisfy all elements of the Settlement. Defendants will separately pay Defendants’ share of its payroll
4 tax burden.

5 3. Settlement Class Information. The court’s preliminary approval order appointed
6 Phoenix Class Action Administration Solutions (“Phoenix”) as the notice/claim administrator.
7 Phoenix reports that, upon receiving Class Member information from Defendant, Phoenix mailed the
8 court approved notice to 679 Class Members. Phoenix further reports that to date it has received no
9 opt-outs, no objections and no work week disputes. See Declaration of Jarrod Salinas (“Decl. Jarrod
10 Salinas”) ¶¶ 8-10. Since Plaintiffs’ deadline to this final approval motion is before the deadline for
11 class members to opt out and/or object (January 2, 2025), Plaintiffs will obtain an updated declaration
12 from Phoenix once the deadline passes and submit it to the Court in advance of the final approval
13 hearing.

14 4. Gross Recovery Payouts. The Settlement Fund will provide real benefit to the Class
15 Members. The highest gross recovery for a Class Member will be approximately \$ 14,775.90. The
16 average gross recovery per Class Member under the class will be approximately \$3,548.60. (Decl.
17 Nathan ¶ 26).

18 5. Agreed Upon Payments from the Settlement Fund. Subject to Court approvals the
19 following payments will be made from the Settlement Fund: 1. Enhancement Payments to Class
20 Representatives of \$25,000.00 to be allocated as follows: Ten Thousand Dollars and Zero Cents
21 (\$10,000.00) to Tolbert; Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to
22 Snyder; and Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) each to Virginia Brew,
23 Tony Grosbeier, and Timothy Mellen; 2. General Release Payments to Class Representatives of
24 \$30,000.00 to be allocated as follows: Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to
25 Tolbert; Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Snyder; and Two
26 Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) each to Virginia Brew, Tony Grosbeier,
27 and Timothy Mellen; 3. PAGA Penalties of up to \$250,000.00 allocated per the PAGA; 4. an award
28 of not more than \$1,575,000.00 (35% of the Settlement Fund) to Class Counsel for attorneys’ fees

1 and costs; 5. Attorneys' costs not to exceed \$200,000.00; and 6. Settlement administration costs not
2 to exceed \$10,500.00. Of the \$250,000.00 PAGA Penalties, \$187,500.00 will be allocated to the
3 California Labor and Workforce Development Agency and the remaining \$62,500.00 shall be
4 distributed amongst approximately 545 PAGA Employees who worked 15,632 pay periods⁵. The
5 Individual PAGA Payments will be calculated by (a) dividing the PAGA Employees' twenty-five
6 percent (25%) share of the PAGA Payment (\$62,500.00) by the total number of Pay Periods worked
7 by all PAGA Employees during the PAGA Period and (b) multiplying the result by each PAGA
8 Employee's Pay Periods. Each PAGA Employee will be entitled to receive an Individual PAGA
9 Payment equal to at least one (1) Pay Period. PAGA Employees assume full responsibility and
10 liability for any taxes owed on their Individual PAGA Payments. The Administrator will report the
11 Individual PAGA Payments on IRS 1099 Forms. (Settlement Agreement §§ 4.2.5 - 4.2.5.1). (Decl.
12 Nathan ¶ 27).

13 6. Notice Process and Approval Rate. The Settlement Administrator mailed the Class
14 Notice to Class Members on November 18, 2024. (Decl. Phoenix ¶ 5). Class Members did not have to
15 submit a claim form to participate in the Settlement; however, the Class Notice contained personalized
16 calculations and Class Members were given an opportunity to confirm or dispute workweeks credited
17 by Defendants. As of the date of this Motion, there are zero (0) disputes about workweeks credited or
18 objections to the settlement and zero (0) Class Members opted out of the Settlement⁶. (Decl. Jarrod
19 Salinas ¶¶ 8-9; Decl. Nathan ¶28).

20 7. Net Settlement Payout. If the Court grants final approval of the Settlement, the entire
21 Settlement Fund will be paid out with no reversion to the Defendants. (Settlement Agreement §
22 4.1. Class Members will receive an estimated average net recovery of approximately \$3,348.60.

24
25 ⁵ Of the 679 class members, 545 individuals were also employed during the shorter PAGA period
26 of April 14, 2021 through September 28, 2024 ("PAGA Period"). These 545 employees will receive a
PAGA payment as well.

27 ⁶ Pursuant to the Court's MPA Order, the Parties are ordered to file this motion thirty days after
28 mailing of Notices to Class Members, on December 18, 2024. Class Counsel and the settlement
administrator will file supplemental declarations after the filing of this motion to notify the court of any
opt-outs and/or objections following the 45-day response deadline of January 2, 2025.

(Decl. Nathan ¶ 29). The Settlement provides Defendants will pay the Gross Settlement Amount of \$4,500,000.00 including the Settlement Administration Costs, and Employment Taxes, within fourteen (14) days of the Effective Date. (Settlement Agreement § 5.3) (Decl. Nathan ¶ 30).

8. Unclaimed Funds. A further reminder notice will be provided to those Class Members who do not negotiate settlement checks within 90 days after they are mailed by the Settlement Administrator. If any settlement checks remain uncashed 180 days after they are mailed by the Settlement Administrator, the uncashed funds will be distributed to *cy pres* recipient(s) pursuant to further order of the Court as necessary and appropriate for the payment, administration, supervision, and accounting of any unpaid cash residue or unclaimed or abandoned class member funds in accordance with Code of Civ. Proc., § 384, subd. (b). (Settlement Agreement ¶ 5.3.4; Second Amended Order Granting Motion for Preliminary Approval of Class Action and PAGA Settlement dated October 14, 2024). The *cy pres* recipient(s) will be subject to order of the Court after the Parties meet and confer in good faith as to a jointly agreed upon *cy pres* recipient.

9. Settlement Administrator's Fees. The Settlement Administrator's charges are expected to be approximately \$10,500.00 from the Settlement Fund. Settlement Agreement ¶ 4.2.3). The final amount will be accounted for in an updated declaration from Phoenix.

10. Release. As part of the Settlement, the release is tailored to track the definition of the settlement class and the PAGA group. The Class Members will release all claims arising from the same set of facts alleged in the operative FAC and in Plaintiffs' LWDA letters. Settlement Agreement, § 6-6.3. The release period for class claims is from June 20, 2019 through September 28, 2024 and the PAGA period is April 14, 2021 through September 28, 2024⁷. (Nathan Decl. ¶ 31).

VI. NOTICE TO THE CLASS WAS PROVIDED; AS OF THE DATE OF THIS MOTION, THERE ARE NO OBJECTIONS AND NO REQUESTS FOR EXCLUSION

⁷ As the total workweeks worked by settlement class members during the class period was greater than 10% of the 40,803 workweeks estimated for purposes of mediation, Rocket Mortgage has exercised its discretion pursuant to section 9 of the Settlement Agreement to cut off the class period as of the date the total workweeks worked by settlement Class Members does not exceed 10% of the 40,803 estimate. As a result, the final day of the class/PAGA/release periods shall be changed from October 13, 2024 (the date of preliminary approval) to September 28, 2024.

1 In its October 14, 2024, Second Amended Order Granting Preliminary Approval of Class
2 Action and PAGA Settlement, the Court ordered the approved Class Notice to be mailed to all Class
3 Members. The Settlement Administrator caused the Class Notice to be mailed on November 18, 2024.
4 The deadline to file objections or to opt-out is through January 2, 2025. As of the date of filing of this
5 Motion, there are no objections and zero exclusions.⁸ (Decl. Phoenix ¶¶ 5-10) The Settlement has been
6 met with overwhelming approval and support from the Class Members.

7 **VII. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION AS**
8 **THE REQUIREMENTS FOR CLASS CERTIFICATION HAVE BEEN MET**

9 The Settlement Class was preliminarily certified based upon the showing in the Motion for
10 Preliminary Approval that the requirements for class certification were met. (*Wershba v. Apple*
11 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 237-238). Code of Civil Procedure § 382 provides that a
12 party seeking class certification must show “(1) the existence of an ascertainable class and (2) a well-
13 defined community of interest among the class members.” (*Richmond v. Dart Industries, Inc.* (1981)
14 29 Cal.3d 462, 469; *Occidental Land v. Superior Court* (1976) 18 Cal.3d 355, 360; *Clothesrigger, Inc.*
15 *v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612; *Daniels v. Centennial Group, Inc.* (1993) 16
16 Cal.App.4th 467, 471). The class representative must also show that (3) maintenance of a class action
17 will result in a substantial benefit to the litigants and to the Court. (*Richmond, supra*, 29 Cal.3d at 477;
18 *Occidental Land, supra*, 18 Cal.3d 355, 360). The community of interest requirement embodies three
19 factors: (1) predominant common questions of law or fact; (2) class representatives with claims or
20 defenses typical of the class; and (3) class representatives who can adequately represent the class.”
21 (*Richmond, supra*, 29 Cal.3d at 470).

22 The parties have agreed that subject to final approval of the Settlement Agreement and for the
23 purpose of settling their dispute, there is sufficient basis for the Court to find that these requirements
24 have been met regarding the Settlement Class. (Settlement Agreement ¶¶ 11-11.5).

26
27 ⁸ Pursuant to the Court’s MPA Order, the Parties are ordered to file this motion thirty days after
28 mailing of Notices to Class Members, on December 18, 2024. Class Counsel and the settlement
administrator will file supplemental declarations after the filing of this motion to notify the court of any
opt-outs and/or objections following the 45-day response deadline of January 2, 2025.

1 **1. Ascertainable and Numerous Class**

2 Defendants identified through their records 679 persons who qualify as Class Members. (Decl.
3 Phoenix ¶ 3). This amount is “numerous,” and it would be impracticable to try to bring each of those
4 Class Members before the Court.

5 **2. Predominating Common Questions of Law and Fact**

6 Plaintiffs contend – and they believe the evidence submitted in their class certification motion
7 shows -- that all Class Members share the same community of interest in recovering damages for
8 alleged wage and hour violations under the California Labor Code arising from their employment with
9 a common employer. Plaintiffs allege the right to recover wages, interest, penalties and attorneys’ fees
10 is common to all Class Members and depends upon the same theories, namely that Plaintiffs and the
11 Class Members were not paid the correct minimum wage, overtime and double time rate, worked off
12 the clock, were not paid premiums for meal and rest breaks that were missed, interrupted, cut short,
13 had wages deducted, were not provided accurate wage statements, were not reimbursed for business
14 expenses, and were not paid all wages at separation. *Brinker Restaurant Corp. v. Superior Court*
15 (*Brinker*) (2012) 53 Cal.4th 1004, 1021 [The “ultimate question” the element of predominance presents
16 is whether “the issues which may be jointly tried, when compared with those requiring separate
17 adjudication, are so numerous or substantial that the maintenance of a class action would be
18 advantageous to the judicial process and to the litigants. . . accord. *Sav-On Drug Stores, Inc. v. Superior*
19 *Court*, (2004) 34 Cal.4th 319, 326. The answer hinges on “whether the theory of recovery advanced by
20 the proponents of certification is, as an analytic matter, likely to prove amenable to class treatment.”].

21 **3. Class Representatives’ Claims Are Typical**

22 Plaintiffs’ assert – and they believe the evidence submitted in their class certification motion
23 shows -- their claims are typical of those of the Class in that all Plaintiffs and Class Members were
24 subject to the same type of employment practices and policies during the Class Period and make the
25 same claims for damages. *Classen v. Weller*, (1983) 145 Cal.App.3d 27, 45; *Sav-On*, 34 Cal.4th at 326.

26 **4. The Class Representatives and Class Counsel Are Adequate**

27 Plaintiffs contend – and they believe the evidence submitted in their class certification motion
28 shows -- they are adequate class representatives and have no conflicts of interest with other Class

Members. By actively prosecuting the case through Settlement, Plaintiffs believe they have shown that they have no interests antagonistic to the Class and have adequately served the Class.

Finally, Class Counsel have adequately represented Plaintiffs and the Class Members. Proposed Class Counsel Reuben Nathan, John Glugoski, and Matthew Righetti have substantial experience in employment, consumer law and class action procedure. (Nathan Decl. ¶ 63, 67, 78-90; Glugoski Decl. ¶ 2 Righetti Decl. ¶¶ 1-5). Each of the lead attorneys have been approved by courts to serve as Class Counsel on numerous prior occasions and they have never been rejected from serving as class counsel. (Nathan Decl. ¶ 86-87; Glugoski Decl. ¶ 2 Righetti Decl. ¶¶ 2-3).

5. There Will Be Substantial Benefit to the Court and Litigants by Certification

As explained above, the Class Members will benefit by receiving meaningful compensation for their back wages as part of a representative action rather than being required to pursue individual actions which cost would outweigh the benefits. However, those who believed they could recover a greater amount of damages were free to opt out and pursue their own actions. The benefit to the Court is that protracted litigation including more depositions, class certification, cross-summary judgment motions, then weeks of trial and related docket work can be avoided.

Generally, a class suit is appropriate “when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385; see *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 808).

VIII. THE COURT SHOULD GRANT FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT AS IT REPRESENTS A FAIR AND REASONABLE COMPROMISE OF THE DISPUTED CLAIMS

In California, the ultimate test for approval of a proposed class action settlement is well established. Among the inter-related factors that the court is to consider are: (1) whether the settlement was reached through arm’s length bargaining; (2) the strength of Plaintiffs’ case; (3) the risk, expense, complexity and likely duration of further litigation; (4) the benefits conferred by the settlement; (5) the experience and views of counsel; (6) the extent of discovery completed and the stage of the proceedings and whether they are sufficient to allow counsel and the court to act intelligently; (7) the presence of a

1 governmental participant and (8) the reaction of the class members to the proposed settlement including
2 the percentage of objectors. *Wershba, supra*, 91 Cal. App. 4th at 244-45; *Dunk v. Ford Motor Co.* (1996)
3 48 Cal.App.4th 1794, 1801-02. “The list of factors is not exclusive and the court is free to engage in a
4 balancing and weighing of factors depending on the circumstances of each case.” *Wershba, supra*, 91
5 Cal.App.4th at 245. As courts have explained, “The proposed settlement is not to be judged against a
6 hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial.”
7 (*Id.* at 246).

8 Courts presume the absence of fraud or collusion in negotiation of the settlement unless
9 evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted
10 in good faith. (*Newberg on Class Actions*, § 11.51; *In re Chicken Anti-Trust Litigation* (M.D. GA
11 1980) 560 F. Supp 957, 962; *Pridd v. Edelman* (6th Circuit 1989) 883 F.2d 438, 447; *Mars Steel Corp.*
12 *v. Continental Illinois National Bank and Trust Co.* (7th Cir. 1987) 834 F.2d 677, 681). Courts do not
13 substitute their judgment for that of the proponents, particularly when settlement has been reached by
14 experienced counsel familiar with the litigation. (*Hammon v. Barry* (D.D.C. 1990) 752 F. Supp 1087,
15 1093; *Steinberg v. Carey* (S.D. NY 1979) 470 F. Supp 471, 474; *In re Armored Car Anti-Trust*
16 *Litigation* (ND GA 1979) 472 F.Supp. 1357; *Sommers v. Abraham Lincoln Federal Savings & Loan*
17 *Association* (ED PA 1978) 79 F.R.D. 571).

18 Plaintiffs believe both sides appreciated that compromise was inherent and necessary in the
19 settlement process. Each side made a good faith attempt to “give and take” to reach a fair compromise.
20 Plaintiffs believe both sides appreciated that “the public interest may indeed be served by a voluntary
21 settlement in which each side gives ground in the interest of avoiding litigation.” *Id.* at 250, quoting,
22 *Air Line Stewards, Loc. 550 v. American Airlines, Inc.* (7th Cir.1972) 455 F.2d 101, 109.

23 Pursuant to *Kullar*, the Settlement overwhelmingly satisfies the requirements for final approval.
24 *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128. (Nathan Decl. ¶ 39-41).

25 **1. Settlement Negotiations Were Conducted At “Arm’s Length,” And Resulted In A Fair**
26 **Compromise, The Strength of Plaintiffs’ Case, The Expense, Complexity And Likely**
27 **Duration Of Further Litigation, Financial Condition of Defendant, And The Benefits**
28 **Conferred By The Settlement**

1 The Settlement is the product of serious, informed and non-collusive negotiations. Settlement
2 was only after vigorously pursuing litigation, researching various underlying issues, conducting
3 extensive discovery, obtaining contact information for Class Members from Defendant, conducting
4 interviews of dozens of current and former employees, retaining experts, creating a damage model,
5 preparing a trial plan and evaluating Defendant's financial condition. (Decl. Nathan ¶ 32).

6 Class Counsel reviewed extensive data, conducted dozens of client interviews, and obtained
7 and reviewed thousands of pages of employee/policy documents prior to resolving the case. The
8 detailed data was sufficient to evaluate potential exposure and was in fact extensively evaluated by
9 Plaintiffs. (Decl. Nathan ¶ 33).

10 On March 7, 2024, while the motion for class certification was looming, Plaintiffs and
11 Defendant, by and through Class Counsel and Defense Counsel respectively, participated in an all-day
12 mediation presided over by Steven Mehta, Esq. While a resolution was not reached at the mediation,
13 the Parties continued to engage in arms' length negotiations. Prior to the class certification hearing, the
14 Parties reached a global settlement. The Parties executed an MOU on April 1, 2024 and ultimately the
15 Settlement Agreement on June 20, 2024. (Decl. Nathan ¶ 34).

16 During all settlement discussions the parties conducted their negotiations at arms' length, and,
17 in spite of a mutual desire to resolve the case, always in an adversarial manner. The parties have been
18 able to construct a settlement that, given the constraints and realities of the case, is fair, reasonable,
19 adequate, and is in the best interests of the Class. (Decl. Nathan ¶ 11, 35; Glugoski Decl. ¶ 20; Righetti
20 Decl. ¶ 22).

21 Arriving at a settlement acceptable to all parties was no small achievement. In fact, Defendant
22 vigorously defended this case. Defendant and their counsel felt strongly about their ability to prevail
23 on the issue of class certification and believed that Defendant had defenses to all individual claims
24 within the Class. In their defense, Defendant contended that this action could not properly be
25 maintained as a class or PAGA action; that Class Members were properly paid minimum, regular,
26 overtime and double time wages; that Defendant did not fail to pay Class Members, who are former
27 employees, any wages allegedly due at the time of their separation; that Defendant provided accurate,
28 itemized wage statements to Class Members; that Defendant provided meal and rest periods to the Class

Members; that Defendant did not fail to reimburse employees for business expenses necessarily incurred in the performance of their duties; that Defendant did not unlawfully deduct wages from Class Members; that Defendant did not violate California Business and Professions Code § 17200 et seq., and that Defendants (a) is not liable for any of the penalties claimed or that could be claimed in the Complaints, and/or (b) penalties would be substantially reduced by the Court. (Nathan Decl. ¶ 36).

The negotiations considered the strengths and weaknesses of the opposition's positions. Negotiations were protracted, but always cordial and professional. As litigation progressed the parties' discussions involved the gradual narrowing of opposing positions. The proposed Settlement Agreement was reached at the end of a process that was neither fraudulent nor collusive. If settlement is not approved then the case will proceed to a contested hearing on class certification and then to trial. (Nathan Decl. ¶ 37).

The proposed Settlement will guarantee that the Class Members receive compensation for their claims and that payments will be received now rather than years in the future. A settlement will also allow Class Members to receive payment without the risk of a contested motion for class certification and trial on the merits that would including all the extra time and expense involved in that process. Importantly, the proposed settlement provided Class Members with a choice by preserving for them the right to opt out. (Nathan Decl. ¶ 38).

Pursuant to *Kullar v. Footlocker* (2008) 168 Cal.App.4th 116, Class Counsel has conducted a class-wide damages assessment in light of the proof and risk factors discussed above and believe that the Settlement is fair reasonable and adequate. Class Counsel calculated the realistic total exposure i.e. damages for the Class Period of approximately \$7,500,000.00, exclusive of attorneys' fees and costs. (Nathan Decl. ¶¶ 39-40).

Consequently, the Settlement of \$4,500,000.00 represents a claim value that adequately takes into account the considerable risks specific to this case and inherent in any litigation (exclusive of wage statement, interest, penalties, and attorneys' fees and costs). (Nathan Decl. ¶¶ 40).

2. Class Counsel Is Experienced and Recommend Settlement

Proposed Class Counsel Reuben Nathan, Matthew Righetti and John Glugoski have substantial experience in employment law and employment class actions. They have been approved as Class

Counsel on numerous prior occasions and have never been deemed inadequate as class counsel. Proposed Class Counsel have worked diligently to advance the interests of the class with no unnecessary duplication of effort. Proposed Class Counsel recommends settlement on the proposed terms. (Decl. Nathan ¶ 59-90; Glugoski Decl. ¶¶ 2, 17; Righetti Decl. ¶¶ 2-3, 22). Such recommendations should be given a presumption of reasonableness. (*Cellphone Termination Fee Cases*, (2009) 180 Cal.App.4th 1110, 1117-18; *Williams v. Vukovich* (6th Cir. 1983) 720 F.2d 909, 922-23 [The court should defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs]).

3. No Government Participant

No government agency is directly involved in this case; *however*, Plaintiff has been authorized to prosecute the PAGA claims on behalf of the LWDA. (Nathan Decl. ¶ 42). The Settlement provides PAGA Penalties of \$250,000.00. Per PAGA, 75%, or \$187,500.00, of which will be paid to the Labor Workforce Development Agency (if this Motion is approved as requested). The remaining portion due to the PAGA employees will be added to the Net Settlement Amount and allocated to the Individual PAGA Payments.

The Individual PAGA Payments will be calculated by (a) dividing the PAGA Employees' twenty-five percent (25%) share of the PAGA Payment (\$62,500.00) by the total number of Pay Periods worked by all PAGA Employees during the PAGA Period and (b) multiplying the result by each PAGA Employee's Pay Periods. Each PAGA Employee will be entitled to receive an Individual PAGA Payment equal to at least one (1) Pay Period. PAGA Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payments. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms. PAGA Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payments. (Settlement Agreement § 4.2.5.1).

As required, Plaintiffs provided the LWDA with requisite notice of this proposed settlement. As of the date of this filing, Plaintiffs have not received any response from the LWDA. (Nathan Decl. ¶ 43).

Where PAGA penalties are negotiated in good faith and "there is no indication that [the] amount

1 was the result of self-interest at the expense of other Class Members,” such amounts are generally
2 considered reasonable. *Hopson v. Hanesbrands, Inc.* (N.D. Cal. Apr. 3, 2009) No. CV-08-0844 EDL,
3 2009 U.S. Dist. LEXIS 33900, at *24. Moreover, the amount allocated to the LWDA is well within
4 the range of reasonable PAGA settlement amounts approved by courts. (*Nordstrom Com. Cases* (2010)
5 186 Cal. App. 4th 576, 579 “[T]rial court did not abuse its discretion in approving a settlement which
6 does not allocate any damages to the PAGA claims.”); *Hopson, supra* [approving PAGA settlement]

7 **4. The Investigation And Discovery Completed And The Stage Of Proceedings Is**
8 **Sufficient**

9 There has been an extraordinary amount of necessary investigation and discovery in this case.
10 Over the course of this litigation, the parties have obtained an abundance of information to assist them
11 in properly analyzing their respective positions. Both sides have had ample opportunity to investigate
12 the veracity and scope of the class claims. This was an active class and Class Counsel conducted dozens
13 of interviews with Class Members (more than 70) to obtain evidence and better marshal the evidence
14 presented by this case.

15 As noted above, a mountain of work was performed in the *Tolbert* action to meet Judge Scarsi’s
16 class certification deadlines, which included multiple depositions taken, over 13,000 pages of
17 documents and employment and payroll data (323 MB) produced by Rocket in response to *Tolbert*
18 discovery efforts. (Nathan Decl. ¶ 44).

19 In addition to informal discovery, Plaintiff through his counsel in the *Tolbert* action: 1)
20 Conducted interviews with class members and reviewed employee/policy documents and files; 2)
21 Investigated the Class Members’ claims based on the theories of the *Tolbert* action; 3) Researched the
22 claims and the law prior to filing the case, 4) Prepared multiple complaints, 5) Propounded voluminous
23 sets of written discovery, 6) Interviewed and retained experts, 7) Prepared for and conducted
24 depositions, 8) Reviewed data and files, 9) Reviewed employment agreements, 10) Created damage
25 models, 11) Assessed risks 12) Drafted lengthy ‘meet and confer’ letters followed by motion practice
26 in both the Central and Northern districts of the federal court, 13) Prepared stipulations, and 14)
27 Engaged in trial plan preparation and strategy. (Decl. Nathan ¶ 4-25, 45; Glugoski Decl. ¶ 18; See
28 also, Glugoski Decl. ISO Preliminary Approval).

Counsel for Plaintiffs have further invested extensive time investigating the applicable “regular rate” law (*Vaquero v. Stoneledge Furniture, et al.*, *Ibarra v. Wells Fargo, et al.*, *Magadia v. Walmart, et al.*, and *Ferra v. Loews Hollywood Hotel, et al.*), which is constantly evolving, briefing of motions and issues related to the merits, class certification, Plaintiffs’ claims and damages, the defenses thereto, and facts/evidence discovered. Plaintiffs believe that the investigation and research discovered through the date of settlement has supported their main contentions. (Nathan Decl. ¶ 46).

5. The Reaction of the Class Members

“A favorable reception by the Class constitutes ‘strong evidence’ of the fairness of a proposed settlement and supports judicial approval.” (*In re: Paine Webber Ltd. Pships. Litig.* (2d Cir. 1997) 171 F.R.D. 104, 126, *aff’d*, 117 F.3d 721; *see also*, *Wal-Mart Stores, Inc. v. Visa USA, Inc.* (2d Cir. 2005) 396 F.3d 96, 119). “By any standard, the lack of objection of the Class Members favors approval of the Settlement.” (*In re Omnivision*, 559 F. Supp. 2d 1036 (N.D. Cal. 2008) at 1043; *see also*, *Ross v. A.H. Robins* (S.D.N.Y. 1988) 700 F. Supp. 682, 684 - “The absence of objectants may itself be taken as evidencing the fairness of a settlement”; *In Re Warner Communications Securities Litigation* (S.D.N.Y. 1985) 618 F. Supp. 735, 746 - noting that two objections to settlement was very low; *Milstein v. Huck* (E.D.N.Y. 1984) 600 F. Supp. 254, 267 - explaining that the reaction of the class was “overwhelmingly favorable” because no objections to the settlement had been filed). The reaction of the Class Members to the Settlement has been overwhelmingly positive, especially considering the size of the class.

IX. THE COURT SHOULD GRANT AN INCENTIVE AWARD TO CLASS REPRESENTATIVES

The proposed awards to Plaintiffs are within the range approved by courts in this district. *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 266-267 (N.D. Cal. 2015) (noting that incentive awards compensate wage-and-hour plaintiffs for a “significant reputational risk” and higher awards are appropriate when the average class member payment is high); *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645 at *5 (N.D. Cal. Feb. 16, 2011) (awarding \$10,000 each to two plaintiffs in a \$1,725,000 settlement).

Moreover, class members who step forward to serve as class representatives sometimes expose

1 themselves to financial risk with respect to a costs award should defendant prevail in the action. Finally,
2 class members who serve as class representatives sometimes expose themselves to retaliation, such as
3 in the form of a cross-complaint, in which case enhanced compensation may be in order. (*Staton v.*
4 *Boeing Co.*, 327 F.3d 938 at p. 977).

5 The Settlement Agreement provides that Plaintiffs may seek an enhancement payment of up to
6 \$25,000.00 to compensate Plaintiffs for their service to the class as follows: Ten Thousand Dollars and
7 Zero Cents (\$10,000.00) to Tolbert; Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00)
8 to Snyder; and Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) each to Virginia Brew,
9 Tony Grosbeier, and Timothy Mellen. In addition, the Court recognizes that in exchange for a general
10 release (i.e., a release that is more broad than the Class Member release), the named Plaintiffs shall
11 receive \$30,000.00 to be allocated as follows: Fifteen Thousand Dollars and Zero Cents (\$15,000.00)
12 to Tolbert; Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Snyder; and Two
13 Thousand Five Hundred Dollars and Zero Cents (\$2,500.00) each to Virginia Brew, Tony Grosbeier,
14 and Timothy Mellen. Settlement Agreement § 4.2.1. The total amounts sought are 0.01222% of the
15 gross Settlement Fund for Plaintiffs, which is reasonable and fair in light of the recoveries due to the
16 absent class members. (Nathan Decl. ¶ 55).

17 As detailed in their accompanying declarations, Plaintiffs participation was instrumental in
18 bringing the lawsuit and obtaining the Settlement on behalf of the Class. Plaintiffs' counsel has
19 firsthand knowledge of some of the efforts they each expended. Plaintiffs requested counsel file the
20 lawsuit and consulted with Class Counsel prior to the filing of the case and throughout the case,
21 including, but not limited to engaging in extensive discovery responses and requests, assisting counsel
22 contact class members, assisting Class Counsel review documents, wage statements, assisted with the
23 formulation of discovery requests, consulted with Class Counsel regarding the MOU, Settlement
24 Agreement and prepared declarations in support of final approval of the Settlement. (Nathan Decl. ¶
25 56).

26 Plaintiffs agreed to a general release of all of their individual claims against Defendant in
27 exchange for a total of \$30,000.00. Additionally, Plaintiffs took significant risk by filing the instant
28 action with mortgage lending being a relatively small industry with the same cast of characters. (Decl.

1 Nathan ¶¶ 58; Brew Decl. ¶ 8; Grosbeier Decl. ¶ 8; Tolbert Decl. ¶ 15; Snyder Decl. ¶ 10; Mellen Decl.
2 ¶ 8).

3 Without their efforts, the Class Members are unlikely to have obtained any recovery. Notably,
4 the proposed Class Representative Service Award was presented to the Class Members through the
5 notice and no one objected to it. (Phoenix Decl. ¶¶ 5-10).

6 **X. THE ADMINISTRATION COSTS ARE FAIR AND REASONABLE AND SHOULD**
7 **BE APPROVED.**

8 Phoenix will provide an updated declaration following the January 2, 2025, opt-out deadline
9 which will include, the total costs incurred and is estimated to be approximately \$10,500.00. The costs
10 incurred and to be incurred include, but are not limited to, expenses for formatting, printing, and
11 mailing the Notice Packet to the Class Members in English; performing skip-trace searches on
12 undeliverable Notice Packets and re-mailing the Notice Packet to any updated addresses located;
13 handling inquiries from Class Members regarding the Settlement; calculating Settlement Awards and
14 preparing the associated tax forms; and transmitting payments, among other things.

15 Accordingly, the Court should grant final approval of payment to Phoenix, a necessary third-
16 party for handling of the notice and settlement process, in the amount of approximately \$10,500.00. A
17 final number will be included in an updated Phoenix declaration prior to final approval.

18 **XI. THE COURT SHOULD GRANT THE MOTION FOR ATTORNEY'S FEES OF**
19 **\$1,575,000.00 AND REIMBURSEMENT OF COURT COSTS AND EXPENSES OF**
20 **\$166,578.08**

21 Consistent with the scope of this action and nature of the relief granted to the Class, and the
22 amount of time expended in prosecution of the case, Plaintiffs and Class Counsel hereby move for an
23 award of attorney's fees of \$1,575,000.00. Consequently, in accordance with that agreement, Nathan
24 & Associates seeks attorneys' fees in the amount of \$776,370.00 and \$75,913.51 in costs, Righetti
25 Glugoski, PC seeks attorneys' fees in the amount of \$743,435.00 and \$90,664.57 in costs, and Crosner
26 Legal, P.C. seeks attorneys' fees in the amount of \$57,985.00 (Nathan Decl. ¶¶ 68, 70-73; Glugoski
27 Decl. ¶ 21; Righetti Decl. ¶¶ 14, 25, 29; Brouillette Decl. ¶ 9).

1 **1. Attorneys Fees Award of \$1,575,000.00 Is Justified.**

2 The requested fee is fair compensation for undertaking complex, risky, expensive, and time-
3 consuming litigation on a contingent fee basis, especially considering the benefits achieved by Class
4 Counsel for the Class Members. As outlined above and set forth in the accompanying declarations of
5 Reuben Nathan, John Glugoski, Matthew Righetti, and Brandon Brouillette. Class Counsel diligently
6 litigated and investigated this case without duplication of efforts.

7 Courts recognize two methods for calculating attorney’s fees in class action cases. The first
8 calculates attorney fees based on a percentage of the common benefit bestowed on the class. The second
9 uses a “lodestar” as the basis-determined by multiplying the hours counsel reasonably expended by
10 reasonable hourly rates-which may be enhanced by a multiplier. *Lealao v. Beneficial California, Inc.*
11 (2000) 82 Cal.App.4th 19, 26. The requested attorneys’ fees is justified under either approach.

12 **a. Percentage of Common Fund Approach**

13 California courts have recognized that an appropriate method for awarding attorney’s fees in
14 class actions is to award a percentage of the “common fund” created as a result of the settlement. (*City*
15 *& County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11; *Quinn v. State* (1975) 15 Cal.3d
16 162, 168; see also *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270; *Lealao,*
17 *supra*, 82 Cal.App.4th at 26). The basis of the common fund is fairness to the successful litigant, who
18 might otherwise receive no benefit because his recovery might be consumed by expenses; correlative
19 prevention of an unfair advantage to others who are entitled to share in the fund and who should bear
20 their share of the burden of its recovery; encouragement of the attorney for the successful litigant, who
21 will be more willing to undertake and diligently prosecute proper litigation for the protection or
22 recovery of the fund if he is assured that he will be properly and directly compensated should his efforts
23 be successful. *Sweet, supra*, 12 Cal. 4th at 111). In *Quinn*, the California Supreme Court stated: “[O]ne
24 who expends attorneys’ fees in winning a suit which creates a fund from which others derive benefits
25 may require those passive beneficiaries to bear a fair share of the litigation costs.” (*Quinn, supra*, 15
26 Cal. 3d at 167). Similarly, in *Sweet*, the California Supreme Court recognized that the common fund
27 doctrine has been applied “consistently in California when an action brought by one party creates a
28 fund in which other persons are entitled to share.” (*Sweet, supra*, 12 Cal. 4th at 110).

1 Several courts have expressed frustration with the alternative “lodestar” approach for deciding
2 fee awards, which usually involves wading through voluminous and often indecipherable time records.
3 (*Lealao, supra*, 82 Cal. App. 4th at 31 n.5, citing, *In re Activision Sec. Litig.* (N.D. Cal 1989) 723 F.
4 Supp. 1373, 1375). The percentage approach is preferable to the lodestar because: (1) it aligns the
5 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
6 litigation by providing an incentive for early, yet reasonable settlement; and (3) it reduces the demands
7 on judicial resources. (*In re Activision Sec. Litig., supra*, 723 F. Supp. at 1378-79).

8 Plaintiffs’ counsel’s request for fees of 35% of the Settlement Fund is within the range of
9 reasonableness. Historically, courts have awarded percentage fees in the range of 20% to 50%,
10 depending on the circumstances of the case. (*See, In re: Activision Sec. Litig., supra*, 723 F. Supp. at
11 1378.) According to Professor Newberg: “No general rule can be articulated on what is a reasonable
12 percentage of a common fund...Usually 50 percent of the fund is the upper limit on a reasonable fee
13 award from a common fund, in order to assure that fees do not consume a disproportionate part of the
14 recovery obtained for the class, though somewhat larger percentages are not unprecedented.” *Newberg*,
15 *supra*, § 14.6 at 550.

16 Courts in the Ninth Circuit look to the following factors when determining what a proper
17 percentage is for an award of attorneys’ fees: (1) the results achieved; (2) the risks of litigation; (3)
18 whether there are benefits to the class beyond the immediate generation of a cash fund; (4) whether the
19 percentage rate is above or below the market rate; (5) the contingent nature of the representation and
20 the opportunity cost of bringing the suit; (6) reactions from the class; and (7) a lodestar cross-check.
21 (*Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1048. Here, Class Counsel has met each
22 and every *Vizcaino* factor such as (1) making sure each Class Member gets a monetary award without
23 having to file a claim; (2) assuming great risk in more than three years of litigation while having to turn
24 down other cases; (3) ensuring Defendant is enforcing policies that will comply with the requirements
25 of the Labor Code which serves to benefit members of both the Class and the general public; (4) seeking
26 a percentage rate that is consistent with the market rate; (5) taking the matter wholly on a contingent
27 basis at great opportunity cost; (6) virtually no negative class reaction; and (7) meeting the lodestar
28 reasonableness check. *See also, Cifuentes v. CEVA Logistics U.S., Inc.* (S.D. Cal. October 23, 2017)

1 2017 WL 4792425; *Good Morning to You Prods. Corp. v. Warner/Chappell Music, Inc.* (C.D. Cal.
2 Aug. 16, 2016). No. CV 13-4460-GHK (MRWx), 2016 WL 6156076, at *2–5; *Bautista v. Harvest*
3 *Management Sub LLCs* (C.D. Cal. July 14, 2014) 2014 WL 12579822 at *13-14.

4 Class Counsel have borne, and continue to bear, the entire risk and cost of litigation associated
5 with this case on a pure contingency basis. The factual and legal issues posed in this case were highly
6 disputed, and there were also risks as to whether or not a class would be certified, leaving a large
7 number of putative class members unlikely to receive any recovery. Even after approval of the
8 Settlement Agreement, Class Counsel will be called upon to expend additional amounts of time fielding
9 calls from Class Members, interviewing them, and resolving issues that may arise, administering the
10 settlement and reporting finality of the Settlement. The Court should finally approve the requested
11 attorney’s fees and costs, which are justified by the results achieved, the complexity of the issues, the
12 difficulty of the case, and the great risks undertaken by Class Counsel. The requested attorneys’ fees
13 and costs are not opposed by Defendant and are well within established guidelines.

14 **b. Lodestar Calculation Approach**

15 The trial court also has broad authority to calculate the lodestar. (*PLCM Group, Inc. v. Drexler*
16 (2000) 22 Cal.4th 1084, 1094-1095 - [T]he fee setting inquiry in California ordinarily begins with the
17 “lodestar,” i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate).
18 “California courts have consistently held that a computation of time spent on a case and the reasonable
19 value of that time is fundamental to a determination of an appropriate attorneys’ fee award.” The
20 reasonable hourly rate is that prevailing in the community for similar work, The lodestar figure may
21 then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair
22 market value for the legal services provided. (*Id.* at 1095).

23 **c. Reasonable Hourly Rate**

24 In calculating the lodestar, a billing rate of \$1,050 per hour was used for Attorney Reuben
25 Nathan of Nathan and Associates, APC, \$1,200 per hour for Attorney Matthew Righetti and \$900 per
26 hour for John Glugoski of Righetti Glugoski, P.C., and Jamie K. Serb and Brandon Brouillette,
27 \$750/hour, and Kiara Bramasco \$650/hour of Crosner Legal, P.C. These are equivalent to their current
28 billing rates on a non-contingency fee basis. (Nathan Decl. ¶¶ 69, 79; Glugoski Decl. ¶ 9, 12; Righetti

Decl. ¶¶ 12, 15; Brouillette Decl. ¶¶ 9, 21). These amounts are also supported by their considerable experience and are consistent with their hourly rates that have been approved by other courts, as set forth in the accompanying declarations. (Nathan Decl. ¶¶78-90; Glugoski Decl. ¶ 2-15; Righetti Decl. ¶¶ 1-18; Brouillette Decl. ¶¶ 10-21).

d. Number of Hours Expended

In determining the number of hours expended by counsel, compensable hours include services provided prior to the filing of the complaint that were reasonably required. (*Stokus v. Marsh* (1990) 217 Cal.App.3d 647, 655). Moreover, detailed time records are not required. “Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records.” (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559; *see also, Wershba., supra*, 91 Cal.App.4th at 255).

Class Counsel submitted the hours expended by them in this litigation. (Nathan Decl. ¶¶ 68-71; Glugoski Decl. ¶ 22; Righetti Decl. ¶ 25-26; Brouillette Decl. ¶ 9).

As of the filing of this motion, attorney Reuben Nathan of Nathan & Associates, APC has expended 739.4 hours, with a lodestar of \$776,370.00 and John Glugoski and Matthew Righetti of Righetti Glugoski, P.C. have expended 924 hours, with a lodestar of \$743,435.00, and Brandon Brouillette, Jaimie Serb, and Kiara Bramasco of Crosner Legal, P.C., have expended 78.5 hours, with a lodestar of \$57,985.00 in the prosecution of this lawsuit. The total lodestar of attorney Nathan, Glugoski, Righetti, and Crosner as of the filing of this motion is \$1,577,790.00. (Nathan Decl. ¶¶ 4-25, 32-46, 68-71; Glugoski Decl. ¶ 24; Righetti Decl. ¶ 25-26; Brouillette Decl. ¶ 9).

There was no duplication of effort and the combined efforts of Class Counsel were required for the successful outcome in the case. (Nathan Decl. ¶¶63, 68-71; Glugoski Decl. ¶ 17; Righetti Decl. ¶ 27). It is estimated that Class Counsel will expend (in total) an additional 20 hours of time included their current lodestars for preparing and attending the final approval hearing and overseeing the completion of administration of this Settlement including communicating with numerous Class Members, resolving claims disputes, preparing pleadings for and attending the later hearings, monitoring the distribution of proceeds, following up on missing payments, etc. (Nathan Decl. ¶ 71; Glugoski Decl. ¶ 23; Righetti Decl. ¶ 26).

Nathan & Associates, APC has expended \$75,913.51 in litigation costs and expenses (Nathan Decl. ¶ 71-73), and requests reimbursement in such amounts. Righetti Glugoski, P.C. has expended \$90,664.57 in litigation costs (Glugoski Decl. ¶¶ 11, 27; Righetti Decl. ¶¶ 14, 29), and requests reimbursement in such amounts.

The proposed Settlement is fair, reasonable, and, adequate. It resolves the case favorably to the Class by providing substantial cash payments to Class Members. It is non-collusive and was achieved as the result of informed, extensive, and arms-length negotiations conducted by counsel for respective parties who are experienced in wage and hour class action litigation. All Class Members have tacitly approved the Settlement by participating in the Settlement and as of the date of this motion, zero objections and zero exclusions to the Settlement have been submitted⁹. For the reasons set forth herein, Plaintiffs respectfully request that this Court grant final approval to the proposed Settlement and enter the Order and Judgment in the form submitted concurrently herewith.

Respectfully submitted,

By: /s/ Matthew Righetti
Matthew Righetti
Attorney for Plaintiffs

⁹ Pursuant to the Court's MPA Order, the Parties are ordered to file this motion thirty days after mailing of Notices to Class Members, on December 18, 2024. Class Counsel and the settlement administrator will file supplemental declarations after the filing of this motion to notify the court of any opt-outs and/or objections following the 45-day response deadline of January 2, 2025