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9 As an individual on behalf of himself and
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF GLENN**

12 JOSE R. LOYA MEDINA, as an individual
13 on behalf of himself and on behalf of all
others similarly situated,

14
15 Plaintiff,

16 v.

17 RUMIANO CHEESE CO., a California
18 Corporation; and DOES 1-100, inclusive,

19 Defendants.
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Case No.: 22CV02958

COMPLEX CASE

*[Assigned for all purposes to the Hon. Alicia
Ekland, Dept. 2]*

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
REQUEST FOR ATTORNEYS' FEES
AND COSS**

**[Filed concurrently with Notice of Motion
and Motion; Declarations of Michael W.
Jones and Jarrod Salinas; [Proposed]
Order]**

**Date: May 8, 2024
Time: 2:30 pm
Dept. 2**

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Labor Code § 226 11

Lab. Code § 2899(e)(2) 11

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Newberg on Class Actions (4th ed. 2002), § 11.41 6

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1 **I. INTRODUCTION**

2 Plaintiff Jose R. Loya Medina hereby moves the Court for an order granting final approval
3 to a proposed non-reversionary class action settlement to resolve wage and hour claims on behalf
4 of approximately 386 individuals employed by Defendant Rumiano Cheese Co. (“RCC” or
5 “Defendant”) as non-exempt employees in California during the period of March 5, 2018 through
6 October 12, 2023. The proposed \$640,000 total settlement provides about \$372,092 in cash
7 payments to the Class, with an average award of about \$955, plus additional amounts payable
8 under PAGA. The remaining balance will cover settlement administration costs, civil
9 penalties to the state, and reasonable attorney’s fees and costs. The parties and their counsel
10 finalized the settlement after extensive and difficult arms-length negotiations overseen by an
11 experienced and highly-regarded mediator. The Court conditionally certified the Class
12 and preliminarily approved the settlement on December 20, 2023. Since then, the Court-
13 approved notice form was mailed to the Class Members on February 16, 2024, and they
14 reacted very favorably to the settlement. Only two class members opted out of the settlement,
15 and there are no objections.

16 Further, Class Counsel secured an excellent settlement with Defendant after some
17 two years of investigation, litigation, and settlement negotiation and administration, all
18 without any compensation for services rendered or costs expended. The class notice duly
19 informed the class members that Class Counsel would request attorney’s fees not to
20 exceed 1/3 of the Total Maximum Settlement Amount, or \$213,333.33, along with
21 reimbursement of no more than \$25,000 for actual costs incurred litigating this matter.
22 As of the filing of this motion, *not one Class Member objected* to the proposed fee award.
23 Consistent with the Settlement and notice, Plaintiff now respectfully requests the Court
24 award Class Counsel's fees in the amount of \$213,333.33 and costs in the amount of
25 \$17,860.15, as described in the Declaration of Michael W. Jones (“Jones Decl.”) filed
26 herewith. The requested attorney’s fees are well within the range of reasonableness,
27 especially considering the complex and risky nature of this litigation, the contingent risk
28

1 assumed, and the nearly two-year delay in payment and, when subjected to a lodestar
2 crosscheck, result in a very modest lodestar enhancement of 1.13.

3 Accordingly, on behalf of himself and the Settlement Class, Plaintiff respectfully
4 request 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. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

7 The details of the procedural and factual background of this matter were outlined in
8 the Plaintiff's Motion for Preliminary Approval of Class Action Settlement (filed on or about
9 November 28, 2023). To re-familiarize the Court, Defendant was founded in 1919 and produces
10 numerous different kinds of cheeses, including gouda, cheddar, mozzarella, havarti, and monterey
11 jack, as well as other dairy products. Defendant operates multiple manufacturing plants including
12 one in Crescent City, California and one in Willows, California. Plaintiff Medina began working
13 for Defendant in or around January 2021 through a staffing agency named Express Employment
14 Services before being hired directly by Defendant in or around June 2021. Plaintiff worked the
15 Crescent City factory as a line worker in multiple departments, including the cheese department,
16 butter department, and protein department. In September 2021, Plaintiff was injured while
17 working and was placed on disability leave. [Jones Decl., ¶ 2.]

18 Plaintiff alleges he and the class were not paid properly by RCC, including having to work
19 "off the clock" and that RCC underpaid them for overtime because it did not calculate the
20 overtime rate correctly. He further alleges RCC failed to maintain compliant meal and rest break
21 policies, that the company failed to provide all required breaks on a fully-compliant basis, and
22 failed to pay the required premium wages for break violations. He also contends he and the class
23 members had to use their personal phones for work purposes without any reimbursement. [Jones
24 Decl., ¶ 3.]

25 Based on these allegations, Plaintiff filed his class action complaint against RCC on
26 August 31, 2022, alleging causes of action for (1) recovery of unpaid minimum wages and
27 liquidated damages (2) recovery of unpaid overtime wages; (3) failure to provide meal periods or
28 compensation in lieu thereof; (4) failure to provide rest periods or compensation in lieu thereof;

1 (5) failure to furnish accurate itemized wage statements; (6) failure to reimburse business
2 expenses; and (7) unfair competition. On November 1, 2022, Plaintiff filed a separate PAGA
3 representative complaint seeking civil penalties under PAGA based on the same alleged Labor
4 Code violations. [Jones Decl., ¶ 4.]

5 RCC has at all times denied Plaintiff's allegations and maintained its payroll policies and
6 procedures comply with California law, that it paid the class members all wages due, and that it
7 properly compensated the class members for all hours worked at the correct rates of pay. It further
8 argued there would be no reason for an employee to use their own phone while working.
9 Defendant also strongly contends the case cannot be maintained as any kind of class or
10 representative action, arguing determining the reasons for any off the clock work, or missed/non-
11 compliant breaks, would result individualized issues predominating and that a trial on a
12 representative basis would be unmanageable. Lastly, Defendant argued that a significant
13 percentage of putative class members signed arbitration agreements and therefore would not be
14 able to participate in any class proceedings. [Jones Decl., ¶ 5.]

15 After agreeing to attempt an early global mediation, the Parties engaged in significant
16 informal discovery to facilitate an exchange of information necessary to engage in a meaningful
17 mediation. The Parties then engaged Todd Smith, Esq., a respected mediator with extensive wage
18 and hour class action experience and, in July 2023, participated in a full day mediation with Mr.
19 Smith that ultimately resulted in the proposed settlement. [Jones Decl., ¶¶ 6-7.] This Court
20 preliminarily approved the settlement on December 20, 2023.

21 Class notices were mailed to class members on February 16, 2024, with a 45-day
22 window (to April 1, 2024) for class members to opt out of or object to the proposed
23 settlement. [Declaration of Jarrod Salinas ("Salinas Decl."), ¶¶ 5, 8-9.]

24 **III. THE PROPOSED SETTLEMENT TERMS**

25 Under the settlement, RCC will pay \$640,000 into a common fund, the Gross Settlement
26 Amount ("GSA"). Attorney's fees of up to \$213,333.33 (1/3 of the GSA), litigation costs of up to
27 \$25,000 (only \$17,860.15 is requested), all employer-side payroll taxes, settlement administration
28 costs of \$11,000, and a payment of \$20,000 for PAGA civil penalties (to be divided 75% to the

1 Labor & Workforce Development Agency and 25% to the Aggrieved Employees), all will be paid
2 from the GSA.¹ The remainder of around \$366,667 will be allocated pro rata among the Class
3 Members based on their total weeks worked during the Class Period. No portion of the GSA will
4 revert to RCC. [Jones Decl., ¶ 8.]

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

6 The Court conditionally certified a settlement class defined to include all individuals all
7 current and former non-exempt employees that worked (1) either directly for RCC and not ever
8 through a staffing agency assigned to work at RCC any time during the Class Period or (2)
9 initially began performing work at any of RCC's locations via a staffing agency and then became a
10 direct employee of RCC at any location in California any time during the Class Period of March 5,
11 2018 through October 12, 2023. The Settlement Administrator ultimately mailed class notices
12 to 386 individuals identified as members of the Class. [Salinas Decl., ¶ 5.] Nothing has
13 changed to require reconsideration of the Court's certification of the Settlement Class.

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

15 As noted, the settlement obligates RCC to pay \$640,000 to resolve the claims of the
16 Settlement, inclusive of attorney's fees and costs. A minimum of approximately \$372,092, less
17 payroll taxes, from the GSA will be distributed to the Participating Class Members. This is a cash
18 settlement that does not require Participating Class Members to submit a claim form to receive their
19 settlement share. Participating Class Members will receive their settlement checks automatically
20 via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and
21 the remaining eighty percent will be allocated to penalties and interest, which allocation is consistent
22 with RCC's potential liability as discussed below. Subject to the Court's approval, any amounts not
23 claimed (because a class member does not cash his or her settlement check) will be forwarded to
24 the California State Controller's Unclaimed Property Division. [Jones Decl., ¶ 9.]

25
26
27 ¹ Plaintiff entered into a separate settlement agreement with RCC in resolution of all claims against the
28 company, including Plaintiff's individual non-wage and hour claims related his employment and
termination thereof, as addressed in more detail below. Consequently he is not seeking a class
representative enhancement award.

1 Each Participating Class Member will receive a share of the Net Settlement Amount based
2 on his or her total weeks worked for RCC during the Class Period while employed in a non-exempt
3 service position. Thus, each Class Member's Individual Settlement Payment will be calculated using
4 criteria typically used in determining appropriate amounts of unpaid wages, unpaid premium wages
5 for missed meal and rest breaks, and potential statutory penalties under applicable law. These
6 methods are intended to ensure each Class Member receives a portion of the available settlement
7 funds corresponding to the relative value of his or her potential claims. The proposed allocation
8 provides a reasonable way to compensate Class Members based on the amount of time they worked
9 for RCC and the number of instances they allegedly missed a meal break and/or rest break, were not
10 provided compensation in lieu of such missed breaks, or lost hours worked due to time rounding.
11 [Jones Decl., ¶ 10.] The average class award is approximately \$955, and class awards range from
12 \$7.76 to \$2,274. The average PAGA award is approximately \$20. [Salinas Decl., ¶¶ 13-14.]

13 **C. Settlement Administration**

14 Phoenix Settlement Administrators, as the Court-approved Settlement Administrator,
15 mailed the Notice Packet to the Class members after making all reasonable effort to ascertain
16 the best mailing address, including running each address through the National Change of
17 Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Salinas
18 Decl., ¶¶ 2-7.] The Class Notice, previously approved by the Court, duly informed Class
19 Members of the settlement terms, including the estimated relief each Class Member will
20 receive, the amounts to be requested for attorney's fees and the class representative
21 enhancement awards, and the right to opt out of or object to the settlement. [Salinas Decl., Exh.
22 A.] Phoenix mailed 386 Notice Packets on February 16, 2024. [Salinas Decl., ¶ 5.] Ultimately,
23 7 Notice Packets were deemed undeliverable, representing a 98.2% success rate. [Salinas Decl.,
24 ¶ 7.] The 45-day response window for responding to the settlement expired on April 1, 2024.
25 [Salinas Decl., ¶¶ 8-10.] As of the filing of this motion, Phoenix has received two requests for
26 exclusion (for a 99.5% participation rate), and no objections to the settlement. No class
27 members disputed the information used to calculate their individual settlement share. [Salinas
28 Decl., ¶¶ 8-10.]

1 **D. Release of Claims**

2 All Participating Class Members will release RCC from all claims alleged in the operative
3 complaint, or that could have been brought based on the factual allegations in the operative
4 complaint, including PAGA claims, during the Class Period. The release is limited to the claims
5 that were actually pleaded or could have been pleaded based on the alleged facts in the operative
6 complaint. [Jones Decl., ¶ 11.]

7 **E. PAGA Claims and Notice to the LWDA**

8 The Parties allocated \$20,000 of the GSA to payment of civil penalties under PAGA, as
9 addressed in more detail below, and Plaintiff respectfully requests the Court approve that amount
10 as fair, reasonable, and adequate and in furtherance of PAGA's underlying purposes. As required
11 by Labor Code section 2699(1)(2), Plaintiff gave notice of the settlement and the approval hearing
12 to the LWDA via its online portal. [Jones Decl., ¶ 12; Exh. 1.]

13 **IV. ARGUMENT**

14 **A. Standards for Final Approval**

15 The law favors settlement, particularly in class actions where substantial resources can
16 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
17 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
18 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco
19 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
20 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
21 compromised, the settlement of a class action requires court approval. Cal. Rule of Court 3.769;
22 Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer (2001)
23 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud or
24 collusion, and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01;
25 Newberg, at §§ 11.22, *et seq.* Review is accomplished through a two-step process intended to
26 determine whether, under the totality of circumstances, the settlement is fair, reasonable and
27 adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

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

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

16 The proposed settlement of this action warrants final approval under the standards
17 summarized above. The settlement is fair, reasonable and adequate, and represents a favorable
18 resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by
19 the class members, as there are no objections submitted, and only two class members requested
20 exclusion, for a 99.5% participation rate.

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

22 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
23 was reached following arm's-length negotiations presided over by Todd Smith, Esq., a highly
24 respected and well-known mediator with extensive experience mediating wage and hour class
25 actions. [Jones Decl., ¶ 7.] Plaintiff and his counsel were well-informed about the facts and the
26 law, and counsel Zachary M. Crosner, Michael Jones and Jamie Serb have years of litigation
27 experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified
28 to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Jones Decl.,

¶¶ 27-34.] 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, there are no objections, and only two Class Member requested exclusion out of 386 settlement class members. [Salinas Decl., ¶¶ 8-9.] 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).

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

The proposed settlement involves a substantial sum of money that, when distributed, will confer meaningful monetary benefits on the Class members. As described above, each individual award will be based on an allocation consistent with the nature of the claims asserted and will fairly and equitably allocate the available funds in relation to the degree of damage each Class member incurred. While class members who worked for only a short period of time will receive relatively small sums, those with longer tenures and who worked more hours and shifts throughout the class period will receive appropriately larger awards.

Prior to settlement, the parties engaged in informal discovery to facilitate settlement discussions. Thus, Plaintiff's counsel reviewed documents and information regarding Defendant's payroll practices, a random sampling of pay stubs and time records from class members, applicable compensation plans, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and other information used to formulate a damages model. Plaintiff then had that information analyzed by a consulting expert to assist in determining potential violation rates and other data used to formulate a damages model. Plaintiff's counsel are confident they obtained sufficient information to understand the law and facts

1 of this case and make an informed decision regarding the proposed settlement and whether it is fair
2 and reasonable. [Jones Decl., ¶¶ 6, 13.]

3 Using that data, Plaintiff ran various calculations and estimated RCC's likely maximum
4 exposure on the class claims at approximately \$9,282,000, including about \$161,000 on the
5 unpaid wage claims, about \$2,273,000 on the meal period claims, approximately \$4,929,000 on
6 the rest break claims, about \$294,000 for expense reimbursement, about \$1,104,000 for wage
7 statement violations, and approximately \$521,000 in waiting time penalties. [Jones Decl., ¶ 14.]
8 Plaintiff's counsel substantially discounted the value of these claims, however, in light of the
9 multiple and considerable risks posed by proceeding with the litigation, as Defendant raised
10 numerous defenses and vigorously defended against these claims.

11 On the unpaid wage claims, Plaintiff alleged RCC failed to pay overtime based on the
12 employees' "regular rate of pay" as required under California law. "Regular rate of pay, which can
13 change from pay period to pay period, includes adjustments to the straight time rate, reflecting,
14 among other things, shift differentials and the per-hour value of any non-hourly compensation the
15 employee has earned." Alvarado v. Dart Container Corp., (2018) 4 Cal. 5th 542, 553. Although
16 Defendant paid bonuses to its employees regularly, per Plaintiff it did not factor these
17 bonuses/incentives when calculating Plaintiff's or any of the other employees' regular rate of pay
18 for purposes of paying his overtime wages. Instead, his, and all other employees', overtime rates
19 are exactly 1.5x their base hourly rate. On the other hand, RCC argued it accurately tracks and
20 pays for all hours worked, and that its compensation policies are legal and fully comply with
21 California law. It also emphasized rounding policies are appropriate where the overall effect on
22 employee time is neutral. [Jones Decl., ¶ 15.]

23 On the meal break claim, Plaintiff alleges he and other employees were often pressured to
24 work through their meal breaks due to the heavy workload involved in keeping production going
25 on the line. Notably, those working in the butter department never received their lawful meal
26 breaks on time, or at all, due to understaffing and Defendant's failure to provide relief workers.
27 Plaintiff's review of the time records produced further suggests numerous "de facto" violations
28 and Plaintiff contends around 48% of all shifts have at least one unique meal period violation,

1 particularly with respect to the failure to provide second meal periods on shifts over 10 hours.

2 [Jones Decl., ¶ 16.]

3 In response, RCC argued its break policies are fully compliant with California law, that it
4 provided class members with the opportunity to take all required breaks, and that many class
5 members waived their second meal periods. Defendant further maintained that, in light of its
6 compliant policies, whether a class member missed a meal period, received a late meal period, or
7 missed a rest break would have been aberrational and against company policy. Thus, per RCC,
8 these issues are not amenable to class or representative treatment since their resolution would
9 require individualized inquiries as to why a break was missed or non-compliant. RCC further
10 argued that in many instances it paid the required one hour of premium pay for documented
11 violations. [Jones Decl., ¶ 17.]

12 For rest breaks, Plaintiff again argued that there were numerous “de facto” violations
13 where class members didn’t receive a break, or didn’t receive a compliant break, due to the press
14 of business and understaffing. As with meal breaks, Defendant argued the applicable rest break
15 policies complied with California law, and that it authorized and permitted employees to take all
16 required breaks. Defendant further contended that, in light of the fact that it is not required to
17 maintain a record of rest periods, any evidence of failure to authorize rest periods and/or
18 discouragement from taking rest periods would be purely anecdotal and individual issues would
19 predominate on liability. This arguably would once again make class certification and a trial
20 unmanageable since the number of instances an employee missed a rest break would have to be
21 tested on a case by case basis to determine compliance. [Jones Decl., ¶ 18.]

22 For Plaintiff’s expense reimbursement claim, he argued Defendant failed to
23 reimburse Plaintiff and the other employees for expenses incurred in using their personal mobile
24 phones and data for business purposes. Of note, Plaintiff and the other employees were frequently
25 contacted by text message and/or phone call with questions and requests regarding their
26 availability for shifts. When employees must use their personal cell phones for work, this statute
27 required an employer to reimburse them for such use. Cochran v. Schwan’s Home Services, Inc.
28 (2014) 228 Cal.App.4th 1137, 1144. In response, RCC argued there would be no need for an

1 employee use a phone to perform his or her work duties, and thus any such use was unnecessary
2 and purely for personal convenience, and therefore not reimbursable. [Jones Decl., ¶ 19.]

3 Plaintiff also alleged derivative claims under Labor Code § 226 (alleged inaccurate wage
4 statement violations) and §§ 201-203 (waiting time penalties), both based on the failure to
5 properly record and pay for all hours worked, and will rise or fall along with that primary claim, in
6 addition to being subject to “good faith” and other defenses available to Defendant. E.g., Amaral
7 v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully
8 fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the
9 underlying claim for failing to pay living wages). Accordingly, Plaintiff discounted the derivative
10 claims significantly in light of these multiple potential defenses. [Jones Decl., ¶ 20.]

11 As far as potential PAGA liability, the theoretical penalties totaled over \$5.8 million
12 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
13 at issue for every single eligible pay period. [Jones Decl., ¶ 21.] As with the class claims, Plaintiff
14 discounted the potential PAGA penalties for the multi-layered defenses proffered by Defendant on
15 the merits, and further discounted these claims since the Court possesses wide discretion to reduce
16 such penalties even if Plaintiff ultimately prevailed. Lab. Code § 2899(e)(2); Fleming v. Covidien
17 (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the potential penalties by
18 over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (after a
19 bench trial, the trial court awarded penalties of just \$5 per pay period, a 90% reduction, which
20 decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016)
21 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

22 Accordingly, the Parties allocated \$20,000 to PAGA penalties, which amount is reasonable
23 and in line with comparable settlements in other class actions in California. Van Kempen v.
24 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
25 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
26 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
27 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
28 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).

1 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
2 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
3 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
4 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
5 not objected to the settlement").

6 Thus, Defendant raised various and multi-layered defenses to each of Plaintiff's claims,
7 anyone of which, if successful, could have decimated Plaintiff's case. And Defendant vowed to raise
8 all these defenses in opposition to class certification and at trial. Accordingly, Plaintiff faced risky
9 issues going forward with this litigation, and given the need to certify the class, maintain
10 certification through trial, try the case on the merits, and deal with post-trial appeals, it would have
11 taken years to realize any recovery in this action. [Jones Decl., ¶¶ 15-22.]

12 Plaintiff and counsel discounted the value of these claims consistent with the risks discussed
13 above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the
14 litigation continued. They concluded – in light of these very real and substantial risks – settlement
15 on the proposed terms and without prolonged and costly litigation was in the best interests of the
16 class. The \$640,000 gross settlement represents a significant portion of Defendant's potential
17 liability and, with an average award of some \$955 per class member (plus additional amounts
18 payable under PAGA), is a fair result within the range of reasonableness considering all potential
19 outcomes and will provide direct awards to all Class Members without further delay. [Jones Decl.,
20 ¶ 23.]

21 Importantly, the mere fact that a settlement does not provide the same recovery as might be
22 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
23 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("even if the relief afforded by the proposed
24 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
25 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
26 settlement in which each side gives ground in the interest of avoiding litigation"); 7-Eleven
27 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that
28 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of

1 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
2 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is
3 fundamentally fair . . . is different from the question whether the settlement is perfect in the
4 estimation of the reviewing court”); White v. Experian Information Solutions, Inc. (C.D. Cal.
5 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even
6 though it represented 99% discount off the maximum value of the claims). Importantly as well,
7 the proposed settlement is non-reversionary and will provide benefits to the Class Members
8 without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing
9 Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at
10 www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome
11 claims process may indicate lack of fairness). Plaintiff and his counsel submit the settlement is
12 within the “range of reasonableness,” and is fair and adequate for the Class.

13 **V. SETTLEMENT ADMINISTRATION COSTS**

14 The settlement provides for a payment to Phoenix for its services as the Settlement
15 Administrator. As set forth in the Declaration of Jarrod Salinas, Phoenix has performed and will
16 continue to perform its required duties through final distribution of the settlement funds, and
17 incurred \$11,000.00 in fees and expenses. [Salinas Decl., ¶ 16; Exh. B.] Plaintiff respectfully
18 requests the Court approve payment of \$11,000 to Phoenix from the GSA. [Jones Decl., ¶ 24.]

19 **VI. ATTORNEY’S FEES AND COSTS**

20 **A. The Attorney's Fees Requested Are Fair and Reasonable and Should Be** 21 **Approved**

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

1 private bargaining, if it were truly possible, might have reached” in determining a reasonable
2 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
3 litigation”). Here, Class Counsel's request for attorney’s fees and costs is reasonable and
4 justified by the work performed, the benefits obtained, and the contingent risk assumed.

5 As addressed in detail above, at the time the parties reached the tentative settlement
6 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
7 some or all the claims would not be certified for class treatment, as Defendant had strong
8 arguments that its compensation policies were legal and properly compensated the class
9 members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the
10 merits, it undoubtedly would have taken several years to realize any recovery while he and
11 the class pursued class certification, trial, and an almost certain appeal. [Jones Decl., ¶¶ 15-22.]

12 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
13 obtain, and the settlement provides substantial cash payments to Class Members, with an
14 average award of about \$955, and with a maximum award of over \$2,240. Importantly as
15 well, the Class Members have been overwhelmingly supportive of the Settlement – as of the
16 filing of this motion, there are no objections to the settlement and only two opt outs. [Salinas
17 Decl., ¶¶ 8-9.]

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

19 The United States Supreme Court has ruled the parties to a class action properly may
20 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
21 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
22 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
23 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
24 should not result in a second major litigation. Ideally, of course, litigants will settle the
25 amount of a fee." The United States Supreme Court has reemphasized this policy and further
26 stressed trial courts have “a responsibility to encourage agreement” on fees. Blum v. Stenson
27 (1984) 465 U.S. 886, 902 n.19.

1 As part of the Settlement, Defendant agreed not to object to an award of no more than
2 1/3 of the GSA for attorney's fees, or \$213,333.33, and up to \$25,000 in reimbursement for
3 litigation costs and expenses (although only \$17,860.15 is requested). Such a fee is
4 commensurate with what the market would provide for similar services and the Court
5 therefore can most certainly enforce the agreement. As California's Court of Appeal has
6 instructed:

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

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

13 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
14 arms-length bargaining regarding relief to the Class was completed. [Jones Decl., ¶ 25.]
15 The requested fee and cost award was a product of these arms-length negotiations and fairly
16 reflects the marketplace value of the services rendered by Class Counsel in this case. As a
17 result, the fee agreed to by the parties should be approved.

18 **C. Class Counsel's Fees are Justified When Calculated as a Percentage of the**
19 **Common Fund**

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

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

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

1 Indeed, both California and federal courts have long recognized an appropriate method
2 for determining the award of attorney's fees is based on a percentage of the total value of
3 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
4 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
5 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
6 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
7 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

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

16 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
17 this action of no more than 1/3 of the total amount recovered by the Class via the lawsuit, or
18 \$213,333.33. The percentage requested is justified for the reasons set forth further below,
19 and comports with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review
20 of class action settlements shows that courts have historically awarded fees in the range of 20
21 to 50 percent, depending upon the circumstances of the case. In re Warner Communications
22 Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in
23 common fund cases range from 20 to 50 percent); Newberg, Newberg on Class Actions (3d
24 ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award
25 from a common fund in order to assure that the fees do not consume a disproportionate part of
26 the recovery obtained for the class, although somewhat larger percentages are not
27 unprecedented.").

28 /////

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

2 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
3 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
4 an objective measure of the work performed into the calculation of a reasonable attorney fee."
5 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 270.5 hours of time on this matter,
6 resulting in a modest and very reasonable lodestar of \$187,855.00.

7 As is fully detailed in the Jones Declaration, Class Counsel's efforts included: (1)
8 extensive pre-lawsuit investigation of Plaintiff's claims, including legal research, research into
9 similar claims and claims against other employers in the same industry, and attempts to locate and
10 contact other employees of Defendant; (2) drafting a PAGA notice letter; (3) drafting the initial
11 complaints and related documents; (4) extensive case management in both cases, including
12 communications with separate defense counsel, meeting and conferring/preparing case
13 management statements, etc.; (5) propounding initial written discovery, (6) lengthy discussions
14 with defense counsel regarding settlement/mediation and informal discovery needed for
15 meaningful settlement discussions; (7) engaging in substantial informal discovery, including
16 propounding informal discovery "requests" and reviewing documents and other information
17 produced; (8) drafting a mediation brief and accompanying damages model after review and
18 analysis of Defendant's informal discovery production; (9) attending an all-day mediation; (10)
19 drafting and filing an amended complaint; (11) negotiating and drafting the settlement agreement
20 and related documents; (12) drafting the motion for preliminary approval, and attending the
21 hearing; (13) administration of the settlement, including communications with the Settlement
22 Administrator and settlement class members; (14) drafting the motion for final approval and
23 attorney's fees, and attending the final approval hearing; and (15) extensive communications with
24 the Plaintiff regarding case status, case investigation and document review, mediation, and
25 settlement terms. Additionally, Class Counsel will incur additional time following final approval
26 to, inter alia, respond to class member inquiries, work with the Settlement Administrator on the
27 distribution of settlement funds, and on the compliance hearing. [Jones Decl., ¶ 26, Exh. 2.]
28

1 In pursuing this matter, Class Counsel incurred total attorney's fees of \$187,855.00,
2 based on 270.5 attorney hours. The lodestar is based on an eminently reasonable number of
3 hours worked to litigate this matter to a successful conclusion, and the requested attorney hourly
4 rates are reasonable and comport with hourly rates charged by other attorneys with similar
5 experience in this practice area in California. [Jones Decl., ¶¶ 27-37.] On a lodestar basis, the
6 fee request of \$213,333.33 results in a multiplier of 1.13, which is a modest enhancement
7 entirely in line with California law. [Jones Decl., ¶¶ 38-39.] Indeed, California courts
8 routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of
9 class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys'
10 fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255
11 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders
12 (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34.) Class Counsel submits that the
13 requested 1.13 multiplier effectively operates to show that the percentage fee request is
14 reasonable considering the challenges presented in this contingency fee matter, and
15 appropriately compensates Class Counsel for the contingent risk assumed and delay in
16 payment during the 2+ years Crosner Legal has represented Plaintiff. [Jones Decl., ¶¶ 40-41.]
17 Thus, the multiplier results in a fee constituting a fair return on the contingency.

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

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

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

5 **1. The Results Achieved.**

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

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

21 At the time of filing the complaint, Class Counsel recognized that they would have to
22 expend a substantial amount of time and advance significant costs to prosecute a statewide
23 class action suit with no guarantee of compensation or reimbursement, in the hope of
24 prevailing against a sophisticated company represented by first-rate attorneys. Despite
25 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
26 of class certification and the ability to prove class-wide and individual damages. In light of
27 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant and
28 their big firm counsel would dig in and attempt to bury their small firms in work. Given the

1 small size of Class Counsel's firm, not receiving any compensation for several years while
2 simultaneously advancing litigation costs posed considerable risk and difficulty. [Jones Decl.,
3 ¶¶ 15-22, 40-41.]

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

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

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

14 There is a substantial difference between the risk assumed by attorneys being paid
15 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
16 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
17 1256. The attorney working on a contingent basis can only log hours while working
18 without pay towards a result that will hopefully entitle him to a market fee considering
19 the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee
20 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this
21 risk in this all or nothing contingent fee case wherein the necessity and financial burden
22 of private enforcement makes the requested award appropriate.

23 Counsel retained on a contingency fee basis, whether in private matters or in class
24 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent
25 fee schedule to compensate for both the contingent risk assumed and the delay in
26 payment. The simple fact is that despite the most vigorous and competent of efforts,
27 success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875.
28 Indeed, if counsel is not adequately compensated for the risks inherent in difficult class

1 actions, competent attorneys will be discouraged from prosecuting similar cases.
2 Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208
3 Cal.App.3d 279, 287.

4 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
5 the investment of unnecessary time in a case, and the adverse resolution of any one of several
6 difficult issues present in this matter could have doomed the entire effort. As discussed, the
7 attorney's fees in this case were not only contingent but fairly risky, and there was always a
8 palpable chance Plaintiff's counsel would receive nothing for any number of reasons. [Jones
9 Decl., ¶¶ 40-41.] Accordingly, the contingent nature of the fee and the financial burdens on
10 Class Counsel and Plaintiff also support the fee requested.

11 5. Awards in Other Cases

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

27 / / / /

28 / / / /

1 **F. Class Counsel’s Costs and Expenses are Reasonable**

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

12 As explained in the Jones Declaration, Class Counsel incurred a total of
13 \$17,860.15 in expenses incurred in connection with this litigation. These expenses
14 include the amounts paid for court filing fees, service of process, expert fees, postage,
15 and mediation fees, all of which are costs normally billed to and paid by the client. These
16 costs were reasonably incurred in the prosecution of this matter and it is respectfully
17 requested that the Court authorize they be reimbursed in full. [Jones Decl., ¶¶ 42-43.]

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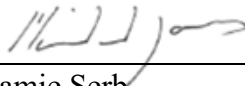
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1 **VII. CONCLUSION**

2 For all the foregoing reasons, Plaintiff Jose R. Loya Medina respectfully requests that the
3 Court grant this motion and grant final approval of the proposed class action settlement and approve
4 the payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment
5 of the Settlement Administrator's fees and expenses, approve the requested class representative
6 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
7 judgment in this action. Finally, Plaintiff requests the Court set a final compliance hearing for May
8 7, 2025, or a later date convenient for the Court.

9 Dated: April 15, 2024

CROSNER LEGAL, P.C.

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12 _____
13 Jamie Serb
14 Michael Jones
15 Zachary Crosner
16 Attorneys for Plaintiff
17 JOSE R. LOYA MEDINA
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