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9 As an individual on behalf of himself and
on behalf of all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN JOAQUIN**

12 DOUGLAS BALL, as an individual on
13 behalf of himself and on behalf of all others
similarly situated,

14
15 Plaintiff,

16 v.

17 KRUGER FOODS, INC., a California
18 corporation; and DOES 1-100, inclusive,

19 Defendants.
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Case No.: STK-CV-UOE-2022-0008581

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

Date: December 18, 2024

Time: 9:00 a.m.

Dept.: 10B

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1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Douglas Ball seeks final approval of a non-reversionary
3 class action settlement resolving wage and hour claims on behalf of 164 individuals who worked
4 for Defendant Kruger Foods, Inc. (“Kruger” or “Defendant”) as a exempt employees, either
5 directly or via a staffing agency, at any location in California during the Class Period of April 10,
6 2021 to December 14, 2023. The proposed \$300,000 total settlement provides about \$135,510 in
7 cash payments to the Class, with an average award of about \$826, plus additional amounts payable
8 under PAGA. The remaining balance will cover a modest service award to Plaintiff, settlement
9 administration costs, civil penalties to the state, and reasonable attorney’s fees and costs. The
10 parties and their counsel finalized the settlement after extensive and difficult arms-length
11 negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally
12 certified the Class and preliminarily approved the settlement on July 16, 2024. Since then, the
13 Court-approved notice form was mailed to the Class Members on August 26, 2024, and they
14 reacted very favorably to the settlement. As of the filing of this motion, there are no objections,
15 and no class members have requested exclusion.

16 Class Counsel secured an excellent settlement with Defendant after some two
17 years of investigation, litigation, and settlement negotiation and administration, all
18 without any compensation for services rendered or costs expended. The class notice duly
19 informed the class members that Class Counsel would request attorney’s fees not to
20 exceed 33.33% of the Gross Settlement Amount, along with reimbursement of no more
21 than \$25,000 for actual costs incurred litigating this matter. As of the filing of this
22 motion, *not one Class Member objected* to the proposed fee award. Consistent with the
23 Settlement and notice, Plaintiff now respectfully requests the Court award Class
24 Counsel's fees in the amount of \$100,000 and costs in the amount of \$25,000, as described
25 in the Declaration of Nikki Ardestani (“Ardestani Decl.”) filed herewith. The requested
26 attorney’s fees are well within the range of reasonableness, especially considering the
27 complex and risky nature of this litigation, the contingent risk assumed, the two-plus year
28

1 delay in payment and, when subjected to a lodestar crosscheck, results in a base lodestar
2 that is slightly higher than the actual fee request.

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

6 **II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE**

7 The background of this matter was covered in detail in Plaintiff's motion for preliminary
8 approval (filed May 20, 2024). To re-familiarized the Court, Defendant Kruger is based in
9 Stockton, and has been producing and canning various condiments such as pickles, relish, peppers,
10 mayonnaise, and sauerkraut, since 1930. Plaintiff worked for Defendant as a non-exempt
11 maintenance technician from December 2021 to January 2022. His duties included providing
12 proper maintenance to all manufacturing and facility equipment and materials; performing
13 preventative maintenance on equipment as required by the operator manual, responding to
14 equipment breakdown, and providing training/guidance to machine operators. Plaintiff worked
15 under a purported Alternative Workweek Schedule ("AWS") where he worked 4 days per week,
16 10 hours a day, without having to be paid daily overtime. [Ardestani Decl., ¶ 2.]

17 On September 26, 2022, Plaintiff filed a class action complaint on behalf of himself and
18 other similarly situated individuals employed by Kruger as non-exempt employees. Plaintiff's
19 class action complaint alleges claims for (1) unpaid minimum wages, (2) unpaid overtime wages,
20 (3) unpaid premium wages for denied meal and rest periods, (4) failure to issue accurately
21 itemized wage statements, (5) failure to timely pay wages upon separation of employment, (6)
22 failure to reimburse business expenses, and (7) unfair competition. On September 21, 2022,
23 Plaintiff filed his notice of claims under PAGA, and on November 30, 2022 (after exhausting
24 administrative remedies) he filed a PAGA-only representative complaint seeking civil penalties
25 under to PAGA based on the same alleged Labor Code violations. [Ardestani Decl., ¶ 3.]

26 Plaintiff alleges a number of wage and hour violations by Defendant. First, he argued that
27 Kruger's AWS was illegal and that Defendant failed to follow the strict requirements under
28 California law for implementing an AWS. He further argued that, even if the AWS is enforceable,

1 Kruger did not pay him and the class members properly under the terms of the AWS. On the meal
2 and rest break claims, Plaintiff alleges numerous “de facto” violations where employee meal
3 periods and rest periods were missed completely, were untimely, and/or were short. For rest
4 breaks, Plaintiff contends employees frequently were contacted by phone or text (on their personal
5 phones) while on break, and that Kruger otherwise failed to fully relieve employees of all
6 employer control for breaks. Plaintiff also alleges employees did not receive any reimbursement
7 for having to use their own phones for work purposes, such as receiving texts and calls from
8 supervisors. [Ardestani Decl., ¶ 4.]

9 Kruger has at all times denied Plaintiff’s allegations and maintained it properly instituted
10 and an AWS for its employees, that its payroll policies and procedures comply with California law
11 and that it properly compensated the class members for all hours worked at the correct rates of
12 pay. It further argued its meal and rest break policies are fully compliant and that it provided class
13 members with all required breaks, and paid appropriate premium wages for documented
14 violations. Likewise, Kruger contended there would be no reason for an employee to use their
15 own phone while working and accordingly it owes no reimbursement. Defendant also strongly
16 contends the case cannot be maintained as any kind of class or representative action, arguing
17 determining the reasons for any off the clock work, missed/non-compliant breaks, or personal cell
18 phone use would result individualized issues predominating and that a trial on a representative
19 basis would be unmanageable. [Ardestani Decl., ¶ 5.]

20 After Plaintiff filed the initial complaint, the Parties initiated discovery and also engaged in
21 numerous meet and confer discussions regarding discovery, potential law and motion, and potential
22 ADR. Ultimately, the Parties agreed to mediation and also agreed to an informal exchange of
23 information to facilitate meaningful settlement discussions. The Parties then retained Brandon
24 McKelvey, a respected neutral with experience mediating wage and hour class actions. In September
25 2023, the Parties participated in a mediation with Mr. McKelvey that ultimately resulted in this
26 settlement. [Ardestani Decl., ¶¶ 6-7.]

27 The Court preliminarily approved the settlement on July 16, 2024. Class Notices were
28 mailed to class members on August 26, 2024, with a forty-five day window (to October 10,

2024) for class members to opt out or object to the proposed settlement. [Declaration of Madely Nava (“Nava Decl.”), ¶¶ 7, 11-13.]

III. THE PROPOSED SETTLEMENT TERMS

Under the settlement, Kruger will pay \$300,000 into a common fund, the Gross Settlement Amount (“GSA”). Attorney’s fees of up to \$100,000.00 (1/3 of the GSA), litigation costs of up to \$25,000, a service award to Plaintiff of no more than \$2,500.00, settlement administration costs of no more than \$8,000, and \$30,000 for PAGA civil penalties (to be divided 75% to the Labor & Workforce Development Agency and 25% to the Aggrieved Employees), all will be paid from the GSA. The remainder of around \$135,510 will be allocated pro rata among the Class Members based on their total weeks worked during the Class Period. No portion of the GSA will revert to Kruger. [Ardestani Decl., ¶ 8.]

A. Certification of the Settlement Class

The Court conditionally certified a settlement class including all current and former non-exempt employees that worked either directly or via a staffing agency for Defendant Kruger at any location in California during the Class Period of April 10, 2021 to December 14, 2023. The Settlement Administrator ultimately mailed class notices to 164 individuals identified as members of the Class. [Nava Decl., ¶ 7.] Nothing has changed to require reconsideration of the Court’s certification of the Settlement Class.

B. The Benefit Conferred on the Settlement Class

As noted, the settlement obligates Kruger to pay \$300,000 to resolve the claims of the Settlement, inclusive of attorney’s fees and costs. A minimum of approximately \$135,510 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that does not require Participating Class Members to submit a claim form to receive their settlement share. Participating Class Members will receive their settlement checks automatically via First Class U.S. Mail. Twenty percent of each settlement share will be allocated to wages and the remaining eighty percent will be allocated to penalties and interest, which allocation is consistent with Kruger’s potential liability as discussed below. Kruger will pay any and all applicable employer-side payroll taxes separately and in addition to the GSA. Subject to the Court’s approval, any amounts not

1 claimed (because a class member does not cash his or her settlement check) will be forwarded to
2 the California State Controller's Unclaimed Property Division. [Ardestani Decl., ¶ 9.]

3 Each Participating Class Member will receive a share of the Net Settlement Amount based
4 on his or her total weeks worked for Kruger during the Class Period while employed in a non-exempt
5 service position. Thus, each Class Member's Individual Settlement Payment will be calculated using
6 criteria typically used in determining appropriate amounts of unpaid overtime wages, unpaid
7 premium wages for missed meal and rest breaks, and potential statutory penalties under applicable
8 law. These methods are intended to ensure each Class Member receives a portion of the available
9 settlement funds corresponding to the relative value of his or her potential claims. The proposed
10 allocation provides a reasonable way to compensate Class Members based on the amount of time
11 they worked for Kruger and the number of instances they allegedly were not paid overtime due to
12 the improper AWS, missed a meal break and/or rest break, were not provided compensation in lieu
13 of such missed breaks, etc. [Ardestani Decl., ¶ 10.]

14 The average class award will be about \$826, and class awards will range from \$10 to \$1,429,
15 while the average PAGA award will be about \$48.39. [Nava Decl., ¶¶ 15, 17.]

16 **C. Settlement Administration**

17 Apex Class Action, as the Court-approved Settlement Administrator, mailed the Notice
18 Packet to the Class members after making all reasonable effort to ascertain the best mailing
19 address, including running each address through the National Change of Address database
20 and "skip-tracing" any Notice Packets returned as undeliverable. [Nava Decl., ¶¶ 3-9.] The
21 Class Notice, previously approved by the Court, duly informed Class Members of the
22 settlement terms, including the estimated relief each Class Member will receive, the amounts
23 to be requested for attorney's fees and the class representative enhancement awards, and the
24 right to opt out of or object to the settlement. [Nava Decl., ¶ 7; Exh. A.] Apex mailed 164
25 Notice Packets on August 26, 2024. [Nava Decl., ¶ 7.] Ultimately, six Notice Packets were
26 deemed undeliverable, representing a 96.3%% success rate. [Nava Decl., ¶ 8.] The response
27 window for opting out of or objecting to the settlement expired on October 10, 2024. [Nava
28 Decl., ¶¶ 11-13.] Apex has received zero requests for exclusion (for a 100% participation

1 rate), and zero objections to the settlement. No disputes were submitted regarding the
2 information used to calculate class member settlement shares. [Nava Decl., ¶¶ 11-13.]

3 **D. Release of Claims**

4 All Participating Class Members will release Kruger and the Released Parties¹ from all
5 claims alleged in the operative complaint, or that could have been brought based on the factual
6 allegations in the operative complaint, including PAGA claims, during the Class Period. The
7 release is limited to the claims that were actually pleaded or could have been pleaded based on the
8 alleged facts in the operative complaint. [Ardestani Decl., ¶ 11.]

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

10 The Parties allocated \$30,000 to payment of civil penalties under PAGA, as addressed in
11 more detail below, and Plaintiff submits that amount is fair, reasonable and adequate, and consistent
12 with PAGA's underlying purposes. As required by Labor Code section 2699(1)(2), Plaintiff gave
13 notice of the settlement and the approval hearing to the LWDA via its online portal, and further
14 served the LWDA with the motion. [Ardestani Decl., ¶ 12; Exh. 1.]

15 **IV. ARGUMENT**

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

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

17 **A. The Proposed Settlement Merits Final Approval**

18 The proposed settlement of this action warrants final approval under the standards
19 summarized above. The settlement is fair, reasonable and adequate, and represents a favorable
20 resolution of highly disputed claims. Further, the settlement was overwhelmingly approved by
21 the class members, as there were no objections and no class members opted out.

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

23 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
24 was reached following arm's-length negotiations presided over by Brandon McKelvey, Esq., a
25 highly respected and well-known mediator with extensive experience mediating wage and hour
26 class actions. [Ardestani Decl., ¶ 7.] Moreover, Plaintiff and his counsel were well-informed
27 about the facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Sepideh Ardestani
28 have years of litigation experience, including litigating wage and hour class actions. Plaintiff's

1 counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling
2 the matter. [Ardestani Decl., ¶¶ 29-33.] Defendant likewise was represented by highly-qualified
3 and experienced defense counsel. Both sides advocated vigorously for their clients, and nothing
4 was "left on the table."

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

6 The settlement was well-received by the class. As of the filing of this motion, no
7 objections have been filed, and there are no opt outs. [Nava Decl., ¶¶ 11-12.] As many courts
8 recognize, class member reaction to the settlement is one of the most important factors to consider
9 in determining if final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541
10 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d
11 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the class to the settlement is perhaps
12 the most significant factor to be weighed in considering its adequacy") (internal quotation marks
13 omitted).

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

16 Prior to mediation, the parties engaged in formal and informal discovery to facilitate
17 settlement discussions. Thus, Plaintiff reviewed documents and information regarding Kruger's
18 payroll practices, a random sampling of pay stubs and time records for sampling of class members,
19 applicable compensation plans, documents related to implementing the AWS, etc., and information
20 from Defendant regarding class size and breakdown, work weeks/pay periods, rates of pay, and
21 other relevant information. Plaintiff then had that information analyzed by a consulting expert to
22 assist in determining potential violation rates and other data used to formulate a damages model.
23 Plaintiff's counsel are confident they obtained sufficient information to understand the law and facts
24 of this case and make an informed decision regarding the proposed settlement and whether it is fair
25 and reasonable. [Ardestani Decl., ¶¶ 6, 13.]

26 Using that data, Plaintiff ran various calculations and estimated Kruger's likely maximum
27 exposure on the class claims at approximately \$3,470,000, including about \$526,600 on the
28 unpaid wage claims, about \$833,350 on the meal period claims, approximately \$1,203,225 on the

1 rest break claims, about \$74,000 for expense reimbursement, about \$436,600 for wage statement
2 violations, and approximately \$395,760 in waiting time penalties. [Ardestani Decl., ¶ 14.]
3 Plaintiff and his counsel substantially discounted the value of these claims, however, in light of
4 the multiple and considerable risks posed by proceeding with the litigation, as Defendant raised
5 numerous defenses and vigorously defended against these claims.

6 On the unpaid wage claims, Plaintiff alleges Defendant's 4/10 AWS schedule was not
7 implemented under the strict procedures required by California law to use an AWS and therefore
8 was invalid. In particular, Plaintiff alleges the required employee secret ballot was done
9 improperly, that employees did not receive proper notice regarding the AWS, and that it was not
10 properly registered with the State. Thus, per Plaintiff, Kruger failed to properly pay for daily
11 overtime earned when employees worked over 8 hours in a shift. Plaintiff also claims that, even if
12 the AWS is valid, Kruger did not correctly pay employees under the AWS because it failed to pay
13 required premium wages when an employee worked less than 10 hours in a day. In response,
14 Kruger argued its AWS was fully and properly implanted and that the company followed all legal
15 requirements for using an AWS, and it provided relevant documentation regarding the procedures
16 it followed. Kruger further emphasized it paid employees correctly under the terms of the valid
17 AWS, and that its payroll procedures otherwise fully compensated all class members at the correct
18 rates. [Ardestani Decl., ¶ 15.]

19 On the meal break claims, Plaintiff primarily contends there are numerous "de facto"
20 violations for missed, late, and short meal periods. Per Plaintiff, his expert's review of the time
21 records produced suggested a violation rate of around 70% for missed and non-compliant meal
22 periods, including missed second lunches on 10+ hour shifts. In response, Kruger argued its break
23 policies are fully compliant with California law, that it provided class members with the
24 opportunity to take all required breaks, and that many class members waived second meal periods.
25 Defendant further maintained that, in light of its compliant policies, whether a class member
26 missed a meal period, received a late meal period, or missed a rest break would have been
27 aberrational and against company policy. Thus, per Kruger, these issues are not amenable to class
28 or representative treatment since their resolution would require individualized inquiries as to why

1 a break was missed or non-compliant. Further, Defendant emphasized it paid thousands in
2 premium wages for documented violations. [Ardestani Decl., ¶ 16.]

3 For rest breaks, Plaintiff again argued that there were numerous “de facto” violations
4 where class members didn’t receive a break (especially third breaks), or didn’t receive a compliant
5 break/had their breaks interrupted by supervisors. As with meal breaks, Defendant argued the
6 applicable rest break policies complied with California law, and that it authorized and permitted
7 employees to take all required breaks. Defendant further contended that, in light of the fact that it
8 is not required to maintain a record of rest periods, any evidence of failure to authorize rest periods
9 and/or discouragement from taking rest periods would be purely anecdotal and individual issues
10 would predominate on liability. This arguably would once again make class certification and a
11 trial unmanageable since the number of instances an employee missed a rest break, or had a break
12 interrupted, would have to be tested on a case by case basis to determine compliance. [Ardestani
13 Decl., ¶ 17.]

14 For Plaintiff’s expense reimbursement claim, he argued Defendant’s supervisors would
15 routinely contact both Plaintiff and other employees during meal and rest breaks by sending them
16 work-related questions and demands to their personal cellphones, and that Defendant never paid any
17 reimbursement. When employees must use their personal cell phones for work, this statute required
18 an employer to reimburse them for such use. Cochran v. Schwan’s Home Services, Inc. (2014)
19 228 Cal.App.4th 1137, 1144. In response, Kruger argued there would be no need for an employee
20 use a phone to perform his or her work duties, and that supervisors thus any such use would have
21 been unnecessary and purely for personal convenience, and therefore not reimbursable. [Ardestani
22 Decl., ¶ 18.]

23 Plaintiff also alleged derivative claims under Labor Code § 226 (alleged inaccurate wage
24 statement violations) and §§ 201-203 (waiting time penalties), both based on the failure to
25 properly record and pay for all hours worked, and will rise or fall along with that primary claim, in
26 addition to being subject to “good faith” and other defenses available to Defendant. E.g., Amaral
27 v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-04 (holding employer did not willfully
28 fail to pay wages under Labor Code § 203 even though the class prevailed on the merits on the

1 underlying claim for failing to pay living wages). Accordingly, Plaintiff discounted the derivative
2 claims significantly in light of these multiple potential defenses. [Ardestani Decl., ¶ 19.]

3 As far as potential PAGA liability, the theoretical penalties totaled over \$2.2 million
4 should Plaintiff prevail on all claims and establish violations of the multiple Labor Code sections
5 at issue for every single eligible pay period. [Ardestani Decl., ¶ 20.] As with the class claims,
6 Plaintiff discounted the potential PAGA penalties for the multi-layered defenses proffered by
7 Defendant on the merits, and further discounted these claims since the Court possesses wide
8 discretion to reduce such penalties even if Plaintiff ultimately prevailed. Lab. Code § 2899(e)(2);
9 Fleming v. Covidien (C.D. Cal. 2011) 2011 U.S. Dist. LEXIS 154590, *8-9 (court reduced the
10 potential penalties by over 82% after a bench trial); Carrington v. Starbucks Corp. (2018) 30
11 Cal.App.5th 504 (after a bench trial, the trial court awarded penalties of just \$5 per pay period, a
12 90% reduction, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions
13 (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. Lexis 48557 (PAGA penalties denied after trial).

14 Accordingly, the Parties allocated \$30,000 to PAGA penalties, which amount is reasonable
15 and in line with comparable settlements in other class actions in California. Van Kempen v.
16 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
17 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
18 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
19 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
20 \$345,000 and the possible weaknesses in plaintiffs' case, or 2.2 percent of total settlement).
21 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
22 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
23 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
24 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
25 not objected to the settlement").

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

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

7 [Ardestani Decl., ¶¶ 21-22.]

8 Accordingly, Plaintiff faced risky issues going forward with this litigation, and given the
9 need to secure class certification, try the case, and deal with post-trial appeals, it would have taken
10 years to realize any recovery in this action. Plaintiff and counsel discounted the value of the class
11 claims consistent with the risks discussed above, and carefully weighed the likelihood of the class
12 receiving substantially greater benefit if the litigation continued. Plaintiff and counsel concluded –
13 in light of these very real and substantial risks – settlement on the proposed terms and without
14 prolonged and costly litigation was in the best interests of the class. The overall \$300,000
15 recovery represents a significant percentage of Defendant’s potential exposure, and given these
16 risks discussed above a total recovery for the class of \$300,000, with an average award of some
17 \$826 per class member, is a fair result within the range of reasonableness considering all potential
18 outcomes. [Ardestani Decl., ¶¶ 21-23.]

19 Importantly, the mere fact that a settlement does not provide the same recovery as might be
20 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
21 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“even if the relief afforded by the proposed
22 settlement is substantially narrower than it would be if the suits were to be successfully litigated,
23 this is no bar to a class settlement because the public interest may indeed be served by a voluntary
24 settlement in which each side gives ground in the interest of avoiding litigation”); 7-Eleven
25 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
26 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
27 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); Lane
28 v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 (“[T]he question whether a settlement is

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

11 **V. SETTLEMENT ADMINISTRATION COSTS**

12 The settlement provides for a payment to Apex for its services as the Settlement
13 Administrator. As set forth in the Declaration of Madely Nava, Apex performed and will continue
14 to perform its required duties through final distribution of the settlement funds and incurred
15 \$6,990 in fees and expenses. [Nava Decl., ¶ 19.] Plaintiff accordingly requests the Court approve
16 payment of \$6,990 to Apex from the GSA. [Ardestani Decl., ¶ 24.]

17 **VI. PLAINTIFF’S ENHANCEMENT AWARD**

18 Pursuant to the terms of the settlement, Plaintiff seeks a modest incentive award of
19 \$2,500 for his service in bringing these claims on behalf of the Class. The request is reasonable
20 given the risks he undertook on behalf of the Class Members, and by contacting and retaining
21 counsel to pursue these claims, Plaintiff helped make this settlement possible for the absent
22 Class Members, while shouldering the risk of being liable for Defendant’s litigation costs.
23 Plaintiff also exposed himself to unwanted notoriety related to filing a public lawsuit
24 (discoverable even through a simple google search) for the benefit of other employees, placing
25 each at risk of discrimination by future prospective employers. As set forth in more detail in his
26 declaration filed with the preliminary approval motion, among taking many other actions
27 assisting in the successful litigation of this case, Plaintiff provided substantial factual
28 information and documents to counsel, attended numerous meetings/phone conferences with

1 counsel to discuss the case, and kept abreast of all significant developments. [Declaration of
2 Douglas Ball, ¶¶ 2-9; Ardestani Decl., ¶ 25.] Accordingly, the requested enhancement payment
3 to Plaintiff is appropriate and justified as part of the settlement. Staton v. Boeing (9th Cir. 2003)
4 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive
5 payments ranging from \$2,000 to \$25,000).

6 **VII. THE REQUESTED ATTORNEY'S FEES AND COSTS ARE REASONABLE AND**
7 **SHOULD BE APPROVED**

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

10 This Court has discretion over the amount of attorneys' fees awarded and court
11 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
12 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82
13 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
14 marketplace for cases involving significant contingent risk, such as this one. Deposit
15 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
16 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
17 private bargaining, if it were truly possible, might have reached" in determining a reasonable
18 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
19 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
20 justified by the work performed, the benefits obtained, and the contingent risk assumed.

21 As addressed in detail above, at the time the parties reached the tentative settlement
22 success for Plaintiff and the putative class was far from certain. Plaintiff faced a real risk that
23 some or all the claims would not be certified for class treatment, as Defendants had strong
24 arguments that its compensation policies were legal and properly compensated the class
25 members. Even if Plaintiff certified some or all of the claims and ultimately prevailed on the
26 merits, it undoubtedly would have taken several years to realize any recovery while he
27 pursued class certification, trial, and an almost certain appeal. [Ardestani Decl., ¶¶ 15-20.]
28

1 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
2 obtain, and the settlement provides substantial cash payments to Class Members, with an
3 average award of about \$826, and with a maximum award of over \$1,400. Importantly as
4 well, the Class Members have been overwhelmingly supportive of the Settlement – there are
5 no objections and no opt outs to the settlement. [Nava Decl., ¶¶ 11-12.]

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

7 The United States Supreme Court has ruled the parties to a class action properly may
8 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
9 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
10 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee
11 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
12 should not result in a second major litigation. Ideally, of course, litigants will settle the
13 amount of a fee." The United States Supreme Court has reemphasized this policy and further
14 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
15 (1984) 465 U.S. 886, 902 n.19.

16 As part of the Settlement, Defendants agreed not to object to an award of no more than
17 1/3 of the GSA for attorney's fees, or \$100,000, and up to \$25,000 in reimbursement for
18 litigation costs and expenses. Such a fee is commensurate with what the market would
19 provide for similar services and the Court therefore can most certainly enforce the agreement.
20 As California's Court of Appeal has instructed:

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

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

26 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
27 arms-length bargaining regarding relief to the Class was completed. [Ardestani Decl.,
28 ¶ 26.] The requested fee and cost award was a product of these arms-length negotiations and

1 fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As
2 a result, the fee agreed to by the parties should be approved.

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

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

11 The recognized advantages of the percentage method-including relative ease of
12 calculation, alignment of incentives between counsel and the class, a better
13 approximation of market conditions in a contingency case, and the
14 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.

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

16 Indeed, both California and federal courts have long recognized an appropriate method
17 for determining the award of attorney's fees is based on a percentage of the total value of
18 benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20 Cal.3d 25,
19 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air West, Inc.
20 (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the common fund
21 recovered operates to "spread litigation costs proportionately among all the beneficiaries so
22 that the active beneficiary does not bear the entire burden alone." Vincent, 557 F.2d at 769.

23 In determining a reasonable common fund fee award, courts should also consider the
24 fact that fees serve as an economic incentive for lawyers to bring class action litigation to
25 achieve increased access to the judicial system for meritorious claims and to enhance
26 deterrents to wrongdoing. Conte, Attorney Fee Awards (2d ed. 1993) § 104. Without
27 prosecution on a contingent basis and use of the class action mechanism, the courthouse door
28 would effectively be closed to most class members due to the relatively small size of their

1 individual claims in relation to the enormous time and cost associated with class action
2 litigation.

3 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
4 this action of no more than 1/3 of the GSA, and specifically \$100,000. The percentage
5 requested is justified for the reasons set forth further below, and comports with fee awards
6 calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements
7 shows that courts have historically awarded fees in the range of 20 to 50 percent, depending
8 upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y.
9 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range
10 from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14
11 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund
12 in order to assure that the fees do not consume a disproportionate part of the recovery
13 obtained for the class, although somewhat larger percentages are not unprecedented.").

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

15 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
16 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
17 an objective measure of the work performed into the calculation of a reasonable attorney fee."
18 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 194.4 hours of time on this matter,
19 resulting in a modest and very reasonable lodestar of \$140,525.

20 Over the two plus years this matter has been pending, Crosner Legal's efforts have
21 included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class,
22 including legal research, research into similar claims and claims against other employers in the
23 same industry, and attempts to locate and contact other employees of the Defendant; (2) drafting a
24 PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case
25 management, including communications with defense counsel, meeting and conferring/preparing
26 case management statements, etc.; (5) lengthy discussions with defense counsel regarding
27 settlement/mediation and informal discovery needed for meaningful settlement discussions;
28 (6) engaging in substantial informal discovery, including propounding informal discovery

1 “requests” and reviewing documents and other information produced; (7) working with a
2 consulting expert on the analysis of Defendant’s informal production; (8) drafting a mediation
3 brief and accompanying damages model after review and analysis of defendant’s formal and
4 informal discovery production; (9) attending an all-day mediation; (10) negotiating and drafting
5 the settlement agreement and related documents; (11) drafting the consolidated amended
6 complaint to effectuate the settlement; (12) drafting motion for preliminary approval, and
7 attending the hearing; (13) administration of the settlement, including communications with the
8 Settlement Administrator and settlement class members; (14) final approval and attorney’s fees,
9 and attending the final approval hearing; and (15) extensive communications with the Plaintiff
10 regarding case status, case investigation and document review, mediation, and settlement terms.
11 Additionally, Class Counsel will incur additional time following final approval to, inter alia,
12 respond to class member inquiries, attend to distribution of settlement funds, and on the
13 compliance hearing. [Ardestani Decl., ¶ 27, Exh. 2.]

14 In pursuing this matter, Class Counsel incurred total attorney’s fees of \$140,525, and
15 the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to
16 a successful conclusion (194.4 attorney hours). The requested attorney hourly rates are reasonable
17 and comport with hourly rates charged by other attorneys with similar experience in this practice
18 area in California. On a lodestar basis, the fee request of \$100,000 is actually lower than the
19 base lodestar, and therefore there is no request for a lodestar multiplier. [Ardestani Decl.,
20 ¶¶ 28-40.] Plaintiff respectfully submits this verifies the reasonableness of the fee request
21 since the actual fees requested are less the value of the services rendered when valued via
22 traditional hourly billing.

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

26 What has now emerged in most fee award decisions is the recognition that fee
27 determinations in both common fund and statutory fee situations are incapable of
28 mathematical precision because of the intangible factors that must be resolved in the court's
discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In

1 determining an appropriate fee in a common fund case, a Court must decide, based on the
2 unique posture of each case, what percentage of the common fund would most reasonably
3 compensate Class Counsel given the nature of the litigation and the performance of counsel.
4 Paul, Johnson, Alston & Hunt v. Graulity (9th Cir. 1989 886 F.2d 268, 272) (the benchmark
5 percentage fee may be adjusted to account for the circumstances involved in a case).

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

10 **1. The Results Achieved.**

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

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

26 At the time of filing the complaint, Class Counsel recognized that they would have to
27 expend a substantial amount of time and advance significant costs to prosecute a statewide
28 class action suit with no guarantee of compensation or reimbursement, in the hope of

1 prevailing against a sophisticated company represented by first-rate attorneys. Despite
2 their belief in the validity of Plaintiff's claims, they also knew they faced substantial risks
3 of class certification and the ability to prove class-wide and individual damages. In light of
4 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would
5 dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's
6 firm, not receiving any compensation for several years while simultaneously advancing
7 litigation costs posed considerable risk and difficulty. [Ardestani Decl., ¶¶ 41-42.]

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

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

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

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

27 Counsel retained on a contingency fee basis, whether in private matters or in class
28 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent

1 fee schedule to compensate for both the contingent risk assumed and the delay in
2 payment. The simple fact is that despite the most vigorous and competent of efforts,
3 success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875.
4 Indeed, if counsel is not adequately compensated for the risks inherent in difficult class
5 actions, competent attorneys will be discouraged from prosecuting similar cases.
6 Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208
7 Cal.App.3d 279, 287.

8 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
9 the investment of unnecessary time in a case, and the adverse resolution of any one of several
10 difficult issues present in this matter could have doomed the entire effort. As discussed, the
11 attorney's fees in this case were not only contingent but fairly risky, and there was always a
12 distinct possibility Plaintiff's counsel would receive nothing for any number of reasons.
13 [Ardestani Decl., ¶¶ 41-42.] Accordingly, the contingent nature of the fee and the financial
14 burdens on Class Counsel also support the fee requested.

15 5. Awards in Other Cases

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

1 method in light of the contingent risk assumed, the delay in payment, the result achieved, and
2 the overall quality of the representation.

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

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

14 As explained in the Ardestani Declaration, Class Counsel incurred a total of
15 \$25,071.53 in expenses incurred in connection with this litigation. These expenses include
16 the amounts paid for court filing fees, service of process, expert fees, postage, and
17 mediation fees, all of which are costs normally billed to and paid by the client. These
18 costs were reasonably incurred in the prosecution of this matter, and were necessary for
19 the successful prosecution of the case and accordingly Plaintiff's counsel requests
20 reimbursement for costs in the amount of \$25,000, consistent with the cap imposed under
21 the Settlement Agreement. [Ardestani Decl., ¶¶ 43-44.]

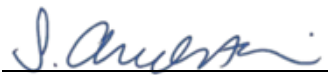
22 **VIII. CONCLUSION**

23 For all the foregoing reasons, Plaintiff respectfully requests that the Court grant this
24 motion and grant final approval of the proposed class action settlement and approve the payment
25 of PAGA penalties to the State. Plaintiff further requests the Court approve payment of the
26 Settlement Administrator's fees and expenses, approve the requested class representative
27 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
28

1 judgment in this action. Finally, Plaintiff requests the Court set a final compliance hearing for
2 December 17, 2025, or a later date convenient for the Court.

3
4 Dated: November 19, 2024

CROSNER LEGAL, PC

5
6 By: 
7 Jamie Serb, Esq.
8 Sepideh Ardestani, Esq.
9 Zachary M. Crosner, Esq.
10 Attorneys for Plaintiff,
11 DOUGLAS BALL
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