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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

WINSTON TOOLSIE, as an individual and on behalf of all others similarly situated,

Plaintiff,

v.

DIRECT TRAVEL, INC., a Delaware Corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: 25CV122876

Assigned for All Purposes to:
Hon. Patrick McKinney
Dept. 18

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

Date: December 9, 2026
Time: 1:30 p.m.
Dept.: 18
Reservation No.: A-122876-001

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I. INTRODUCTION

Plaintiff and Class Representative Winston Toolsie seeks final approval of a non-reversionary class action settlement resolving wage and hour claims on behalf of 86 individuals who worked for defendant Direct Travel, Inc. ("Direct Travel" or Defendant") as current and former non-exempt employees in the State of California at any time during the Class Period of May 9, 2021 to May 15, 2026. The proposed $275,000 total settlement provides about $126,623 in cash payments to the Class, with an average award of $1,472, plus additional amounts payable under PAGA. The remaining balance will cover a modest service award to Plaintiff, 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 July 29, 2026. Since then, the Court-approved notice form was mailed to the Class Members on August 31, 2026, and they reacted very favorably to the settlement. As of the filing of this motion, there are no objections, and no class members requested exclusion.

Class Counsel secured an excellent settlement with Defendant after some two 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 $91,666.66, along with reimbursement of no more than $30,000 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 $91,666.66 and costs in the amount of $16,720.05, as described in the Declaration of Nikki Trenner ("Trenner 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, the delay in payment and, when subjected to a lodestar crosscheck, results in fee request

equal to the base lodestar with a reasonable 1.29 upward modifier.

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

Defendant Direct Travel is a corporate travel management company that assists businesses in planning, booking, and managing travel arrangements. Plaintiff Toolsie was employed by Defendant from approximately September 2024 through December 2024 as a non-exempt Senior Corporate Travel Advisor. During his employment, Plaintiff was compensated at an hourly rate of $29.00. Plaintiff typically worked Monday through Friday from approximately 6:00 a.m. to 3:00 p.m., five days per week, and on occasion worked overtime. [Trenner Decl., ¶ 2.]

Plaintiff alleges Direct Travel violated California wage and hour law in several respects. First, he alleges Defendant failed to pay all minimum wages due by failing to pay employees for all hours worked, and that class members worked "off the clock" while booting up their computers and going through the log in/authentication process to access needed applications such as Teams and Sabre. Plaintiff also contends meal and rest periods were at times taken late or were cut short when employees were engaged in calls with clients. Per Plaintiff Defendant failed to pay the required premium wages owed for noncompliant meal periods and failed to pay any premium wages for missed or noncompliant rest periods. Finally, Plaintiff alleges that Defendant failed to fully reimburse employees, who worked remotely from home, for necessary business expenses incurred as a result of the remote work. [Trenner Decl., ¶ 3.]

Based on these allegations, on May 9, 2025, Plaintiff commenced this action by filing a class action complaint alleging causes of action against Defendant for: (a) recovery of unpaid wages and liquidated damages; (b) failure to provide compliant meal breaks, (c) failure to provide compliant rest breaks, (d) furnish accurate itemized wage statements; (e) failure to timely pay all wages due upon separation of employment; (f) failure to reimburse business expenses; and (g) violation of the Unfair Competition Law. On May 8, 2025, after notice to Defendant and the LWDA and exhausting administrative remedies, Plaintiff filed a separate Complaint, with case No. 25CV122132,alleging a cause

of action for civil penalties PAGA based on the same Labor Code violations alleged in the class action. [Trenner Decl., ¶ 4.]

Direct Travel has at all times denied Plaintiff's allegations and maintained its timekeeping and payroll policies and procedures comply with all applicable state and federal law, and that it accurately tracked and paid for all hours worked, including overtime pay. It further argued it provided employees with all required meal and rest breaks on a fully-compliant basis, and further provided reimbursement for all costs associated with remote work. Additionally, Direct Travel strongly contends the case cannot be maintained as a class action, arguing for example that to the extent class members allegedly worked off the clock or missed breaks, it was intermittent and infrequent and evidence of such alleged violations would be anecdotal and therefore individualized issues would predominate. [Trenner Decl., ¶ 5.]

After Plaintiff filed the initial complaint, the Parties initiated discovery and also engaged in numerous meet and confer discussions regarding discovery, potential law and motion, and potential ADR. Ultimately, the Parties agreed to mediation and also agreed to an informal exchange of information to facilitate meaningful settlement discussions. The Parties then retained the Hon. Carl J. West (Ret.), a respected neutral with experience mediating wage and hour class actions. In March 2026, the Parties participated in a mediation with Judge West that ultimately resulted in this settlement. [Trenner Decl., ¶¶ 6-7.] Prior to the motion for preliminary approval of the settlement, Plaintiff filed a First Amended Complaint on or around May 11, 2026 adding PAGA claims that were previously set forth in Case No. 25CV122132. Case No. 25CV122132 has been dismissed by an order dated May 28, 2026. The Court preliminarily approved the settlement on July 29, 2026.

Class Notices were mailed to class members on August 31, 2026, with a forty-five day window (to October 15, 2026) for class members to opt out or object to the proposed settlement. [Declaration of Ana Merges ("Merges Decl."), ¶¶ 8, 11.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Direct Travel will pay $275,000 into a common fund, the Gross Settlement Amount ("GSA"). Attorney's fees of up to $91,666.66 (1/3 of the GSA), litigation

costs of up to $30,000 (which have been requested in a reduced amount of $16,720.05), settlement administration costs of $4,990, a service award to Plaintiff of no more than $10,000, and PAGA civil penalties of $25,000, all will be paid from the GSA. The balance of around $126,623 will be allocated pro rata to the Class Members based on their weeks worked during the Class Period. No portion of the GSA will revert to Direct Travel. [Trenner Decl., ¶ 8.]

A. Certification of the Settlement Class

The Court conditionally certified a settlement class defined to include all current and former non-exempt employees who worked for Defendant in the State of California at any time during the Class Period of May 9, 2021 and ending May 15, 2026. The Settlement Administrator ultimately mailed Class Notices to 86 individuals determined to be members of the Settlement Class. Nothing has happened to warrant reconsideration of the Court's certification of the Class for settlement purposes.

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates Direct Travel to pay $275,000 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $126,623 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that does not 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 penalties and interest, which allocation is consistent with Direct Travel's potential liability. Direct Travel will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any amounts not claimed (because a class member does not cash their settlement check) will be forwarded to Children's Defense Fund as the proposed *cy pres* beneficiary. [Trenner 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 during the Class Period. Thus, each Class Member's Individual Settlement Payment will be calculated using criteria typically used in determining appropriate amounts of unpaid wages, 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 Direct Travel in California and the amount unpaid off the clock work, etc. [Trenner Decl., ¶ 10.]

The average class award will be about $1,472, and class awards will range from $9.86 to $2,584, while the average PAGA award will be about $126. [Merges Decl., ¶¶ 15, 17.]

C. Settlement Administration

Apex Class Action, LLC, 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. [Merges Decl., ¶¶ 3-10.] 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. [Merges Decl., ¶ 8; Exh. A.] Apex mailed 86 Notice Packets on August 31, 2026. [Merges Decl., ¶ 8.] Ultimately, 5 Notice Packets were deemed undeliverable, representing a 94.2% success rate. [Merges Decl., ¶ 10.] The response window for opting out of or objecting to the settlement expired on October 15, 2026, except for the one individual whose notice was remailed and the deadline was extended to October 29, 2026. [Merges Decl., ¶ 11.] Apex received zero requests for exclusion (for a 100% participation rate), and zero objections to the settlement. No disputes were submitted regarding the information used to calculate settlement shares. [Merges Decl., ¶ 12.]

D. Release of Claims

All Participating Class Members will release Direct Travel 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 operative complaint. Similarly, Plaintiff, acting on behalf of the LWDA, will release all claims for PAGA penalties alleged or that could have been alleged in the operative complaint for the PAGA Period. [Trenner Decl., ¶ 11.]

E. PAGA and Notice to the LWDA

As noted, the Parties allocated $25,000 to resolution of Plaintiff's alleged claims under PAGA, and Plaintiff submits that amount is fair, reasonable and adequate, and furthers with PAGA's underlying purposes. Consistent with PAGA, $16,250 of that amount will go to the LWDA for the State's share of the civil penalties, while the remaining $8,750 will be distributed pro rata to eligible Aggrieved Employees. Prior to filing this motion, Plaintiff provided notice of the proposed settlement of the PAGA claims and the approval hearing to the LWDA. [Trenner Decl., ¶ 12; Exh. 1.]

IV. ARGUMENT

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.

A. 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 were no objections and no class members opted out.

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

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by the Hon. Carl J. West (Ret.), a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Trenner Decl., ¶ 7.] Moreover, Plaintiff and his counsel were well-informed about the facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Nikki Trenner, all have years of litigation experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Trenner Decl., ¶¶ 28-33.] 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 Favorably to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and there are no opt outs. [Merges 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., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("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).

B. The Proposed Settlement Meets the Kullar Factors and is within the Range of Reasonableness

Prior to mediation, the parties engaged in extensive formal and informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding Direct Travel's payroll practices, pay stubs and time records for a sampling of class members, meal break policies, etc., and information from Defendant regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. This extensive information then was analyzed by a consulting expert to look for time spent working off the clock, etc., and other issues relevant to liability and damages. Plaintiff's counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Trenner Decl., ¶¶ 6, 13.]

Using that data, Plaintiff ran various calculations and estimated Direct Travel's likely maximum exposure on the class claims at approximately $2,418,346, including about $65,888 on the unpaid wage/off the clock claim, $186,805 on the meal violation claims, $1,635,615 on the rest break claims, $78,960 on the unreimbursed expense claim, $296,300 on the wage statement claims, and $154.778 on the waiting time penalty claims. [Trenner Decl., ¶ 14.] Plaintiff and counsel substantially discounted the value of these claims, however, in light of Defendant's

multi-layered defenses on both class certification and on the merits, and the considerable risks posed by proceeding with the litigation.

First, on the unpaid wage claims, Plaintiff alleged Direct Travel failed to pay for all hours worked and particularly failed to compensate employees for time spent booting up work computers and logging in to the various applications needed to perform their job duties. In Cadena v. Customer Connexx LLC (9th Cir. 2022) 51 F.4th 831, the Ninth Circuit held that computer boot-up is "integral and indispensable" when computers contain data and tools necessary for employees' principal job functions. The Cadena court found an "obvious connection between the computers and software programs and the work the [call center representatives] are employed to perform" because essential work tools existed on the computer. Id. at 840. Plaintiff estimated class members lost at least 5 minutes of compensable time each shift for these reasons and, as held by the California Supreme Court in Troester v. Starbucks Corp. (2018) 5 Cal.5th 829, even brief periods of regularly occurring work time must be compensated as it can accumulate into meaningful unpaid wages. [Trenner Decl., ¶ 15.]

In response, Defendant argued that its policies prohibited any "off the clock" work and that it fully compensated employees for all hours worked, and further paid all wages at the correct overtime rates. Accordingly, per Direct Travel, if any off the clock work occurred it was intermittent and infrequent, against company policy, and done without the employer's knowledge or consent. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (the employer must have actual or constructive knowledge of the off the clock work). For these reasons, per Direct Travel, class certification of this issue would be impossible because innumerable individual inquires would be required to determine what "off the clock" occurred and if it was compensable. [Trenner Decl., ¶ 16.]

On the meal and rest break claims, Plaintiff alleged that Defendant's policies did not permit employees freedom to leave the premises during their meal periods for at least part of the class period, and thus were facially non-compliant. Beyond that, Plaintiff's review of the sampling of records received suggested substantial "de facto" violations for missed, late, and short meal breaks, and suggested at least an 11.8% violation rate for unique meal period

violations. Similar to meal periods, Plaintiff also alleged rest periods were frequently delayed, cut short, or missed entirely due to the demands of the position, as the nature of the job required class members to remain available to handle a high volume of calls, leaving insufficient time to take timely and uninterrupted rest breaks. [Trenner Decl., ¶ 17.]

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

On the expense reimbursement claim, Plaintiff alleges that he and the class members had to incur costs associated with working remotely from home, such as a desk, chair, paper, and pens. Additionally, Plaintiff and the class were required to use their home internet service and electricity without reimbursement by Defendant. In response, Direct Travel argued its policies authorized reimbursement of expenses incurred working from home. [Trenner Decl., ¶ 19.]

Finally, Plaintiff's claims under Labor Code sections 203 and 226 are derivative of the primary unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks posed by the need to take into account the discretionary nature of such awards and the "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though class prevailed on underlying claim for failure to pay living wages).

Thus, while these claims largely are derivative of the unpaid wage claim, they also are subject to additional defenses. [Trenner Decl., ¶ 20.]

As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled to civil penalties totaling around $1,250,000 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections as to each and every pay period at issue. [Trenner Decl., ¶ 21.] As with the class claims, Plaintiff discounted the potential PAGA penalties based on Defendant's 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 $25,000 to PAGA penalties, and 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.

The settlement obviates the significant risk that this Court may find any kind of class or representative resolution unachievable or deny certification of all or some of Plaintiff's claims. Furthermore, even if Plaintiff obtained certification of all or some of the claims, continued

litigation would be lengthy and expensive as the parties pursued merits discovery, a probable motion to decertify, as well as trial and possible appeals, and would further and substantially delay any recovery by the class with no assurance of recovering significantly more than the proposed settlement. While Plaintiff is confident in the merits of these claims, legitimate controversies exist regarding each one of them. Plaintiff also recognizes proving the amount of wages and penalties due each Class Member would be an expensive, time-consuming, and uncertain proposition. [Trenner Decl., ¶ 22.]

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, and the overall $275,000 recovery represents a significant percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of $275,000, which will result in average award of some $1,472.36 per class member, is a significant result within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Trenner Decl., ¶ 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 ("Compromise is inherent and necessary in the settlement process…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"); 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"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential

recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement is non-reversionary and will provide timely benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. SETTLEMENT ADMINISTRATION COSTS

The settlement provides for a payment to Apex for its services as the Settlement Administrator. As set forth in the Declaration of Ana Merges, Apex performed and will continue to perform its required duties through final distribution of the settlement funds and incurred $4,990 in fees and expenses. [Merges Decl., ¶ 18.] Plaintiff accordingly requests the Court approve payment of $4,990 to Apex from the GSA. [Trenner 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, and kept abreast of all significant developments. [Declaration of Winston Toolsie, ¶¶ 2-9 (filed July 1, 2026); Trenner 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

A. The Attorney's Fees Requested Are Fair and 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. [Trenner Decl., ¶¶ 15-21.]

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 $1,472, and with a maximum award of over $2,400. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – there are no objections and no opt outs to the settlement. [Merges Decl., ¶ 11.]

B. 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 GSA for attorney's fees, or $91,666.66, and up to $30,000 in reimbursement for litigation costs and expenses (only $16,720.05 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. [Trenner 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.

C. 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 GSA, and specifically $91,666.66. 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. 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.").

D. 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 89.8 hours of time on this matter, resulting in a modest and very reasonable lodestar of $71,055.00.

Over the two 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 complaint and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (6) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (7) working with a consulting expert on the analysis of Defendant's informal production; (8) drafting a mediation brief and accompanying damages model after review and analysis of defendant's formal and informal discovery production; (9) attending an all-day mediation; (10) negotiating and drafting the settlement agreement and related documents; (11) drafting the consolidated amended complaint to effectuate the settlement; (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. [Trenner 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 $71,055.00, and the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a successful conclusion (89.8 attorney hours). 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 $91,666.66 represents the base lodestar with a reasonable and modest upward modifier of 1.29, which is entirely in line with California precedent. [Trenner Decl., ¶¶ 28-38.] Indeed, California courts routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of class action cases. Indeed, courts in California and elsewhere routinely approve multipliers at or even in excess of the modifier here. Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."). Class Counsel submits that the requested 1.29 multiplier, effectively operates to show that the percentage fee request is reasonable considering the challenges presented in this contingency fee matter, the excellent result and substantial average payout to the class members, and appropriately compensates Class Counsel for the contingent risk assumed and delay in payment during the 1.5+ years counsel have been representing Plaintiff. Thus, the multiplier results in a fee constituting a fair return on the contingency.

E. 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.

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. Paul, Johnson, Alston & Hunt v. Graulty (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. Laffitte, 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 no class members 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 complaint, 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. [Trenner Decl., ¶¶ 39-40.]

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 Plaintiff 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 Plaintiff's 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 Plaintiff's 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. [Trenner Decl., ¶¶ 39-40.] 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 amounting to 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.

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F. 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 Trenner Declaration, Class Counsel incurred a total of $16,720.05 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 requests reimbursement for costs in the amount of $16,720.05, consistent with the cap imposed under the Settlement Agreement. [Trenner Decl., ¶¶ 41-42.]

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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. Plaintiff further requests the Court approve payment of the Settlement Administrator's fees and expenses, approve the requested class representative enhancement payment, approve the award of attorney's fees and costs as requested, and enter judgment in this action. Finally, Plaintiff requests the Court set a final compliance hearing for December 8, 2027, or a later date convenient for the Court.

Dated: November 12, 2026

CROSNER LEGAL PC



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