JAMIE K. SERB, ESQ. (SBN 289601)
jamie@crosnerlegal.com
ZACHARY M. CROSNER (SBN 272295)
zach@crosnerlegal.com
CROSNER LEGAL, PC
9440 Santa Monica Blvd. Suite 301
Beverly Hills, CA 90210
Tel: (866) 276-7637
Fax: (310) 510-6429

Attorneys for Plaintiff OSCAR BARAJAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

OSCAR BARAJAS, as an individual and on behalf of all others similarly situated,

Plaintiff,

v.

CPC LOGISTICS SOLUTIONS, LLC, a Missouri limited liability company; CPC LOGISTICS INC., a Missouri corporation; NEWCO DISTRIBUTORS, INC., a California corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: 22CV011373

Assigned for All Purposes to:
Hon. Chad A. Stegeman
Dept. 17

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

Date: August 5, 2026
Time: 3:00 p.m.
Dept.: 17

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Plaintiff and Class Representative Oscar Barajas seeks final approval of a non-reversionary class action settlement resolving wage and hour claims on behalf of 595 individuals who are or previously were employed by any of the Released Parties (as defined and including CPC Logistics Solutions, LLC and CPC Logistics Inc., collectively, "Defendants") and performed work in California during the Class Period of November 19, 2017 to August 15, 2025, excluding all such individuals who were employed in positions requiring a commercial driver's license. The proposed $305,160 total settlement provides about $130,186 in cash payments to the Class, with an average award of about $231. The remaining balance will cover settlement administration costs, civil penalties to the state, and reasonable attorney's fees and costs. The parties and their counsel finalized the settlement after extensive and difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved the settlement on March 18, 2026. Since then, the Court-approved notice form was mailed to the Class Members on April 23, 2026, and they reacted very favorably to the settlement. As of the date of this motion, zero class members have opted out of the settlement and there are no objections.

Further, Class Counsel secured an excellent settlement with Defendant after some four years of investigation, litigation, and settlement negotiation and administration, all without any compensation for services rendered or costs expended. The class notice duly informed the class members that Class Counsel would request attorney's fees not to exceed 1/3 of the Gross Settlement Amount, or $101,720.00, along with reimbursement of no more than $26,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not one Class Member objected* to the proposed fee award. Consistent with the Settlement and Notice, Plaintiff now respectfully requests the Court award Class Counsel's fees in the amount of $101,720.00 and costs in the amount of $23,985.57, as described in the Declaration of Jamie Serb ("Serb Decl.") filed herewith. The requested attorney's fees are well within the range of reasonableness, especially considering the complex and risky nature of this litigation, the contingent risk assumed, and the four year delay in payment and, when subjected to a lodestar crosscheck, results in fee request that is smaller than the base lodestar.

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

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

CPC is a staffing company that has provided its clients with drivers and warehouse staff for the past 50 years. Plaintiff Barajas was hired by CPC on September 17, 2021 and placed to work at Newco Distributor's facility in Hayward, California, as a non-exempt warehouse equipment operator/clerk. He was responsible for relocating inventory within the warehouse using a forklift as well as other loading equipment. [Serb Decl., ¶ 2.]

On May 16, 2022 Plaintiff filed his class action complaint against all Defendants and Newco Distributors[1] alleging claims for: (1) unpaid minimum wages, (2) unpaid overtime wages, (3) unpaid premium wages for late, short or denied meal and rest periods, (4) failure to furnish accurately itemized wage statements, (5) failure to pay all wages due upon separation of employment, (6) failure to reimburse business expense, and (7) unfair competition. On July 1, 2022, Defendant CPC Logistics removed Plaintiff's Class Action to the United States District Court for the Northern District of California based on the Class Action Fairness Act ("CAFA"). On September 23, 2022, United States District Court Judge William H. Orrick granted Plaintiff's Motion to Remand the Class Action back to the Alameda County Superior Court as Plaintiff successfully argued that Defendant CPC Logistics failed to allege more than $5 million in controversy as to the claims against it. [Serb Decl., ¶ 3.]

Meanwhile, on August 17, 2022, and after exhausting his administrative remedies with the LWDA, Plaintiff filed a representative complaint seeking penalties pursuant to PAGA based on the same alleged Labor Code violations as the class action matter. [Serb Decl., ¶ 4.]

Defendants have at all times denied Plaintiff's allegations and maintained their meal and rest

[1] Plaintiff reached a separate settlement with Defendant Newco, and that entity is not a party to the proposed settlement currently before the Court.

break and payroll policies and procedures comply with California law, that they paid the class member wages due at the correct rates of pay, and provided them with required meal and rest breaks or paid the required compensation for any documented meal/rest violations. Defendants also contend there would be no need for any class member to incur any business expenses in the performance of their job duties and therefore no reimbursement is owed. Additionally, Defendants strongly contend the case cannot be maintained as a class action, arguing for example that to the extent class members missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and infrequent and evidence of such missed breaks would be anecdotal, and therefore individualized issues would predominate. [Serb Decl., ¶ 5.]

After Plaintiff filed his complaints, and after the matter was remanded from federal court, the Parties engaged in initial written discovery and, after meeting and conferring regarding discovery, law and motion, and other case management issues, agreed to attempt mediation. The Parties also agreed on a protocol for an exchange of substantial documents and information before the mediation to facilitate the settlement discussions. The Parties then engaged Steve Pearl, Esq., a respected professional neutral with substantial wage and hour and class action experience and, in February 2024, the Parties participated in a full day mediation with Mr. Pearl and ultimately were able to reach agreement on all major issues. [Serb Decl., ¶¶ 6-7.] The Court granted preliminary approval of the Settlement on March 18, 2026.

Class notices were mailed to class members on April 23, 2026, with a 60-day window (to June 22, 2026) for class members to opt out of or object to the proposed settlement. [Declaration of Fatima Montanez ("Montanez Decl."), ¶¶ 8, 10.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Defendants will pay $305,160 into a common fund, the Maximum Settlement Amount ("MSA"). Attorney's fees of up to $101,720 (1/3 of the MSA), actual litigation costs of up to $26,000 (only $23,985.57 is requested), settlement administration costs of $9,268, a service award to Plaintiff of no more than $10,000, and PAGA civil penalties of $30,000 (divided 75%, or $22,500 to the LWDA and 25%, or $7,500, to the PAGA Aggrieved Employees), all will be paid from the MSA. The balance of around $130,186 will be allocated pro rata to the Class

Members based on their weeks worked during the Class Period. No portion of the MSA will revert to Defendants. [Serb Decl., ¶ 8.]

A. <u>Certification of the Settlement Class</u>

The Court conditionally certified a settlement class defined to include all non-exempt employees who are or previously were employed by any of the Released Parties (as defined in the Settlement Agreement) and performed work in California during the Class Period of November 19, 2017 to August 15, 2025, excluding all such individuals who were employed in positions requiring a commercial driver's license. The Settlement Administrator ultimately mailed a total of 595 class notices on April 23, 2026. [Montanez Decl., ¶ 8.] Nothing has changed to require reconsideration of the Court's certification of the Settlement Class.

B. <u>The Benefit Conferred on the Settlement Class</u>

As noted, the settlement obligates Defendants to pay $305,160 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $130,986 from the MSA will be distributed to the Participating Class Members. This is a cash settlement that <u>does not</u> require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to expenses, penalties and interest, which allocation is consistent with CPC's potential liability. Defendants will pay any and all applicable employer-side payroll taxes separately and in addition to the MSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash their settlement check) will be forwarded to the State Controller's Unclaimed Property Fund. [Serb Decl., ¶ 9.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her total weeks worked in California as a non-exempt employee in a position that did not require a commercial driver's license. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages for missed meal and rest breaks, unreimbursed expenses, and potential statutory penalties under applicable law. These methods are intended to ensure each Class Member receives a settlement award corresponding to the relative value of their potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for CPC in California and the amount unpaid wages due to using the incorrect regular rate, the number of missed meal breaks and/or rest breaks, etc. [Serb Decl., ¶ 10.]

The average class award will be approximately $231, and the awards will range from about $11.82 on the low end to over $4,300 on the high end. The average PAGA award will be about $12.61, and PAGA awards will range from $1.12 to about $239. [Montanez Decl., ¶¶ 16, 18.]

C. <u>Settlement Administration</u>

Simpluris, Inc., as the Court-approved Settlement Administrator, mailed the Notice Packet to the Class Members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Montanez Decl., ¶¶ 3-9.] The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms, including the estimated relief each Class Member will receive, the amounts to be requested for attorney's fees and the class representative enhancement awards, and the right to opt out of or object to the settlement. [Montanez Decl., ¶ 8, Exh. A.] Simpluris mailed 595 Notice Packets on April 23, 2026. [Montanez Decl., ¶ 8.] As of the filing of this motion, 65 Notice Packets were deemed undeliverable. [Islas Decl., ¶ 9.] The response window for opting out, objecting to the settlement, or submitting a dispute, expired on June 22, 2026. [Montanez Decl., ¶ 8.] As of the filing of this motion, Simpluris has received zero requests for exclusion (for a 100% participation rate), zero objections to the settlement, and no disputes regarding the information used to calculate class member settlement shares. [Montanez Decl., ¶¶ 11-13.]

D. <u>Release of Claims</u>

All Participating Class Members will release Defendants and the Released Parties from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the complaint during the Class Period. The release is limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the complaint. All PAGA Aggrieved Employees will release Defendants and the Released Parties from all claims for PAGA civil penalties alleged in the PAGA notice letter, or that could have been brought based on the factual allegations in the PAGA notice letter during the PAGA Period. [Serb Decl., ¶ 11.]

E. PAGA and Notice to the LWDA

As noted, the Parties allocated $30,000 to payment of alleged civil penalties under PAGA, and Plaintiff submits that amount is fair, reasonable and adequate, and consistent with PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiff gave notice of the settlement and the hearing to the LWDA via its online portal. [Serb Decl., ¶ 12; Exh. 1.]

IV. ARGUMENT

A. Standards For Approval

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

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

B. The Proposed Settlement Merits Final Approval

The proposed settlement of this action warrants final approval under the standards summarized above. The settlement is fair, reasonable and adequate, and represents a favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by the class members as there are no objections and no class member has requested exclusion.

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

The settlement is not the result of fraud or collusion. The proposed settlement resulted from serious, arms-length negotiations facilitated by respected mediator Steve Mehta, Esq., who has considerable experience mediating wage and hour class action cases. [Serb Decl., ¶ 7.] Plaintiff's counsel Jamie Serb and Zach Crosner, and Crosner Legal, P.C., have years of experience litigating wage and hour class actions, and are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Serb Decl., ¶¶ 28-35.] Defendant likewise was represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients and nothing was "left on the table."

2. The Class Reacted Favorablv to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and no Class Member has requested exclusion, for a 100% participation rate. [Montanez Decl., ¶¶ 11-12.] As many courts recognize, class member reaction to the settlement is one of the most important factors to consider in determining if final approval should be granted.

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

C. The Settlement is Fair and Reasonable Based on the Strengths of Plaintiff's Case and the Risks and Costs of Further Litigation

Prior to the mediations, the parties engaged in both formal and informal discovery to facilitate settlement discussions. Plaintiff reviewed documents and information regarding CPC's payroll practices, a random sampling of pay stubs and time records from class members, a class list, applicable compensation plans and expense reimbursement plans, meal and rest break policies, arbitration agreements, etc., and information from Defendants regarding class size and breakdown, work weeks/pay periods, rates of pay, and other information used to formulate a damages model. Plaintiff then had that information analyzed by a consulting expert to assist in determining potential violation rates and other data used to formulate a damages model. Plaintiff's counsel are confident they obtained sufficient information to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is fair and reasonable. [Serb Decl., ¶¶ 6, 13.]

Using the data obtained from Defendants, Plaintiff ran various calculations and estimated Defendants' likely maximum exposure on the class claims at approximately **$5,098,000**, including about $68,500 on the unpaid wage/regular rate claim, $565,135 on the meal break claims, $2,550,800 on the rest break claims, $149,690 on the unreimbursed expense claim, $560,050 on the wage statement claims, and $1,204,390 on the waiting time penalty claims. [Serb Decl., ¶ 14.] Through the information exchanged and analysis undertaken, Plaintiff weighed the risks of continued litigation against the benefits of the proposed settlement and determined settlement to be the most reasonable option.

In addition to their base hourly wages, Class Members also earned various other forms of wages, such as Bonus Pay, Referral Bonus, Referral Bonus-CPC, zCommisions, Per Diem, and Per Diem-Single, as reflected in the payroll records. Plaintiff contends Defendants failed to include these non-hourly, non-discretionary wages in the calculation of the employees' "regular rate of pay." On the regular rate issue, "an employee's 'regular rate of pay' for purposes of Labor Code section 510 and the IWC wage orders is not the same as the employee's straight time rate (i.e., his or her normal hourly wage rate). Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly compensation the employee has earned." Alvarado v. Dart Container Corp. (2018) 4 Cal.5th 542, 554. Bonuses and other incentive pay designed to increase an employee's productivity must be included in the regular rate. Id. As the Ninth Circuit recently confirmed, per diems also may be included in determining the regular rate. Clarke v. AMN Servs. (9th Cir. 2021) 987 F.3d 848, 858. As a result, per Plaintiff, Defendants regularly underpaid Class Members for their overtime, sick pay, and meal break premiums. On the other hand, CPC argued that its pay policies fully compensated the class members for all hours worked at the correct hourly rates, and further argued there was very little in the way of bonus pay that would even trigger an obligation calculate the regular rate, or that many of these forms of additional compensation were discretionary and properly excluded from the regular rate calculation. [Serb Decl., ¶ 15.]

On the meal break claims, Plaintiff focused primarily on Defendants' alleged failure to maintain a California-compliant break policy and to provide Plaintiff and the class members employees with all required meal periods, particularly on shifts lasting longer than 10 hours. Not only does the meal period policy fail to notify employees hours when to take their meal periods, but Plaintiff's expert's review of the records provided by Defendants suggests that some 26% of all shifts contained a unique meal period violation (i.e., missed, late, or short), including failing to provide timely meal periods, failing to provide first meal periods, and failing to provide a second meal period on shifts over ten hours. [Serb Decl., ¶ 16.]

Defendants countered that in many instances actually took their meal break (including second meal breaks) even if not reflected on the time sheets and, accordingly, class certification is not appropriate because individual inquiries would be necessary to determine this question. For the same reasons, Defendants contended the claim would fail on the merits because it would be difficult for Plaintiff to show Defendants' actual or constructive knowledge that a particular class member worked through a specific lunch period. Defendants also contended they maintained a fully-compliant meal break policy at all times, and it always provided the class members with the opportunity to take meal breaks and thus met the requirements imposed by California law. Per Defendants, if individuals did not take a meal period, it was in violation of company policy and, once again, a multitude of individual inquiries would be necessary to determine if an individual may have missed a meal break by personal choice or for some other reason. Defendants further emphasized that many travel nurses signed valid meal period waivers, and that it paid thousands of dollars in meal premiums for documented violations and accordingly made a good faith effort to comply. [Serb Decl., ¶ 17.]

On the rest break claim, Plaintiff claimed Defendants' written policy failed to inform employees that rest breaks had to be for a net 10 minutes to be compliant, which failure directly impacted Class Member rest breaks as, per Plaintiff, they lost time getting to/from their work station to a break room. Thus, per Plaintiff, this failure to communicate that the rest break is a *net* ten minutes resulted in non-compliant breaks. Defendants countered that it is only liable if Plaintiff can prove, on a shift-by-shift basis, that Class Members actually did not take a fully-compliant rest break based on Plaintiff's theory of liability advanced above. This arguably would have made class certification more difficult and/or rendered trial unmanageable. [Serb Decl., ¶ 18.]

The claims for unreimbursed business expenses under Labor Code § 2802 revolved around Plaintiff's allegations that CPC required its non-exempt employees to incur extraordinary laundry costs to maintain their own work uniforms, and also to purchase their own Covid test kits. In response, Defendants argued there was no need for employees to incur any special costs for laundering or maintaining their uniforms, and that if any Class Members did so it would have been purely for personal preference and not reimbursable. Similarly, CPC contends it did not require employees to purchase or provide their own Covid test kits and if any Class Member purchased such kits it was entirely voluntary. [Serb Decl., ¶ 19.]

Plaintiff's claims for penalties under Labor Code §§ 203 and 226 are derivative of the underlying unpaid minimum and overtime wage and meal/rest break claims and, accordingly, they would essentially rise or fall with Plaintiff's success or failure on her primary claims. Further, Plaintiff had to account for the discretionary nature of such awards and the "good faith" and other defenses available to Defendants. Defendants also raised a good faith defense to the waiting time penalties as it applies to both meal/rest periods and underpaid overtime premiums. Amaral v. Cintas Corp. No. 2,163 Cal.App.4th 1157, 1203-4 (2008) (employer did not willfully fail to pay wages under Labor Code § 203 even though the class prevailed on the merits for failing to pay living wages). [Serb Decl., ¶ 20.]

As far as potential PAGA liability, the alleged aggrieved employees theoretically are entitled to penalties totaling about $3 million should Plaintiff prevail on all claims, establish violations of the multiple Labor Code sections at issue, and secure the maximum penalty on all issues. [Serb Decl., ¶ 21.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on Defendants' various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated $30,000 to PAGA penalties.

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

Overall, Defendants raised various defenses to Plaintiff's claims on both class certification and the merits that, if successful, could have negatively impacted Plaintiff's claims or potentially reduced potential damages. Accordingly, Plaintiff faced significant risks going forward with this litigation, and given the need to secure and maintain class certification, prevail at trial, and deal with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff and counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class. The overall $305,160 recovery represents a significant percentage of Defendants' potential exposure and, given the multiple litigation risks addressed above, a total recovery for the class of $305,160, with an average award of some $231 per class member, is a fair result within the range of reasonableness considering all potential outcomes. [Serb Decl., ¶¶ 22-23.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"). Importantly as well, the proposed settlement is non-reversionary and will provide benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Simpluris, Inc. for its services as the Settlement Administrator. As set forth in the Declaration of Fatima Montanez, Simpluris performed and will continue to perform its required duties through final distribution of the settlement funds and incurred $9,268.00 in fees and expenses. [Montanez Decl., ¶ 19.] Plaintiff accordingly requests the Court approve payment of $9,268.00 to Simpluris from the MSA. [Serb Decl., ¶ 24.]

VI. PLAINTIFF'S ENHANCEMENT AWARD

Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of $10,000 for his service in bringing these claims on behalf of the Class. The request is reasonable given the risks he undertook on behalf of the Class Members, and by contacting and retaining counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendant's litigation costs. Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing himself at risk of discrimination by future prospective employers. As set forth in more detail in his declaration filed with the preliminary approval motion, among taking many other actions assisting in the successful litigation of this case, Plaintiff provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, personally attended the all-day mediation along with counsel, and kept abreast of all significant developments. [Declaration of Oscar Barajas, ¶¶ 2-9; Serb Decl., ¶ 25.] Accordingly, the requested enhancement payment to Plaintiff is appropriate and justified as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000).

VII. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE AND SHOULD BE APPROVED

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

Here, Class Counsel's request for attorney's fees and costs is reasonable and justified by the work performed, the benefits obtained, and the contingent risk assumed. As addressed in detail above, at the time the parties reached the tentative settlement success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that some or all the claims would not be certified for class treatment, as Defendant had strong arguments that its compensation policies were legal and properly compensated the class members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the merits, it undoubtedly would have taken several years to realize any recovery while he pursued class certification, trial, and an almost certain appeal. [Serb Decl., ¶¶ 14-21.]

Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about $231, and with a maximum award of over $4,300. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – there are no objections and no one opt outs to the settlement. [Montanez Decl., ¶¶ 11-12.]

A. The Requested Fee Award Is Reasonable and Appropriate

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

As part of the Settlement, Defendant agreed not to object to an award of no more than 1/3 of the MSA for attorney's fees, or $101,720, and up to $26,000 in reimbursement for litigation costs and expenses (only $23,985.57, is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

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

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

Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. [Serb Decl., ¶ 26.] The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

B. Class Counsel's Fees are Justified When Calculated as a Percentage of the Common Fund

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

> The recognized advantages of the percentage method-including relative ease of calculation, alignment of incentives between counsel and the class, a better

> approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation convince us the percentage method is a valuable tool that should not be denied our trial courts.

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

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

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

Here, Class Counsel seek a fee award for their successful prosecution and resolution of this action of no more than 1/3 of the MSA, and specifically $101,720.00. The percentage requested is justified for the reasons set forth further below, and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

Indeed, in addition to the California Supreme Court's approval of a 1/3 fee in Lafitte, other courts in California likewise routinely approve fees of 1/3 of the gross settlement. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery"). "Under the percentage method, California has recognized that most fee awards based on either a lodestar or percentage calculation are 33 percent . . . ." Smith v. CRST Van Expedited, Inc. (S.D. Cal. 2013) 2013 WL 163293, at *5. *See also* Bickley v. Schneider Nat'l Carriers, Inc. (N.D.Cal. Oct. 13, 2016) 2016 WL 6910261, at *4 (awarding attorney's fees of one-third of the recovery); Barbosa v. Cargill Meat Solutions Corp. (E.D. Cal. 2013) 297 F.R.D. 431, 449-450 (one-third of the settlement); Garcia v. Gordo Trucking, Inc. (E.D. Cal. Oct. 31, 2012) 2012 WL 5364575 (approving attorney's fees of one-third of the common fund); Vasquez v. Coast Valley Roofing (E.D. Cal. 2010) 266 F.R.D. 482 (approving award of attorney's fees of one-third of the amount recovered by the class); Stuart v. RadioShack Corp. (N.D. Cal. 2010) 2010 WL 3155645 (awarding attorney's fees of recovery and noting the one-third award was "well within the range of percentages which courts have upheld as reasonable in other class action lawsuits.").

C. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 190.6 hours of time on this matter, resulting in a modest and very reasonable lodestar of $156,295.00.

Over the four plus years this matter has been pending, Crosner Legal's efforts have included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal research, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other employees of the Defendant; (2) drafting a PAGA notice letter; (3) drafting the initial class complaint and related documents, and drafting the PAGA complaint (4) addressing the removal to federal court and successfully moving to remand; (5) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (6) drafting and filing a first amended complaint; (7) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (8) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (9) drafting a mediation brief and accompanying damages model after review and analysis of Defendant's informal discovery production; (10) attending an all-day mediation; (11) negotiating and drafting the settlement agreement and related documents; (12) drafting motion for preliminary approval, and attending the hearing; (13) administration of the settlement, including communications with the Settlement Administrator and settlement class members; (14) final approval and attorney's fees, and attending the final approval hearing; and (15) extensive communications with the Plaintiff regarding case status, case investigation and document review, mediation, and settlement terms. [Serb Decl., ¶ 27, Exh. 2.] Additionally, Class Counsel will incur additional time following final approval to, inter alia, respond to class member inquiries, attend to distribution of settlement funds, and on the compliance hearing.

In pursuing this matter, Class Counsel incurred total attorney's fees of $156,295, and the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a successful conclusion (190.6 attorney hours). [Serb Decl., ¶¶ 28-40, Exh. 2.] The requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. On a lodestar basis, the fee request of $101,720 is actually less than the base lodestar and accordingly there is no request to apply a lodestar enhancement. This does, however, show the reasonableness of the requested fees, as the value of the fee request on a percentage basis is less than the value of the fees when valued via traditional hourly billing.

/////

/////

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

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

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

1. The Results Achieved.

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

2. Class Counsel Bore Considerable Risk.

At the time of filing the initial complaints Class Counsel recognized that they would have to expend a substantial amount of time and advance significant costs to prosecute a statewide class action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against a sophisticated company represented by first-rate attorneys. Despite their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks of class certification and the ability to prove class-wide and individual damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's firm, not receiving any compensation for several years while simultaneously advancing litigation costs posed considerable risk and difficulty. [Serb Decl., ¶¶ 41-42.]

3. The Skill Required and the Quality of Work.

Practice in the narrow area of wage and hour litigation requires skill, knowledge and experience. The issues presented in this case required more than just a general appreciation of wage and hour law and class action procedure. This Settlement was possible only because counsel persuaded Defendant that Plaintiffs and the putative class had a realistic chance of prevailing on their claims despite Defendant's contrary arguments, and that the case would be pursued through class certification and trial if necessary. In successfully navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a risky and difficult case.

4. The Contingent Nature of the Fee and Risk Assumed

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

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

Here, the contingent fee practices of Plaintiffs' counsel simply do not accommodate the investment of unnecessary time in a case, and the adverse resolution of any one of several difficult issues present in this matter could have doomed the entire effort. As discussed, the attorney's fees in this case were not only contingent but fairly risky, and there was always a distinct possibility Plaintiffs' counsel would receive nothing for any number of reasons. Indeed, Class Counsel has, on multiple occasions, ultimately recovered no fee in several wage and hour class action cases despite investing substantial attorney time and out-of pocket costs. [Serb Decl., ¶¶ 41-42.] Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel also support the fee requested.

5. Awards in Other Cases

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

E. Class Counsel's Costs and Expenses are Reasonable

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

As explained in the Serb Declaration, Class Counsel incurred a total of $23,985.57 in expenses incurred in connection with this litigation. These expenses include the amounts paid for court filing fees, service of process, expert fees, postage, and mediation fees, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter, and were necessary for the successful prosecution of the case and accordingly Plaintiff's counsel request reimbursement for costs in the amount of $23,985.87. [Serb Decl., ¶¶ 43-44.]

/////

/////

VIII. CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this motion and grant final approval of the proposed class action settlement and approve the payment of PAGA penalties to the State and PAGA Aggrieved Employees. Plaintiff further requests the Court approve payment of the Settlement Administrator's fees and expenses, approve the requested class representative enhancement payments, approve the award of attorney's fees and costs as requested, and enter judgment in this action. Finally, Plaintiff requests the Court set a hearing regarding settlement compliance for August 4, 2027, or a later date convenient for the Court.

Dated: July 13, 2026

CROSNER LEGAL, PC

By: ______________________
Jamie K. Serb, Esq.
Zachary M. Crosner, Esq.
Attorneys for Plaintiff,
OSCAR BARAJAS