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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

VALERIA BOLANOS, as an individual on behalf of herself and on behalf of all others similarly situated, Plaintiff, vs. NEWPORT FAB, LLC, a Delaware Limited Liability Corporation; TOWER SEMICONDUCTOR NEWPORT BEACH, INC., a Delaware Corporation; JAZZ SEMICONDUCTOR TRUSTED FOUNDRY, INC., a Delaware Corporation; TOWER SEMICONDUCTOR USA, INC., a California Corporation; JAZZ SEMICONDUCTOR, INC., an unknown entity; and DOES 1 to 100, inclusive, Defendants.	Case No.: 30-2022-01280696-CU-OE-CXC Assigned for all purposes to: Hon. Layne H. Melzer Dept. CX102 **MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT, AND REQUEST FOR ATTORNEY'S FEES AND COSTS** Date: June 26, 2025 Time; 2:00 p.m. Dept. CX-102

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I. INTRODUCTION

Plaintiffs and Class Representatives Valeria Bolanos and Fanny Thorng seek final approval of a non-reversionary class action settlement resolving wage and hour claims on behalf of 1,195 individuals employed by Defendant Newport Fab, LLC ("Newport Fab" or "Defendant") as non-exempt employees during the period of March 21, 2018 to April 13, 2024. The proposed $3,900,000.00 total settlement provides about $2,441,318 in cash payments to the Class, with an average award of about $2,042, plus additional amounts payable under PAGA. The remaining balance will cover modest service awards to the Plaintiffs, settlement administration costs, civil penalties to the state, and reasonable attorney's fees and costs. The parties and their counsel finalized the settlement after extensive and difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The Court conditionally certified the Class and preliminarily approved the settlement on November 15, 2024. Since then, the Court-approved notice form was mailed to the Class Members and they have reacted very favorably to the settlement. As of the filing of this motion, there are no objections and no Class Members have requested exclusion.

Class Counsel secured an excellent settlement with Defendant after extensive investigation, litigation, and settlement negotiation and administration, all without any compensation for services rendered or costs expended. The class notice duly informed the class members that Class Counsel would request attorney's fees not to exceed one-third (1/3) of the Gross Settlement Amount, or $1,300,000.00, along with reimbursement of no more than $30,000.00 for actual costs incurred litigating this matter. As of the filing of this motion, *not one Class Member objected* to the proposed fee award. Consistent with the Settlement and notice, Plaintiffs now respectfully request the Court award Class Counsel's fees in the amount of $1,300,000.00 and costs in the amount of $26,681.90, as described in the Declaration of Sepideh Ardestani ("Ardestani Decl.") and Declaration of John G. Yslas ("Yslas Decl.") filed herewith. The requested attorney's fees are well within the range of reasonableness, especially considering the complex and risky nature of this litigation, the contingent risk assumed, the over two-plus year delay in payment and, when subjected to a lodestar crosscheck, reflect the base lodestar with a reasonable 2.50 upward modifier, which is entirely in line with California precedent.

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

II. FACTUAL BACKGROUND AND PROCEDURAL POSTURE

The factual and procedural background of the case was addressed at length on preliminary approval, but to remind the Court Newport Fab, LLC (dba Jazz Semiconductor) is located in Newport Beach, and manufactures electrical equipment and components. It has been doing business for over 20 years and is a subsidiary of Israeli company Tower Semiconductor, which is a leading foundry of "high value analog semiconductor solutions." Plaintiff Fanny Thorng was hired by Defendant as a "Fab Operator Assistant" on May 22, 2017. She was promoted on August 20, 2018 to a "Photo/Fab Operator Assistant." Her scheduled shifts were Sunday – Monday and every other Saturday from 5:30 p.m. to 5:36 a.m. She was terminated on February 10, 2022. Plaintiff Valeria Bolanos was hired by Defendant on July 7, 2020 as an Operator Assistant and subsequently promoted to a "Photo/Fab Operator" on December 7, 2020. Bolanos also worked a night shift from 5:30 p.m. to 5:30 a.m. Sometime in 2021 she was injured and went on medical leave. Plaintiffs and the class members are unionized employees and operated under various Collective Bargaining Agreements applicable to different time periods and positions. [Declaration of Michael Ardestani ("Ardestani Decl."), ¶ 2.]

On September 15, 2022, Plaintiff Bolanos commenced this Action by filing a Complaint alleging causes of action against Newport Fab for (1) Recovery of Unpaid Minimum Wages and Liquidated Damages; (2) Recovery of Unpaid Overtime Wages; (3) Failure to Provide Meal Periods or Compensation in Lieu Thereof; (4) Failure to Provide Rest Periods or Compensation in Lieu Thereof; (5) Failure to Furnish Accurate Itemized Wage Statements; (6) Failure to Timely Pay All Wages Due Upon Separation of Employment; (7) Failure to Reimburse Business Expenses; and (8) Unfair Competition. After providing notice to the Labor & Workforce Development Agency (LWDA") and exhausting administrative remedies, Plaintiff Bolanos filed a separate PAGA action on or about October 8, 2022, seeking PAGA civil penalties based on the same alleges Labor Code violations. On September 9, 2022, Plaintiff Thorng filed a class action lawsuit against Defendant (Orange County Superior Court Case No. 30-2022-01279796), alleging various Labor Code violations. The Parties subsequently stipulated to dismiss the Thorng action without prejudice and add Plaintiff Thorng as a named plaintiff in the Bolanos action. The Court subsequently consolidated the Bolanos class action and the separately filed PAGA action into Case No. 30-2022-01280696. [Ardestani Decl., ¶ 3.]

Plaintiffs allege Defendant committed multiple Labor Code violations. First, they claim Newport Fab failed to pay all minimum and overtime wages due to a time rounding policy that systematically deprived employees of all wages, and failing to pay for "off the clock" work such as donning and doffing protective gear, going through security checkpoints, etc. Plaintiffs next contend Defendant failed to provide meal breaks prior to the end of the 5th hour of work and rounding meal break time punches such that employees did receive a full 30-minute break, and by failing to provide second lunch breaks on shifts exceeding 10 hours of work. Plaintiffs further allege Defendant failed to provide rest breaks by, inter alia, prohibiting employees from leaving the premises while no break. Lastly, Plaintiffs allege they regularly used their personal phones for work purposes without reimbursement. [Ardestani Decl., ¶ 4.]

Newport Fab has at all times denied Plaintiffs' allegations and maintained its break and payroll policies and procedures comply with California law, that it provided its employees with required meal and rest breaks, that it properly accurately tracked employee time and paid Plaintiffs and all other employees all wages due at the correct hourly and overtime rates. Defendant also argued there would be no need for employees to use their own phones for work purposes. Newport Fab strongly contends the case cannot be maintained as any kind of class or representative action, arguing that to the extent class members missed meal breaks, that such breaks were non-compliant, or that any unpaid "off the clock" work occurred, it was intermittent and infrequent and evidence of such violations would be purely anecdotal, and therefore individualized issues predominate and trial would be unmanageable. [Ardestani Decl., ¶ 5.]

After finalizing the pleadings, the Parties began meeting and conferring on discovery, potential law and motion, and other case management issues, and ultimately agreed to attempt mediation. The Parties also engaged in extensive informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. The Parties then engaged Todd Smith, Esq., a highly respected mediator with extensive wage and hour class action experience and, in October 2023, participated in a full day mediation with Mr. Smith. By the end of the day, the Parties were able to reach agreement on all major issues. [Ardestani Decl., ¶¶ 6-7.] The Parties fully-executed the Class Action and PAGA Settlement Agreement and Class Notice in May 2024. The Parties amended the Class Action and PAGA Settlement Agreement and Class Notice in October 2024. On or around October 25, 2024, the Parties filed supplemental documents in support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. The Court granted preliminary approval to the settlement on November 15, 2024. [Ardestani Decl., ¶ 7.]

Class Notices were mailed to class members on December 26, 2024, with a 60-day window (to February 24, 2025) for class members to opt out or object to the proposed settlement. In and around early February 2025, however, Defendant determined an additional 30 individuals had been inadvertently omitted from the initial class list. Accordingly, the Settlement Administrator mailed notice packets to these individuals on February 18, 2025, and their 60-day response window closed on April 21, 2025. [Declaration of Yami Burns ("Burns Decl."), ¶¶ 5-7, 10-12.]

III. <u>THE PROPOSED SETTLEMENT TERMS</u>

Under the settlement, Newport Fab will pay $3,900,000.00 into a common fund, the Gross Settlement Amount ("GSA"). Reasonable attorney's fees of up to one-third of the GSA, or $1,300,000.00, actual litigation costs of up to $30,000.00 (only $26,681.90 is requested), modest Class Representative Service Payments of up to $10,000.00 for each plaintiff, settlement administration costs of $12,000.00, and $100,000.00 for alleged civil penalties under PAGA,[1] all

[1] Consistent with PAGA, 75%, or $75,000.00 of that amount will go the LWDA for the State's share of the civil penalties, and the remaining 25%, or $25,000.00 will be distributed pro rata to the Aggrieved Employees.

will be paid from the GSA. The remainder of approximately $2,441,318 will be allocated among the Participating Class Members based on their total weeks worked during the Class Period. No portion of the GSA will revert to Newport Fab. [Ardestani Decl., ¶ 8.]

A. <u>Certification of the Settlement Class</u>

The Court conditionally certified a settlement class including all persons who worked for Newport Fab as an hourly-paid or non-exempt employee at any time during the Class Period, which runs from March 21, 2018 to April 13, 2024. The Settlement Administrator ultimately mailed class notices to 1,195 individuals identified as members of the class. [Burns Decl., ¶¶ 5-7.] Nothing has changed to warrant reconsideration of the Court's certification of the class for settlement purposes.

B. <u>The Benefit Conferred on the Settlement Class</u>

As noted, the settlement obligates Newport Fab to pay $3,900,000.00 to resolve the Settlement Class's claims, inclusive of attorney's fees and costs. At least $2,441,318 from the GSA will be distributed to the Participating Class Members. This is a cash settlement that <u>does not</u> 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 expenses, penalties and interest. Newport Fab 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 claimed (because a class member does not cash his or her settlement check) will be forwarded to the California State Controller's Unclaimed Property Fund. [Ardestani Decl., ¶ 9.]

Each Participating Class Member will receive a share of the Net Settlement Amount based on his or her position held and total weeks worked for Newport Fab during the Class Period while employed as a non-exempt employee. Thus, each Class Member's Individual Class Payment will be calculated using criteria typically used in determining appropriate amounts of alleged unpaid wages, unpaid premium wages for missed meal breaks, unreimbursed expenses, and potential statutory penalties under applicable law. These methods are intended to ensure each Class

Member receives a portion of the available settlement funds corresponding to the relative value of his or her potential claims. The proposed allocation provides a reasonable way to compensate Class Members based on the amount of time they worked for Newport Fab, and the number of instances they missed a break, were not provided compensation in lieu of such missed breaks, or lost wages due to underpaid overtime. [Ardestani Decl., ¶ 10.]

The average class award will be approximately $2,042, and class awards will range from $14.15 to over $4,700. There are approximately 876 Aggrieved Employees also eligible to receive a share of the PAGA civil penalties, and the average PAGA award will be about $28.54, while PAGA awards will range from $0.67 to $52.84. [Burns Decl., ¶¶ 15-16.]

C. Settlement Administration

Phoenix Settlement Administrators, as the Court-approved Settlement Administrator, mailed the Notice Packet to the Class members after making all reasonable effort to ascertain the best mailing address, including running each address through the National Change of Address database and "skip-tracing" any Notice Packets returned as undeliverable. [Burns Decl., ¶¶ 3-9.] The Class Notice, previously approved by the Court, duly informed Class Members of the settlement terms, including the estimated relief each Class Member will receive, the amounts to be requested for attorney's fees and the class representative enhancement awards, and the right to opt out of or object to the settlement. [Burns Decl., ¶¶ 5-7, Exhs. A-B.] Phoenix mailed 1,165 Notice Packets on December 26, 2024, and then mailed an additional 30 Notice Packets on February 18, 2025. [Burns Decl., ¶¶ 5, 7.] Ultimately, zero Notice Packets were deemed undeliverable, representing a 100% success rate. [Burns Decl., ¶ 9.] The 60-day response window for objecting, opting out, or challenging workweeks expired on February 24, 2025 for the initial round of mailing, and on April 21, 2025 for the follow up mailing. [Burns Decl., ¶¶ 10-12.] As of the filing of this motion, Phoenix has received zero requests for exclusion (for a 100% participation rate), and zero objections to the settlement. No disputes were submitted regarding the information used to calculate class member settlement shares. [Burns Decl., ¶¶ 10-12.]

/////

D. Release of Claims

All Participating Class Members will be deemed to release Newport Fab from all claims alleged in the operative complaint, or that could have been brought based on the allegations in the operative complaint, including PAGA claims, from March 21, 2018 to April 13, 2024. The release is limited to the claims that were actually pleaded or could have been pleaded based on the alleged facts in the operative complaint. [Ardestani Decl., ¶ 11.]

E. PAGA Claims and Notice to the LWDA

The Parties allocated $100,000.00 to payment of civil penalties under PAGA for such claims against Newport Fab, as addressed in more detail below, and which amount Plaintiffs submit is fair, reasonable and adequate and consistent with PAGA's underlying purposes. As required by Labor Code section 2699(*l*)(2), Plaintiffs gave notice of the settlement and preliminary approval hearing to the LWDA via its online portal, and further served the LWDA with this motion. [Ardestani Decl., ¶ 12; Exh. 1.]

IV. ARGUMENT

A. Standard of Review for a Class Action Settlement

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

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

B. The Proposed Settlement Merits Final Approval

The proposed settlement of this action warrants final approval under the standards summarized above. The settlement is fair, reasonable and adequate, and represents a favorable resolution of highly disputed claims. Further, the settlement thus far has been overwhelmingly approved by the class members, as there are no objections and no Class Member requested exclusion.

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

The settlement is not the result of fraud or collusion. Rather, the proposed settlement was reached following arm's-length negotiations presided over by Todd Smith, Esq., a highly respected and well-known mediator with extensive experience mediating wage and hour class actions. [Ardestani Decl., ¶ 7.] Moreover, Plaintiffs and their counsel were well-informed about the facts and the law, and counsel at Crosner Legal and Wilshire Law Group all have years of litigation experience, including litigating wage and hour class actions. Plaintiffs' counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Ardestani Decl., ¶¶ 30-38; Yslas Decl., ¶¶ 4-14.] Defendant likewise was represented by highly-qualified and experienced defense counsel. Both sides advocated vigorously for their clients, and nothing was "left on the table."

2. The Class Reacted Favorably to the Settlement

The settlement was well-received by the class. As of the filing of this motion, no objections have been filed, and not one Class Member requested exclusion out of 1,195 settlement class members. [Burns Decl., ¶¶ 10-11.] As many courts recognize, class member reaction to the settlement is one of the most important factors to consider in determining if final approval should be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy") (internal quotation marks omitted).

C. The Proposed Settlement Meets the Dunk and Kullar Factors and is within the Range of Reasonableness, And Final Approval Should Be Granted

Prior to mediation, the parties engaged in extensive informal discovery to facilitate settlement discussions. As a result, Plaintiffs reviewed documents and information regarding Newport Fab's payroll practices, pay stubs and time records for a sampling of class members, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. This extensive information then was analyzed by a consulting expert to look for meal and rest break violation rates, time lost due to rounding, time spent working off the clock due to donning/doffing, security checks, etc., and other issues relevant to liability and damages. Plaintiffs' counsel are confident they obtained sufficient information to enable them to understand the law and facts of this case and make an informed decision regarding the proposed settlement and whether it is in the best interests of the class. [Ardestani Decl., ¶¶ 6, 13.]

Using that data, Plaintiffs ran various calculations and estimated Newport Fab's likely maximum exposure on the class claims at approximately $33.18 million, including about $58,500.00 on the rounding claim, 2.372 million on the off the clock/unpaid wage claims, approximately $10.022 million on the meal period claims, about $13.163 million on the rest period claims, approximately $895,000.00 on the expense reimbursement claim, around $3.712 million on the wage statement claims, and $2.957 million on the waiting time penalty claims. [Ardestani Decl., ¶ 14.] Plaintiffs and their counsel substantially discounted the value of these claims, however, in light of Defendant's multi-layered defenses on both class certification and on the merits, and the multiple and considerable risks posed by proceeding with the litigation.

The unpaid wage claims focus primarily on Newport Fab's alleged failure to pay Class Members at least minimum wages and/ or overtime wages for all of their hours worked.
Per Defendant's CBAs, employees had to be at their workstation at the beginning of their shift, meaning they typically clocked a few minutes early in order to at their station on time. Per Plaintiffs, this policy when coupled with Defendant's rounding policy resulted in employees losing a few minutes of time per shift even though Defendant's time keeping system captured every minute on the clock. <u>Delmer Camp v. Home Depot USA, Inc.</u> (2022) 84 Cal. App. 5th 638, 660 (employer should pay for exact amount of time worked during a shift if employer captures that time). Second, Plaintiffs' allege a policy requiring them to go through a lengthy donning/doffing process with required protective equipment, and also undergoing a security checkpoint process when entering and leaving the work facility. *E.g.*, <u>Frlekin v. Apple Inc</u>. (2020) 8 Cal. 5th 1038 (finding time undergoing mandatory bag checks compensable). Per Plaintiffs, Defendant required employees to go through the donning and doffing process and security checkpoint *before* clocking in at the beginning of their shifts, and *after* clocking out at the end of their shifts, which could take several minutes each shift. [Ardestani Decl., ¶ 15.]

In response, Defendant argued its payroll policies are fully compliant, that it properly tracked and paid for all hours worked at the appropriate hourly wage. Defendant also emphasized time rounding is permissible under California law so long it has an overall neutral effect on employee time and compensation. <u>See's Candy Shops, Inc. v. Superior Court</u> (2012) 210

Cal.App.4th 889. Additionally, Defendant argued any donning/doffing was done on the clock and compensated for and, to the extent it was not on the clock, it was done against company policy and without the company's knowledge. White v. Starbucks Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive knowledge of the off the clock work). Defendant likewise argued the issue would not be certifiable since it would require individualized inquiries whether any compensable "off the clock" work occurred, whether for donning/doffing, security checks, or otherwise, and why it was or was not documented and paid for. [Ardestani Decl., ¶ 16.]

On the meal and rest break claims, Plaintiffs contend Newport Fab's written policies are not fully compliant, and Plaintiffs' review of the time and payroll records provided suggested these deficiencies in the written policies affected employee breaks. For example, Plaintiffs' analysis showed a 76.4% violation rate for "de facto" meal period violations, primarily for late meal periods starting after the fifth hour of work. Indeed, per Plaintiffs, many lunches weren't even scheduled to start until well after the fifth hour, in violation of the Labor Code. Plaintiffs also contend Defendant's rounding policy resulted in shortened meal breaks. Donohue v. Amn Servs. (2021) 11 Cal. 5th 58, 68 (even small intrusion into meal period time results in a violation). Lastly, Plaintiffs emphasized they did not receive second meal periods on shifts greater than 10 hours, and that any waivers of second breaks were invalid and unenforceable. Saechao v. Landry's Inc. (N.D. Cal., Mar. 15, 2016, No. C 15-00815 WHA) 2016 WL 1029479, at *4 ("Whether or not California law permits an employer to utilize prospective meal-break waivers remains an open question which can plainly be resolved on a class-wide basis."). [Ardestani Decl., ¶ 17.]

Plaintiffs also contend employees were consistently required to work in excess of four hours (or major fraction thereof) without receiving lawful rest periods. Plaintiffs argued they did not receive a net ten minute break after accounting for walking from their work station to the break room and back, and further that rest periods were interrupted and/or cut short by management and other employees requiring assistance. [Ardestani Decl., ¶ 18.]

In response, Newport Fab argued its written break policies are fully compliant, that it provided employees with the opportunity to receive all required breaks, and that class members validly waived their second meal periods. Defendant further maintained that, in light of its compliant policies, whether a class member missed a meal period, received a late meal period, or missed a rest break would have been aberrational and against company policy. Thus, per Newport Fab, these issues are not amenable to class or representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant. [Ardestani Decl., ¶ 19.]

On the expense reimbursement claim, Plaintiffs allege that throughout their employment, they and the class members were required to use their personal cell phones in order to communicate with supervisors and other employees during work hours. The aggrieved employees would not have been able to successfully accomplish their duties without incurring these business expenses. However, Defendant did not reimburse Plaintiffs and the class members for this expense. Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113 (2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."). On the other hand, Defendant argued there would be no conceivable need for employees to use their phones for work and that any use of employee phones was purely for personal convenience and therefore not reimbursable. [Ardestani Decl., ¶ 20.]

The claims under Labor Code sections 203 and 226 are derivative of the primary unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional risks posed by the need to take into account the discretionary nature of such awards and the "good faith" and other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though class prevailed on underlying claim for failure to pay living wages). Thus, while these claims largely are derivative of the unpaid wage claim, they also are subject to additional defenses. [Ardestani Decl., ¶ 21.]

Finally, Defendant argued the applicable CBA's controlled and exempted it from liability for meal breaks and overtime under Labor Code sections 510 and 512, and further that the CBA's required arbitration of employment disputes. Plaintiffs countered by noting that such exemptions apply only if the CBA provides for a regular hourly rate of pay of not less than 30 percent more than the state minimum wage rate, and further noting that in many instances the base hourly wage for class members was less than the required threshold. Thus, per Plaintiffs the CBAs were inapplicable and did not exempt Newport Fab from potential liability or otherwise impact Plaintiffs' claims in any way. [Ardestani Decl., ¶ 22.]

As far as potential PAGA liability, the allegedly aggrieved employees theoretically are entitled to penalties totaling around $18 million in civil penalties should Plaintiffs prevail on all claims and establish violations of the multiple Labor Code sections at issue for each and every pay period. [Ardestani Decl., ¶ 23.] As with the class claims, Plaintiffs discounted the potential PAGA penalties based on Defendant's various defenses on the merits and also accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded penalties of $5 per pay period after a bench trial, which decision was upheld on appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557 (PAGA penalties denied after trial).

Accordingly, the Parties allocated $100,000.00 to PAGA penalties, and Plaintiffs submit this amount is reasonable under the circumstances and in line with comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v. Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final approval of $5,000 PAGA penalty from $370,000 settlement, or 1.4 percent of total settlement); Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303 (finding a $7,500 PAGA payment reasonable when measured against the overall settlement of $345,000 and the possible weaknesses in Plaintiffs' case, or 2.2 percent of total settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has not objected to the settlement.

The settlement obviates the significant risk that this Court may find any kind of class or representative resolution unachievable or deny certification of all or some of Plaintiffs' claims. Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued litigation would be lengthy and expensive as the parties pursued merits discovery, a probable motion to decertify, as well as trial and possible appeals, and would further and substantially delay any recovery by the class with no assurance of recovering significantly more than the proposed settlement. While Plaintiffs are confident in the merits of these claims, legitimate controversies exist regarding each one of them. Plaintiffs also recognize proving the amount of wages and penalties due each Class Member would be an expensive, time-consuming, and uncertain proposition. [Ardestani Decl., ¶¶ 24-25.]

Plaintiffs and counsel discounted the value of the class claims consistent with the risks discussed above, and carefully weighed the likelihood of the class receiving substantially greater benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these very real and substantial risks – settlement on the proposed terms and without prolonged and costly litigation was in the best interests of the class, and the overall $3,900,000.00 recovery represents a significant percentage of Defendant's potential exposure. Given these risks, a total recovery for the class of $3,900,000.00, which will result in average award of about $2,042 per class member, is a significant result well within the range of reasonableness considering all potential outcomes, and it will provide direct monetary awards to all Class Members without further delay. [Ardestani Decl., ¶ 25.]

Importantly, the mere fact that a settlement does not provide the same recovery as might be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the settlement process…even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation"); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d 811, 819 ("[T]he question whether a settlement is fundamentally fair . . . is different from the question whether the settlement is perfect in the estimation of the reviewing court"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it represented 99% discount off the maximum value of the claims). Importantly as well, the proposed settlement is non-reversionary and will provide timely benefits to the Class Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf (reversionary provisions and/or cumbersome claims process may indicate lack of fairness). Plaintiffs and their counsel submit the settlement is within the "range of reasonableness," and is fair and adequate for the Class.

V. PLAINTIFFS' ENHANCEMENTS

A modest incentive award for each Plaintiff is appropriate under applicable law. See Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting cases awarding class representatives service and incentive payments ranging from $2,000 to $25,000). Both devoted time and resources to the litigation, provided documents, assisted Class Counsel with investigating the claims asserted and in preparing for mediation. The service payments provided to Plaintiffs as the class representatives are typical in class action cases and reasonable. Rodriguez v. W Publ'g Corp. (9th Cir. 2009) 563 F.3d 948, 958-59 (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.").

Here, the Settlement Agreement provides for an enhancement of up to $10,000.00 to each Plaintiff ($20,000.00). These requests are reasonable given the risks they undertook on behalf of the Class Members. By contacting and retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for the absent Class Members, while shouldering the risk of being liable for Defendant's litigation costs. *See* Fanny Thorng's Declaration in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement filed on June 12, 2024 attached to the Yslas Decl. at Exhibit 3 ("Thorng Decl."). Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit (discoverable even through a simple google search) for the benefit of other employees, placing themselves at risk of discrimination by future prospective employers. [Thorng Decl., ¶ 12.] As stated in their respective declarations filed at preliminary approval, among taking many other actions assisting in the successful litigation of this case, both Plaintiffs provided substantial factual information and documents to counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and kept abreast of all significant developments. [Ardestani Decl., ¶ 26.] Thorng Decl., ¶¶ 6-9.

VI. SETTLEMENT ADMINSTRATION COSTS

The settlement provides for a payment to Phoenix for its services as the Settlement Administrator. As set forth in the Declaration of Yami Burns, Phoenix has performed and will continue to perform its required duties through final distribution of the settlement funds and incurred $12,000.00 in fees and expenses. [Burns Decl., ¶ 18; Exh. C.] Accordingly, Plaintiffs respectfully request the Court approve payment of $12,000.00 to Phoenix from the GSA. [Ardestani Decl., ¶ 27.]

VII. ATTORNEY'S FEES AND COSTS

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

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

947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed private bargaining, if it were truly possible, might have reached" in determining a reasonable fee, and a fee award should approximate a "range of fees freely negotiated in comparable litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and justified by the work performed, the benefits obtained, and the contingent risk assumed.

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

Nonetheless, Plaintiffs succeeded and expeditiously obtained the relief they set out to obtain, and the settlement provides substantial cash payments to Class Members, with an average award of about $2,042, and with a maximum award of over $4,700. Importantly as well, the Class Members have been overwhelmingly supportive of the Settlement – as of the filing of this motion, there are no objections to the settlement and no opt outs. [Burns Decl., ¶¶ 10-11, 15.]

B. The Requested Fee Award Is Reasonable and Appropriate

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

As part of the Settlement, Defendant agreed not to object to an award of no more than one-third (1/3) of the GSA for attorney's fees, or $1,300,000.00, and up to $30,000.00 in reimbursement for litigation costs and expenses (only $26,681.90 is requested). Such a fee is commensurate with what the market would provide for similar services and the Court therefore can most certainly enforce the agreement. As California's Court of Appeal has instructed:

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

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

Here, the parties did not negotiate the inclusion of attorney's fees until after extensive arms-length bargaining regarding relief to the Class was completed. [Ardestani Decl., ¶ 28.] The requested fee and cost award was a product of these arms-length negotiations and fairly reflects the marketplace value of the services rendered by Class Counsel in this case. As a result, the fee agreed to by the parties should be approved.

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

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

> The recognized advantages of the percentage method-including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the

> litigation convince us the percentage method is a valuable tool that should not be denied our trial courts.

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

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

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

Here, Class Counsel seek a fee award for their successful prosecution and resolution of this action of one-third (1/3) of the total amount recovered by the Class via the lawsuit, or $1,300,000.00. The percentage requested is justified for the reasons set forth further below, comports with this Court's standard fee award as set forth in the Preliminary Approval Order, and further is in line with fee awards calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements shows that courts have historically awarded fees in the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on

Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund in order to assure that the fees do not consume a disproportionate part of the recovery obtained for the class, although somewhat larger percentages are not unprecedented.").

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

To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing an objective measure of the work performed into the calculation of a reasonable attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 699.63 hours of time on this matter, resulting in a modest and very reasonable lodestar of $518,983.

As is fully detailed in the Ardestani and Yslas Declarations, Class Counsel's efforts included: (1) extensive pre-lawsuit investigation of the claims of Plaintiffs and the putative class, including legal research, obtaining Plaintiffs' employment records, research into similar claims and claims against other employers in the same industry, and attempts to locate and contact other employees of Defendant; (2) drafting PAGA notice letters; (3) drafting the initial class and PAGA complaints and related documents; (4) case management, including communications with defense counsel, meeting and conferring/preparing case management statements, etc.; (5) lengthy discussions with defense counsel regarding settlement/mediation and informal discovery needed for meaningful settlement discussions; (6) engaging in substantial informal discovery, including propounding informal discovery "requests" and reviewing documents and other information produced; (7) drafting a mediation brief and accompanying damages model after review and analysis of defendant's informal discovery production; (8) attending an all-day mediation; (9) negotiating and drafting the settlement agreement and related documents; (10) drafting the amended complaint; (11) drafting the motion for preliminary approval and supplemental papers; (12) administration of the settlement, communications with the Settlement Administrator and settlement class members; (13) drafting the motion for final approval and motion for attorney's fees, and attending the final approval hearing; and (14) extensive communications with the Plaintiffs regarding case status, case investigation and document review, mediation, and settlement terms. [Ardestani Decl., ¶ 29, Exh. 2; Yslas Decl., ¶ 16.] Additionally, Class Counsel will incur additional time to attend the final approval hearing and following final approval to, inter alia, respond to class member inquiries, work with the Settlement Administrator on the distribution of settlement funds, and on the compliance hearing.

In pursuing this matter, Class Counsel incurred total attorney's fees of $518,983, and the lodestar is based on a very reasonable number of hours worked to litigate this matter to a successful conclusion (699.63 attorney hours), and the requested attorney hourly rates are reasonable and comport with hourly rates charged by other attorneys with similar experience in this practice area in California. [Ardestani Decl., ¶¶ 30-43.] On a lodestar basis, the fee request of $1,300,000.00 results in a multiplier of 2.5, which is a modest enhancement entirely in line with California law. [Id.; Yslas Decl., ¶¶ 17-18.] Indeed, California courts routinely approve multipliers in the in the 2-4 range to compensate for the time and risk of class action cases. Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 66 (affirming attorneys' fee award including an upward multiplier of 2.5); Wershba, 91 Cal.App.4th at 255 ("Multipliers can range from 2 to 4 or even higher."); City of Oakland Oakland Raiders (1988) 203 Cal.App.3d 78, 85 (affirming a multiplier of 2.34).) Class Counsel submits that the requested 2.5 multiplier effectively operates to show that the percentage fee request is reasonable considering the challenges presented in this contingency fee matter, and appropriately compensates Class Counsel for the contingent risk assumed and delay in payment during the 3+ years counsel has been representing Plaintiffs. Thus, the multiplier results in a fee constituting a fair return on the contingency.

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

What has now emerged in most fee award decisions is the recognition that fee determinations in both common fund and statutory fee situations are incapable of 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 determining an appropriate fee in a common fund case, a Court must decide, based on the unique posture of each case, what percentage of the common fund would most reasonably compensate Class Counsel given the nature of the litigation and the performance of counsel. Paul, Johnson, Alston & Hunt v. Graulty (9th Cir. 1989 886 F.2d 268, 272) (the benchmark percentage fee may be adjusted to account for the circumstances involved in a case).

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

1. The Results Achieved.

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

2. Class Counsel Bore Considerable Risk.

At the time of filing the complaint, Class Counsel recognized that they would have to expend a substantial amount of time and advance significant costs to prosecute a statewide class action suit with no guarantee of compensation or reimbursement, in the hope of prevailing against a sophisticated company represented by first-rate attorneys. Despite their belief in the merits of Plaintiffs' claims, they also knew they faced substantial risks of class certification and the ability to prove class-wide and individual damages. In light of the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would dig in and attempt to bury their firms in work. Given the size of Class Counsels' respective firms, not receiving any compensation for several years while simultaneously advancing litigation costs posed considerable risk and difficulty. [Ardestani Decl., ¶¶ 44-45.]

3. The Skill Required and the Quality of Work.

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

4. The Contingent Nature of the Fee and Risk Assumed

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

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

Here, the contingent fee practices of Plaintiffs' counsel simply do not accommodate the investment of unnecessary time in a case, and the adverse resolution of any one of several difficult issues present in this matter could have doomed the entire effort. As discussed, the attorney's fees in this case were not only contingent but fairly risky, and there was always a real chance Plaintiffs' counsel would receive nothing for any number of reasons. [Ardestani Decl., ¶¶ 44-45.] Accordingly, the contingent nature of the fee and the financial burdens on Class Counsel and Plaintiffs also support the fee requested.

5. Awards in Other Cases

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

F. <u>Class Counsel's Costs and Expenses are Reasonable</u>

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

Per the Ardestani and Yslas Declarations, Class Counsel incurred a total of $26,681.90 in expenses in connection with this matter. These expenses include amounts paid for court filing fees, service of process, expert fees, and mediation fees, all of which are costs normally billed to and paid by the client. These costs were reasonably incurred in the prosecution of this matter, and should be reimbursed in full. Plaintiffs respectfully request that the Court authorize reimbursement of counsel's costs in the amount of $26,681.90. [Ardestani Decl., ¶¶ 46-47; Yslas Decl., ¶ 19.]

VIII. <u>CONCLUSION</u>

For all the foregoing reasons, Plaintiffs Valeria Bolanos and Fanny Thorng respectfully request that the Court grant this motion and grant final approval of the proposed class action settlement and approve the payment of PAGA penalties to the State. Plaintiffs further request the Court approve payment of the Settlement Administrator's fees and expenses, approve the requested class representative enhancement payments, approve the award of attorney's fees and costs as requested, and enter judgment in this action.

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Finally, Plaintiffs request the Court set a final compliance hearing for June 25, 2026, or a later date convenient for the Court.

Dated: June 10, 2025

CROSNER LEGAL, P.C.
WILSHIRE LAW FIRM, PLC

By: ______________________

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