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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JEREMIAH CLAIBORNE, PABLO CAMPOS HERNANDEZ and MARCOS RODRIGUEZ and VICTOR AVALOS on behalf of themselves and all others similarly situated, Plaintiff, vs. PERFORMANCE TRANSPORTATION, LLC, a California limited liability company; PERFORMANCE FOOD GROUP, INC., a Colorado corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. 22STCV31766 ASSIGNED FOR ALL PURPOSES TO: Judge: Hon. David S. Cunningham III Dept.: S11 Class Action **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** [Declarations of Lance Dacre, Ruben Escobedo Shani O. Zakay, Jean-Claude Lapuyade and [Proposed] Order, concurrently filed herewith] Date: May 28, 2026 Time: 11:00 a.m. Dept.: S11

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Attorneys for Plaintiff MARCOS RODRIGUEZ

PLEASE TAKE NOTICE THAT on May 28, 2026 at 11:00 a.m. in Department S11 of the above entitled Court located at 312 N. Spring Street, Los Angeles, CA 90012, Plaintiffs Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez, and Victor Avalos ("Plaintiffs") will and hereby do move the Court for an Order: (1) certifying the Class for Settlement purposes only; (2) granting final approval of the Class Action and PAGA Settlement; (3) approving the maximum settlement amount of Seven Hundred Twenty Seven Thousand Seven Hundred Eighty Three Dollars and Sixty Seven Cents ($727,783.67); (4) approving all settlement payments to Participating Class Members and Aggrieved Employees; (5) approving Plaintiffs Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez, and Victor Avalos as Class Representatives and allocating Service Payments to the Class Representatives of Ten Thousand Dollars ($10,000) each; (6) approving the PAGA Payment of Thirty Seven Thousand Five Hundred Dollars ($37,500); (7) approving costs of administering the Settlement to ILYM Group, Inc., in the amount Twelve Thousand Eight Hundred Fifty Dollars ($12,850); (8) approving payment of Two Hundred Forty Two Thousand Five Hundred Seventy Dollars and Thirty Cents ($242,570.30) in attorneys' fees and total attorneys' cost of Nineteen Thousand Five Hundred Forty-Five Dollars and Ninety-Nine Cents ($19,545.99); (9) approving James Hawkins, Isandra Fernandez, and Lance Dacre from the law firm of James Hawkins, APLC; Ruben Escobedo from the law firm of Workworld Law Corp; Shani O. Zakay from the law firm of Zakay Law Group, APLC; and Jean-Claude Lapuyade from the law firm of JCL Law Firm, APC, as Class Counsel for Plaintiffs and the Class Members in this matter.

This unopposed motion is made pursuant to California Rules of Court Rule 3.769, which requires court approval of the settlement of a putative class action. This unopposed motion is based on: (i) the following Memorandum of Points and Authorities; (ii) the concurrently filed Declarations of Lance Dacre, Ruben Escobedo, Shani O. Zakay and Jean-Claude Lapuyade; (iii) the Class Representative declarations filed in this matter in support of the approval of the settlement; (iv) the First Amended Joint Stipulation for Settlement and Release of Class Action and Representative Action Claims and the First Amendment to First Amended Joint Stipulation for Settlement and Release of Class Action and Representative Action Claims (collectively and hereafter referred to as the "Settlement Agreement") attached as **Exhibit 1** to the Declaration of Lance Dacre; (v) upon the oral arguments of counsel (should there be any) and; (vi) upon the complete records and file of this matter.

Dated: May 5, 2026

JAMES HAWKINS, APLC

Isandra Y. Fernandez
Lance Dacre
Attorneys for Plaintiff Jeremiah Claiborne

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez, and Victor Avalos ("Plaintiffs") on behalf of themselves and all Class Members, seek final approval of the class action and PAGA settlement agreement reached with Performance Transportation, LLC ("PTL"), and Performance Food Group, Inc. ("PTL") (collectively "Defendants," collectively with Plaintiffs the "Parties").

On December 16, 2025, this Court preliminarily approved the settlement amount of Seven Hundred Twenty-Seven Thousand Seven Hundred Eighty-Three Dollars and Sixty-Seven Cents ($727,783.67) as being fair, adequate, and reasonable. Further, this Court preliminarily appointed Plaintiffs' counsel James Hawkins, Isandra Fernandez, and Lance Dacre from the law firm of James Hawkins, APLC; Ruben Escobedo from the law firm of Workworld Law Corp; Shani O. Zakay from the law firm of Zakay Law Group, APLC; and Jean-Claude Lapuyade from the law firm of JCL Law Firm, APC, as Class Counsel, the named Plaintiffs Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez, and Victor Avalos as Class Representatives, and preliminarily certified the Class defined as: all current and former nonexempt, hourly-paid employees (including but not limited to hourly and component-pay truck drivers) who performed work for Performance Transportation, LLC ("PTL") in California at any time from September 1, 2018, through March 18, 2024. (Class Period"). The Court also approved ILYM Group, Inc. ("ILYM") as the Settlement Administrator.

On January 20, 2026, the Parties notified the Class Members about the settlement through the Settlement Administrator, ILYM. (Declaration of Nathalie Beltran from ILYM ("Beltran Decl." ¶ 7.) The deadline for requests for exclusions from and objections to the Settlement expired March 6, 2026, forty-five (45) days after the mailing. (Beltran Decl. ¶¶ 11-12.) As previously set forth in Plaintiffs' Motion for Preliminary Approval ("PAM"), this is a cash settlement with no reversionary aspect. Every Class Member who has not opted out of the Settlement will automatically be mailed an individual settlement payment.

Most importantly, the Settlement and all its terms received overwhelming support from the Class Members. Specifically, out of the total 855 Class Members, there are zero (0) requests for exclusion and zero (0) objections to the settlement. (Beltran Decl., ¶¶ 11-13.) Therefore, Plaintiffs respectfully request the Court grant final approval of the Settlement, Class Counsels' requested Attorney Fees and Costs amounts, Class Representative Service Payments, Settlement Administration Expenses, and the PAGA Payment as fully disclosed to Class Members.

II. LITIGATION AND SETTLEMENT

A. Pleadings

On March 14, 2022, Plaintiff Hernandez filed a PAGA representative action in Kern County Superior Court captioned State ex rel. Hernandez v. Performance Transportation, LLC, Case. No. BCV-22-100592 (the "Hernandez Action"). (See Declaration of Lance Dacre in Support of Motion for Final Approval of Class Action and PAGA Settlement ("Dacre Decl.") ¶ 2.)

On September 28, 2022, Plaintiff Claiborne filed a wage and hour class action against Defendants in Los Angeles County Superior Court captioned Clairborne v. Performance Transportation, LLC et al. Case No. 22STCV31766 ("Claiborne" Action). On that same date, Claiborne submitted notice to the LWDA of his intent to file a claim under PAGA. On October 25, 2022, Plaintiff submitted an amended notice to the LWDA and on December 22, 2022, filed a First Amended Complaint adding the claims in Hernandez. Hernandez was subsequently dismissed without prejudice. (Dacre Decl. ¶ 3.)

On September 1, 2022, Plaintiff Rodriguez filed a wage and hour class action against Defendant PFG in Alameda Superior Court captioned *Rodriguez v. Performance Food Group* Case No. 22CV021320) ("*Rodriguez* Action") alleging the following claims: (1) unfair competition, (2) failure to pay minimum wages; (3) failure to pay overtime wages; (4) failure to provide meal periods or compensation in lieu thereof; (5) failure to provide rest periods or compensation in lieu thereof; (6) failure to provide accurate, itemized wage statements, and (7) failure to reimburse employees for business expenses. On November 8, 2022, Rodriguez filed a PAGA action in Alameda County Superior Court captioned *Rodriguez v. Performance*

Transportation, LLC, Case No. 22CV021320 ("*Rodriguez*" Action). (Dacre Decl. ¶ 4.)

On August 28, 2024, Plaintiffs Claiborne and Hernandez filed a Second Amended Complaint adding the named plaintiffs, Marcos Rodriguez and Victor Avalos and facts and claims asserted therein. The Second Amended Complaint is the "Operative Complaint" in the Action, alleging: (1) failure to pay lawful wages including overtime pursuant to California Labor Code sections 510, 1194 and 1198, and the applicable wage orders; (2) failure to provide lawful meal periods pay premiums in lieu thereof in violation of California Labor Code sections 226.7 and 512(a), and the applicable wage orders; (3) failure to lawful rest periods or pay premiums in lieu thereof in violation of California Labor Code section 226.7, and the applicable wage orders; (4) failure to reimburse employee expenses pursuant to California Labor Code sections 2800 and 2802; (5) failure to timely pay wages during employment in violation of California Labor Code section 204; (6) failure to timely pay wages due at termination of employment in violation of California Labor Code sections 201-203; (7) failure to provide accurate and itemized wage statements in violation of California Labor Code section 226(a) and the applicable wage orders; (8) violations of California Business and Professions Code section 17200, *et seq*.; (9) failure to establish, implement, and maintain effective injury prevention program; (10) permitting unsafe work and failure to provide safe workplace, practices, and processes (11) failure to pay minimum wages owed; (12) failure to provide time records; (13) failure to pay correct sick pay compensation pursuant to Labor Code sections 246, 218.5, and the applicable wage orders; and (14) a cause of action for civil penalties under the Private Attorneys General Act, California Labor Code section 2698, *et seq*. (Dacre Decl. ¶ 5.)

B. <u>Discovery and Mediation</u>

Through informal discovery, Defendant produced extensive documentation, including, but not limited to, employment records, policies, time and wage records, employment and operations practices, and procedures documents, composite data, as well as time and pay data for a sample of Class Members during the Class Period, and other detailed information relevant to the claims in the Action. (Dacre Decl. ¶ 6.) The Parties' attorneys also engaged in numerous discussions about the strengths and weaknesses of the claims and defenses in the Action and meticulously analyzed these records, including the use of an expert. (*Id.*).

On March 1, 2024, the Parties participated in a full-day mediation with Jason Marsili, an experienced wage and hour class action mediator (Dacre Decl. ¶ 7.) At the mediation, the Parties exchanged further information and documentation concerning Plaintiffs' claims and Defendants' defenses. Although they were unable to reach an agreement at the mediation, the Parties subsequently continued negotiations and accepted a mediator's proposal and reached a global resolution of all claims asserted in the Action. (*Id.*) The principal terms were set forth in a Memorandum of Understanding ("MOU") executed by the Parties on or about December 18, 2023, and then ultimately the First Amended Joint Stipulation for Settlement and Release of Class Action and Representative Action Claims and the First Amendment to First Amended Joint Stipulation for Settlement and Release of Class Action and Representative Action Claims. (collectively the "Settlement Agreement") This settlement is now before this Court for final approval. (Dacre Decl., ¶ 7; Exh. 1).

C. <u>The Preliminarily Approved Settlement</u>

On December 30, 2024, Plaintiffs filed the Motion for Preliminary Approval of Class Action and PAGA Settlement. On December 16, 2025, the Court entered the Order granting preliminary approval of the Settlement Agreement and preliminarily appointed Class Counsel (James Hawkins, Isandra Fernandez, and Lance Dacre from the law firm of James Hawkins, APLC; Ruben Escobedo from the law firm of Workworld Law Corp; Shani O. Zakay from the law firm of Zakay Law Group, APLC; and Jean-Claude Lapuyade from the law firm of JCL Law Firm, APC), the Class Representatives (Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez, and Victor Avalos), and approved the Administrator (ILYM). The Court also approved the proposed Court Approved Notice of Class Action Settlement and Hearing Date for Final Approval ("Class Notice") Now that administration has been completed, subject to the Court's final approval, the fees and expenses will be paid from the Gross Settlement Amount ("GSA") of $727,783.67 as follows:

1. Subject to Court approval, Class Counsel shall be paid a Class Counsel Fees Payment of not more than 33 and 1/3%, which is Two Hundred Forty-Two Thousand Five Hundred Seventy Dollars and Thirty Cents ($242,570.30) and a Class Counsel Litigation Expenses Payment of Nineteen Thousand Five Hundred Forty-Five Dollars and Ninety-Nine Cents ($19,545.99). (Settlement Agreement, ¶ 13); Dacre Decl. ¶ 24, Ex. 2; Declaration of Ruben Escobedo ("Escobedo Decl.") ¶ 18, Exh 1; Declaration of Shani O. Zakay ("Zakay Decl.") ¶ III.3, Exh. B; Declaration of Jean-Claude Lapuyade ("Lapuyade Decl.") ¶¶ 3, 11, Exh 1.)

2. Subject to Court approval, Class Representative Service Payments to the Class Representatives of not more than Ten Thousand Dollars ($10,000) each to Plaintiffs Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez, and Victor Avalos, (in addition to any Individual Class Payments Plaintiffs are entitled to receive as Participating Class Members and any Individual PAGA Payments due to Plaintiffs) (Settlement Agreement, ¶ 14)

3. Subject to Court approval, the Settlement Administrator will receive an Administration Expenses Payment in the amount of Twelve Thousand Eight Hundred Fifty Dollars ($12,850). (Beltran Decl. ¶¶ 14, 16)

4. Subject to Court approval, Defendant shall pay a PAGA Payment in the amount of (i) Thirty-Seven Thousand Five Hundred Dollars ($37,500) allocated from the GSA, with 75% ($28,125) allocated to the LWDA PAGA Payment and 25% ($9,375) allocated to the Individual PAGA Payments (Settlement Agreement, ¶ 13) The Individual PAGA Payments are not subject to withholdings and will be reported via IRS Form 1099, if applicable.

5. Subject to Court Approval, tax allocation shall be: 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported via IRS Form W-2. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported via IRS Form 1099. (Settlement Agreement, ¶ 15)

6. The GSA does not include Defendant's share of taxes on the wages portion of Individual Class Payments, which will be paid by Defendant separately and in addition to the gross settlement amount. (Settlement Agreement, ¶ 1.M)

D. <u>Dissemination of Class Notice</u>

On January 12, 2026, Defendant's counsel provided ILYM with the class data file for 855 individuals, containing the names, social security numbers, last known mailing addresses, and the total number of relevant workweeks worked by each Settlement Class Member. (Beltran Decl., ¶ 5.) The mailing addresses contained in the Class List were processed and updated utilizing the National Change of Address Database ("NCOA"). (Beltran Decl., ¶ 6.) On January 20, 2026, the Class Notice was mailed to all 855 Class Members. (Beltran Decl., ¶ 7.) A total of 78 Class Notices were returned by the post office. ILYM performed an advanced address search (i.e., skip trace) through which it was able to locate 69 updated addresses, and ILYM mailed a Class Notice to those updated addresses. (Beltran Decl., ¶ 8.) Ultimately, 9 Class Notices were deemed undeliverable. (Beltran Decl., ¶ 10.)

E. <u>The Settlement Provides Reasonable Compensation to the Class Members</u>

Even without the presumption of fairness and reasonableness, the Settlement is well within the range of reasonableness. All Participating Class Members will be paid their portion of the Net Settlement Amount ("NSA"). Subject to Court approval, the NSA available to pay the Class is approximately $375,317.39. (Beltran Decl., ¶ 14.) The 855 Participating Class Members, (100% of the total 855 Class Members) are to be paid Individual Settlement Amounts out of the NSA. (Beltran Decl., ¶¶ 13.) The average of all estimated Participating Class payments is $438.97, and the highest class payment is $1,988.06. (Beltran Decl., ¶ 14.)

The Settlement clearly is within the range of reasonableness as thoroughly discussed in detail in the motion for preliminary approval and as considered by the Court in granting preliminary approval. As explained at preliminary approval, accounting for the risks of continued litigation, Plaintiffs determined that a settlement amounting to $727,783.67 was fair and reasonable. The specific details of the claims and their valuations addressed in the Motion for Preliminary Approval are set forth in the Declaration of Lance Dacre in Support of Motion for

Preliminary Approval of Class Action and PAGA Settlement ¶¶ 9-10 This is a fair and reasonable recovery far exceeding settlements previously approved by courts. (*See, e.g., In re Warfarin Sodium Antitrust Litig.,* 212 F.R.D. 231, 256-58 (D. Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total estimated damages); *In Re Armored Car Antitrust Litig.,* 472 F. Supp. 1357, 1373 (N.D. Ga. 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In Re Four Seasons Secs. Laws Litig.,* 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of damages); *Balderas v. Massage Envy Franchising, LLP,* 2014 WL 3610945, at *5 (N.D. Cal. July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery "[fell] within the range of possible initial approval based on the strength of plaintiff's case and the risk and expense of continued litigation."); *In re Omnivision Techs., Inc.,* 559 F. Supp. 2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).[1]

Plaintiffs have considered the expense and length of continued proceedings necessary to continue this lawsuit against Defendant through trial and any possible appeals. Plaintiffs are also aware of the burdens of proof necessary to establish liability for the claims asserted, Defendant's defenses thereto, and the potential difficulties in establishing Plaintiffs' damages. (Dacre Decl. ¶ 8.)

The proposed Settlement requires Defendant to pay each Class Member who does not opt out a portion of the NSA as specifically set forth in the Settlement Agreement. The amount to be paid to the Class is undoubtedly fair, adequate, and reasonable especially in light of the

[1] *See also In re Uber FCRA Litig*., No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross settlement fund, prior to deducting attorneys' fees and services awards, was valued at 7.5% or less of total possible verdict); *Viceral v. Mistras Grp., Inc*., No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement representing "8.1% of the full verdict value" with net settlement amount representing approximately 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc*., No. 12-cv-02705-DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross settlement amount represented 8.6% of the maximum potential recovery from the class claims and estimated amount distributable to class after accounting for attorneys' fees and other deductions represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where "[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee and costs—even before any reduction thereof for attorney's fees and costs.").

significant risk to Plaintiffs and Class Members in continuing with the litigation, potentially not obtaining class certification, and the chance of not prevailing at trial and thus leaving employees with no recovery. (Dacre Decl., ¶ 9).

III. FINAL SETTLEMENT APPROVAL IS APPROPRIATE

The law favors settlements, particularly in class actions and other complex cases in which substantial resources can be conserved by avoiding the time, cost and rigors of formal litigation. (*Class Plaintiffs v. City of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276; *Potter v. Pacific Coast Lumber Co. Of Cal.* (1951) 37 Cal. 2d. 592, 602-603; Newberg on Class Actions § 11.41 (4th ed.. When faced with a motion for final approval of a class action settlement under Code of Civil Procedure section 382, a court inquires whether the settlement is "fair, adequate, and reasonable." (*See e.g., Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 407-408; *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.)

A. This Court Preliminarily Found This Settlement to be Fair, Adequate and Reasonable and Nothing Has Changed to Disturb That

Before granting final approval of a class action settlement, courts must determine that the proposed settlement is fair, reasonable, and adequate—and not a product of fraud, overreaching, or collusion. (Cal. R. Ct. 3.769 (g); Cal. Civ. Pro. Code § 382; *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at 1801.) Courts must presume that a settlement is fair, reasonable, and adequate, and thus appropriate for Final approval when the following three factors are satisfied: (1) the Parties reached settlement via arms-length negotiations; (2) counsel conducted sufficient investigation and discovery to allow themselves and the court to act intelligently; and (3) counsel is experienced in similar litigation. (*Id.* at 1802; *see also 7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal. App. 4th 1135, 1146.) Further, as discussed below, although not determinative, courts consider the percentage of objectors in determining whether a presumption of fairness exists. (*7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1153.) There is no question that these factors are satisfied here. The Parties conducted a sufficient amount of informal discovery, participated in a full-day private mediation, and had numerous conferences of counsel that ultimately led to an arms-length settlement which provides for favorable recovery. Moreover, out of 855 Class Members there were zero requests for exclusion from, and zero objections to, the Settlement. (Beltran Decl., ¶¶ 11-13.)

B. The Settlement Resulted from Non-Collusive, Arms-Length Negotiations

There certainly is no collusion between the Parties. As discussed in the Preliminary Approval Motion and herein, Plaintiffs and Defendants participated in a full day mediation with an experienced wage and hour mediator. (Dacre Decl., ¶ 10). Armed with all of the relevant information and the help of a highly experienced mediator, counsel for the Parties engaged in lengthy, serious, and meaningful negotiations which has resulted in the Settlement Agreement. (*Id*.) The involvement of a neutral third-party mediator is a factor that favors approval and evidences the presumptive fairness of the arms-length negotiations. Indeed, courts should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring themselves that a settlement agreement represents an arms-length transaction entered without self-dealing or other potential misconduct. (*Kullar v. Foot Locker, supra,* 168 Cal. App. 4th at 129.)

C. The Settlement is Supported by Substantial Investigative and Discovery Efforts

As discussed in the preliminary approval papers, supporting declarations and herein, Plaintiffs' counsel analyzed a significant amount of information that Defendant produced through informal discovery and in preparation for mediation. The Parties have conducted significant investigation of the facts and law during the prosecution of the Action. Class Counsels' research enabled them to pinpoint the relevant issues and claims and to assess potential liability and damages. These efforts resulted in the Parties achieving a resolution on favorable terms, as was evidenced during mediation and negotiations leading to Settlement. (Dacre Decl., ¶ 11; Escobedo Decl. ¶ 13.)

D. Class Counsel is Experienced in Similar Litigation

The endorsement of qualified and well-informed counsel of the settlement as fair is entitled to significant weight. (*See Dunk, supra*, 48 Cal.App.4th at 1802.) As discussed in the preliminary approval papers and set forth in the declarations of Class Counsel, Class Counsel have represented, mediated, and settled other employee class actions in wage and hour litigation and have knowledge of the strengths and weaknesses of the claims against Defendant and the benefits of the proposed settlement under the circumstances of the case. (Dacre Decl., at ¶¶ 13-19; Escobedo Decl. ¶¶ 3-11; Zakay Decl. ¶ I.3, Exh. A; Lapuyade Decl. ¶¶ 4, 7, 13-18, Exh. 2) Class Counsel believes that the Settlement is fair, adequate, reasonable, and in the best interests of the Class as a whole. (Dacre Decl., ¶13; Escobedo Decl. 13)

E. Class Members' Positive Reaction to the Settlement Favors Final Approval

Finally, courts look at the reaction of class members to determine if a settlement that directly affects their interests should be approved as fair, adequate, and reasonable. (*Dunk, supra*, 48 Cal. App. 4th at 1802.) As noted above, out of 855 Class Members, there were zero requests for exclusion and zero objections. (Beltran Decl., ¶¶ 11-13.) The Court should construe this as a further indication of Class Members' support for the Settlement as fair, adequate, and reasonable.

IV. CLASS REPRESENTATIVE SERVICE PAYMENTS ARE REASONABLE

The settlement provides for Class Representative Service Payments to be paid to the named Plaintiffs and Class Representatives. The purpose is to provide an additional incentive payment, taking into consideration the risks, time and effort in coming forward to fulfill all the duties associated with being a Class Representative. Awarding incentive awards to compensate named plaintiff in class actions has been specifically recognized. (*See, e.g., Clark v. American Residential Services, LLC* (2009) 175 Cal App 4th 785, 804 (incentive awards to named Plaintiffs appropriate for participation in class action); *Bell v. Farmers Ins. Exchange* (2004) 115 Cal. App. 4th 715, 726 (upholding "service payments" to named plaintiffs for their efforts in bringing class case).)

As stated by the Court of Appeal in the *Cellphone Termination Fee Cases*: incentive awards are "intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." (*Cellphone Termination Fee Case* (2010) 186 Cal. App. 4th 1380, 1394 (approving an incentive award of $10,000).

The Class Representative Service Payment is intended to compensate named Plaintiffs and Class Representatives Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez, and Victor Avalos for their willingness to accept the responsibility of representing the interests of all Class Members as well as acting a attorneys general on behalf of the employees. The purpose is to provide an incentive payment, taking into consideration the risks, time, and effort expended by them coming forward to provide invaluable information and to litigate this matter on behalf of all Class Members. Here, each Plaintiff independently brought their own lawsuit. Each Plaintiff individually accepted the risk they alone may have had to pay significant fees and costs if they lost; they each have spent many hours discussing the case with their attorneys, looking for and providing documents, and spending many hours of their personal time to do so. They each have waived any possible claim they might have against Defendants by signing a Code of Civil Procedure 1542 waiver. (Dacre Decl., ¶ 23; see Declarations of Jeremiah Claiborne, Pablo Campos Hernandez, Marcos Rodriguez, and Victor Avalos filed in support of the motions for approval of the Settlement.)

Plaintiffs have also given up ***any*** personal claims they had or may have had in reaching this Settlement on behalf of the other employees. The Plaintiffs' release of claims given in this Settlement is ***much broader*** and includes a California Code of Civil Procedure 1542 waiver, which is ***not*** given by any of the other class members. (Dacre Decl., ¶ 23)

Plaintiffs also risked potential judgment against them if this case had been unsuccessful. In class action losses, class representatives are deemed the losing party that is liable for the prevailing party's costs. (*Earley v. Superior Court* (2000) 79 Cal. App. 4th 1420, 1433-1434.) Finally, Plaintiffs also risked this lawsuit having a negative impact on future employment opportunities, as prospective employers may be less inclined to hire an employee who has served as a class representative. *see, e.g. Staton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 977.) This risk is not mitigated by the fact there are multiple Plaintiffs nor by the fact it is present in other class action lawsuits. It remains a real possibility with a huge impact for hourly employees such as Plaintiffs. As such, Plaintiffs respectfully request that this Court approve the Class Representative Service Payments in the amounts of $10,000 (a fraction of the GSA) each to Plaintiffs Jeremiah

Claiborne, Pablo Campos Hernandez, Marcos Rodriguez, and Victor Avalos.

V. CLASS COUNELS' REQUEST FOR FEES IS REASONABLE

Subject to court approval, the settlement amount of $727,783.67 includes an allocation of Two Hundred Forty Two Thousand Five Hundred Seventy Dollars and Thirty Cents ($242,570.30) (33 and 1/3% of the GSA) in Class Counsel Fees. Plaintiffs and class members are entitled to recover their attorneys' fees and costs. (Labor Code § 2802; Code Civ. Proc. § 1021.5(a); *Earley*, 79 Cal.App.4th at 1420.) A fee award is justified when class benefits are obtained via settlement. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1290-91; *Westside Cty. for Indep. Living, Inc. v. Obledo* (1983) 33 Cal.3d 348, 352-53.) Fee awards may be based on (1) the percentage-of-the-benefit method; or (2) the lodestar plus multiplier method. (*See Wershba v. Apple Computer Inc.* (2001) 91 Cal. App. 4th 224, 254; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 27.) Both methods are proper in California, with courts typically only using a lodestar-multiplier method as a check against the reasonableness of a percentage fee award. (*See, e.g.*, *Serrano v. Priest* (*Serano III*) (1977) 20 Cal.3d 25, 48-49 fn. 23; *People ex rel. Dept. of Transportation v. Yuki* (1995) 31 Cal. App. 4th 1754, 1769-1772; *Salton Bay Marina, Inc. v. Imperial Irrigation Dist.* (1985) 172 Cal. App. 3d 914, 954.) Regardless of the method used to analyze attorneys' fees, the main inquiry is to determine whether the end result is fair and reasonable. *Powers v. Eichen* (9th Cir. 2000) 229 F. 3d 1249, 1258.

A. Class Counsels' Requested Fees Are Reasonable Under the Lodestar/Multiplier Analysis

When fees are allocated by percentage method, courts have discretion to "cross-check" the fees awarded through the lodestar method. However, the Supreme Court in *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal. 5th 480, 505, "emphasize[d] [that] the lodestar calculation, when used in this manner, does not override the trial court's primary determination of the fee as a percentage of the common fund and thus does not impose an absolute maximum or minimum on the potential fee award."

In determining the outcome of a fee award in a class action matter, one of the main benchmarks to consider is the result for the class. The Supreme Court has said that in an award of attorney's fees the "most critical factor is the degree of success obtained." (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 436.) The "benefit obtained for the class" is considered the "foremost" consideration in determining the appropriate fee in a common fund case. (*In re Bluetooth Headset Products Liability Litigation* (9th Cir. 2011) 654 F.3d 935, 942.)

The lodestar-multiplier method begins with a calculation of time spent and reasonable hourly compensation of each attorney and paralegal who worked on the case. Then to compensate counsel for risk, quality, and result, courts commonly apply a "multiplier" to the lodestar in awarding attorneys' fees. California courts often increase the base lodestar with a multiplier after considering: (1) the continuing obligation of plaintiff's counsel to devote time and effort to the litigation; (2) the extent to which the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee agreement, both from the point of view of eventual success on the merits and securing an award; (4) the experience, reputation, and ability of the attorneys who performed the services, and the skill they displayed in litigation; (5) the amount involved and the results obtained on behalf of the class by plaintiff 's counsel; and (6) the reaction of the class members. (*See, e.g., Serrano*, *supra*, 20 Cal. 3d at 49; *Dunk v. Ford Motor Co*., *supra,* 48 Cal. App. 4th at 1810 n.21.) However, no rigid formula applies, and each factor should be considered only "where appropriate." (*See Dept. of Transp. v. Yuki* (1995) 31 Cal. App. 4th 1754, 1771; *see also Serrano, supra*, 20 Cal.3d at 49.)

1. <u>Time and Effort</u>

Class Counsel, who are experienced wage and hour class action attorneys, have put a significant number of hours in this case. Class Counsel had to conduct substantial investigation, research numerous issues, review and analyze policies, independently analyze time records, and wage statements, as well as dedicate substantial time to analyze data, time records and payroll records. Those efforts, along with negotiating settlement, obtaining preliminary approval, preparing and filing the final approval papers, required a significant amount of time and labor. There will also be additional time and effort expended subsequent to final approval, including preparing for and appearing at the final accounting and for any additional issues that may arise. (Dacre Decl., ¶ 20; Escobedo Decl. ¶ 13;)

The total amount of attorney time estimated to have been expended thus far, and estimated to be expended in finalizing this matter is 500.6 and Class Counsel's total lodestar is $402,410.00 with no multiplier. (Dacre Decl., ¶ 21 estimating 265 hours and lodestar of $247,980 for James Hawkins APLC, Lapuyade Decl. ¶¶ 5,10 estimating 129.1 hours and a lodestar of $98,175 for JCL Law Firm, Inc., Zakay Decl. ¶¶ 1-2 estimating 56.5 hours and a lodestar of $31,255 for Zakay Law Group, APLC, and Escobedo Decl. ¶¶ 16-17 estimating 50 hours and a lodestar of $25,000 for WorkWorld Law Corp.)

While multipliers have been found to be reasonable, a multiplier is not requested in this case. (*See, e.g., Glendora Cmty. Redev. Agency v. Demeter* (1984) 155 Cal. App. 3d 465, 480-81 (affirming multiplier of 12); *Nat. Gas Anti-Trust Cases I, II, III & IV* (Cal. Super. Ct. Dec. 11, 2006) No. 4221, 2006 WL 5377849, at *4 ("numerous cases have applied multipliers of between 4 and 12 to counsel's lodestar in awarding fees."); *Hernandez v. Arthur J. Gallagher Serv. Co., LLC* (S.D. Cal. Aug. 26, 2024) No. 22-cv-01910-H-DEB, 2024 WL 3941824, at *10 (applying a multiplier of 14.45); *Moreno v. Pretium Packaging L.L.C.* (C.D. Cal. Aug. 6, 2021) No. 8:19-cv-02500-SB, 2021 (finding a multiplier of 2.57 reasonable "in light of the contingent nature of recovery, the complexity of the issues, and the result obtained").) Further, courts have defined reasonable multipliers on a lodestar cross-check to "range from 2 to 4 or even higher." (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal. App. 4th 224, 255. Courts have also approved a multiplier over 9. *See Weiss v. Mercedes-Benz of N. Am., Inc*., 899 F. Supp. 1297, 1304 (D.N.J. 1995) (9.3 multiplier), *aff'd*, 66 F.3d 314 (3d Cir. 1995). Here, the tasks and work performed by Class Counsel were reasonable and necessary to the prosecution of this case and justified. Accordingly, Class Counsel's requested fee of $242,570.30 is reasonable, fair, and should be awarded, especially in light of Plaintiffs' counsels' lodestar in this matter.

2. <u>Extent Litigation Precluded Other Employment</u>

Inherent to class action litigation is the amount of time and labor required to properly adjudicate the case. From start to settlement, judgment or verdict, class action litigation commands commitment, an extensive amount of time, labor and resources to successfully litigate. Although this litigation did not conclusively preclude other employment, it did impact Class

Counsels' ability to take on other class action cases. Class Counsel work in a boutique law firm with few attorneys and staff. (Dacre Decl., ¶ 16; Escobedo Decl. ¶14)

3. Contingent Nature of the Agreement

In *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132, the court noted, the economic rationale for contingency cases has been explained as follows: "A contingent fee must be higher than a fee for the same legal services paid as they are performed. As discussed further below, the contingent fee compensates the lawyer not only for the legal services he renders but also for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans." (Posner, Economic Analysis of Law (4th ed. 1992) pp. 534, 567.) "A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases." *Id*. Here, Class Counsel took the matter on a contingent basis. (Dacre Decl., ¶ 22; Escobedo Decl. ¶ 15)

4. Experience, Reputation, and Ability of Plaintiffs' Counsel

Class Counsel also have considerable experience and has demonstrated competence with litigating wage and hour class actions. Class Counsels' skill and experience in litigating wage and hour class actions, in state and federal forums, contributed to the results obtained on behalf of the putative class members. (Dacre Decl., ¶¶ 13-19; Escobedo Decl. ¶¶ 3-11; Lapuyade Decl. ¶¶ 13-18, Exh. 2; Zakay Decl. ¶ 3, Exh. A.)

5. Results Obtained on Behalf of the Class by Plaintiffs' Counsel

The award of attorney fees should reflect the successful outcome of the case (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 440.) As already discussed herein and in the preliminary approval motion, this case involves numerous and difficult issues largely precluding a clear-cut outcome as to liability. (Dacre Decl., ¶ 12) There also were significant class certification issues stemming from the facts concerning whether individual issues predominate and whether class member declarations and statistical samplings can support certification. (*Id.*) Defendant recognized the uncertainty of Plaintiffs' claims and vigorously disputed liability and the amount of damages. Nevertheless, despite the obstacles as already discussed in the preliminary approval motion and herein, Class Counsel obtained favorable financial compensation for the class members. (*Id*.) None of the Class Members opted out of or objected to the Settlement. Thus, all 855 Participating Class Members are to be paid Individual Class Payments out of the NSA. (Beltran Decl., ¶¶ 11-13.) The average of all estimated Participating Class payments is $438.97, and the highest class payment is $1,988.06. (Beltran Decl., ¶ 14.)

Also, subject to Court approval, the average estimated PAGA payment is $14.20, and the highest PAGA payment is $44.61. (Beltran Decl., ¶ 15.)

Despite the complexity and hurdles of the case, Class Counsel have, through the investment of substantial effort, and the resources of their boutique law firm, been able to secure a favorable Settlement on behalf of the Class Members.

6. <u>Reaction of Putative Class Members</u>

As already discussed herein, the reaction of the Class Members has been positive. Specifically, not one of the Class Members objected to Class Counsel's request for attorneys' fees and there were no requested exclusions, which also provides compelling evidence that the request is fair, adequate, and reasonable.

In sum, based on the six factors discussed above, Class Counsel's requested fee in this action should be granted. Additionally, by settling this case prior to trial rather than continuing to litigate issues that remain somewhat unsettled, counsel obtained exceptional results for the class at far less expense to the parties, counsel and to this Court. Accordingly, Class Counsels' requested fee is further warranted. "Considering that our Supreme Court has placed an extraordinarily high value on settlement, it would seem counsel should be rewarded, not punished, for helping to achieve that goal." (*Lealao*, *supra*, 82 Cal. App. 4th at 52.) Multipliers of two to four are commonplace in California class actions and can range even higher. (*Wershba, supra,* 91 Cal. App. 4th at 255; *In re California Indirect Purchases* (October 22, 1998) WL1031494 at * 10, fn 5.) Again, in this case, the requested fee, without a multiplier, is both necessary and appropriate, especially considering the lodestar.

B. Class Counsels' Requested Fees Are Reasonable Under the Percentage of the Benefit Method

1. Attorneys' Fees Should be Based Upon the Total Benefit to the Class

Under California law, courts have the discretion to award fees under the percentage method when fees are drawn from an ascertainable fund. (*See Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 503 ("*Laffitte II*") ("We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created."). The common fund method "better approximates the workings of the marketplace than the lodestar approach" in setting the price of contingent fees. (*See Lealao v. Beneficial Cal. Inc.* (2000) 82 Cal. App. 4th 19, 48 ("*Lealao"*). The percentage method "provide[s] incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace." (*Id*.)

The primary benefit of the percentage method is that it focuses on the benefit conferred on the class as a result of the efforts of Class Counsel. Awarding Class Counsel fees based on a percentage of the recovery has the advantages of eliminating the incentive for attorneys to increase hours unnecessarily, encouraging early settlement of disputes, and preserving judicial resources otherwise used to monitor attorneys' billable hours. (*See In re Activision Sec. Litig.,* (N.D. Cal. 1989) 723 F. Supp. 1373, 1378-79; *Manual For Complex Litigation* 4th ed. §14.121 (2004) ("in practice, the lodestar method is difficult to apply, time consuming to administer, inconsistent in result. . . capable of manipulation,... [and] creates inherent incentive to prolong the litigation"); *see also In re Quantum Health Resources, Inc*. (C.D.Cal. 1997) 962 F.Supp. 1254, 1256 (noting that lodestar "creates an incentive to keep litigation going in order to maximize the number of hours included in the court's lodestar calculation").)

The percentage of the fund method survives in California class action cases. (*Laffitte v. Robert Half Intern, Inc.* (2016) 1 Ca. 4th 480, 506; *see also Chavez v. Netflix, Inc*. (2008) 162 Cal. App. 4th 43 at 65, 66; *Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.*

(2005) 127 Cal. App. 4th 387, 397 [the common fund doctrine is "frequently applied in class actions when the efforts of the attorney for the named class representatives produce monetary benefits for the entire class"]; *Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal. App. 4th at 254.)

2. The Contingent Nature of Class Counsels' Representation Supports the Requested Fees Based on a Percentage of the GSA

Further, the contingent nature of Class Counsels' representation also warrants the requested attorney fees based on the percentage of the Gross Settlement Amount. The risks in taking on any class action are enormous especially in regard to wage-and-hour class actions because the wage laws are still developing and a change in the law could wipe out a plaintiff's recovery. Litigating a class action through trial takes years and requires the investment of hundreds of thousands of dollars. Attorneys willing to undertake this risk deserve appropriate compensation. As elaborated by the California Supreme Court in *Graham v. Daimler Chrysler Corp.* (2008) 34 Cal. 4th 553, 579-580, counsel should be awarded a fee enhancer for taking on contingent cases because a "contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans."

> As the California Supreme Court specifically explained:
>
> A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases. *Id.* at 580. *(citing Ketchum v. Moses*, (2001*)* 24 Cal. 4th 1122, 1132-33).

In the legal marketplace, an attorney whose compensation is entirely dependent on success—who takes a significant risk—should and does expect a significantly higher fee than an attorney who is paid a market rate as the case goes along, win or lose. (*See, e.g., Rader v.*

Thrasher (1962) 57 Cal. 2d 244, 253 ("'[a] contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable'" (citation omitted); *Salton Bay Marina v. Imperial Irrig. Dist.* (1985) 172 Cal. App. 3d 914, 955 (contingent nature of the litigation is a relevant factor in determining a reasonable attorney fee award).)

Class Counsel represented the Class Members in this matter and has borne the entire risk and costs of litigation on a pure contingency basis. To date, Class Counsel has not received any compensation and yet has expended litigation costs on behalf of the class. Class action contingency cases are inherently risky. Upon retention, Class Counsel makes a commitment to litigate the case through trial. These types of cases can take years, hundreds of hours of work and cost an enormous amount of money; these risks are known upon retention. The risks involved coupled with the contingency basis of this case further support Class Counsel's request for attorneys' fees and costs. (Dacre Decl., ¶ 22; Escobedo Decl. ¶ 15)

3. Additional Factors Regarding Contingency Market Rate Justify the Requested Fee Award

Further, important public policies underlie a court's determination of a motion for attorneys' fees in class actions. Employees who are wronged by an employer's violation of state and federal labor laws should have access to counsel with the ability and resources necessary to litigate complex cases. (*See e.g., Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Ca1. 4th 319, 340 (enforcement of labor laws and class action device are both matters of public policy); Our legal system places unique reliance on private litigants to enforce substantive provisions of employment law through class actions. (*See, e.g., Gentry v. Superior Court* (2007) 42 Cal. 4th 443, 450-6 (confirming the public importance of private enforcement of overtime laws through class actions); *Lealao*, 82 Cal. App. 4th (legal system relies 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 the California Court of Appeal recognized in *Thayer v. Wells Fargo Bank*, 92 Cal.

App. 4th 823, 839: “Adequate fee awards are perhaps the most effective means of achieving [the] salutary goal [of encouraging `private attorney general actions and] [c]ourts should not be indifferent to the realities of the legal marketplace or unduly parsimonious in the calculation of such fees.” (*See also Lealao*, 82 Cal. App. 4th at 53 (cautioning against fee awards that are too small and therefore “chill the private enforcement essential to vindication of many rights...”). At a minimum, attorneys providing these substantial benefits should be paid an award equal to the amount negotiated in private bargaining that take place in the legal marketplace. (*Deposit Guaranty Nat. Bank, Jackson, Miss. v. Roper* (1980) 445 U.S. 326, 338; *Lealao*, 82 Cal. App. 4th at 49-50.)

4. <u>Counsels’ Requested Fee Award is Within California’s Benchmark Awards and Thus Reasonable</u>

In addition to the foregoing, Class Counsel’s request for attorneys’ fees in the amount of $242,570.30 or not more than 33 and 1/3% of the $727,783.67 GSA is within the “zone of reasonableness.” The fee amount presently sought is not extraordinary but actually falls at the “average” fee deemed reasonable under California State court authority, as it is recognized that “courts may award attorney’s fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under $10 million.” (*See, e.g., Martin v. AmeriPride Servs.*, 2011 U.S. Dist. LEXIS 61796, 23 (S.D. Cal. June 9, 2011). *Birch v. Office Depot, Inc.,* USDC Southern District, Case No. 06cv1690 DMS (WMC) (awarding 40% fee on a $16 million wage and hour class action settlement); *Rippee v. Boston Mkt. Corp.*, USDC Southern District, Case No. 05cv1359 BTM (JMA) (awarding a 40% fee on a $3.75 million wage and hour class action settlement).

Moreover, the percentage should be measured against the full fund established by the settlement and not upon the total value of the net settlement fund. (*Williams v. MGM-Pathe Communications Co*. (9th Cir. 1997) 129 F.3d 1026, 1027.) This method recognizes that the efforts of class counsel established the entire settlement, including non-monetary benefits, for the benefit of the class. (*Id.*) In the Ninth Circuit’s decision in *Williams*, the parties settled class action claims in favor of the class for a total settlement fund of $4.5 million, and the district court awarded class counsel attorneys' fees based upon "the class members' claims against that fund. *Williams*, 129 F.3d at 1027. The class counsel in *Williams* contended that the district court erred and should have calculated their fee as one-third of the entire $4.5 million settlement fund. *Id*. The Ninth Circuit agreed with class counsel and determined that the district court's award of a fee based solely upon the claims against the settlement fund was an abuse of its discretion.

Ninth Circuit courts have applied *Williams* in a variety of contexts, including claims made settlements without a minimum or maximum recovery. (*See*, *e.g.*, *Browning v. Yahoo! Inc.* (N.D. Cal. Nov. 16, 2007) WL 4105971 at *13–14 (claims-made settlement with no minimum or maximum recovery); *Young v. Polo Retail,* (N.D. Cal. Mar. 28, 2007) WL 951821 at*14-24 (same); *Lopez v. Youngblood* (E.D. Cal. Sept. 1, 2011) WL 10483569 at *32–43 (reversionary common fund with maximum recovery only). *Hopson v. Hanesbrands Inc*. (N.D. Cal. Apr. 3, 2009) 09 WL 928133 at *11; *Glass v. UBS Financial Services*, (N.D. Cal. Jan. 26, 2007) WL 221862 at *16) (same). In sum, Class Counsels' request for an award of attorney's fees is reasonable.

Lastly, Class Counsel have a Fee-Splitting Agreement, which Plaintiffs have consented to in writing. Under this agreement, the Class Counsel Fees Payment shall be allocated as follows: 50.5% to James Hawkins, APLC, 29.5% to WorkWorld Law Corp., and 20% to JCL Law Firm, APC. (Dacre Decl., ¶ 25.)

VI. CLASS COUNSELS' REQUESTED COSTS ARE REASONABLE

Attorneys who create a common fund for the benefit of a class are entitled to payment from the fund of reasonable litigation expenses and costs. Common fund fee and expense awards include the expenses necessarily incurred as a result of the litigation because those who benefit from counsel's effort should share in the cost. *See Rider v. Cty. of San Diego*, 11 Cal. App. 4th 1410, 1423 n.6 (1992). The appropriate analysis to determine whether costs are compensable is whether the costs are of the type typically billed by attorneys to paying clients in the marketplace, such as costs for consultants, copying, postage, long distance charges, travel expenses, filing fees, mediation fees, and investigation fees. *See Harris v. Marhoefer*, 24 F.3d 16, 19-20 (9th Cir. 1994); *see also Hartless v. Clorox Co.*, 273 F.R.D. 630, 641 (S.D. Cal. 2011).

Here, the Settlement provides for repayment of Class Counsels' actual and reasonable costs of litigation in an amount not to exceed $35,000. Class Counsel incurred reasonable litigation costs in bringing this matter to a resolution before trial. The total costs incurred and to be incurred by Class Counsel in this litigation are $19,545.99. To date Class Counsel have advanced actual and reasonable litigation costs as follows: WorkWorld Law Corp. $606.10, JCL Law Firm, APC $2,376.97, Zakay Law Goup, APLC, $688.01, and James Hawkins APLC $15,874.91. (Escobedo Decl. ¶ 18; Lapuyade Decl. ¶¶ 3, 11-12, Exh. 1; Zakay Decl. ¶¶ 3-4, Exh. B; Dacre Decl., ¶ 24, Exh.2.) All of Class Counsels' out-of-pocket expenses are the types of expenses normally charged to paying clients in the course of litigation and were reasonably and necessarily incurred in Class Counsels' efforts to effectively prosecute these claims on behalf of Plaintiff and the Class Members. All of these costs were necessary given the substantial discovery, investigation, and mediation expenses, as well as other costs demanded by this case over the past approximately four years. (*Id*.)

VII. THE SETTLEMENT ADMINISTRATOR'S FEES ARE REASONABLE

ILYM was retained to administer the notice and settlement process. ILYM's duties included, but were not limited to: (a) printing and mailing the Court Approved Class Notice; (b) receiving undeliverable Notices; (c) receiving any requests for exclusion; (d) answering questions from Class Members. Should the Court grant final approval of this Settlement, ILYM will be responsible for further duties, including but not limited to: (e) calculating Individual Class Settlement Amounts, (f) calculating Individual PAGA Payments, (g) distributing funds, (h) tax-reporting following final approval; (i) mailing Settlement checks; (j) and for such other tasks as the Parties mutually agree or the Court orders ILYM to perform. (Beltran Decl., ¶ 3). Thus, Plaintiffs respectfully request that, ILYM be awarded costs in the amount of $12,850. (Beltran Decl., ¶¶ 14,16.)

VIII. CONCLUSION

The Parties have negotiated a fair Settlement of the wage and hour claims that likely would not have been brought, let alone successfully resolved, but for the effort and resolve of the Plaintiffs individual effort and their counsel. The Class Members' positive response indicates that the Settlement is fair and reasonable. Accordingly, Plaintiffs respectfully request that this Court grant final approval of the Settlement Agreement and enter judgment.

Respectfully submitted,

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