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**SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

ANTOINETTE BROWN, as an individual
and on behalf of all others similarly
situated,

Plaintiff,
vs.

ELA FOODS, INC., a California
corporation; POP FOODS SERVICES,
INC., a California corporation; and DOES
1-100, inclusive,

Defendants.

CASE NO.: 22STCV26088

Assigned for All Purposes to:
Hon. Elaine Lu
Dept SSC-9

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

**[Filed concurrently with Notice of Motion and
Motion; Declarations of Nikki Trenner and
Bryn Bridley; [Proposed] Order]**

**DATE: August 28, 2024
TIME: 10:00 a.m.
DEPT.: SSC-9**

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Antoinette Brown seeks final approval of a non-
3 reversionary class and PAGA action settlement resolving wage and hour claims on behalf of
4 1,098 individuals who worked for Defendants ELA Foods, Inc. and POP Foods Services, Inc.
5 (collectively, “ELA” or “Defendants”) as current and former non-exempt, hourly employees in
6 California during the Class Period of September 7, 2020 to January 31, 2024. The proposed
7 \$350,000 total settlement provides just under \$191,000 in cash payments to the Class, with an
8 average award of about \$173, plus additional amounts payable under PAGA. The remaining
9 balance will cover a modest service award to Plaintiff, settlement administration costs, civil
10 penalties to the state, and reasonable attorney’s fees and costs. The parties and their counsel
11 finalized the settlement after extensive and difficult arms-length negotiations overseen by an
12 experienced and highly-regarded mediator. The Court conditionally certified the Class
13 and preliminarily approved the settlement on April 23, 2024. Since then, the Court-approved
14 notice form was mailed to the Class Members on May 17, 2024, and they have reacted very
15 favorably to the settlement. As of the date of this motion, only one class member opted out of
16 the settlement, and there are no objections.

17 Further, Class Counsel secured an excellent settlement with Defendants after some two
18 years of investigation, litigation, and settlement negotiation and administration, all without any
19 compensation for services rendered or costs expended. The class notice duly informs the class
20 members that Class Counsel would request attorney’s fees not to exceed 33.33% of the Gross
21 Settlement Amount, or \$116,666.67, along with reimbursement of no more than \$20,000 for actual
22 costs incurred litigating this matter. As of the filing of this motion, not one Class Member objected
23 to the proposed fee award. Consistent with the Settlement and notice, Plaintiff now respectfully
24 requests the Court award Class Counsel’s fees in the amount of \$116,666.67 and costs in the amount
25 of \$13,734.81, as described in the Declaration of Nikki Trenner (“Trenner Decl.”) filed herewith.
26 The requested attorney’s fees are well within the range of reasonableness, especially considering
27 the complex and risky nature of this litigation, the contingent risk assumed, and the two-plus year
28 delay in payment and, when subjected to a lodestar crosscheck, result in fee request that is less than

1 the unadorned lodestar.

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

5 **II. BACKGROUND/LITIGATION HISTORY**

6 The details of the procedural and factual background of this matter were outlined in the
7 Plaintiff's Motion for Preliminary Approval of Class and PAGA Action Settlement and
8 supplemental briefing (filed on or about December 5, 2023 and March 28, 2024, respectively).
9 To re-familiarize the Court with this litigation, Defendants are a Popeyes Louisiana Kitchen
10 franchisee that own and operate Popeyes Louisiana Kitchen restaurants, including ten restaurants
11 in California. Defendants employed Plaintiff as a non-exempt employee from November 2021 to
12 January 2022 at their Palmdale, California location. [Declaration of Nikki Trenner "(Trenner
13 Decl.), ¶ 2.]

14 Plaintiff contends the Class Members were not paid all minimum or overtime wages, did
15 not receive proper expense reimbursement, not provided with legally compliant meal and rest
16 periods, did not receive compliant wage statements, and did not receive all wages due on separation
17 of employment. Plaintiff timely exhausted her administrative remedies with the LWDA by
18 submitting her PAGA notice on August 10, 2022. Plaintiff did not receive notice from the LWDA
19 that it intended to investigate the alleged violations outlined in his PAGA letter. Consequently, on
20 August 11, 2022, Plaintiff filed a class action complaint against Defendants, and filed a First
21 Amended Complaint adding a PAGA cause of action on October 17, 2022. The operative FAC
22 alleges claims for minimum and overtime wages, meal and rest break violations, inaccurate wage
23 statements, waiting time penalties, unfair competition, and penalties under PAGA. [Trenner Decl.,
24 ¶¶ 3-4.]

25 Once the matter was at issue, the Parties initiated discovery and later, after engaging in
26 meet and confer discussions regarding discovery, potential law and motion, and the merits of the
27 case, ultimately agreed to attempt mediation. They then engaged in significant informal
28 discovery to facilitate an exchange of information necessary to engage in a meaningful mediation.

1 In July 2023, the Parties participated in mediation with the Hon. Steven Denton (Ret.), a
2 respected wage and hour class action mediator and, after a full day of mediation, reached the
3 proposed settlement. [Trenner Decl., ¶¶ 5-6.] This Court preliminarily approved the settlement
4 on April 23, 2024.

5 Class notices were mailed to class members on May 22, 2024, with a 45-day window
6 (to July 8, 2024) for class members to opt out of or object to the proposed settlement.
7 [Declaration of Bryn Bridley (“Bridley Decl.”), ¶¶ 6, 9-11.]

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

9 Under the settlement Defendants will pay \$350,000 into a common fund, the Gross
10 Settlement Amount (GSA”). Attorney’s fees of up to \$116,666.67 (33.33% of the GSA), litigation
11 costs of up to \$20,000 (only \$13,734.81 is requested), settlement administration costs of \$18,621,
12 and \$10,000.00 for PAGA civil penalties (of which \$7,500 will go to the California Labor &
13 Workforce Development Agency (“LWDA”) for the State’s share of civil penalties and \$2,500 will
14 go to eligible Aggrieved Employees), all will be paid from the GSA. The remainder of around
15 \$191,000 will be allocated pro rata to the Class Members based on their weeks worked during the
16 Class Period. No portion of the GSA will revert to ELA. [Trenner Decl., ¶ 7.]

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

18 The Court conditionally certified a settlement class defined to include “all current and
19 former non-exempt, hourly employees in California employed by Defendants during the Class
20 Period of September 7, 2020 to January 31, 2024. The Settlement Administrator ultimately
21 mailed class notices to 1,089 individuals identified as members of the Class and for whom
22 address information was available. [Bridley Decl., ¶¶ 4-6.] Nothing has changed to require
23 reconsideration of the Court’s certification of the Settlement Class.

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

25 As noted, the settlement obligates Defendants to pay \$350,000 to resolve the Settlement
26 Class’s claims, inclusive of attorney’s fees and costs. About \$191,000 from the GSA will be
27 distributed to the Participating Class Members. This is a cash settlement that does not require
28 Participating Class Members to submit a claim form to receive their settlement share. Participating

1 Class Members will receive their settlement checks automatically via First Class U.S. Mail.
2 Twenty-five percent of each settlement share will be allocated to wages and the remaining seventy-
3 five percent will be allocated to non-wage premiums and interest, which allocation is consistent
4 with ELA's potential liability as discussed below. ELA will pay any and all applicable employer-
5 side payroll taxes separately and in addition to the GSA. Subject to the Court's approval, any
6 amounts not claimed (because a class member does not cash their settlement check) will be
7 forwarded to the California State Controller's Unclaimed Property Fund. [Trenner Decl., ¶ 8.]

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

17 The average award to the Participating Class Members will be approximately \$173 with a
18 maximum award of over \$930, while the average PAGA award will be about \$2.69. [Bridley Decl.,
19 ¶¶ 13-14.]

20 C. Settlement Administration

21 Atticus Settlement Administrators, as the Court-approved Settlement Administrator,
22 mailed the Notice Packet to the Class members after making all reasonable effort to ascertain
23 the best mailing address, including running each address through the National Change of
24 Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Bridley
25 Decl., ¶¶ 4--7.] The Class Notice, previously approved by the Court, duly informed Class
26 Members of the settlement terms, including the estimated relief each Class Member will
27 receive, the amounts to be requested for attorney's fees and the class representative
28

enhancement awards, and the right to opt out of or object to the settlement. [Bridley Decl., ¶ 6, Exh. A.] Atticus mailed 1,089 Notice Packets on May 22, 2024. [Bridley Decl., ¶ 6.] As of the filing of this motion, 86 Notice Packets were deemed undeliverable. [Bridley Decl., ¶ 7.] The response window for opting out, objecting to the settlement, or submitting a dispute, expired on July 8, 2024. [Bridley Decl., ¶¶ 9-11.] As of the filing of this motion, Atticus has received only one request for exclusion, zero objections to the settlement, and no disputes have been submitted regarding the information used to calculate class member settlement shares. [Bridley Decl., ¶¶ 9-11.]

D. Release of Claims

All Participating Class Members will release Defendants from all claims alleged in the operative complaint, or that could have been brought based on the factual allegations in the operative complaint during the Class Period, including all PAGA claims. 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. [Trenner Decl., ¶ 10.]

E. PAGA and Notice to the LWDA

As noted, the Parties allocated \$10,000 from the GSA to resolution of Plaintiff's claims under PAGA, and respectfully request that the Court approve that amount as fair, reasonable and adequate, and consistent with PAGA's underlying purposes. Under PAGA, \$7,500 of this amount will be paid to the LWDA as the state's share of the civil penalties, and the remainder of \$2,500 will be distributed to the 929 Aggrieved Employees eligible to receive a PAGA payment. [Bridley Decl., ¶ 4.] As required by Labor Code section 2699(l)(2), Plaintiff notified the LWDA of the settlement and the final approval hearing via its online portal. [Trenner Decl., ¶ 11; Exh. 1.]

IV. ARGUMENT

A. Standards For Approval

The law favors settlement, particularly in class actions where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A. Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco

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

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

24 ////

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

26 The proposed settlement of this action warrants final approval under the standards
27 summarized above. The settlement is fair, reasonable and adequate, and represents a
28 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly

1 approved by the class members as there are no objections and no class member has requested
2 exclusion.

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

4 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
5 was reached following arm's-length negotiations presided over by the Hon. Steven Denton
6 (Ret.), a highly respected and well-known mediator with extensive experience mediating wage
7 and hour class actions. [Trenner Decl., ¶ 6.] Moreover, Plaintiff and her counsel were well-
8 informed about the facts and the law, and counsel Zachary M. Crosner, Jamie K. Serb, and Nikki
9 Trenner have years of litigation experience, including litigating wage and hour class actions.
10 Plaintiff's counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation
11 or settling the matter. [Trenner Decl., ¶¶ 26-33.] Defendants likewise were represented by highly-
12 qualified and experienced defense counsel. Both sides advocated vigorously for their clients
13 and nothing was "left on the table."

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

15 The settlement was well-received by the class. As of the filing of this motion, no
16 objections have been filed, and only one Class Member has requested exclusion out of
17 1,099 settlement class members. [Bridley Decl., ¶¶ 9-10.] As many courts recognize, class member
18 reaction to the settlement is one of the most important factors to consider in determining if final
19 approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th
20 Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y.
21 2001) ("It is well-settled that the reaction of the class to the settlement is perhaps the most
22 significant factor to be weighed in considering its adequacy") (internal quotation marks omitted).

23 ////

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

26 The proposed settlement involves a substantial sum of money that, when distributed,
27 will confer meaningful monetary benefits on the Class members. As described above, each
28 individual award will be based on an allocation consistent with the nature of the claims asserted

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

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

15 Using that data, Plaintiff ran various calculations and estimated Defendants' theoretical
16 maximum exposure on the class claims at about \$4.526 million. More specifically, the theoretical
17 maximum includes approximately \$152,400 on the off the clock claim and about \$1,500 on the
18 regular rate claim, around \$926,500 on the meal and rest break claims (both assuming a 100%
19 violation rate), about \$87,500 on the expense reimbursement claims, approximately \$550,400 on
20 the wage statement claims, and approximately \$966,700 on the wage statement claims and waiting
21 time penalties of about \$2,391,600. Plaintiff's counsel substantially discounted the value of these
22 claims, however, in light of the multiple and considerable risks posed by proceeding with the
23 litigation, as ELA raised numerous defenses and vigorously defended against these claims.
24 [Trenner Decl., ¶ 13.]

25 First, Plaintiff contends Defendants failed to provide legally compliant meal and rest breaks.
26 Specifically, Plaintiff contends the volume of work Defendants imposed made it difficult if not
27 impossible for the class members to take all required meal and breaks, and further made it difficult
28 to take breaks on a fully compliant basis even when they were able to take one at all. Plaintiff claims

1 this violates Labor Code sections 512, 226.7, and the applicable IWC Wage Orders, as well as
2 Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004 and Augustus v. ABM Security
3 Serv., Inc. (2016) 2 Cal.5th 257 for failure to provide meal and rest periods and within the
4 applicable time frames. Furthermore, Plaintiff contends Defendants unlawfully restricted how
5 employees used their break time, such as prohibiting naps, requiring supervisor permission to leave
6 the premises, and restricting use of cell phones, such that the Class Members were not relieved of
7 all employer control. [Trenner Decl., ¶ 14.]

8 Defendants deny Plaintiff's contentions, claiming they made meal and rest breaks available
9 to Class Members in compliance with California law. Defendants contend their meal and rest break
10 policies are lawful and that Class Members were frequently reminded, via training and supervisors,
11 that they were required to take all meal and rest breaks. Defendants also contend that time records
12 demonstrate that Class Members took duty-free, timely meal and rest breaks. Defendants contend
13 their meal and rest break policies and practices comported with the flexibility the *Brinker* court
14 held was integral to California's meal and rest period requirements. Finally, Defendants argue that
15 Plaintiff's meal and rest break claims are not susceptible to common proof, as the claims would
16 require individualized inquiry, including whether there was an unlawful companywide policy,
17 whether employees had the opportunity to take meal and rest periods, whether they voluntarily
18 chose to forego their meal and rest periods, and whether Defendants ever prevented them from
19 taking meal and rest periods. Accordingly, Defendants contend these claims are vulnerable to a
20 ruling that class treatment is not appropriate. [Trenner Decl. ¶ 15.]

21 Plaintiff also asserts Defendants' failed to pay for all hours worked, particularly with respect
22 to a few minutes needed to don and doff food safety clothing such as hair nets, aprons, etc., and
23 also for sometimes "auto deducting" 30 minutes for a meal period even if it didn't last a full 30
24 minutes. Plaintiff further contends Defendants failed to pay all overtime wages at the regular rate
25 of pay, as Defendants failed to incorporate non-discretionary bonuses paid during the same pay
26 periods that overtime wages were earned, in violation of Alvarado v. Dart Container Corp. (2018)
27 4 Cal.5th 542. [Trenner Decl., ¶ 16.]

28 Plaintiff also contends Defendants required Plaintiff and the Class Members had to use their

1 personal cell phones for work related purposes including communicating with supervisors before
2 and after their shifts. However, Defendants failed to reimburse employees for the use of their
3 personal cell phones Cochran v. Schwan's Home Service, Inc. (2014) 228 Cal.App.4th 1137, it was
4 held that § 2802 requires employers to always reimburse employees who are required to use
5 personal cell phones for work-related calls for a reasonable percentage of their cell phone bills. On
6 the other hand, Defendants argued there was no reason for employees to use their own phones while
7 working, and any other use was purely for personal preference and therefore not reimbursable.
8 [Trenner Decl., ¶ 17.]

9 Plaintiff's claims for inaccurate wage statements and waiting time penalties are derivative
10 of the unpaid wage claims. Should those claims fail, Plaintiff's claim for inaccurate wage
11 statements and waiting time penalties would also fail. Defendants also contend they would not be
12 liable for waiting time penalties because a "good faith dispute" exists over the payment of past
13 wages. Cal. Code Regs. Tit. 8 § 13520; Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157,
14 1201. Further, Defendants contend Plaintiff would have to prove that Defendants "willfully" failed
15 to pay Class Members appropriate wages due upon separation of employment. Defendants contend
16 that any failure to pay wages upon separation was not willful. [Trenner Decl. ¶ 18.]

17 As far as potential PAGA liability, the theoretical civil penalties likely exceed \$5 million
18 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
19 at issue. [Trenner Decl., ¶ 19.] As with the class claims, Plaintiff discounted the potential PAGA
20 penalties based on Defendants' various defenses on the merits and also accounted for the Court's
21 wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code §
22 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties
23 of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell
24 Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties
25 denied after trial). Accordingly, the Parties allocated \$10,000 to PAGA penalties.

26 Plaintiff submits this amount is reasonable under the circumstances and in line with
27 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
28 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final

1 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
2 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
3 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
4 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
5 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
6 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
7 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
8 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
9 not objected to the settlement.

10 Thus, Plaintiff and her counsel discounted the value of the class claims consistent with the
11 risks discussed above, as well as the potential applicability of arbitration agreements signed by
12 many class members. They carefully weighed the likelihood of the class receiving substantially
13 greater benefit if the litigation continued, and concluded – in light of these very real and substantial
14 risks – settlement on the proposed terms and without prolonged and costly litigation was in the best
15 interests of the class. The overall \$350,000 recovery represents a significant percentage of
16 Defendants' potential exposure and, given Defendants' multi-layered defenses and all other
17 potential risks of continued litigation, a total recovery for the class of \$350,000, which will result
18 in average award of some \$173 per class member, plus additional sums under PAGA, is a
19 significant result well within the range of reasonableness considering all potential outcomes, and it
20 will provide direct monetary awards to all Class Members without further delay. [Trenner Decl.,
21 ¶¶ 20-22.]

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

(2000) 85 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); 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); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court”). Importantly as well, the proposed settlement is non-reversionary and will provide immediate 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 her 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 Atticus from the GSA for its services as the Settlement Administrator. As set forth in the Declaration of Bryn Bridley, Atticus has performed and will continue to perform its required duties through final distribution of the settlement funds, and incurred \$18,621.00 in fees and expenses. [Bridley Decl., ¶ 15.] Accordingly, Plaintiff respectfully requests the Court approve payment of \$18,621 to Atticus from the GSA. [Trenner Decl., ¶ 23.]

VI. ATTORNEY’S FEES AND COSTS

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

1 involving significant contingent risk, such as this one. Deposit Guaranty Nat'l Bank, Jackson,
2 Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S. 947; Lealao, 82 Cal.App.4th at
3 49-50 (court should attempt "to award the fee that informed private bargaining, if it were truly
4 possible, might have reached" in determining a reasonable fee, and a fee award should
5 approximate a "range of fees freely negotiated in comparable litigation"). Here, Class
6 Counsel's request for attorney's fees and costs is reasonable and justified by the work
7 performed, the benefits obtained, and the contingent risk assumed. As addressed in detail
8 above, at the time the parties reached the tentative settlement success for Plaintiff and the
9 putative class was far from certain. Plaintiff faced a real risk that some or all the claims would
10 not be certified for class treatment, as ELA had strong arguments that its compensation policies
11 were legal and properly compensated the class members. Even if Plaintiff certified some or all
12 of the claims and ultimately prevailed on the merits, it undoubtedly would have taken several
13 years to realize any recovery while they pursued class certification, trial, and an almost certain
14 appeal. [Trenner Decl., ¶¶ 14-22.]

15 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief she set out to
16 obtain, and the settlement provides substantial cash payments to Class Members, with an
17 average award of about \$173, and with a maximum award of over \$930. Importantly as well,
18 the Class Members have been overwhelmingly supportive of the Settlement – as of the filing
19 of this motion, there are no objections to the settlement and only one individual opted out.
20 [Bridley Decl., ¶¶ 9-10.]

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

22 The United States Supreme Court has ruled the parties to a class action properly may
23 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
24 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30. In Hensley v. Eckerhart (1983)
25 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
26 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
27 should not result in a second major litigation. Ideally, of course, litigants will settle the amount
28 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, Defendants agreed not to object to an award of no more than 33.33% of the GSA for attorney's fees, or \$116,666.67, and up to \$20,000 in reimbursement for litigation costs and expenses (only \$13,734.81 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., ¶ 24.] 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.

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

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

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

16 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
17 this action of no more than 33.33% of the total amount recovered by the Class via the lawsuit,
18 or \$116,666.67. 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 **D. A Lodestar Cross-Check Also Supports Class Counsel's Fee Request**

1 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
2 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
3 an objective measure of the work performed into the calculation of a reasonable attorney fee."
4 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 173.1 hours of time on this matter,
5 resulting in a modest and very reasonable lodestar of \$125,995.

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

27 In pursuing this matter, Class Counsel incurred total attorney's fees of \$125,995, based
28 on 173.1 attorney hours. The lodestar is based on an eminently reasonable number of hours worked

1 to litigate this matter to a successful conclusion, and the requested attorney hourly rates are
2 reasonable and comport with hourly rates charged by other attorneys with similar experience in this
3 practice area in California. [Trenner Decl., ¶¶ 26-38.] On a lodestar basis, the fee request of
4 \$116,666.67 results in a base lodestar that is larger than the actual fee request on a percentage
5 of the recovery basis and accordingly there is no request for a lodestar enhancement. [Trenner
6 Decl., ¶¶ 37-38.] Class Counsel submits this fact effectively operates to show that the
7 percentage fee request is reasonable considering it less than the actual value of the services
8 rendered when valued via traditional hourly billing.

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

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

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

24 **1. The Results Achieved.**

25 Class Counsel obtained an excellent result in this case for the Class Members. The
26 Settlement provides real monetary benefits to the Class Members, and the Settlement is
27 particularly advantageous to the Class Member because the proceeds will be distributed
28 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.

1 Considering many individual claims would be very modest and would not be cost-effective
2 to pursue successfully, the Settlement provided them with fair compensation for their claims.
3 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
4 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
5 by the fact that only one class member opted out. Additionally, the settlement amounts to a
6 substantial percentage of the maximum value of the amount the Class might have obtained if
7 it had tried the case and recovered on all theories seeking recovery of wages and penalties.
8 "It is well-settled law that a cash settlement amounting to only a fraction of the potential
9 recovery does not per se render the settlement inadequate or unfair." In re Omnivision
10 Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

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

12 At the time of filing the complaint, Class Counsel recognized that they would have to
13 expend a substantial amount of time and advance significant costs to prosecute a statewide
14 class action suit with no guarantee of compensation or reimbursement, in the hope of
15 prevailing against a sophisticated company represented by first-rate attorneys. Despite
16 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
17 of class certification and the ability to prove class-wide and individual damages. In light of
18 the highly uncertain nature of this suit, Class Counsel also bore the risk that ELA would dig
19 in and attempt to bury their small firms in work. Given the small size of Class Counsel's
20 firm, not receiving any compensation for several years while simultaneously advancing
21 litigation costs posed considerable risk and difficulty. [Trenner Decl., ¶¶ 39-40.]

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

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

1 navigating these hurdles, Class Counsel displayed appropriate skill while pursuing a
2 risky and difficult case.

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

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

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

22 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
23 the investment of unnecessary time in a case, and the adverse resolution of any one of several
24 difficult issues present in this matter could have doomed the entire effort. As discussed, the
25 attorney's fees in this case were not only contingent but fairly risky, and there was always a
26 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
27 [Trenner Decl., ¶¶ 39-40.] Accordingly, the contingent nature of the fee and the financial
28 burdens on Class Counsel and Plaintiff also support the fee requested.

1 **5. Awards in Other Cases**

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

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

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

17 As explained in the Trenner Declaration, Class Counsel incurred a total of
18 \$13,734.81 in expenses incurred in connection with this litigation. These expenses
19 include the amounts paid for court filing fees, Case Anywhere charges, service of
20 process, expert fees, postage, and mediation fees, all of which are costs normally billed
21 to and paid by the client. These costs were reasonably incurred in the prosecution of this
22 matter and it is respectfully requested that the Court authorized they be reimbursed in
23 full. [Trenner Decl., ¶¶ 41-42.]

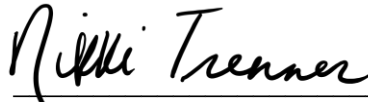
24 **VII. CONCLUSION**

25 For all the foregoing reasons, Plaintiff Antoinette Brown respectfully requests that the
26 Court grant this motion and grant final approval of the proposed class action settlement and
27 approve the payment of PAGA penalties to the State. Plaintiff further requests the Court approve
28 payment of the Settlement Administrator's fees and expenses, approve the requested class

1 representative enhancement payment, approve the award of attorney's fees and costs as requested,
2 and enter judgment in this action. Finally, Plaintiff requests the Court set a non-appearance case
3 review regarding settlement compliance for August 28, 2025, or a later date convenient for the
4 Court.

5
6 Dated: August 6, 2024

CROSNER LEGAL, P.C.

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8 Nikki Trenner

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11 Attorneys for Plaintiff ANTOINETTE BROWN
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