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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 LYNDA BROWNING, on behalf of herself
17 and all others similarly situated,

18 Plaintiff,

19 v.

20 PASADENA HOSPITAL ASSOCIATION,
21 LTD, a California non-profit corporation; THE
22 HUNTINGTON MEDICAL FOUNDATION
23 dba HUNTINGTON HEALTH
24 PHYSICIANS, a California nonprofit
25 corporation, and DOES 1 – 100,

26 Defendants.

Case No.: 20STCV48262

Assigned for All Purposes to:

Hon. Elihu M. Berle

Dept. SSC-6

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

[Filed concurrently with Notice of Motion and
Motion; Declarations of Nikki Trenner and Nick
Castro; [Proposed] Order]

Date: October 9, 2023

Time: 9:00 a.m.

Dept. SSC-6

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Lynda Browning seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 338
4 individuals who worked for defendant The Huntington Medical Foundation dba Huntington
5 Health Physicians as current and former non-exempt, hourly-paid employees in California at any
6 time from December 18, 2016 to July 31, 2022. The proposed \$335,000 total settlement
7 provides about \$151,557 in cash payments to the Class, with an average award of about \$448,
8 plus additional amounts payable under PAGA. The remaining balance will cover a modest
9 service award to Plaintiff, settlement administration costs, civil penalties to the state, and
10 reasonable attorney's fees and costs. The parties and their counsel finalized the settlement
11 after extensive and difficult arms-length negotiations overseen by an experienced and
12 highly-regarded mediator. The Court conditionally certified the Class and preliminarily
13 approved the settlement on June 13, 2023. Since then, the Court-approved notice form was
14 mailed to the Class Members on July 7, 2023, and they have reacted very favorably to the
15 settlement. As of the date of this motion, no class members opted out of the settlement, and
16 there are no objections.

17 Further, Class Counsel secured an excellent settlement with HHP after some two
18 years of investigation, litigation, and settlement negotiation and administration, all
19 without any compensation for services rendered or costs expended. The class notice duly
20 informs the class members that Class Counsel would request attorney's fees not to exceed
21 33.33% of the Gross Settlement Amount, or \$111,655.50, along with reimbursement of
22 no more than \$25,000 for actual costs incurred litigating this matter. As of the filing of
23 this motion, *not one Class Member objected* to the proposed fee award. Consistent with
24 the Settlement and notice, Plaintiff now respectfully requests the Court award Class
25 Counsel's fees in the amount of \$111,655.50 and costs in the amount of \$15,787.27, as
26 described in the Declaration of Nikki Trenner ("Trenner Decl.") filed herewith. The
27 requested attorney's fees are well within the range of reasonableness, especially
28 considering the complex and risky nature of this litigation, the contingent risk assumed,

1 and the two-plus year delay in payment and, when subjected to a lodestar crosscheck,
2 result in a base lodestar that is slightly higher than the actual fee request.

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

6 **II. BACKGROUND/LITIGATION HISTORY**

7 The details of the procedural and factual background of this matter were outlined in the
8 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about
9 March 1, 2023). To re-familiarize the Court with this litigation, HHP owns and operates
10 approximately seven primary care clinics in Southern California, where it has been providing
11 primary care services to patients for many years. Plaintiff Lynda Browning was employed by HHP
12 at its Pasadena location as an hourly, non-exempt registered nurse for over thirty years until she
13 resigned in May 2019. (Trenner Decl., ¶ 2.)

14 On December 18, 2020, Plaintiff filed a class action complaint against Defendant. The
15 operative Complaint alleges claims for failure to pay wages, including overtime wages, meal and
16 rest break violations, inaccurate wage statements, waiting time penalties, failure to reimburse
17 expenses, and unfair competition. Plaintiff consequently filed an amended complaint adding a claim
18 for PAGA based on the same alleged Labor Code violations and consistent with her notice letter.
19 (Trenner Decl., ¶ 3.)

20 HHP has at all times denied Plaintiff's allegations and maintained its meal and rest break
21 and payroll policies and procedures comply with California and federal law, that it paid the class
22 member wages due, and provided them with required meal and rest breaks. Additionally, HHP
23 strongly contends certain aspects of the case are preempted under Federal law, and that the case
24 cannot be maintained as a class action, arguing for example that to the extent class members
25 missed meal and/or rest breaks, or that such breaks were non-compliant, it was intermittent and
26 infrequent and evidence of such missed breaks would be anecdotal, and therefore individualized
27 issues would predominate. [Trenner Decl., ¶ 4.]

28 Once the matter was at issue, the Parties initiated discovery and later, after engaging in

1 meet and confer discussions regarding discovery, potential law and motion, and the merits of the
2 case, ultimately agreed to attempt mediation. They then engaged in significant informal discovery
3 to facilitate an exchange of information necessary to engage in a meaningful mediation. In May
4 2022, the Parties participated in mediation with Steve Mehta, Esq., a respected wage and hour
5 class action mediator and, after a full day of mediation, reached the proposed settlement. [Trenner
6 Decl., ¶¶ 5-6.] This Court preliminarily approved the settlement on June 13, 2023.

7 Class notices were mailed to class members on July 7, 2023, with a 60-day window
8 (to September 7, 2023) for class members to opt out of or object to the proposed settlement.
9 [Declaration of Nick Castro (“Castro Decl.”), ¶¶ 7, 11-12.]

10 **III. TERMS OF THE PROPOSED SETTLEMENT**

11 Under the settlement, HHP will pay \$335,000 into a common fund, the Gross Settlement
12 Amount (“GSA”). Attorney’s fees of up to \$111,655.50 (33.33% of the GSA), litigation costs of up
13 to \$25,000 (only \$15,787.37 is requested), settlement administration costs of \$11,000, and a service
14 award to Plaintiff of no more than \$10,000, and \$35,000.00 for PAGA civil penalties (of which
15 \$26,250 will go to the California Labor & Workforce Development Agency (“LWDA”) for the
16 State’s share of civil penalties and \$8,750 will go to eligible Aggrieved Employees), all will be paid
17 from the GSA. The remainder of around \$151,577 will be allocated pro rata to the Class Members
18 based on their weeks worked during the Class Period. No portion of the GSA will revert to HHP.
19 [Trenner Decl., ¶ 7.]

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

21 The Court conditionally certified a settlement class defined to include individuals who
22 worked for defendant HHP as current and former non-exempt, hourly-paid employees in
23 California at any time from December 18, 2016 to July 31, 2022. The Settlement Administrator
24 ultimately mailed class notices to 338 individuals identified as members of the Class. [Castro
25 Decl., ¶ 7.] Nothing has changed to require reconsideration of the Court’s certification of
26 the Settlement Class.

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

28 As noted, the settlement obligates HHP to pay \$335,000 to resolve the Settlement Class’s

1 claims, inclusive of attorney's fees and costs. At least \$151,557 from the GSA will be distributed
2 to the Participating Class Members. This is a cash settlement that does not require Participating
3 Class Members to submit a claim form to receive their settlement share. Participating Class
4 Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty-five
5 percent of each settlement share will be allocated to wages and the remaining seventy-five percent
6 will be allocated to non-wage premiums, penalties, and interest, which allocation is consistent
7 with HHP's potential liability as discussed below. HHP will pay any and all applicable employer-
8 side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any
9 amounts not claimed (because a class member does not cash their settlement check) will be
10 forwarded to the California State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 8.]

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

20 The average award to the Participating Class Members will be approximately \$448 with a
21 maximum award of over \$1,190, while the average PAGA award will be about \$43.53. [Castro
22 Decl., ¶ 14.]

23 **C. Settlement Administration**

24 ILYM Group, Inc., as the Court-approved Settlement Administrator, mailed the Notice
25 Packet to the Class members after making all reasonable effort to ascertain the best mailing
26 address, including running each address through the National Change of Address database
27 and "skip-tracing" any Notice Packets returned as undeliverable. [Castro Decl., ¶¶ 4-9.] The
28 Class Notice, previously approved by the Court, duly informed Class Members of the

1 settlement terms, including the estimated relief each Class Member will receive, the amounts
2 to be requested for attorney's fees and the class representative enhancement awards, and the
3 right to opt out of or object to the settlement. [Castro Decl., Exh. A.] ILYM mailed 338
4 Notice Packets on July 7, 2023. [Castro Decl., ¶ 7.] As of the filing of this motion, zero
5 Notice Packets were deemed undeliverable. [Castro Decl., ¶¶ 8-9.] The response window for
6 opting out, objecting to the settlement, or submitting a dispute, will expire on September 7,
7 2023. [Castro Decl., ¶¶ 11-13.] As of the filing of this motion, ILYM has received zero
8 requests for exclusion, zero objections to the settlement, and no disputes have been submitted
9 regarding the information used to calculate class member settlement shares. [Castro Decl., ¶¶
10 11-13.] ILYM will submit an updated declaration on or before September 29, 2023.

11 **D. Release of Claims**

12 All Participating Class Members will release HHP from all claims alleged in the operative
13 complaint, or that could have been brought based on the factual allegations in the operative
14 complaint during the Class Period, including all PAGA claims. The release is limited to the claims
15 that were actually pleaded or could have been pleaded based on the alleged facts in the operative
16 complaint. [Trenner Decl., ¶ 10.]

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

18 As noted, the Parties allocated \$35,000 from the GSA to resolution of Plaintiff's claims
19 under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and
20 adequate. Consistent with PAGA, \$26,250 of this amount will be paid to the LWDA as the
21 state's share of the civil penalties, and the remainder of \$8,750 will be distributed to the 201
22 Aggrieved Employees eligible to receive a PAGA payment. [Castro Decl., ¶ 15.] As required
23 by Labor Code section 2699(I)(2), Plaintiff notified the LWDA of the settlement and the final
24 approval hearing via its online portal. [Trenner Decl., ¶ 11; Exh. 1.]

25 **IV. ARGUMENT**

26 **A. Standards For Approval**

27 The law favors settlement, particularly in class actions where substantial resources can
28 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.

1 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
2 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
3 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
4 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
5 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
6 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple
7 Computer (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect
8 against fraud or collusion, and to ensure fairness to absent class members. Dunk, 48
9 Cal.App.4th at 1800-01; Newberg, at §§ 11.22, *et seq.* Review is accomplished through a
10 two-step process intended to determine whether, under the totality of circumstances, the
11 settlement is fair, reasonable and adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91
12 Cal.App.4th at 245.

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

27 **B. The Proposed Settlement Merits Final Approval**

28 The proposed settlement of this action warrants final approval under the standards

1 summarized above. The settlement is fair, reasonable and adequate, and represents a
2 favorable resolution of highly disputed claims. Further, up to this point, the settlement
3 appears to have class member approved as there are no objections and no class member has
4 requested exclusion.

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

6 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
7 was reached following arm's-length negotiations presided over by Lisa Klerman, Esq., a highly
8 respected and well-known mediator with extensive experience mediating wage and hour class
9 actions. [Trenner Decl., ¶ 6.] Moreover, Plaintiff and her counsel were well-informed about the
10 facts and the law, and counsel Zachary M. Crosner, Jamie K. Serb, and Nikki Trenner have years
11 of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are
12 well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter.
13 [Trenner Decl., ¶¶ 29-35.] HHP likewise was represented by highly-qualified and experienced
14 defense counsel. Both sides advocated vigorously for their clients and nothing was "left on the
15 table."

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

17 The settlement was well-received by the class. As of the filing of this motion, no
18 objections have been filed, and not one Class Member has requested exclusion out of 338
19 settlement class members. [Castro Decl., ¶¶ 11-12.] As many courts recognize, class member
20 reaction to the settlement is one of the most important factors to consider in determining if final
21 approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir.
22 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001)
23 ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant
24 factor to be weighed in considering its adequacy") (internal quotation marks omitted).

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

27 The proposed settlement involves a substantial sum of money that, when distributed,
28 will confer meaningful monetary benefits on the Class members. As described above, each

1 individual award will be based on an allocation consistent with the nature of the claims asserted
2 and will fairly and equitably allocate the available funds in relation to the degree of damage
3 each Class member incurred. While class members who worked for only a short period of time
4 will receive relatively small sums, those with longer tenures and who worked more hours and
5 shifts throughout the class period will receive appropriately larger awards.

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

16 Using that data, Plaintiff ran various calculations and estimated HHP's theoretical
17 maximum exposure on the class claims at about \$8.123 million. More specifically, the theoretical
18 maximum includes approximately \$116,000 in damages on the claims for unpaid minimum and
19 overtime wages, around \$3,047,000 in damages for meal period violations and \$3,331,000 in
20 damages on the rest period claims (both assuming a 100% violation rate), over \$367,000 on the
21 expense reimbursement claims, approximately \$573,000 on the wage statement claims, and
22 approximately \$689,000 in waiting time penalties. Plaintiff's counsel substantially discounted the
23 value of these claims, however, in light of the multiple and considerable risks posed by proceeding
24 with the litigation, as HHP raised numerous defenses and vigorously defended against these
25 claims. [Trenner Decl., ¶ 13.]

26 First, Plaintiff contends Defendant failed to provide legally compliant meal and rest breaks.
27 Specifically, as to meal breaks, Plaintiff contends her analysis of the time and payroll records
28 produced by HHP reveals at least 10% of all shifts contained a unique meal period violation (i.e.,

1 late, short, or missed), which Plaintiff claims violates Labor Code sections 512, 226.7, and the
2 applicable IWC Wage Orders, as well as Brinker Restaurant Corp. v. Superior Court (2012) 53
3 Cal.4th 1004 and Augustus v. ABM Security Serv., Inc. (2016) 2 Cal.5th 257 for failure to provide
4 all required meal periods and within the required time frames. Plaintiff further contends HHP's meal
5 period policies improperly restricted Class Member's activities on meal periods (for example, by
6 prohibiting certain activities such as naps) and therefore the Class Members remained subject to
7 employer control during meal periods. (Trenner Decl., ¶ 14.)

8 Plaintiff also contends HHP failed to provide duty-free rest periods to Class Members by
9 similarly failing to relinquish control over how Class Members utilize their rest period time by
10 retaining control over the location where employees took rest periods, by requiring employees to
11 obtain supervisor permission before leaving the premises during their shifts, prohibiting employees
12 from taking naps or being inattentive during rest periods, and otherwise subjecting Class Members
13 to policies imposing employer control during their break time. (Trenner Decl., ¶ 15.)

14 Defendant denies Plaintiff's contentions, claiming it made meal and rest breaks available to
15 Class Members in compliance with California law. Defendant contends its meal and rest break
16 policies are lawful and that Class Members were frequently reminded they were required to take all
17 meal and rest breaks. Defendant also contends that time records demonstrate that Class Members
18 took duty-free, timely meal and rest breaks. Defendant also contends its meal and rest break policies
19 and practices comported with the flexibility the *Brinker* court held was integral to California's meal
20 and rest period requirements. Finally, Defendant argues that Plaintiff's meal and rest break claims
21 are not susceptible to common proof, as the claims would require individualized inquiry, including
22 whether there was an unlawful companywide policy, whether employees had the opportunity to take
23 meal and rest periods, whether they voluntarily chose to forego their meal and rest periods, and
24 whether Defendant ever prevented them from taking meal and rest periods. Accordingly, Defendant
25 contends these claims are vulnerable to a ruling that class treatment is not appropriate. (Trenner
26 Decl., ¶ 16.)

27 For the expense reimbursement claims, Plaintiff argues HHP requires Class Members to use
28 their personal cell phones to communicate with supervisors and coworkers throughout their shifts

1 without reimbursement. In response, HHP contends there was no need to use a personal cell phone
2 in the performance of Class Member job duties, and if anyone did so it was purely for personal
3 convenience and not a job requirement. (Trenner Decl., ¶ 17.)

4 Plaintiff further contends Defendant failed to pay all wages due by HHP also failed to pay
5 all minimum and overtime wages by requiring employees to clock out for meal periods despite
6 retaining control over their actions during meal periods which, per Plaintiff's experts, resulted in
7 some 6,149.6 uncompensated hours. Defendant contends it paid class members all wages due as
8 required under applicable law, and that no uncompensated time occurred during meal periods since
9 HHP fully relinquished control over employee activities during meal periods. (Trenner Decl., ¶ 18.)

10 On the inaccurate wage statement claims under Labor Code section 226, Plaintiff contends
11 HHP's wage statements violate Section 226 on their face by failing to correctly state the total hours
12 worked during each pay period. HMF listed overtime hours twice under "OT Base" and "Wgt OT"
13 but does not provide the total overtime hours worked during the pay period. As a result, the wage
14 statements also list the total hours worked twice, with one correct amount and another amount that
15 erroneously overstates the total hours worked. (Trenner Decl., ¶ 19.) Courts have repeatedly held
16 that such a practice violates California Labor Code section 226(a). *E.g.*, McKenzie v. Fed. Express
17 Corp. (C.D. Cal. 2011) 765 F. Supp. 2d 1222, 1227-29.

18 As a result of the above alleged violations, Plaintiff also alleges HHP failed to timely pay all
19 wages that were due and owing upon separation of employment. Thus, should the primary claims
20 fail, Plaintiff's claim for waiting time penalties would also fail. Defendant also contends it would
21 not be liable for waiting time penalties because a "good faith dispute" exists over the payment of
22 past wages. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201. Further, Defendant
23 contends Plaintiff would have to prove Defendant "willfully" failed to pay Class Members
24 appropriate wages due upon separation of employment. (Trenner Decl., ¶ 20.)

25 As far as potential PAGA liability, the theoretical civil penalties likely are around \$4 million
26 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections at
27 issue. (Trenner Decl., ¶ 21.) As with the class claims, Plaintiff discounted the potential PAGA
28 penalties based on Defendant's various defenses on the merits and also accounted for the Court's

1 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code §
2 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties
3 of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage
4 and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied
5 after trial). Accordingly, the Parties allocated \$35,000 to PAGA penalties.

6 Plaintiff submits this amount is reasonable under the circumstances and in line with
7 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
8 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
9 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
10 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
11 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
12 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
13 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
14 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018)
15 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where
16 "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not
17 objected to the settlement.

18 Thus, Plaintiff and her counsel discounted the value of the class claims consistent with the
19 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
20 greater benefit if the litigation continued. Plaintiff and counsel concluded – in light of these very
21 real and substantial risks – settlement on the proposed terms and without prolonged and costly
22 litigation was in the best interests of the class. The overall \$335,000 recovery represents a significant
23 percentage of Defendant's potential exposure. Given Defendant's multi-layered defenses and all
24 other potential risks of continued litigation, a total recovery for the class of \$335,000, which will
25 result in average award currently estimated at \$448 per class member, plus additional sums under
26 PAGA, is a significant result well within the range of reasonableness considering all potential
27 outcomes, and it will provide direct monetary awards to all Class Members without further delay.
28 [Trenner Decl., ¶¶ 22-24.]

1 Importantly, the mere fact that a settlement does not provide the same recovery as might be
2 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate.
3 Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the settlement
4 process...even if the relief afforded by the proposed settlement is substantially narrower than it
5 would be if the suits were to be successfully litigated, this is no bar to a class settlement because the
6 public interest may indeed be served by a voluntary settlement in which each side gives ground in
7 the interest of avoiding litigation”); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000)
8 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount to only a fraction of
9 the potential recovery does not, in and of itself, mean that the proposed settlement is grossly
10 inadequate and should be disapproved”); White v. Experian Information Solutions, Inc. (C.D. Cal.
11 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
12 though it represented 99% discount off the maximum value of the claims); Lane v. Facebook, Inc.
13 (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is
14 different from the question whether the settlement is perfect in the estimation of the reviewing
15 court”). Importantly as well, the proposed settlement is non-reversionary and will provide immediate
16 benefits to the Class Members without a claims process. *White*, 803 F.Supp.2d at 1098; *c.f.*, Federal
17 Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20,
18 available at available at [http:// www.fjc.gov/sites/default/files/2012/ClassGd3.pdf](http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf) (reversionary
19 provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and her
20 counsel submit the settlement is within the “range of reasonableness,” and is fair and adequate for
21 the Class.

22 **V. PLAINTIFF’S ENHANCEMENT AWARD**

23 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of \$5,000
24 for her service in bringing these claims on behalf of the Class. The request is reasonable given the
25 risks she undertook on behalf of the Class Members. By contacting and retaining counsel to
26 pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members,
27 while shouldering the risk of being liable for HHP’s litigation costs. Plaintiff also exposed herself
28 to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google

1 search) for the benefit of other employees, placing herself at risk of discrimination by future
2 prospective employers. As set forth in more detail in her declaration submitted at preliminary
3 approval, among taking many other actions assisting in the successful litigation of this case,
4 Plaintiff provided substantial factual information and documents to counsel, attended numerous
5 meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant
6 developments. [Declaration of Lynda Browning, ¶¶ 2-9; Trenner Decl., ¶ 25.] Finally, there are
7 no class member objections submitted with respect to the amounts Plaintiff proposes to receive.
8 [Castro Decl., ¶ 12.] Accordingly, the requested enhancement payment to Plaintiff is appropriate
9 and justified as part of the settlement.

10 **VI. SETTLEMENT ADMINISTRATION COSTS**

11 The settlement provides for a payment to ILYM of no more than \$11,000 for its services as
12 the Settlement Administrator. As set forth in the Declaration of Nick Castro, ILYM has
13 performed and will continue to perform its required duties through final distribution of the
14 settlement funds, and incurred \$10,000.00 in fees and expenses. [Castro Decl., ¶ 16.] Accordingly,
15 Plaintiff respectfully requests the Court approve payment of \$11,000 to ILYM from the GSA.
16 [Trenner Decl., ¶ 26.]

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

18 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be** 19 **Approved**

20 This Court has discretion over the amount of attorneys' fees awarded and court
21 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
22 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
23 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
24 marketplace for cases involving significant contingent risk, such as this one. Deposit
25 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
26 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
27 private bargaining, if it were truly possible, might have reached" in determining a reasonable
28 fee, and a fee award should approximate a "range of fees freely negotiated in comparable

1 litigation”). Here, Class Counsel's request for attorney’s fees and costs is reasonable and
2 justified by the work performed, the benefits obtained, and the contingent risk assumed.

3 As addressed in detail above, at the time the parties reached the tentative settlement
4 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
5 some or all the claims would not be certified for class treatment, as HHP had strong
6 arguments that its compensation policies were legal and properly compensated the class
7 members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the
8 merits, it undoubtedly would have taken several years to realize any recovery while they
9 pursued class certification, trial, and an almost certain appeal. [Trenner Decl., ¶¶ 14-21.]

10 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to
11 obtain, and the settlement provides substantial cash payments to Class Members, with an
12 average award of about \$448, and with a maximum award of almost \$1,200. Importantly as
13 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
14 filing of this motion, there are no objections to the settlement and zero individuals have opted
15 out. [Castro Decl., ¶¶ 11-12, 14.]

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

17 The United States Supreme Court has ruled the parties to a class action properly may
18 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
19 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
20 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
21 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
22 should not result in a second major litigation. Ideally, of course, litigants will settle the
23 amount of a fee." The United States Supreme Court has reemphasized this policy and further
24 stressed trial courts have “a responsibility to encourage agreement” on fees. Blum v. Stenson
25 (1984) 465 U.S. 886, 902 n.19.

26 As part of the Settlement, HHP agreed not to object to an award of no more than
27 33.33% of the GSA for attorney's fees, or \$111,655.50, and up to \$25,000 in reimbursement
28 for litigation costs and expenses. Such a fee is commensurate with what the market would

1 provide for similar services and the Court therefore can most certainly enforce the agreement.

2 As California's Court of Appeal has instructed:

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

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

7 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
8 arms-length bargaining regarding relief to the Class was completed. [Trenner Decl., ¶ 23.]
9 The requested fee and cost award was a product of these arms-length negotiations and fairly
10 reflects the marketplace value of the services rendered by Class Counsel in this case. As a
11 result, the fee agreed to by the parties should be approved.

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

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

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

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

25 Indeed, both California and federal courts have long recognized an appropriate method
26 for determining the award of attorney's fees is based on a percentage of the total value of
27 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
28 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.

1 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
2 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
3 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

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

12 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
13 this action of no more than 33.33% of the total amount recovered by the Class via the lawsuit,
14 or \$111,655.50. The percentage requested is justified for the reasons set forth further below,
15 and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review
16 of class action settlements shows that courts have historically awarded fees in the range of 20
17 to 50 percent, depending upon the circumstances of the case. In re Warner Communications
18 Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in
19 common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d
20 ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award
21 from a common fund in order to assure that the fees do not consume a disproportionate part of
22 the recovery obtained for the class, although somewhat larger percentages are not
23 unprecedented.").

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

25 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
26 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
27 an objective measure of the work performed into the calculation of a reasonable attorney fee."
28

1 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 279.9 hours of time on this matter,
2 resulting in a modest and very reasonable lodestar of \$213,385.00.

3 As is fully detailed in the Trenner Declaration, Class Counsel's efforts included: (1)
4 extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal
5 research, research into similar claims and claims against other employers in the same industry, and
6 attempts to locate and contact other HHP employees; (2) drafting a PAGA notice letter; (3)
7 drafting the initial complaint and related documents; (4) case management, including
8 communications with defense counsel, meeting and conferring/preparing case management
9 statements, etc.; (5) drafting a first amended complaint; (6) propounding initial written discovery,
10 (7) lengthy discussions with defense counsel regarding settlement/mediation and informal
11 discovery needed for meaningful settlement discussions; (8) engaging in substantial informal
12 discovery, including propounding informal discovery "requests" and reviewing documents and
13 other information produced; (9) drafting a mediation brief and accompanying damages model after
14 review and analysis of HHP's informal discovery production; (10) attending an all-day mediation;
15 (11) negotiating and drafting the settlement agreement and related documents; (12) drafting an
16 amended complaint to effectuate the settlement; (13) drafting the motion for preliminary approval,
17 and attending the hearing; (14) administration of the settlement, including communications with
18 the Settlement Administrator and settlement class members; (15) drafting the motion for final
19 approval and motion for attorney's fees, and attending the final approval hearing; and (16)
20 extensive communications with the Plaintiff regarding case status, case investigation and
21 document review, mediation, and settlement terms. Additionally, Class Counsel will incur
22 additional time following final approval to, inter alia, respond to class member inquiries, work
23 with the Settlement Administrator on the distribution of settlement funds, and on the compliance
24 hearing. [Trenner Decl., ¶ 28, Exh. 2.]

25 In pursuing this matter, Class Counsel incurred total attorney's fees of \$213,385.00,
26 based on 279.9 attorney hours. The lodestar is based on an eminently reasonable number of
27 hours worked to litigate this matter to a successful conclusion, and the requested attorney hourly
28 rates are reasonable and comport with hourly rates charged by other attorneys with similar

1 experience in this practice area in California. [Trenner Decl., ¶¶ 29-40.] On a lodestar basis, the
2 fee request of \$111,655.50 results in a base lodestar that is higher than the fees requested on
3 percentage of the recovery basis. Class Counsel submits the lodestar crosscheck operates to
4 show that the percentage fee request is reasonable considering the fees requested are lower
5 than the actual value of the services rendered when valued via traditional hourly billing.

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

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

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

21 **1. The Results Achieved.**

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

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

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

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

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

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

28 /////

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

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

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

20 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
21 the investment of unnecessary time in a case, and the adverse resolution of any one of several
22 difficult issues present in this matter could have doomed the entire effort. As discussed, the
23 attorney's fees in this case were not only contingent but fairly risky, and there was always a
24 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
25 [Trenner Decl., ¶¶ 41-42.] Accordingly, the contingent nature of the fee and the financial
26 burdens on Class Counsel and Plaintiff also support the fee requested.

27 /////

28 /////

1 **5. Awards in Other Cases**

2 As discussed, the attorney's fees requested by Class Counsel are within the range of
3 fees awarded in comparable cases, as cross-checked against the lodestar method in light of the
4 contingent risk assumed, the delay in payment, the result achieved, and the overall quality of
5 the representation.

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

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

17 As explained in the Trenner Declaration, Class Counsel incurred a total of
18 \$15,787.27 in expenses incurred in connection with this litigation. These expenses
19 include the amounts paid for court filing fees, service of process, expert fees, postage,
20 and mediation fees, all of which are costs normally billed to and paid by the client. These
21 costs were reasonably incurred in the prosecution of this matter and it is respectfully
22 requested that the Court authorized they be reimbursed in full. [Trenner Decl., ¶¶ 43-44.]

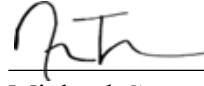
23 **VII. CONCLUSION**

24 For all the foregoing reasons, Plaintiff Lynda Browning respectfully requests that the Court
25 grant this motion and grant final approval of the proposed class action settlement and approve the
26 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
27 the Settlement Administrator's fees and expenses, approve the requested class representative
28 enhancement payment, approve the award of attorney's fees and costs as requested, and enter

1 judgment in this action. Finally, Plaintiff requests the Court set a final compliance hearing for
2 September 30, 2024, or a later date convenient for the Court.

3
4 Dated: August 7, 2023

CROSNER LEGAL, P.C.

5
6 

Michael Crosner

Zachary Crosner

Nikki Trenner

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