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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE**

ULISES JIMENEZ, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

DELTA VIEW FARMS, LLC, a California
limited liability company; GREGORY O. DIAS
DAIRY-FARMING, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: VCU293548

CLASS ACTION

*[Assigned for all purposes to the Hon.
Bret D. Hillman, Dept. 2]*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, CLASS
REPRESENTATIVE SERVICE
PAYMENT, AND ATTORNEYS' FEES
AND COSTS**

Date: September 10, 2024

Time: 8:30 a.m.

Dept.: 2

[Hearing Date Set by Order of the Court]

Action Filed: September 29, 2022

Trial Date: None Set

1 PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court,
2 on September 10, 2024 at 8:30 a.m., or as soon thereafter as the matter may be heard in
3 Department 2 of the above-entitled Court, located at 221 South Mooney Blvd., Visalia, California
4 93291, Plaintiff Ulises Jimenez (“Plaintiff”) will, and hereby does, move this Court for entry of
5 an Order:

6 1. Granting final approval of the proposed Settlement Agreement (“Settlement”)
7 between Plaintiff and Defendant Gregory O. Dias Dairy Farming, Inc. dba Delta View
8 Farms (“Delta View”);

9 2. Confirming the certification of the Settlement Class for settlement purposes under
10 Section 382 of the California Code of Civil Procedure:

11 All current and former non-exempt employees who worked for
12 Delta View in California at any time from September 29, 2018
through October 17, 2023 (the “Class Period”).

13 3. Confirming the appointment of Plaintiff Ulises Jimenez as the Class Representative
14 for settlement purposes;

15 4. Confirming the appointment of Abramson Labor Group as Class Counsel;

16 5. Approving an award of \$90,000.00 in attorneys’ fees to Class Counsel;

17 6. Approving an award of \$11,123.10 in costs to Class Counsel;

18 7. Approving an award of \$7,750.00 in costs to Phoenix Settlement Administrators for
19 its settlement administration services;

20 8. Approving a Class Representative Service Payment of \$5,000.00 to Plaintiff for his
21 service as the Class Representative;

22 9. Approving an award of \$18,750.00 to the Labor & Workforce Development Agency
23 (“LWDA”); and

24 10. Entering final judgment in the form of the [Proposed] Judgment and Order Granting
25 Final Approval of Class Action Settlement filed herewith.

26 This Motion is made on the following grounds: (1) the Settlement Class continues to meet
27 the requirements for class certification for settlement purposes under Cal. Code of Civil
28 Procedure § 382; (2) Plaintiff and Class Counsel continue to be adequate representatives of the

1 Settlement Class; (3) the Settlement is a fair, adequate, and reasonable compromise of disputed
2 wage and hour claims; (4) the requested amounts for Class Counsel's attorneys' fees and costs,
3 settlement administration costs, and the Class Representative's Service Payment are all fair,
4 adequate, and reasonable; and (5) in light of the foregoing, the [Proposed] Judgment and Order
5 Granting Final Approval of Class Action Settlement submitted herewith should be entered so as
6 to give finality to, and allow for disbursements from, the Settlement.

7 This motion is based on this notice of motion; the attached memorandum of points and
8 authorities; the declaration of Neil M. Larsen and exhibits attached thereto; the declaration of
9 Lluvia Islas and exhibits attached thereto; the declaration of Plaintiff; the pleadings and other
10 papers filed in this action; and any further oral or documentary evidence or argument presented
11 at the time of hearing.

12 Respectfully Submitted,

13 Dated: June 18, 2024

ABRAMSON LABOR GROUP

15 Neil Larsen
16 Neil M. Larsen
17 Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Ulises Jimenez (“Plaintiff”) seeks preliminary approval of a class action
4 settlement (“Settlement”) with Defendant Gregory O. Dias Dairy Farming, Inc. dba Delta View
5 Farms (“Delta View” or “Defendant”) (together with Plaintiff, the “Parties”). Under the
6 Settlement, Delta View has agreed to pay \$270,000.00 to the following Settlement Class, which
7 consists of 149 individuals:

8 All current and former non-exempt employees who worked for Delta View in
9 California at any time from September 29, 2018 through October 17, 2023 (the
“Class Period”).

10 In this non-reversionary Settlement, all Participating Class Members will receive
11 automatic payments without the need to submit a claim form, resulting in an average payment
12 (“Settlement Award”) of approximately **\$660.25** to Participating Class Members. This is a
13 favorable resolution of the highly disputed wage and hour claims in this case, especially in light
14 of the significant litigation risks that Plaintiff faced. Moreover, after receiving notice of the
15 proposed Settlement and projected estimated settlement payments, **not a single Settlement Class**
16 **member has objected to the Settlement or elected to opt-out of the Settlement, resulting in**
17 **a 100% participation rate.**

18 As explained further below, the Court should grant Plaintiff’s motion in its entirety
19 because: (1) the Settlement Class continues to meet the requirements for certification for
20 settlement purposes under Cal. Code Civ. Proc. § 382; (2) the Settlement is a fair, adequate, and
21 reasonable compromise of the disputed claims in this case; and (3) the requested amounts for
22 attorneys’ fees and costs, settlement administration costs, and class representative service
23 payment are all fair, adequate, and reasonable.

24 **II. SUMMARY OF THE LITIGATION**

25 **A. FACTUAL AND PROCEDURAL BACKGROUND**

26 Delta View is a dairy farm located in Visalia, California. See Declaration of Neil M.
27 Larsen (“Larsen Decl.”), ¶ 7. Plaintiff is a former non-exempt employee of Delta View who
28 worked for Delta View during the Class Period. *Id.* On September 29, 2022, Plaintiff filed this

1 Action, alleging claims for failure to pay overtime wages, meal and rest period violations, waiting
2 time penalties, wage statement penalties, and unfair competition. *Id.*, ¶ 8. On December 5, 2022,
3 Plaintiff filed a First Amended Complaint adding a claim for PAGA civil penalties. *Id.*, ¶ 9.

4 In or about January 2023, Delta View engaged in a “*Pick Up Stix*” campaign in which it
5 offered individual settlement payments of \$250.00 each to many of its employees, in exchange for
6 those employees’ signing a general release. Larsen Decl., ¶ 10. According to information provided
7 by Delta View, Delta View reached individual settlements with approximately 19 putative class
8 members and paid them \$250.00 each in exchange for their release of claims. *Id.* This is why the
9 Settlement Agreement contains a \$250.00 “True Up Payment” to each Settlement Class member
10 who did not enter into a *Pick Up Stix* agreement – to place those Settlement Class members on
11 equal footing with those Settlement Class members who did sign the agreements. *Id.*

12 **B. DISCOVERY, MEDIATION, AND SETTLEMENT**

13 In preparation for mediation, the Parties engaged in both formal and informal discovery.
14 Larsen Decl., ¶ 11. Plaintiff propounded written discovery, and in response, Delta View provided
15 written responses as well as over 4,500 pages of documents, including (but not limited to) a class
16 list, settlement agreements reached between Delta View and putative class members, policy
17 documents, and timekeeping and payroll records for putative class members. *Id.* In addition, and
18 in preparation for mediation, the Parties engaged in informal discovery, including (but not limited
19 to) Delta View’s production of a class list with putative class members’ hire dates, termination
20 dates (if applicable), and rates of pay. *Id.* Plaintiff’s counsel hired an expert data analyst to
21 analyze the data produced by Delta View. *Id.* Counsel for the Parties also conducted a pre-
22 mediation call where we shared our respective views of the case and potential damages. *Id.* This
23 discovery allowed the Parties to assess the merits and value of Plaintiff’s claims and Delta View’s
24 defenses, as well as the chances for class certification. *Id.*

25 The Parties attended a full-day mediation with Jim Phillips, Esq. on October 17, 2023, at
26 which the Parties vigorously debated Plaintiff’s claims and Delta View’s defenses, and the
27 chances of certification. Larsen Decl., ¶ 12. At the conclusion of the mediation session, the Parties
28 agreed to accept a mediator’s proposal. *Id.* Over the following months, the Parties negotiated the

1 finer terms of the settlement, ultimately resulting in the Settlement. *Id.*

2 **C. PRELIMINARY APPROVAL AND MAILING OF NOTICES**

3 On January 12, 2024, Plaintiff submitted the proposed Settlement to this Court with his
4 Motion for Preliminary Approval of Class Action Settlement. Larsen Decl., ¶ 13. On February 6,
5 2024, this Court ordered Plaintiff’s counsel to file a supplemental declaration and continued the
6 hearing on the Motion for Preliminary Approval to February 27, 2024. *Id.* Plaintiff’s counsel filed
7 a supplemental declaration on February 20, 2024, and thereafter this Court issued its Order
8 Granting Preliminary Approval on February 27, 2024. *Id.* & Exhibit A (Order Granting
9 Preliminary Approval).

10 On March 29, 2024, the Court-approved Class Notice was mailed to Settlement Class
11 members, who had until May 28, 2024 to submit objections, requests for exclusion, or workweek
12 disputes. *See* Declaration of Lluvia Islas (“Islas Decl.”), ¶¶ 5-10. As of the date of this filing,
13 Phoenix Settlement Administrators (“Phoenix”) received no objections, no requests for exclusion,
14 and no workweek disputes. *Id.* at ¶¶ 8-10. Now that notice has been provided to the Settlement
15 Class and the Notice process is complete, Plaintiff respectfully submits the Settlement for this
16 Court’s final approval.

17 **III. SUMMARY OF THE SETTLEMENT AND NOTICE PROCESS**

18 **A. Settlement Class Definition**

19 As noted, the Settlement Class is comprised of “All current and former non-exempt
20 employees who worked for Delta View in California at any time from September 29, 2018
21 through October 17, 2023 (the “Class Period”).” *See* Exhibit A to Larsen Decl.

22 **B. Monetary terms**

23 The Settlement provides for Delta View to pay a non-reversionary Gross Settlement
24 Amount (“GSA”) of \$270,000.00. *See* Settlement, § 4. After deducting requested attorneys’ fees
25 (\$90,000.00) and litigation costs (\$11,123.10), Class Representative Service Payment
26 (\$5,000.00), settlement administration costs (\$7,750.00), and the amount set aside as PAGA
27 penalties (\$25,000.00), the Net Settlement Amount (“NSA”) is estimated at \$131,126.90. *See*
28 Settlement, § 3(C)-(D); Larsen Decl., ¶ 22 & Exh. B; Islas Decl., ¶¶ 12, 14-15 & Exh. B. Together

1 with the \$6,250.00 PAGA Amount, the total amount to be paid to Settlement Class members
2 equals \$137,376.90. Islas Decl., ¶ 12.

3 The NSA shall be distributed to Participating Class Members as follows: (i) \$250.00
4 “True-Up Payment” will be allocated to each Participating Class Member who did not sign a
5 settlement agreement as part of Delta View’s *Pick Up Stix* process, for a total of \$32,750.00
6 allocated to 131 Settlement Class members; and (ii) after deducting the True-Up Payment, the
7 remainder of the NSA will be paid to all Participating Class Members pro rata based on the
8 number of workweeks worked during the Class Period. See Settlement, § 6(B). Additionally,
9 \$6,250.00 shall be designated as the 25% share of the PAGA civil penalties designated for
10 distribution to the PAGA Members and shall be distributed to Settlement Class members
11 proportionately based on the number of pay periods worked at any time from September 29, 2021
12 through October 17, 2023 (“PAGA Period”). See Settlement § 2, 6(C).

13 All payments from the PAGA Amount will be classified as 100% penalties; all payments
14 from the NSA will be classified as one-fifth (20%) wages and four-fifths (80%) penalties and
15 interest. See Settlement § 6(E). The portion of individual Settlement Awards allocated to wages
16 will be reported by the Settlement Administrator on an IRS Form W-2. *Id.* The remaining non-
17 wage payments will be reported on an IRS Form-1099 by the Settlement Administrator. *Id.* Delta
18 View’s share of employer-side payroll taxes shall be paid by Delta View separate from, and in
19 addition to, the Gross Settlement Amount. See Settlement § 4(D).

20 **C. Summary of Notice Process**

21 On March 12, 2024, Phoenix received a data file from Defense Counsel that contained
22 names, last known mailing addresses, Social Security numbers, dates of employment, and
23 workweek information for each Settlement Class member (“Class Data”), which contained 149
24 Settlement Class members. Islas Decl., ¶ 3. On March 12, 2024, Phoenix conducted a National
25 Change of Address (“NCOA”) search in an attempt to update Settlement Class members’
26 addresses as accurately as possible. *Id.*, ¶ 4.

27 On March 29, 2024, Phoenix mailed the Notice Packet via U.S. first class mail, in English
28 and Spanish, to all 149 Settlement Class members. Islas Decl., ¶ 5. Following the initial mailing,
20 Notice Packets were returned to Phoenix. *Id.*, ¶ 6. None of them were returned with forwarding

addresses. *Id.* Phoenix obtained 12 updated addresses through a skip trace, and promptly remailed the Notice Packets to those individuals. *Id.* As of the date of this filing, 8 Notice Packets are considered undeliverable. *Id.*, at ¶ 7.

Settlement Class members had until May 28, 2024 to submit objections, disputes, or requests for exclusion. Islas Decl., ¶¶ 5-10. Phoenix received no objections from Class Members, no requests for exclusion, and no workweek disputes. *Id.* at ¶¶ 8-10. The average estimated payment is \$660.25, with the highest estimated payment being \$5,414.48. *Id.*, ¶ 13.

D. Funding of the Settlement and Uncashed Settlement Funds

The Settlement will be fully funded no later than thirty (30) days after the Court grants final approval of the Settlement. *See* Settlement § 4(B). Within seven (7) business days of Defendant’s deposit of the GSA, and after approval by counsel of the individual Settlement Award calculations, Phoenix will prepare and mail individual Settlement Awards, to Participating Class Members. *Id.*, § 6(D).

After disbursement, Class Members will have 180 days to cash their checks. *See* Settlement, § 6(F). Funds remaining unclaimed after 180 days shall be distributed to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, in the name of the Class Member who did not cash his/her check. *Id.*

IV. ARGUMENT

A. This Court Should Confirm its Conditional Certification of the Settlement Class for Settlement Purposes Because it Meets All of the Requirements for Class Certification Under Code of Civil Procedure § 382

Under Code of Civil Procedure § 382, a class may be certified if: (1) it is ascertainable and its members are too numerous for joinder to be practical; (2) the representative and absent class members share a community of interest, and questions of law and fact common to the class predominate over questions unique to individual class members; (3) the representative’s claims are typical of the classes’ claims; and (4) the representative will fairly and adequately represent the class’s interests. *See Richmond v. Dart Industries, Inc.*, 29 Cal.3d 462, 470 (1981).

Here, this Court found that the Settlement Class meets all the requirements for class

1 certification for settlement purposes when it granted preliminary approval of the Settlement on
2 February 27, 2024. *See generally* Larsen Decl., Exh. A. No subsequent events have cast doubt on
3 the propriety of this determination, and in fact, the reaction of the Settlement Class has been
4 overwhelmingly positive, with not a single objection or request for exclusion. *See* Islas Decl., ¶¶
5 8-10. This Court should therefore confirm its conditional certification of the Settlement Class.

6 **B. This Court Should Finally Approve the Settlement Because it is a Fair, Adequate,**
7 **and Reasonable Compromise of Disputed Wage and Hour Claims**

8 Rule of Court 3.769 conditions class settlements on court approval, which is generally
9 evaluated under the same standards as Fed. R. Civ. Proc. 23. *See Reed v. United Teachers Los*
10 *Angeles*, 208 Cal.App.4th 322, 337 (2012) (Rule 3.769 requires court to determine “that the
11 settlement is fair, reasonable and adequate to all concerned”); *Hanlon v. Chrysler Corp.*, 150 F.3d
12 1011, 1026 (9th Cir. 1998) (Rule 23(e) requires court to determine “whether a proposed settlement
13 is fundamentally fair, adequate, and reasonable”). Settlement is the preferred means of dispute
14 resolution, particularly in class actions. *See In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th
15 Cir. 2008). There is a presumption of fairness when a settlement is negotiated at arm’s length by
16 counsel. *See Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116, 130 (2008).

17 The court approval process consists of preliminary settlement approval, notice being given
18 to class members, and a final fairness and approval hearing being held, at which class members
19 have the opportunity to be heard with respect to the settlement. *See Malibu Outrigger Bd. of*
20 *Governors v. Superior Court*, 103 Cal.App.3d 573, 578-79 (1980). Now that notice has been
21 provided to the Settlement Class, Plaintiff respectfully requests that this Court finally approve the
22 Settlement as fair, adequate, and reasonable.

23 ***1. The Settlement was Reached at Arm’s Length, Through Experienced***
24 ***Counsel and an Experienced Mediator, and Was Based on Sufficient***
25 ***Information to Intelligently Negotiate a Fair Settlement in Light of the***
Claims Asserted and Risks of Continued Litigation

26 To make a fairness determination, the Court should consider several factors, including:
27 “the strength of Plaintiff’s case, the risk, expense, complexity and likely duration of further
28 litigation, the risk of maintaining class action status through trial, the amount offered in
settlement, the extent of discovery completed and the stage of the proceedings, [and] the

1 experience and views of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (1996).
2 “The list of factors is not exclusive and the Court is free to engage in a balancing and weighing
3 of the factors depending on the circumstances of each case.” *Wershba v. Apple Computer, Inc.*,
4 91 Cal.App.4th 224, 245 (2001). As discussed below, the proposed Settlement is fair, adequate,
5 and reasonable in light of the overall balance of factors in this case.

6 **2. The Settlement is Fair, Adequate and Reasonable in Light of the Risks**
7 **Faced by Plaintiff**

8 The Settlement resulted from extensive arm’s-length negotiations between qualified
9 counsel, with the assistance of an experienced mediator, and is fair, adequate, and reasonable for
10 all Settlement Class members. While Plaintiff steadfastly maintains his claims are meritorious,
11 Plaintiff acknowledges his position included substantial risks and uncertainty, which justifies a
12 downward departure from the maximum exposure each claim potentially carried.

13 As detailed in Plaintiff’s Motion for Preliminary Approval, there was a significant risk of
14 non-certification and/or not prevailing on the merits with respect to each of Plaintiff’s claims.
15 Larsen Decl., ¶ 14. For example, with respect to Plaintiff’s claim for under-paid overtime wages,
16 Delta View’s records showed that it only employed 26 or more employees on a small number of
17 days during the Class Period, and was generally subject to the overtime wage requirements only
18 for smaller employers under Wage Order 14, and not the overtime wage requirements for larger
19 employers. *Id.* As for Plaintiff’s claim for meal and rest period violations, Delta View argues that
20 it has maintained legally-compliant meal and period policies and practices throughout the Class
21 Period, and that under *Brinker* it is only required to “provide” the opportunity to take meal periods
22 and “authorize and permit” rest periods, not “ensure” they are taken. *Id.* at ¶ 15. Delta View also
23 contends that employee wage statements showed that it paid thousands of meal period premiums
24 during the Class Period, thus demonstrating its good faith efforts at compliance. *Id.* Delta View
25 further argues that any missed meal or rest periods were due to employee choice, and that
26 individualized inquiries would be required to determine whether individual employees received
27 a non-compliant meal or rest period on each shift, and why any meal or rest period was late, short
28 or missed. *Id.*

1 As for Plaintiff's derivative claims for wage statement penalties, waiting time penalties,
2 and PAGA civil penalties, Delta View argues that Plaintiff's derivative claims fail for the same
3 reasons his underlying claims fail. Larsen Decl., ¶ 16. Delta View further asserts it has strong,
4 good-faith defenses to Plaintiff's underlying claims, precluding imposition of waiting time
5 penalties. *Id.* Delta View further contends any alleged wage statement violations could not be
6 shown to be "knowing and intentional," particularly given its good-faith defenses; that Plaintiff
7 cannot show he or other employees "suffer[ed] injury" due to alleged wage statement violations,
8 as required by Lab. Code § 226(e); and that employee wage statements always accurately reflect
9 amounts paid to employees, as required under the relevant case law. *Id.* Finally, Delta View
10 contends Plaintiff's PAGA claim fails because the underlying claims fail, and that the Court
11 would substantially reduce any potential PAGA penalties given Delta View's good-faith
12 defenses. *Id.*

13 These considerations not only bore heavily on the negotiations leading to the Settlement,
14 but they also confirm that the Settlement is a fair, adequate, and reasonable compromise in view
15 of the risks of further litigation. Larsen Decl., ¶ 17. Thus, while these risks are far from exhaustive,
16 they demonstrate that the Settlement is fair, adequate, and reasonable. *Id.*

17 ***3. The Settlement Fairly, Reasonably, and Adequately Compensates Class***
18 ***Members Because Each Participating Class Member Will Be Paid Based on the***
19 ***Extent of His or Her Injury***

20 Each individual Settlement Award will be calculated based on the proportionate number
21 of workweeks worked by each Class member during the Class Period, and whether the Class
22 member is also entitled to a True-Up Payment and/or portion of the PAGA Amount. *See*
23 *Settlement*, § 6(B)-(C). This method of distribution compensates Settlement Class members based
24 on the estimated extent of their injuries, as those who worked more workweeks would have been
25 subject to more of the alleged wage and hour violations than those who worked fewer workweeks,
26 those who did not previously sign a settlement agreement should be placed on equal footing with
27 those who did, and those who are eligible for a portion of PAGA Amount would be entitled to
28 additional penalties. Thus, the formula for compensating Settlement Class members is fair,
adequate, and reasonable, as it is tethered to the damages and penalties that could be recovered.

1 **4. *The Absence of Any Objections and Opt-Outs Confirms that the***
2 ***Settlement is Fair, Adequate, and Reasonable***

3 Class members' response to a settlement is relevant in evaluating whether it merits final
4 approval. *Dunk, supra*, 48 Cal.App.4th at 1801. The absence of objections and requests for
5 exclusion supports a fairness presumption. *See 7-Eleven Owners for Fair Franchising v.*
6 *Southland Corp.*, 85 Cal.App.4th 1135, 1152-53 (2000) (finding 9 objections and 80 opt-outs
7 from a class of 5,454 showed a "particularly impressive" favorable response from class
8 members). Here, not a single Settlement Class member has objected to the Settlement, nor has
9 any Settlement Class member elected to opt-out of the Settlement, resulting in a 100%
10 participation rate. *Islas Decl.*, ¶¶ 8-10. The extremely favorable response of the Settlement Class
11 further confirms that the Settlement is fair, adequate, and reasonable.

12 **C. The Requested Award of Attorneys' Fees is Reasonable**

13 Plaintiff and the Settlement Class, as the prevailing parties in settlement, are entitled to
14 recover their attorneys' fees and costs for their wage claims. *See* Labor Code §§ 226(e), 1194,
15 2699(g), and 2802(c). A fee award is justified where the legal action has produced its benefits by
16 way of a voluntary settlement. *See, e.g., Maria P. v. Riles*, 43 Cal.3d 1281, 1290-91 (1987);
Westside Community for Independent Living, Inc. v. Obledo, 33 Cal.3d 348, 352-53 (1983).

17 **1. *Under the Common Fund Doctrine, it is Proper to Compensate Class***
18 ***Counsel Based on a Percentage of the Recovery Obtained for the Class***

19 When a settlement results in a common fund for the benefit of a class, class counsel may
20 be awarded fees as a percentage of the common fund. *See Wershba, supra*, 91 Cal.App.4th at
21 254 (recognizing the "percentage of recovery" method). The California Supreme Court
22 confirmed in *Laffitte v. Robert Half Int'l, Inc.*, 1 Cal.5th 480, 506 (2016), that "[t]he percentage
23 of fund method survives in California class action cases." Specifically, the *Laffitte* Court held:

24 The recognized advantages of the percentage method—including relative
25 ease of calculation, alignment of incentives between counsel and the class,
26 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."

27 *Id.* at 503 (internal citation omitted); *see also e.g., Serrano v. Priest*, 20 Cal.3d 25, 34 (1977)
28 ("when a number of persons are entitled in common to a specific fund, and an action brought by

1 a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund,
2 such plaintiff or plaintiffs may be awarded attorney's fees out of the fund."); *Rawlings v.*
3 *Prudential-Bache Properties, Inc.*, 9 F.3d 513, 516 (6th Cir. 1993) (the percentage of the fund
4 method for calculating attorneys' fees more accurately reflects the results achieved for the
5 putative class than the lodestar method and "establishes reasonable expectations on the part of
6 plaintiffs' attorneys as to their expected recovery; and it encourages early settlement, which
7 avoids protracted litigation."); *In re Rite Aid Corp. Securities Litigation*, 396 F.3d 294, 300 (3d
8 Cir. 2005) ("The percentage-of-recovery method is generally favored in common fund cases
9 because it allows courts to award fees from the fund 'in a manner that rewards counsel for success
10 and penalizes it for failure.'").

11 Here, Class Counsel's fee request of \$90,000.00 (one-third of the Gross Settlement
12 Amount) is fair and reasonable based on a percentage of the recovery confirmed with a lodestar
13 cross-check. First, "regardless whether the percentage method or the lodestar method is used, fee
14 awards in class actions average around one-third of the recovery." *Chavez v. Netflix, Inc.*, 162
15 Cal.App.4th 43, 66, fn. 11 (2008). This is also consistent with Class Counsel's experience in
16 similar wage and hour class action matters. See Larsen Decl., ¶¶ 2-6. Thus, the percentage sought
17 by Class Counsel here (the same percentage approved in *Laffitte*) is reasonable.

18 **2. The Reasonableness of the Fee Request is Confirmed by a Lodestar**
19 **"Cross-Check"**

20 *Laffitte* also held that trial courts have discretion to assess reasonableness of fee awards
21 with tools such as the "lodestar cross-check," whereby the trial court calculates class counsel's
22 lodestar (hours worked multiplied by hourly rate) and determines whether the "lodestar
23 multiplier" needed to bring the lodestar on par with the percentage of recovery is reasonable.
24 *Laffitte* at 503-06. While a trial court may utilize the lodestar cross-check, it need not do so. *Id.*,
25 at 506 ("[w]e hold further that trial courts have discretion to conduct a lodestar cross-check on a
26 percentage fee, as the court did here; they also retain the discretion to forgo a lodestar cross-
27 check and use other means to evaluate the reasonableness of a requested percentage fee.")

28 Under the lodestar method, the court computes the "lodestar" amount by multiplying the
number of hours reasonably expended by each attorney or legal staff member by their reasonable

1 hourly rates. *See, e.g., Serrano*, 20 Cal.3d at 48. The court then enhances the lodestar by a
2 “multiplier” to account for a range of factors, such as the novelty and difficulty of the case, its
3 contingent nature, and the degree of success achieved. *Id.* at 49; *Ketchum v. Moses*, 24 Cal.4th
4 1122, 1132-36 (2001); *Thayer v. Wells Fargo Bank*, 92 Cal.App.4th 819, 834 (2001) (“There is
5 no hard-and-fast rule limiting the factors that may justify an exercise of judicial discretion to
6 increase or decrease a lodestar calculation”).

7 Under California law, lodestar multipliers can range from 2 to 3 or even higher. *See, e.g.,*
8 *Chavez, supra*, 162 Cal.App.4th at 49-50, 62 (approving multiplier of approximately 2.5); *City*
9 *of Oakland v. Oakland Raiders*, 203 Cal.App.3d 78 (1988) (approving multiplier of ~2.34);
10 *Coalition for Los Angeles County Planning etc. Interest v. Bd. of Supervisors*, 76 Cal.App.3d
11 241, 251 (1977) (approving multiplier of ~2.04); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
12 1050-51 (9th Cir. 2002) (upholding multiplier of 3.65). In class actions such as this one, where
13 the value of the benefit conferred to the class “can be monetized with a reasonable degree of
14 certainty,” a court may “adjust the lodestar in comparison to a percentage of the common fund
15 to ensure that the fee awarded is reasonable and within the range of fees freely negotiated in the
16 legal marketplace in comparable litigation.” *Consumer Privacy Cases*, 175 Cal.App.4th 545, 557
17 (2009). In doing so, “the court determines, retrospectively, whether the litigation involved a
18 contingent risk or required extraordinary legal skill justifying augmentation of the unadorned
19 lodestar in order to approximate the fair market for such services.” *Id.* at 556; *see also Laffitte,*
20 *supra*, 1 Cal.5th at 503-05.

21 In this case, Class Counsel have a lodestar of approximately \$112,612.50 without the use
22 of any multiplier, compared to the \$90,000 fee request. Larsen Decl., ¶ 20. A general summary
23 showing the number of hours of work performed by each attorney and paralegals is set forth
24 below. The billing rates used are reasonable in view of the evidence submitted herewith. *Id.*, at
25 ¶¶ 20-23; Exh. C (*Laffey Matrix*).

26 ///

27 ///

28 ///

Name	Rate	Hours	Lodestar
Tuvia Korobkin (15th Year Attorney)	\$550	130.5	\$71,775.00
Neil M. Larsen (13th Year Attorney)	\$500	22.75	\$11,375.00
Rijenea Appling (2nd Year Attorney)	\$250	110.5	\$27,625.00
Legal Assistants	\$150	12.25	\$1,837.50
Total Lodestar			\$112,612.50

The fee award requested here is justified because Class Counsel achieved a significant monetary recovery for the Settlement Class in an uncertain and risky case, while bearing the substantial burdens of representation on a contingency basis, and the fees requested are in line with the market rate. *Vizcaino*, 290 F.3d at 1048-51 (finding that exceptional results in a contingency case, significant risk and the absence of supporting precedents, are proper considerations in awarding attorneys' fees). Class Counsel negotiated a substantial recovery for the Settlement Class, and not a single Settlement Class member has objected to the Settlement or to Class Counsel's requested fees. See *Islas Decl.*, ¶ 9.

Additionally, the average settlement payment in this case of approximately \$660.25 exceeds payments in similar wage and hour class action settlements. See, e.g., *Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. 2012) (finding that average payment to class members of less than \$200 was a "good" result); *Williams v. Centerplate, Inc.*, Nos. 11-CV-2159-H-KSC, 2013 WL 4525428, at *4 (S.D. Cal. 2013) (granting final approval of class action settlement where average recovery for each class member was approximately \$108, based on \$239,363.14 distributed to 2,212 claimants). The fact that Class Counsel achieved these results in the face of serious defense challenges, in the face of serious defense challenges and an uncertain legal landscape, confirms the strength of the results achieved.

As discussed above, this case presented significant risk as to both class certification and merits considerations. Accordingly, it is fair and reasonable to account for these risks in compensating Class Counsel. Class Counsel should also be compensated for the risks involved in undertaking this litigation and expending considerable effort, all while working on a pure contingency basis. Since undertaking representation of Plaintiff, Class Counsel have borne all

1 the costs of litigation without receiving any compensation. Larsen Decl., ¶ 18. During this time,
2 Class Counsel have expended \$11,123.10 in costs and have devoted substantial time to this
3 litigation. *Id.* & Exh. B.

4 Class Counsel's efforts have included conducting pre-filing investigation, analyzing
5 Plaintiff's claims, conducting legal research, reviewing Delta View's documents and policies,
6 conducting extensive formal and informal discovery, analyzing timekeeping and payroll records
7 with help of an expert to develop a comprehensive mediation brief and exposure analysis,
8 preparing for and attending mediation, negotiating and preparing the short-form Memorandum of
9 Understanding and the long-form Settlement Agreement, preparing the Motion for Preliminary
10 Approval, overseeing the Notice process and fielding inquiries from Settlement Class members,
11 drafting the instant Motion for Final Approval, and otherwise litigating the case. *See* Larsen Decl.,
12 ¶ 19. Given the considerable potential for adverse outcomes in this case, including, but not limited
13 to, losing on class certification and/or merits issues, the contingent risk borne by Class Counsel
14 was great. *Id.*

15 Class Counsel's previous experience in litigating wage and hour class actions also
16 supports the reasonableness of the fee request. Class Counsel are well-versed in wage and hour
17 class action litigation, with substantial experience litigating claims for unpaid wages, meal and
18 rest period violations, and related penalties, and have been certified as class counsel in numerous
19 other cases. *See* Larsen Decl., ¶¶ 2-6. Their experience in similar matters was integral in
20 evaluating the strengths and weaknesses of the case against Delta View, and the reasonableness
21 of the Settlement. *Id.* Practice in the narrow field of wage and hour litigation requires skill and
22 knowledge concerning the rapidly evolving substantive state and federal law, as well as the
23 procedural law of class action litigation. *Id.* Because it is reasonable to compensate Class Counsel
24 commensurate with their skill, reputation, and experience, a fee award of one-third of the Gross
25 Settlement Amount is reasonable as the California Supreme Court held in *Laffitte*.

26 **D. The Requested Litigation Cost Amount Warrants Final Approval as Fair,**
27 **Adequate, and Reasonable**

28 Class Counsel requests \$11,123.10 in litigation costs. Larsen Decl., ¶ 18 & Exh. B. The

1 cost request is fair, adequate, and reasonable, as the costs were reasonably incurred, and the costs
2 Plaintiff seeks are routinely approved by courts. *See, e.g., Harris v. Marhoefer*, 24 F.3d 16, 19
3 (9th Cir. 1994) (counsel should recover “those out-of-pocket expenses that would normally be
4 charged to a fee paying client”); *Ashker v. Sayre*, No. 05-03759 CW, 2011 WL 825713, at * 3
5 (N.D. Cal. 2011) (“costs of reproducing pleadings, motions and exhibits are typically billed by
6 attorneys to their fee-paying clients” and are reimbursable); *Trustees of Const. Industry &*
7 *Laborers Health and Welfare Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258-59 (9th Cir. 2006)
8 (legal research costs are reimbursable); *In re Immune Response Securities Litigation*, 497 F.
9 Supp. 2d 1166, 1177-78 (S.D. Cal. 2007) (mediation expenses, consultant and expert fees, legal
10 research, copies, postage, filing fees, messenger and overnight delivery costs are reimbursable).
11 Because the expense reimbursements requested by Class Counsel were reasonably incurred, and
12 no Class member has objected to them, this Court should grant the request for costs.

13 **E. This Court Should Approve the Requested Settlement Administration Costs**

14 Plaintiff also requests that this Court approve \$7,750.00 in settlement administration costs
15 to the Settlement Administrator, Phoenix. As detailed in the declaration of Lluvia Islas submitted
16 herewith, Phoenix performed duties in connection with this Settlement that were integral in
17 effectuating the Settlement and the Notice process. Among other things, Phoenix calculated each
18 Settlement Class member’s individual payment, updated addresses contained in the class data
19 supplied by Delta View, translated and formatted Notices for mailing, mailed Notice Packets to
20 all 149 Settlement Class members, kept the parties informed of any objections or requests for
21 exclusion, and have otherwise administered the Settlement. *See Islas Decl.*, ¶¶ 2-10. Phoenix’s
22 requested costs are fair, reasonable, and adequate, and should be finally approved.

23 **F. This Court Should Approve Plaintiff’s Requested Class Representative**
24 **Service Payment**

25 Courts routinely approve enhancement payments to compensate named plaintiffs for the
26 services they provide and the risks they incur during class action litigation. *See, e.g., Bell v.*
27 *Farmers Ins. Exchange*, 115 Cal.App.4th 715, 726 (2004) (upholding “service payments” to
28 named plaintiffs for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield Co.*

1 (N.D. Cal. 1995) 901 F. Supp. 294 (approving \$50,000 service payment).

2 Here, Plaintiff seeks a Class Representative Service Payment of \$5,000, and believes this
3 request is reasonable given his efforts in this case and the risks he undertook on behalf of Class
4 members. *See* Jimenez Decl. ¶¶ 4-6. Plaintiff gathered documents for use in the lawsuit, reviewed
5 and analyzed documents related to the claims in this case and the policies produced by Delta
6 View, and discussed case strategy and Delta View’s wage and hour practices and policies with
7 Class Counsel on numerous occasions. *Id.*, ¶ 5.

8 Plaintiff also undertook the risk of being liable for Delta View’s costs if this case were
9 lost, as well as the reputational risk of being the named plaintiff in a wage and hour class action
10 against an employer. *See, e.g., Deaver v. Compass Bank*, 2015 WL 8526982 at **14-15 (N.D.
11 Cal. Dec. 11, 2015) (approving \$7,500 incentive payment in \$500,000 wage and hour settlement,
12 finding the award “particularly appropriate in this wage and hour class action, where Plaintiff
13 undertook a significant ‘reputational risk’ in bringing this action against his former employer”).
14 *See Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245, 268 (N.D. Cal. 2015) (approving
15 \$15,000 total award to named plaintiff in wage and hour class action settlement, including
16 \$10,000 incentive award plus an additional \$5,000 for plaintiff’s release of claims). Moreover,
17 after receiving notice of the proposed Service Award for Plaintiff, no Settlement Class member
18 has objected to it. *See Islas Decl.*, ¶ 9. Thus, the requested \$5,000 service payment to Plaintiff is
19 appropriate and justified as part of the Settlement and should be finally approved.

20 **I. CONCLUSION**

21 For the foregoing reasons, Plaintiff respectfully submits that this Court should grant
22 Plaintiff’s motion in its entirety and adopt the [Proposed] Judgment and Order Granting Final
23 Approval of Class Action Settlement submitted herewith.

24 Respectfully submitted,

25 Dated: June 18, 2024

ABRAMSON LABOR GROUP

26
27 By: Neil Larsen
Neil M. Larsen
28 Attorneys for Plaintiff