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8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF PLACER**

10
11 JESUS BAUTISTA, individually, and on
12 behalf of all others similarly situated,
13 Plaintiff,
14 vs. WESTERN CARE CONSTRUCTION
15 COMPANY, INC., a California corporation,
16 and DOES 1 through 20, inclusive,
17 Defendants.
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CASE NO. S-CV-0049217

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

Date: May 28, 2024
Time: 8:30 a.m.
Dept.: 42

1 **I. INTRODUCTION**

2 Plaintiff and Class Representative Jesus Bautista seeks final approval of a non-
3 reversionary class action settlement resolving wage and hour claims on behalf of 58 individuals
4 who worked for Western Care Construction Company, Inc. (“WCCC” or “Defendant”) as non-
5 exempt employees in California during the period of April 8, 2018 to November 4, 2023. The
6 proposed \$75,000 total settlement provides about \$19,788 in cash payments to the Class, with an
7 average award of about \$341, plus additional amounts payable under PAGA. The remaining
8 balance will cover a modest service award to Plaintiff, resolution of Plaintiff’s individual non-
9 wage and hour claims, settlement administration costs, civil penalties to the state, and reasonable
10 attorney’s fees and costs. The parties and their counsel finalized the settlement after extensive and
11 difficult arms-length negotiations overseen by an experienced and highly-regarded mediator. The
12 Court conditionally certified the Class and preliminarily approved the settlement on January 22,
13 2024. Since then, the Court-approved notice form was mailed to the Class Members on February
14 12, 2024, and they reacted very favorably to the settlement. Not one Class Member requested
15 exclusion, and there are no objections.

16 Class Counsel secured an excellent settlement with WCCC after extensive
17 investigation, litigation, and settlement negotiation and administration, all without any
18 compensation for services rendered or costs expended. The class notice duly informed
19 the class members that Class Counsel would request attorney’s fees not to exceed 40%
20 of the Gross Settlement Amount, or \$30,000, along with reimbursement of no more than
21 \$9,000 for actual costs incurred litigating this matter. As of the filing of this motion, *not*
22 *one Class Member objected* to the proposed fee award. Consistent with the Settlement
23 and notice, Plaintiff now respectfully requests the Court award Class Counsel’s fees in
24 the amount of \$30,000 and costs in the amount of \$8,717.14, as described in the
25 Declaration of J. Kirk Donnelly (“Donnelly 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 nearly two-
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1 plus delay in payment and, when subjected to a lodestar crosscheck, result in a base
2 lodestar that is higher than the actual fee request.

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

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

7 The details of the procedural and factual background of this matter were outlined in
8 the Plaintiffs' Motion for Preliminary Approval of Class Action Settlement (filed on or about
9 November 7, 2023). To re-familiarize the Court with this litigation, on October 3, 2022,
10 Plaintiff, on behalf of himself and all others similarly situated, filed a class action complaint
11 against Defendant for several alleged violations of the Labor Code and IWC Wage Orders.
12 Plaintiff filed his claims on behalf of a putative class of individuals who worked for WCCC as
13 non-exempt employees. Defendant WCCC develops and maintains senior living facilities and is
14 headquartered in Rocklin, California. Plaintiff Jesus Bautista worked for WCCC as a non-exempt
15 employee for some 20 years. Plaintiff claims he was terminated in and around June 2022 in
16 retaliation after dispute regarding a prior on the job injury that later wound up requiring surgery.
17 [Donnelly Decl., ¶ 2.]

18 On the class wage and hour claims Plaintiff alleged that, as non-exempt employees, he
19 and the class members were entitled to receive their meal and rest breaks as required under the
20 Labor Code and IWC Wage Orders. Plaintiff and the class members regularly worked shifts
21 longer than 8 hours, and frequently worked shifts exceeding 10 or even 12 hours. Based on
22 information obtained from Plaintiff, in conjunction with review of payroll and time records and
23 other information received from WCCC, Plaintiff alleges they did not receive all of the required
24 meal breaks. Plaintiff further alleges review of those same time records also suggests numerous
25 de facto violations where the class members' meal breaks were late or lasted less than 30 minutes,
26 and that class members never received an extra hour of premium pay in lieu of a missed meal or
27 rest break. Plaintiff also alleges he and the class members worked off the clock by being required
28 to complete their work, such as cleaning up job sites, loading/unloading equipment, etc., after the

1 scheduled end of a shift but without proper compensation. Plaintiff next contends he and the
2 class members had to use their own personal phones for work purposes, such as receiving texts
3 and phone calls from supervisors and taking pictures of their work, as well as using their own
4 vehicles to transport equipment and materials, etc. [Donnelly Decl., ¶ 3.]

5 Based on these allegations, Plaintiff's class action complaint asserted claims for damages
6 for: (1) failure to pay all wages due, (2) failure to provide all required meal and rest breaks or
7 compensation in lieu thereof; (3) failure to reimburse business expenses; (4) failure to provide
8 accurate, itemized wage statements; (4) failure to pay all wages due upon termination of
9 employment; and (5) unfair competition. Plaintiff filed a First Amended Complaint on November
10 14, 2022 that added a claim for civil penalties under PAGA based on the same alleged violations.
11 The FAC is the operative complaint for purposes of settlement. [Donnelly Decl., ¶ 4.]

12 WCCC has at all times denied Plaintiff's allegations and maintained its meal and rest
13 break and payroll policies and procedures comply with California law, and that it provided the
14 class members with required meal and rest breaks. WCCC also argued it accurately tracked and
15 paid for all hours worked by its employees, and that off the clock work was strictly against
16 company policy. Defendant also emphasized it owns and operates multiple company vehicles and
17 there would rarely if ever be a need for an employee to use a personal vehicle for their work.
18 Additionally, WCCC strongly contends the case cannot be maintained as any kind of class or
19 representative action, arguing that to the extent class members missed meal and/or rest breaks,
20 that such breaks were non-compliant, or that an employee worked off the clock, it would have
21 been intermittent and infrequent and evidence of such missed breaks or off the clock work would
22 be purely anecdotal, and therefore individualized issues would predominate and trial would be
23 unmanageable. Next, WCCC emphasized that about half the class – 30 out of 60 individuals –
24 signed arbitration agreements, severance agreements, or both, and that those individuals therefore
25 would be unable to participate in any certified class action. Lastly, WCCC contends Plaintiff
26 actually resigned his employment and was not terminated in retaliation for any kind of medical
27 condition, or for any other improper reason. [Donnelly Decl., ¶ 5.]

28 Both before and after Plaintiff filed his complaint, the Parties engaged in meet and confer

1 discussions regarding discovery, potential law and motion, and the merits of the case, and
2 ultimately agreed to attempt early global mediation. They then engaged in significant informal
3 discovery to facilitate an exchange of information necessary to engage in a meaningful mediation.
4 The Parties then engaged the Vivian Williamson, Esq., a respected mediator with extensive wage
5 and hour class action experience and, in September 2023, participated in a full day mediation with
6 Ms. Williamson that resulted in the proposed settlement. [Donnelly Decl., ¶¶ 6-7.] This Court
7 preliminarily approved the settlement on January 22, 2024.

8 Class Notices were mailed to class members on February 12, 2024, with a 45-day
9 window (to March 28, 2024) for class members to opt out or object to the proposed
10 settlement. [Declaration of Nathalie Beltran (“Beltran Decl.”), ¶¶ 7, 10-12.]

11 **III. THE PROPOSED SETTLEMENT TERMS**

12 Under the settlement, WCCC will pay \$75,000.00 into a common fund, the Gross
13 Settlement Amount.¹ Reasonable attorney’s fees of up to 40% of the GSA, or \$30,000, litigation
14 costs of up to \$9,000 (only \$8,717.14 is requested), an enhancement award of up to \$5,000 and a
15 \$5,000 payment to Plaintiff Bautista in resolution of his personal non-wage and hour claims,
16 settlement administration costs of no more than \$3,995, and \$2,500 for PAGA civil penalties,² all
17 will be paid from the Gross Settlement Amount. The remainder of \$19,788 will be allocated
18 among the Participating Class Members based on their total weeks worked during the Class
19 Period. None of the GSA will revert to WCCC. [Donnelly Decl., ¶ 8.]

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

21 The Court conditionally certified a settlement class defined to include including all
22 individuals who worked for Defendant as a non-exempt employee in California during the Class
23 Period, which runs from April 8, 2018 to November 4, 2023. The Settlement Administrator
24 ultimately mailed class notices to 58 individuals identified as members of the Class. [Beltran
25 Decl., ¶ 5.] Nothing has changed to require reconsideration of the Court’s certification of

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27 ¹ Unless otherwise stated, all capitalized terms have the same meaning as those defined in the Settlement Agreement

28 ² Per PAGA, the \$1,875 of this amount will go to the Labor & Workforce Development Agency as the State’s share of the civil penalties, and the remaining \$625 will be distributed pro rata to the Aggrieved Employees

1 the Settlement Class.

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

3 As noted, at least \$19,788 from the Gross Settlement Amount will be distributed to the
4 Participating Class Members. This is a cash settlement that does not require Participating Class
5 Members to submit a claim form to receive their settlement share. Participating Class Members
6 will receive their settlement checks automatically via First Class U.S. Mail. One-third of each
7 settlement share will be allocated to wages and the remaining two-thirds will be allocated to
8 expenses, penalties and interest, which allocation is consistent with WCCC's potential liability as
9 discussed below. All applicable employer-side payroll taxes will be paid by WCCC separately
10 from the GSA. Subject to the Court's approval, any amounts not claimed (because a class
11 member does not cash his or her settlement check) will be forwarded to The Gathering Inn as the
12 agreed upon *cy pres* beneficiary. [Donnelly Decl., ¶ 9.]

13 Each Participating Class Member will receive a share of the Net Settlement Amount based
14 on his or her total weeks worked for WCCC during the Class Period while employed in a non-
15 exempt position. Thus, each Class Member's Individual Settlement Payment will be calculated
16 using criteria typically used in determining appropriate amounts of unpaid wages, unpaid
17 premium wages for missed meal and rest breaks, and potential statutory penalties under
18 applicable law. These methods are intended to ensure each Class Member receives a portion of
19 the available settlement funds corresponding to the relative value of his or her potential claims.
20 The proposed allocation provides a reasonable way to compensate Class Members based on the
21 amount of time they worked for WCCC and the number of instances they missed a meal break
22 and/or rest break, were not provided compensation in lieu of such missed breaks, or lost hours
23 worked due to the alleged off the clock work. [Donnelly Decl., ¶ 10.]

24 The average class award will be approximately \$341, and the largest award will be over
25 \$800. There are 35 Class Members also eligible to receive a share of the PAGA civil penalties,
26 and their average PAGA award will be about \$18. [Beltran Decl., ¶¶ 14-15.]

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1 **C. Settlement Administration**

2 ILYM Group, Inc., as the Court-approved Settlement Administrator, mailed the Notice
3 Packet to the Class members after making all reasonable effort to ascertain the best mailing
4 address, including running each address through the National Change of Address database
5 and "skip-tracing" any Notice Packets returned as undeliverable. [Beltran Decl., ¶¶ 3-8.]
6 The Class Notice, previously approved by the Court, duly informed Class Members of the
7 settlement terms, including the estimated relief each Class Member will receive, the amounts
8 to be requested for attorney's fees and the class representative enhancement awards, and the
9 right to opt out of or object to the settlement. [Beltran Decl., ¶ 7, Exh. A.] ILYM mailed 58
10 Notice Packets on February 12, 2024. [Beltran Decl., ¶ 7.] Ultimately, zero Notice Packets
11 were deemed undeliverable, representing a 100% success rate. [Beltran Decl., ¶ 9.] The 45-
12 day response window for objecting to the settlement expired on March 28, 2024. [Beltran
13 Decl., ¶¶ 10-12.] As of the filing of this motion, ILYM has received zero requests for
14 exclusion (for a 100% participation rate), and zero objections to the settlement. No disputes
15 have been submitted regarding the information used to calculate class member settlement
16 shares. [Beltran Decl., ¶¶ 10-12.]

17 **D. Release of Claims**

18 All Participating Class Members will be deemed to release defendant WCCC from all
19 claims alleged in the operative complaint, or that could have been brought based on the facts
20 asserted in the operative complaint, including PAGA claims, from April 8, 2018 to November 4,
21 2023. The release is limited to the claims that were actually pleaded or could have been pleaded
22 based on the alleged facts in the operative complaint. Only Plaintiff Bautista is providing a full
23 general release of claims and waiver of Civil Code section 1542. [Donnelly Decl., ¶ 11.]

24 **E. PAGA and Notice to the LWDA**

25 As noted, the Parties allocated \$2,500 to payment of alleged civil penalties under PAGA,
26 and Plaintiff requests the Court approve that amount as fair, reasonable and adequate, and
27 consistent with the purposes underlying PAGA. As required by Labor Code section 2699(l)(2),
28 Plaintiff gave notice of the settlement and the final approval hearing to the LWDA via its online

portal. [Donnelly Decl., ¶ 12; Exh. 1.]

IV. ARGUMENT

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. Ford 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

1 experienced in similar litigation; and (4) the percentage of objectors is small. Dunk, 48
2 Cal.App.4th at 1802; Wershba, 91 Cal.App.4th at 245.

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

4 The proposed settlement of this action warrants final approval under the standards
5 summarized above. The settlement is fair, reasonable and adequate, and represents a
6 favorable resolution of highly disputed claims. Further, the settlement was overwhelmingly
7 approved by the class members, as there were no objections and no Class Members requested
8 exclusion, for a 100% participation rate.

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

11 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
12 was reached following arm's-length negotiations presided over by Vivian Williamson, Esq., a
13 highly respected and well-known mediator with extensive experience mediating wage and
14 hour class actions. [Donnelly Decl., ¶ 7.] Moreover, Plaintiff and his counsel were well-
15 informed about the facts and the law, and counsel J. Kirk Donnelly has years of litigation
16 experience, including litigating wage and hour class actions. Plaintiff's counsel are well-qualified
17 to evaluate the risks and benefits of pursuing further litigation or settling the matter. [Donnelly
18 Decl., ¶¶ 28-30.] Defendant WCCC likewise was represented by highly-qualified and
19 experienced defense counsel. Both sides advocated vigorously for their clients, and nothing
20 was "left on the table."

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

22 The settlement was well-received by the class. As of the filing of this motion, no
23 objections have been filed, and no Class Members requested exclusion out of 58 settlement
24 class members. [Beltran Decl., ¶¶ 9-10.] As many courts recognize, class member reaction to the
25 settlement is one of the most important factors to consider in determining if final approval should
26 be granted. Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see
27 also In re: American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is
28 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).

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

The proposed settlement involves a substantial sum of money that, when distributed, will confer meaningful monetary benefits on the Class members. As described above, each individual award will be based on an allocation consistent with the nature of the claims asserted and will fairly and equitably allocate the available funds in relation to the degree of damage each Class member incurred. While Class members who worked for only a short period of time will receive relatively small sums, those with longer tenures and who worked more hours and shifts throughout the class period will receive appropriately larger awards. Prior to mediation, the parties engaged in extensive informal discovery to facilitate settlement discussions. As a result, Plaintiff reviewed documents and information regarding WCCC’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. Plaintiff’s counsel is 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. [Donnelly Decl., ¶¶ 6, 13.]

Using that data, Plaintiff ran various calculations under different theories of liability and estimated WCCC’s maximum exposure on the class claims at approximately \$752,000, including and \$92,326 on the unpaid wage/off the clock claim, \$585,312 on the meal and rest break claims, \$34,480 on the expense reimbursement claims, \$127,400 on the wage statement claims, and \$107,520 on the waiting time penalty claims. [Donnelly Decl., ¶ 14.] Plaintiff substantially discounted the value of these claims in light of the multiple and considerable risks posed by proceeding with the litigation.

First, Plaintiff and the class face the risk of not being able to proceed on a class basis since about half of the class members signed arbitration agreements or severance agreements, or both, and those individuals would be unlikely to be able to participate further in the case. In fact, if

1 only about 30 individuals would be eligible to become class members, this raised the possibility
2 that the Court might find against Plaintiff on the numerosity requirement on class certification.
3 Even if Plaintiff overcame that hurdle, the potential recovery essentially would be cut in half.
4 [Donnelly Decl., ¶ 15.]

5 As far as off the clock work, Plaintiff alleged he and the class members frequently worked
6 several extra minutes at the end of a shift on various duties such as cleaning up a job site,
7 loading/unloading trucks, storing equipment, etc., and that such time was not accounted or paid
8 for by WCCC. WCCC countered by arguing that its timekeeping and payroll policies accurately
9 recorded and paid for all hours worked, and that it frequently paid overtime to Plaintiff and the
10 class members when they worked beyond the end of their scheduled shift. Defendant contends to
11 the extent any off the clock work occurred, it was against company policy and done without
12 company knowledge. [Donnelly Decl., ¶ 16.] Accordingly Defendant argued the issue would not
13 be certifiable since it would require individualized inquiries whether any compensable “off the
14 clock” work occurred and why it was or was not documented and paid for. White v. Starbucks
15 Corp. (N.D. Cal. 2007) 497 F.Supp.2d 1080, 1083 (employer must have actual or constructive
16 knowledge of the off the clock work for liability to attach).

17 Plaintiff also contends WCCC fails to provide duty-free meal and rest periods to Class
18 Members by failing to relinquish control over how Class Members utilize their rest period time
19 by instructing Plaintiff and Class Members to monitor their phones and respond to any incoming
20 calls/texts from management. Plaintiff also contends Defendant’s own records show de facto
21 violations where meal periods were not recorded, especially with respect to second meal periods,
22 or started late. [Donnelly Decl., ¶ 17.]

23 Defendant denies Plaintiff’s contentions, claiming it made meal and rest breaks available
24 to Class Members in compliance with California law. Defendant contends its meal and rest break
25 policies are lawful and that Class Members were frequently reminded they were required to take
26 all meal and rest breaks. Defendant also contends that time records demonstrate that Class
27 Members took duty-free, timely meal and rest breaks. Finally, Defendant argues that Plaintiff’s
28 meal and rest break claims are not susceptible to common proof, as the claims would require

1 individualized inquiry, including whether there was an unlawful companywide policy, whether
2 employees had the opportunity to take meal and rest periods, whether they voluntarily chose to
3 forego their meal and rest periods, and whether Defendant ever prevented them from taking meal
4 and rest periods. Accordingly, Defendant contends these claims are vulnerable to a ruling that
5 class treatment is not appropriate. [Donnelly Decl., ¶ 18.]

6 On the expense reimbursement claim, Plaintiff alleges that throughout their employment,
7 he and the class members were required to use their personal cell phones in order to communicate
8 with supervisors and other employees during work hours, and take pictures of their work.
9 However, Defendants did not reimburse Plaintiffs and the class members for this expense.
10 Cochran v. Schwan's Home Serv., Inc. (2014) 228 Cal.App.4th 113. On the other hand,
11 Defendant argued there would be no conceivable need for employees to use their phones for work
12 and that any use of employee phones was purely for personal convenience and therefore not
13 reimbursable. Plaintiff also contends he used his own vehicle for company business, while
14 Defendant countered that it owns and operates a fleet of vehicles that employees use to perform
15 their duties, and that it employees were prohibited from using their own vehicles to mitigate
16 potential liability among other reasons. [Donnelly Decl., ¶ 19.]

17 Plaintiff also contends Defendant's wage statements failed to include the employee ID
18 number or last four digits of the SSN, as required by Labor Code section 226(a)(7), and therefore
19 violated the Labor Code on their face. Plaintiff also alleged derivatively that, as a result of the
20 above alleged violations, Defendant failed to provide accurate wage statements and failed to
21 timely pay all wages that were due and owing upon separation of employment. Thus, should the
22 primary claims fail, Plaintiff's derivative claims would also fail. Defendant also contends it
23 would not be liable for waiting time penalties because a "good faith dispute" exists over the
24 payment of past wages. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th 1157, 1201.
25 Further, Defendant contends Plaintiff would have to prove that Defendant "willfully" failed to
26 pay Class Members appropriate wages due upon separation of employment. Defendant contends
27 that any failure to pay wages upon separation was not willful. [Donnelly Decl., ¶ 20.]

28 As far as potential PAGA liability, the Aggrieved Employees theoretically are entitled to

1 penalties totaling upwards of \$700,000 should Plaintiff prevail on all claims and establish
2 violations of the multiple Labor Code sections at issue. [Donnelly Decl., ¶ 21.] As with the class
3 claims, Plaintiff discounted the potential PAGA penalties since the Court possesses wide
4 discretion to reduce such penalties, or to decline to award penalties at all. Labor Code
5 § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial court awarded
6 penalties of \$5 per pay period after a bench trial, which decision was upheld on appeal); In re
7 Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS 48557
8 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$2,500 to PAGA penalties,
9 which amount Plaintiff submits is reasonable under the circumstances and in line with
10 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
11 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
12 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
13 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS
14 116303 (finding a \$7,500 PAGA payment reasonable when measured against the overall
15 settlement of \$345,000 and the possible weaknesses in Plaintiffs' case, or 2.2 percent of total
16 settlement). Additionally, the LWDA has been informed of the terms of the PAGA portion of the
17 settlement, and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D.
18 Cal. Oct. 3, 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA
19 penalties of 0.6% where "[p]laintiffs [have] submitted the settlement agreement to the LWDA,
20 and the LWDA has not objected to the settlement.

21 Thus, Defendant raised various defenses to each of Plaintiff's claims, any one of which, if
22 successful, could have derailed Plaintiffs' case. Accordingly, Plaintiff faced risky issues going
23 forward with this litigation, and given the need to secure class certification, try the case, and deal
24 with post-trial appeals, it would have taken years to realize any recovery in this action. Plaintiff
25 and his counsel discounted the value of the class claims consistent with the risks discussed above,
26 and carefully weighed the likelihood of the class receiving substantially greater benefit if the
27 litigation continued. Plaintiff and counsel concluded – in light of these very real and substantial
28 risks – settlement on the proposed terms and without prolonged and costly litigation was in the

1 best interests of the class. [Donnelly Decl., ¶¶ 22-23.]

2 The overall recovery represents a significant percentage of Defendant's potential exposure
3 and, given the risks addressed above, a total recovery for the class of \$75,000, which will result in
4 average awards of some \$341 per class member is a significant result well within the range of
5 reasonableness considering all potential outcomes, and it will provide direct monetary awards to
6 all Class Members without further delay. [Donnelly Decl., ¶ 23.]

7 Importantly, the mere fact that a settlement does not provide the same recovery as might
8 be achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
9 adequate. Wershba, 91 Cal.App.4th at 246, 250 ("Compromise is inherent and necessary in the
10 settlement process...even if the relief afforded by the proposed settlement is substantially
11 narrower than it would be if the suits were to be successfully litigated, this is no bar to a class
12 settlement because the public interest may indeed be served by a voluntary settlement in which
13 each side gives ground in the interest of avoiding litigation"); Lane v. Facebook, Inc., 696 F.3d
14 811, 819 (9th Cir. 2012) ("[T]he question whether a settlement is fundamentally fair . . . is
15 different from the question whether the settlement is perfect in the estimation of the reviewing
16 court"); 7-Eleven Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135,
17 1150 ("The fact that a proposed settlement may amount to only a fraction of the potential
18 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
19 should be disapproved"); White v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803
20 F.Supp.2d 1086, 1098 (rejecting contention settlement was not fair and reasonable even though it
21 represented 99% discount off the maximum value of the claims). Importantly as well, the
22 proposed settlement is non-reversionary and will provide immediate benefits to the Class
23 Members without a claims process. White, 803 F.Supp.2d at 1098; c.f., Federal Judicial Center,
24 Managing Class Action Litigation: A Pocket Guide for Judges (3d ed. 2010) at 20, available at
25 <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf> (reversionary provisions and/or
26 cumbersome claims process may indicate lack of fairness). Plaintiff and his counsel submit the
27 settlement is within the "range of reasonableness," and is fair and adequate for the Class.

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1 **V. PLAINTIFF’S ENHANCEMENT AWARD**

2 Under the terms of the settlement, Plaintiff seeks a modest incentive award of \$5,000 for
3 his service in bringing these claims on behalf of the Class. The request is reasonable given the
4 risks he undertook on behalf of the Class Members. By contacting and retaining counsel to
5 pursue these claims, Plaintiff helped make this settlement possible for the absent Class Members,
6 while shouldering the risk of being liable for Defendant’s litigation costs. Plaintiff also exposed
7 himself to unwanted notoriety related to filing a public lawsuit (discoverable even through a
8 simple google search) for the benefit of other employees, placing himself at risk of discrimination
9 by future prospective employers. As set forth in more detail in his declaration submitted with the
10 preliminary approval motion, among taking many other actions assisting in the successful
11 litigation of this case, Plaintiff provided substantial factual information and documents to
12 counsel, attended numerous meetings/phone conferences with counsel to discuss the case, and
13 kept abreast of all significant developments. [Declaration of Juan Bautista, ¶¶ 2-9; Donnelly
14 Decl., ¶ 24.] Finally, there are no class member objections submitted with respect to the amounts
15 Plaintiff proposes to receive. [Beltran Decl., ¶ 11.] Accordingly, the requested enhancement
16 payments to Plaintiff is appropriate and justified as part of the settlement.

17 **VI. SETTLEMENT ADMINISTRATION COSTS**

18 The settlement provides for a payment to ILYM for its services as the Settlement
19 Administrator. As set forth in the Declaration of Nathalie Beltran, ILYM has performed and will
20 continue to perform its required duties through final distribution of the settlement funds and
21 incurred \$3,550.00 in fees and expenses. [Beltran Decl., ¶ 16.] Accordingly, Plaintiff respectfully
22 requests the Court approve payment of \$3,550 to ILYM from the GSA. [Donnelly Decl., ¶ 25.]

23 **VII. ATTORNEY’S FEES AND COSTS**

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

26 This Court has discretion over the amount of attorneys' fees awarded and court
27 approval is required for Class Counsel's fees. Cal. Rule of Court 3.769; Levy v. Toyota
28 Motor Sales, U.S.A. (1992) 4 Cal.App.4th 807, 813; Lealao v. Beneficial Cal., Inc. (2000) 82

1 Cal.App.4th 19. In defining a reasonable fee, the Court should attempt to mimic the
2 marketplace for cases involving significant contingent risk, such as this one. Deposit
3 Guaranty Nat'l Bank, Jackson, Miss. v. Roper (1980) 445 U.S. 326, 338, rehg. den. 446 U.S.
4 947; Lealao, 82 Cal.App.4th at 49-50 (court should attempt "to award the fee that informed
5 private bargaining, if it were truly possible, might have reached" in determining a reasonable
6 fee, and a fee award should approximate a "range of fees freely negotiated in comparable
7 litigation"). Here, Class Counsel's request for attorney's fees and costs is reasonable and
8 justified by the work performed, the benefits obtained, and the contingent risk assumed.

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

18 Nonetheless, Plaintiff succeeded and expeditiously obtained the relief he set out to
19 obtain, and the settlement provides substantial cash payments to Class Members, with an
20 average award of about \$341, and with a maximum award of over \$800. Importantly as well,
21 the Class Members have been overwhelmingly supportive of the Settlement – as of the filing
22 of this motion, there are no objections to the settlement and no opt outs. [Beltran Decl.,
23 ¶¶ 10-12.]

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

25 The United States Supreme Court has ruled the parties to a class action properly may
26 negotiate not only the settlement of the action itself but also the payment of attorney's fees.
27 Evans v. Jeff D. (1986) 475 U.S. 717, 734-35, 738, fn. 30.) In Hensley v. Eckerhart (1983)
28 461 U.S. 424, 437, the Supreme Court explained that negotiated, agreed-upon attorney's fee

1 provisions are the ideal towards which the parties should strive: "A request for attorney's fees
2 should not result in a second major litigation. Ideally, of course, litigants will settle the
3 amount of a fee." The United States Supreme Court has reemphasized this policy and further
4 stressed trial courts have "a responsibility to encourage agreement" on fees. Blum v. Stenson
5 (1984) 465 U.S. 886, 902 n.19.

6 As part of the Settlement, TWC agreed not to object to an award of no more than 40%
7 of the GSA for attorney's fees, or \$30,000.00, and up to \$10,000 in reimbursement for
8 litigation costs and expenses (although only \$8,717.14 is requested). Such a fee is
9 commensurate with what the market would provide for similar services and the Court
10 therefore can most certainly enforce the agreement. As California's Court of Appeal has
11 instructed:

12 Given the unique reliance of our legal system on private litigants to enforce substantive
13 provisions of law through class and derivative actions, attorneys providing the essential
14 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.

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

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

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

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

1 The recognized advantages of the percentage method-including relative ease of
2 calculation, alignment of incentives between counsel and the class, a better
3 approximation of market conditions in a contingency case, and the encouragement it
4 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.

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

6 Indeed, both California and federal courts have long recognized an appropriate
7 method for determining the award of attorney's fees is based on a percentage of the total
8 value of benefits afforded to class members by the settlement. Serrano v. Priest (1977) 20
9 Cal.3d 25, 34; Boeing Co. v. Van Gernert (1980) 444 U.S. 472, 478; Vincent v. Hughes Air
10 West, Inc. (9th Cir. 1977) 557 F.2d 759, 769. Awarding a fee based on a percentage of the
11 common fund recovered operates to "spread litigation costs proportionately among all the
12 beneficiaries so that the active beneficiary does not bear the entire burden alone." Vincent,
13 557 F.2d at 769.

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

22 Here, Class Counsel seek a fee award for their successful prosecution and resolution
23 of this action of no more than forty percent of the total amount recovered by the Class via the
24 lawsuit, or \$30,000. The percentage requested is justified for the reasons set forth further
25 below, and comports with fee awards calculated on a percentage-of-the-benefit basis.
26 Indeed, review of class action settlements shows that courts have historically awarded fees in
27 the range of 20 to 50 percent, depending upon the circumstances of the case. In re Warner

1 Communications Sec. Litig. (S.D.N.Y. 1985) 618 F.Supp. 735, 749-50 (concluding that
2 percentage fees in common fund cases range from 20 to 50 percent); Newberg, Newberg on
3 Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50% of the fund is the upper limit on a
4 reasonable fee award from a common fund in order to assure that the fees do not consume a
5 disproportionate part of the recovery obtained for the class, although somewhat larger
6 percentages are not unprecedented.").

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

8 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
9 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for
10 bringing an objective measure of the work performed into the calculation of a reasonable
11 attorney fee." Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 53.7 hours of time on this
12 matter, resulting in a modest and very reasonable lodestar of \$41,460.00.

13 As is fully detailed in the Donnelly Declaration, Class Counsel's efforts included: (1)
14 extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class, including legal
15 research, obtaining Plaintiff's employment records, research into similar claims and claims
16 against other employers in the same industry, and attempts to locate and contact other WCCC
17 employees; (2) drafting a PAGA notice letter; (3) drafting the initial complaint and related
18 documents, and drafting a first amended complaint; (4) case management, including
19 communications with defense counsel, meeting and conferring/preparing case management
20 statements, attending the initial CMC, etc.; (5) propounding extensive written discovery and
21 review and analysis of the responses; (6) lengthy discussions with defense counsel regarding
22 settlement/mediation and informal discovery needed for meaningful settlement discussions; (7)
23 engaging in substantial informal discovery, including propounding informal discovery "requests"
24 and reviewing documents and other information produced; (8) drafting a mediation brief and
25 accompanying damages model after review and analysis of defendant's informal discovery
26 production; (9) attending an all-day mediation; (10) negotiating and drafting the settlement
27 agreement and related documents; (11) drafting the motion for preliminary approval; (12)
28 administration of the settlement, including communications with the Settlement Administrator

1 and settlement class members; (13) drafting the motion for final approval and motion for
2 attorney's fees, and attending the final approval hearing; and (14) extensive communications with
3 the Plaintiff regarding case status, case investigation and document review, mediation, and
4 settlement terms. Additionally, Class Counsel will incur additional time following final approval
5 to, inter alia, respond to class member inquiries, work with the Settlement Administrator on the
6 distribution of settlement funds, and on the compliance hearing and amended judgment.

7 [Donnelly Decl., ¶ 27, Exh. 2.]

8 In pursuing this matter, Class Counsel incurred total attorney's fees of \$41,460.00, the
9 lodestar is based on an eminently reasonable number of hours worked to litigate this matter to a
10 successful conclusion (53.7 attorney and paralegal hours), and the requested attorney hourly rates
11 are reasonable and comport with hourly rates charged by other attorneys with similar experience
12 in this practice area in California. [Donnelly Decl., ¶¶ 28-35; Exh. 3.] On a lodestar basis, the
13 fee request of \$30,000 results in a base lodestar that is higher than the fees requested on
14 percentage of the recovery basis and, accordingly, there is no request for a lodestar
15 enhancement. Class Counsel submits the lodestar crosscheck operates to show that the
16 percentage fee request is reasonable considering the fees requested are lower than the actual
17 value of the services rendered when valued via traditional hourly billing.

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

21 What has now emerged in most fee award decisions is the recognition that fee
22 determinations in both common fund and statutory fee situations are incapable of
23 mathematical precision because of the intangible factors that must be resolved in the court's
24 discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In
25 determining an appropriate fee in a common fund case, a Court must decide, based on the
26 unique posture of each case, what percentage of the common fund would most reasonably
27 compensate Class Counsel given the nature of the litigation and the performance of counsel.
28 Paul, Johnson, Alston & Hunt v. Gaulty (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, 1 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 not only one class member 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 validity of Plaintiff's 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 small firm in work. Given the small size of Class

1 Counsel's firm, not receiving any compensation for several years while simultaneously
2 advancing litigation costs posed considerable risk and difficulty. [Donnelly Decl., ¶¶ 36-37.]

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

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

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

13 There is a substantial difference between the risk assumed by attorneys being paid
14 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
15 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d
16 1249, 1256. The attorney working on a contingent basis can only log hours while
17 working without pay towards a result that will hopefully entitle him to a market fee
18 considering the risk and other factors of the undertaking. Id. at 1257. Otherwise, the
19 contingent fee attorney receives nothing. Id. In this case, Class Counsel subjected
20 themselves to this risk in this all or nothing contingent fee case wherein the necessity
21 and financial burden of private enforcement makes the requested award appropriate.

22 Counsel retained on a contingency fee basis, whether in private matters or in class
23 action litigation, is entitled to a premium beyond their standard, hourly, non-contingent
24 fee schedule to compensate for both the contingent risk assumed and the delay in
25 payment. The simple fact is that despite the most vigorous and competent of efforts,
26 success is never guaranteed. McKittrick v. Gardner (4th Cir. 1967) 378 F.2d 872, 875.
27 Indeed, if counsel is not adequately compensated for the risks inherent in difficult class
28 actions, competent attorneys will be discouraged from prosecuting similar cases.

1 Ketchum v. Moses (2001) 24 Cal.4th 1122, 1132-33; Cazares v. Saenz (1989) 208
2 Cal.App.3d 279, 287.

3 Here, the contingent fee practices of Plaintiff's counsel simply do not accommodate
4 the investment of unnecessary time in a case, and the adverse resolution of any one of several
5 difficult issues present in this matter could have doomed the entire effort. As discussed, the
6 attorney's fees in this case were not only contingent but fairly risky, and there was always a
7 palpable chance Plaintiff's counsel would receive nothing for any number of reasons.
8 [Donnelly Decl., ¶¶ 36-37.] Accordingly, the contingent nature of the fee and the financial
9 burdens on Class Counsel and Plaintiff also support the fee requested.

10 5. Awards in Other Cases

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

24 F. Class Counsel's Costs and Expenses are Reasonable

25 Plaintiff's counsel also requests reimbursement of actual out-of-pocket expenses incurred
26 to prosecute this action. These expenses were incidental and necessary to the effective
27 representation of the employees, and Plaintiffs' counsel is permitted to recover litigation costs
28 and expenses under the common fund doctrine and the Settlement Agreement. Serrano, 20 Cal.3d

1 at 35 (common fund doctrine permits recovery of fees and costs from the fund); Rider v. County
2 of San Diego (1992) 11 Cal.App.4th 1410, 1424 n.6 (costs are recoverable from the common fund
3 “[o]f necessity, and for precisely the same reasons discussed above with respect to the recovery of
4 attorneys’ fees by ... [Plaintiffs’] attorneys”). Plaintiffs’ counsel also is entitled to recover “those
5 out-of-pocket expenses that would normally be charged to a fee-paying client.” Harris v.
6 Marhoefer (9th Cir. 1994) 24 F.3d 16, 19.

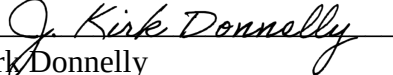
7 Per the Donnelly Declaration, Class Counsel incurred a total of \$8,717.14 in
8 expenses in connection with this matter. These expenses include amounts paid for court
9 filing fees, service of process, remote court appearances, expert fees, postage, and
10 mediation fees, all of which are costs normally billed to and paid by the client. These
11 costs were reasonably incurred in the prosecution of this matter, and should be
12 reimbursed in full. Plaintiff respectfully requests that the Court authorize reimbursement
13 of counsel’s costs in the amount of \$8,717.14. [Donnelly Decl., ¶¶ 38-39.]

14 **VIII. CONCLUSION**

15 For all the foregoing reasons, Plaintiff Marcus French respectfully requests that the Court
16 grant this motion and grant final approval of the proposed class action settlement and approve the
17 payment of PAGA penalties to the State. Plaintiff further requests the Court approve payment of
18 the Settlement Administrator’s fees and expenses, approve the requested class representative
19 enhancement payment, approve the award of attorney’s fees and costs as requested, and enter
20 judgment in this action. Finally, Plaintiff request the Court set a final compliance hearing for
21 May 29, 2025, or a later date convenient for the Court.

22
23 Dated: April 15, 2024

LAW OFFICES OF J. KIRK DONNELLY, APC

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25 
26 J. Kirk Donnelly
27 Attorneys for Plaintiff JESUS BAUTISTA
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