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8 and SANDRA BRADFORD
9 As individuals on behalf of themselves and
on behalf of all others similarly situated

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN BERNARDINO**
13

14 JACKIE SHILEVINATZ and SANDRA
15 BRADFORD, as individuals on behalf of
themselves and on behalf of all others
16 similarly situated,

17 Plaintiffs,

18
19 v.

20 AIRPORT TERMINAL SERVICES, INC.,
a Missouri corporation; ALLIANCE
21 GROUND INTERNATIONAL, LLC, a
Delaware corporation; and DOES 1-100,
22 inclusive,

23 Defendants.
24
25
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27
28

Case No.: CIVSB2229072

Assigned for All Purposes to:
Hon. Joseph Ortiz
Dept. S-17

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: December 17, 2024
Time: 1:30 p.m.
Dept.: S-17

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1 **I. INTRODUCTION**

2 Plaintiffs and Class Representatives Jackie Shilevinatz and Sandra Bradford seek final
3 approval of a non-reversionary class action settlement resolving wage and hour claims on behalf
4 of 3,827 individuals who worked for Defendants Airport Terminal Services, Inc. and Alliance
5 Ground International, LLC (“Defendants”), either directly or via a staffing agency, at any location
6 in California during the Class Period of October 31, 2018 through January 8, 2024. The proposed
7 \$2,615,000 total settlement provides about \$1,657,003 in cash payments to the Class, with an
8 average award of about \$435, plus additional amounts payable under PAGA. The remaining
9 balance will cover modest service awards to Plaintiffs, settlement administration costs, civil
10 penalties to the state, and reasonable attorney’s fees and costs. The parties and their counsel
11 finalized the settlement after extensive and difficult arms-length negotiations overseen by an
12 experienced and highly-regarded mediator. The Court conditionally certified the Class and
13 preliminarily approved the settlement on June 11, 2024. Since then, the Court-approved notice
14 form was mailed to the Class Members on July 25, 2024, and they reacted very favorably to the
15 settlement. As of the filing of this motion, only three class members submitted timely and valid
16 requests for exclusion, and there are no objections.

17 Class Counsel secured an excellent settlement with Defendant after some two
18 years of investigation, litigation, and settlement negotiation and administration, all
19 without any compensation for services rendered or costs expended. The class notice duly
20 informed the class members that Class Counsel would request attorney’s fees not to
21 exceed 33.33% of the Gross Settlement Amount, along with reimbursement of no more
22 than \$20,000 for actual costs incurred litigating this matter. As of the filing of this
23 motion, *not one Class Member objected* to the proposed fee award. Consistent with the
24 Settlement and notice, Plaintiff now respectfully requests the Court award Class
25 Counsel's fees in the amount of \$871,666.67 and costs in the amount of \$20,000, as
26 described in the Declaration of Nikki Trenner (“Trenner Decl.”) filed herewith. The
27 requested attorney’s fees are well within the range of reasonableness, especially
28 considering the complex and risky nature of this litigation, the contingent risk assumed,

1 the two-plus year delay in payment and, when subjected to a lodestar crosscheck, results
2 in a base lodestar with a reasonable 3.62 upward modifier.

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

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

7 The background of this matter was covered in detail in Plaintiffs' motion for preliminary
8 approval (filed March 19, 2024). To re-familiarized the Court, Defendants provides ground
9 handling services and passenger services, such as passenger check in and ticketing, passenger
10 boarding, baggage services, and ramp handling services, for various airlines at LAX Airport, John
11 Wayne Airport, Daugherty Field Airport, Ontario International Airport, Norman Y. Mineta San
12 Jose International Airport, San Francisco International Airport, Palm Springs International
13 Airport, and Oakland International Airport. Plaintiff Shilevinatz worked for Defendants for about
14 7 years as a gate agent at the Palm Springs and Oakland airports. Plaintiff Bradford worked for
15 Defendants for about a year, from August 2022 to August 2023, performing ticketing work, gate
16 agent work, and reservations for Spirit Airlines at the Oakland airport. [Trenner Decl., ¶ 2.]

17 On October 31, 2022, Plaintiff Shilevinatz filed the underlying class action against
18 Defendants alleging (1) failure to pay all wages due, including both minimum and overtime (2)
19 failure to provide meal periods; (3) failure to provide rest periods; (4) failure to provide accurate
20 wage statements; (5) failure to reimburse business expenses; and (6) unfair competition. After
21 exhausting administrative remedies, on April 21, 2023, Plaintiff Shilevinatz filed a First Amended
22 Complaint¹ adding a claim under PAGA based on the same alleged Labor Code violations. She
23 alleged her claims on behalf of a putative class of individuals who worked for Defendants as non-
24 exempt employees in California during the relevant time frame. [Trenner Decl., ¶ 3.]

25 Plaintiffs allege Defendants failed to pay all wages due to the class members because they
26 rounded off employee time punches, which rounding practice resulted in an overall loss of

28 ¹ Plaintiff filed a PAGA complaint against Defendants in Riverside County on January 3, 2023. After filing her FAC
in this matter, she dismissed the Riverside case without prejudice on May 22, 2023. [Trenner Decl., ¶ 3.]

1 compensable hours worked by the class members. Plaintiffs also claim Defendants failed to
2 include non-discretionary, non-hourly compensation in the calculation of the “regular rate” used to
3 determine the correct overtime rate. As a result, per Plaintiffs, Defendants underpaid for overtime.
4 Plaintiffs further alleged Defendants failed to provide all required meal and rest breaks on a fully
5 compliant basis, and that review of employee time records suggests meal periods frequently were
6 untimely, and that required meal and rest breaks were not provided on shifts over 10 hours.
7 Plaintiffs further contend Defendants did not pay an extra hour of premium pay in lieu of missed
8 or non-compliant breaks. Plaintiffs next contended that they had to use their personal phones on
9 company business without reimbursement, and that their wage statements were inaccurate and did
10 not include all information required by the Labor Code. [Trenner Decl., ¶ 4.]

11 Defendants have at all times denied Plaintiffs’ allegations and maintained their meal break
12 and payroll policies and procedures comply with California law, that they provided employees
13 with required meal and rest breaks, and properly tracked employee time and paid Plaintiffs and all
14 other employees all wages due at the correct hourly and overtime rates. Additionally, Defendants
15 strongly contend the case cannot be maintained as any kind of class or representative action,
16 arguing that to the extent class members missed meal breaks, that such breaks were non-
17 compliant, or that any unpaid “off the clock” work occurred, it was intermittent and infrequent and
18 evidence of such violations would be purely anecdotal, and therefore individualized issues
19 predominate and trial would be unmanageable. [Trenner Decl., ¶ 5.]

20 After Plaintiffs filed the initial complaint, the Parties initiated discovery and also engaged in
21 numerous meet and confer discussions regarding discovery, potential law and motion, and potential
22 ADR. Ultimately, the Parties agreed to mediation and also agreed to an informal exchange of
23 information to facilitate meaningful settlement discussions. The Parties then retained Steve
24 Serratore, Esq., a respected neutral with experience mediating wage and hour class actions. In
25 October and November 2023, the Parties participated in two mediation sessions with Mr. Serratore
26 that resulted in this settlement. [Trenner Decl., ¶¶ 6-8.]

27 The Court preliminarily approved the settlement on June 11, 2024. Class Notices were
28 mailed to class members on July 25, 2024, with a forty-five day window (to September 8, 2024)

1 for class members to opt out or object to the proposed settlement. [Declaration of Sara-
2 Schwermer-Sween (“Schwermer-Sween Decl.”), ¶ 12.]

3 **III. THE PROPOSED SETTLEMENT TERMS**

4 Under the settlement, Defendants will pay \$2,615,000.00 into a common fund, the Gross
5 Settlement Amount (“GSA”). Reasonable attorney’s fees of up to one-third of the GSA, or
6 \$871,666.67, actual litigation costs of up to \$20,000, modest enhancement awards of up to \$5,000
7 for each plaintiff, settlement administration costs of no more than \$26,330, and \$30,000 for
8 alleged civil penalties under PAGA,² all will be paid from the GSA. The remainder of
9 approximately \$1,657,003 will be allocated among the Participating Class Members based on their
10 total weeks worked during the Class Period. No portion of the GSA will revert to Defendants.
11 [Trenner Decl., ¶ 9.]

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

13 The Court conditionally certified a settlement class including all current and former non-
14 exempt employees that worked either directly or via a staffing agency for Defendants at any location
15 in California during the Class Period of October 31, 2018 through January 8, 2024.³ The Settlement
16 Administrator ultimately mailed class notices to 3,827 individuals identified as members of the
17 Class. [Schwermer-Sween Decl., ¶ 12.] Nothing has changed to require reconsideration of
18 the Court’s certification of the Settlement Class.

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

20 As noted, the settlement obligates Defendants to pay \$2,615,000 to resolve the Settlement
21 Class’s claims, inclusive of attorney’s fees and costs. At least \$1,657,003 from the GSA will be
22 distributed to the Participating Class Members. This is a cash settlement that does not require
23 Participating Class Members to submit a claim form to receive their settlement share. Participating
24 Class Members will receive their settlement checks automatically via First Class U.S. Mail. One-
25 third of each settlement share will be allocated to wages and the remaining two-thirds percent will
26

27 ² Consistent with PAGA, \$22,500 of that amount will go the LWDA for the State’s share of the civil penalties, and the
remaining \$3,500 will be distributed pro rata to the Aggrieved Employees.

28 ³ The Settlement Administrator determined that the Settlement Agreement’s escalator clause was triggered, and
Defendants elected to shorten the class period to January 8, 2024 to account for that. [Shwermer-Sween Decl., ¶ 19.]

1 be allocated to expenses, penalties and interest. Defendants will pay any and all applicable
2 employer-side payroll taxes separately and in addition to the GSA. Subject to the Court's
3 approval, any amounts not claimed (because a class member does not cash his or her settlement
4 check) will be forwarded to the California State Controller's Unclaimed Property Fund. [Trenner
5 Decl., ¶ 10.]

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

17 **C. Settlement Administration**

18 Rust Consulting, Inc., as the Court-approved Settlement Administrator, mailed the
19 Notice Packet to the Class members after making all reasonable effort to ascertain the best
20 mailing address, including running each address through the National Change of Address
21 database and "skip-tracing" any Notice Packets returned as undeliverable. [Schwermer-
22 Sween Decl., ¶¶ 3-15.] The Class Notice, previously approved by the Court, duly informed
23 Class Members of the settlement terms, including the estimated relief each Class Member will
24 receive, the amounts to be requested for attorney's fees and the class representative
25 enhancement awards, the right to opt out of or object to the settlement, and was mailed in
26 both English and Spanish versions. [Schwermer-Sween Decl., ¶¶ 9, 12; Exh. A.] Rust mailed
27 3,827 Notice Packets on July 25, 2024. [Schwermer-Sween Decl., ¶ 12.] Ultimately, 93
28 Notice Packets were deemed undeliverable, representing a 97.6% success rate. [Schwermer-

1 Sween Decl., ¶ 13.] The response window for opting out of or objecting to the settlement
2 expired on September 8, 2024. [Schwermer-Sween Decl., ¶ 12.] Rust has received three valid
3 and timely requests for exclusion (for a 99.9% participation rate), one untimely request for
4 exclusion, and zero objections. [Schwermer-Sween Decl., ¶¶ 17-18; Exh. B.] Two disputes
5 were submitted regarding the information used to calculate class member settlement shares,
6 and both have been resolved. [Schwermer-Sween Decl., ¶ 16.]

7 The average class award will be about \$435, and class awards will range from about \$15 to
8 \$2,576. The average PAGA award will be about \$3.21, and PAGA awards will range from about
9 \$0.25 to \$11. [Schwermer-Sween Decl., ¶¶ 19-22.]

10 **D. Release of Claims**

11 All Participating Class Members will be deemed to release Defendants from all claims
12 alleged in the operative complaint, or that could have been brought based on the allegations in the
13 operative complaint, including PAGA claims, from October 31, 2018 through January 8, 2024.
14 The release is limited to the claims that were actually pleaded or could have been pleaded based on
15 the alleged facts in the operative complaint. [Trenner Decl., ¶ 12.]

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

17 The Parties allocated \$30,000 to payment of civil penalties under PAGA for such claims
18 against Defendants, and Plaintiffs submit that amount is fair, reasonable and adequate, and
19 consistent with PAGA's underlying purposes. Under PAGA, the LWDA will receive 75% of that
20 sum, or \$22,500, for the State's share of the civil penalties, while the 2,332 Aggrieved Employees
21 will share the remaining 25%, or \$7,500, on a pro rata basis. As required by Labor Code section
22 2699(I)(2), Plaintiffs gave notice of the settlement and final approval hearing to the LWDA via its
23 online portal. [Trenner Decl., ¶ 13; Exh. 1.]

24 **IV. ARGUMENT**

25 The law favors settlement, particularly in class actions where substantial resources can
26 be conserved by avoiding the time, cost, and rigors of formal litigation. H. Newberg & A.
27 Conte, 4 Newberg on Class Actions (4th ed. 2002), § 11.41; Class Plaintiffs v. City of Seattle
28 (9th Cir. 1992) 955 F.2d 1268, 1276, cert. denied, 506 U.S. 953; Van Bronkhorst v. Safeco

1 Corp. (9th Cir. 1976) 529 F.2d 943,950; Potter v. Pacific Coast Lumber Co. (1951) 37 Cal.2d
2 592, 602. Nevertheless, to make certain the rights of absent parties are not unjustly
3 compromised, the settlement of a class action requires court approval. Cal. Rule of Court
4 3.769; Dunk v. Ford Motor Co. (1996) 48 Cal.App.4th 1794, 1801; Wershba v. Apple Computer
5 (2001) 91 Cal.App.4th 224, 245. The purpose of that judicial review is to protect against fraud
6 or collusion, and to ensure fairness to absent class members. Dunk, 48 Cal.App.4th at 1800-01;
7 Newberg, at §§ 11.22, *et seq.* Review is accomplished through a two-step process intended to
8 determine whether, under the totality of circumstances, the settlement is fair, reasonable and
9 adequate. Dunk, 48 Cal.App.4th at 1801; Wershba, 91 Cal.App.4th at 245.

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

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

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

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

2 The settlement is not the result of fraud or collusion. Rather, the proposed settlement
3 was reached following two days of arm's-length negotiations presided over by Steve Serratore,
4 Esq., a highly respected and well-known mediator with extensive experience mediating wage
5 and hour class actions. [Trenner Decl., ¶ 7.] Moreover, Plaintiffs and their counsel were well-
6 informed about the facts and the law, and counsel Zachary M. Crosner, Jamie Serb, and Nikki
7 Trenner have years of litigation experience, including litigating wage and hour class actions.
8 Plaintiffs' counsel are well-qualified to evaluate the risks and benefits of pursuing further litigation
9 or settling the matter. [Trenner Decl., ¶¶ 30-35, 39.] Defendants likewise were represented by
10 highly-qualified and experienced defense counsel. Both sides advocated vigorously for their
11 clients, and nothing was "left on the table."

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

13 The settlement was well-received by the class. As of the filing of this motion, there are
14 no objections and only 3 out of 3,827 Class Members validly requested exclusion. [Schwermer-
15 Sween Decl., ¶¶ 16-17.] As many courts recognize, class member reaction to the settlement is one
16 of the most important factors to consider in determining if final approval should be granted.
17 Mandujano v. Basic Vegetable Prods., Inc., 541 F.2d 832, 837 (9th Cir. 1976); see also In re:
18 American Bank Note Holographics, 127 F.Supp.2d 418, 425 (S.D.N.Y. 2001) ("It is well-settled
19 that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in
20 considering its adequacy") (internal quotation marks omitted).

21 **C. The Proposed Settlement Meets the Dunk and Kullar Factors and is**
22 **within the Range of Reasonableness**

23 California law recognizes several factors bearing on the fairness, adequacy, and
24 reasonableness of a proposed class settlement. Kullar v. Foot Locker Retail, Inc. (2008) 168
25 Cal.App.4th 116, 128. In relevant part, these factors include: 1) the amount offered in settlement 2)
26 the strength of plaintiff's case; 3) the risk, expense, complexity, and likely duration of further
27 litigation; 4) the risk of maintaining class action status throughout trial; 5) the experience and views
28

1 of counsel; and 6) the reaction of the class members to the proposed settlement. Id. As demonstrated
2 below, the proposed settlement satisfies these requirements.

3 Prior to mediation, the parties engaged in extensive informal discovery to facilitate
4 settlement discussions. As a result, Plaintiffs reviewed documents and information regarding
5 Defendants' payroll practices, pay stubs and time records for a sampling of pay periods, meal and
6 rest break policies, etc., and information from Defendants regarding class size and breakdown of
7 job positions, work weeks, rates of pay, and other information used to formulate a damages model.
8 Plaintiffs also had this information reviewed by a consulting expert to assist with data analysis and
9 calculating potential damages. Plaintiffs' counsel are confident they obtained sufficient information
10 to enable them to understand the law and facts of this case and make an informed decision regarding
11 the proposed settlement and whether it is in the best interests of the class. [Trenner Decl., ¶¶ 6, 14.]

12 Next, the proposed settlement falls within the range of reasonableness warranting
13 preliminary approval. The proposed settlement involves a significant sum that, when distributed,
14 will confer direct monetary benefits on the class members. As described above, each class member
15 will be entitled to a monetary payment without having to file a claim and each payment will be
16 relative to the value of his or her potential claims. Plaintiffs' analysis was supported by the pre-
17 mediation production described above, which permitted Plaintiffs' counsel to estimate potential
18 damages on various theories of liability.

19 Using that data, Plaintiffs ran various calculations and estimated Defendants' likely
20 maximum exposure on the class claims at approximately \$26.25 million, including \$89,310 on the
21 rounding claim, \$128,260 on the underpaid overtime/regular rate claim, \$3,096,100 on the meal
22 break claims, \$8,864,700 on the rest break claims, \$505,090 on the expense reimbursement claim,
23 \$3,666,550 on the wage statement claims, and \$9,896,160 on the waiting time penalty claims.
24 [Trenner Decl., ¶ 15.] Plaintiffs and counsel substantially discounted the value of these claims,
25 however, in light of the multiple and considerable risks posed by proceeding with the litigation.

26 On the unpaid wage claims, Plaintiffs first alleged Defendants rounded off employee time
27 punches to the nearest quarter hour, which resulted in an overall loss of compensable time and
28 corresponding wages. In Delmer Camp v. Home Depot USA, Inc. (2022) 84 Cal.App.5th 638, the

1 appellate court noted “*Troester* and *Donohue* appear to suggest, as [the court has] explained here,
2 that the application of *See’s Candy* should be reexamined in circumstances where employee
3 worktime in minutes can be captured and has been captured by the employer and, as a result of a
4 quarter-hour rounding system, the employee is not compensated for all actual worktime.” Here,
5 Plaintiffs allege Defendants time keeping system tracked employee time to the minute and
6 therefore employees could and should have been paid accordingly. On the other hand, Defendants
7 argued that See’s Candies v. Superior Court (2012) 210 Cal.App.4th 889 remains good law and
8 that any time rounding was entirely neutral in its overall effect on employee compensation.
9 [Trenner Decl., ¶ 16.]

10 Plaintiffs also alleged employers were not paid all overtime wages due because Defendants
11 did not include certain forms of compensation, such as “incentive bonuses” and “lump sum
12 bonuses,” in the “regular rate of pay” used to calculate the correct overtime rate. “Regular rate of
13 pay, which can change from pay period to pay period, includes adjustments to the straight time
14 rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly
15 compensation the employee has earned.” Alvarado v. Dart Container Corp. of California (2018) 4
16 Cal.5th 542, 554. As a result, Plaintiffs contends Defendants frequently underpaid the Class
17 Members for their overtime. While Plaintiffs believe this is one of the stronger claims, they also
18 recognize the exposure is nominal, as the amount lost typically is only a few dollars per work
19 week. [Trenner Decl., ¶ 17.]

20 On the meal and rest break claims, Plaintiffs contend while Defendants’ written break
21 policy violated California law in that it didn’t notify employees when they were to take their meal
22 period and failed to notify employees they were entitled to a second meal period during shifts over
23 ten hours. Plaintiffs further noted the policy required supervisors to schedule and approve meal
24 periods and further mandated such scheduling could be varied “to ensure safety and/or customer
25 services is not compromised.” Plaintiffs contend their review of the time records produced shows
26 a failure to provide timely first meal periods of at least thirty minutes in 45% of the total shifts
27 over five hours, a lack of second meal periods in 89% of the total shifts over ten hours. Plaintiffs
28 also contend they did not receive proper and timely rest breaks for the same reasons, and

1 particularly due to the supervisors' authority to vary break times "to ensure safety and/or customer
2 services is not compromised." [Trenner Decl., ¶ 18.]

3 In response, Defendants emphasized the written policies are compliant, and that they
4 provided class members with the opportunity to take all required meal and rest breaks and thus
5 met their obligations under the law. Defendants argued further that in light of the compliant
6 policies, whether a class member missed a meal period, received a late meal period, or missed a
7 rest break would have been aberrational and against company policy. Thus, per Defendants, these
8 issues are not amenable to class or representative treatment since their resolution would require
9 individualized inquiries as to why a break was missed or non-compliant. [Trenner Decl., ¶ 19.]

10 On the expense reimbursement claim, Plaintiffs claimed that they and the Class Members
11 regularly had to use their personal phones while on the clock and for work purposes to, inter alia,
12 communicate with supervisors, take pictures of their work, and so on. Per Plaintiffs, Defendants
13 did not pay any reimbursement for use of personal phones. Defendants on the other hand argued
14 that any use of personal mobile devices was unnecessary to perform the job and therefore was
15 purely for personal convenience. If so, then the expense was neither reasonable nor necessary,
16 and therefore no reimbursement was required. Labor Code § 2802. [Trenner Decl., ¶ 20.]

17 On the claims under Labor Code section 226, for inaccurate wage statements, Plaintiffs
18 alleged derivative wage statement violations based on the alleged unpaid wage and meal/rest
19 break violations, and further alleged derivative Labor Code 203 violations for failure to timely pay
20 all wages due on separation of employment. Being derivative, these claims accordingly are subject
21 to the same risks and uncertainties applicable to the primary claims, plus additional risks posed by
22 the need to take into account the discretionary nature of such awards and the "good faith" and
23 other defenses available to Defendant. Amaral v. Cintas Corp. No. 2 (2008) 163 Cal.App.4th
24 1157, 1203-4 (employer did not willfully fail to pay wages under Labor Code § 203 even though
25 class prevailed on underlying claim for failure to pay living wages). Thus, while these claims
26 largely are derivative of the unpaid wage claims, they also are subject to additional defenses.
27 [Trenner Decl., ¶ 21.]

1 As far as potential PAGA liability, the allegedly aggrieved employees theoretically are
2 entitled to penalties totaling over \$20 million in civil penalties should Plaintiffs prevail on all claims,
3 establish violations of the multiple Labor Code sections at issue, and recover the maximum
4 allowable penalties. [Trenner Decl., ¶ 22.] As with the class claims, however, Plaintiffs discounted
5 the potential PAGA penalties based on Defendants' various defenses on the merits and also
6 accounted for the Court's wide discretion to reduce such penalties, or to decline to award penalties
7 at all. Labor Code § 2699(e)(2); Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504 (trial
8 court awarded penalties of \$5 per pay period after a bench trial, which decision was upheld on
9 appeal); In re Taco Bell Wage and Hour Actions (E.D. Cal. Apr. 8, 2016) 2016 U.S. Dist. LEXIS
10 48557 (PAGA penalties denied after trial). Accordingly, the Parties allocated \$5,000 to PAGA
11 penalties, and Plaintiffs submit this amount is reasonable under the circumstances and in line with
12 comparable settlements in other wage and hour class actions in California. *E.g.*, Van Kempen v.
13 Matheson Tri-Gas, Inc. (N.D. Cal. Aug. 25, 2017) 2017 U.S. Dist. LEXIS 137182 (granting final
14 approval of \$5,000 PAGA penalty from \$370,000 settlement, or 1.4 percent of total settlement);
15 Slavkov v. First Water Heater Partners I (N.D. Cal. July 25, 2017) 2017 U.S. Dist. LEXIS 116303
16 (finding a \$7,500 PAGA payment reasonable when measured against the overall settlement of
17 \$345,000 and the possible weaknesses in Plaintiffs' case, or 2.2 percent of total settlement).
18 Additionally, the LWDA has been informed of the terms of the PAGA portion of the settlement,
19 and will be able to weigh in as necessary. Jennings v. Open Door Mktg. Inc. (N.D. Cal. Oct. 3,
20 2018) 2018 U.S. Dist. LEXIS 171356, at *27 (approving settlement with PAGA penalties of 0.6%
21 where "[p]laintiffs [have] submitted the settlement agreement to the LWDA, and the LWDA has
22 not objected to the settlement.

23 The settlement obviates the significant risk that this Court may find any kind of class or
24 representative resolution unachievable or deny certification of all or some of Plaintiffs' claims.
25 Furthermore, even if Plaintiffs obtained certification of all or some of the claims, continued
26 litigation would be lengthy and expensive as the parties pursued merits discovery, a probable
27 motion to decertify, as well as trial and possible appeals, and would substantially delay any
28 recovery by the class with no assurance of recovering significantly more than the proposed

1 settlement. While Plaintiffs are confident in the merits of these claims, legitimate controversies
2 exist regarding each one of them. Plaintiffs also recognizes proving the amount of wages and
3 penalties due each Class Member would be an expensive, time-consuming, and uncertain
4 proposition. [Trenner Decl., ¶ 23-24.]

5 Plaintiffs and their counsel discounted the value of the class claims consistent with the
6 risks discussed above, and carefully weighed the likelihood of the class receiving substantially
7 greater benefit if the litigation continued. Plaintiffs and counsel concluded – in light of these very
8 real and substantial risks – settlement on the proposed terms and without prolonged and costly
9 litigation was in the best interests of the class. The overall \$2,615,000 recovery represents a
10 significant percentage of Defendants’ potential exposure and, given the risks addressed above, a
11 total recovery for the class of \$2,615,000, which will result in average award of some \$473 per
12 class member, is a significant result well within the range of reasonableness considering all
13 potential outcomes, and it will provide direct monetary awards to all Class Members in short
14 order. [Trenner Decl., ¶¶ 23-25.]

15 Importantly, the mere fact that a settlement does not provide the same recovery as might be
16 achieved at trial is not a proper indicator of whether the settlement is fair, reasonable, and
17 adequate. Wershba, 91 Cal.App.4th at 246, 250 (“Compromise is inherent and necessary in the
18 settlement process...even if the relief by the proposed settlement is substantially narrower than it
19 would be if the suits were to be successfully litigated, this is no bar to a class settlement because
20 the public interest may indeed be served by a voluntary settlement in which each side gives
21 ground in the interest of avoiding litigation”); Lane v. Facebook, Inc. (9th Cir. 2012) 696 F.3d
22 811, 819 (“[T]he question whether a settlement is fundamentally fair . . . is different from the
23 question whether the settlement is perfect in the estimation of the reviewing court”); 7-Eleven
24 Owners for Fair Franchising v. Southland Corp. (2000) 85 Cal.App.4th 1135, 1150 (“The fact that
25 a proposed settlement may amount to only a fraction of the potential recovery does not, in and of
26 itself, mean that the proposed settlement is grossly inadequate and should be disapproved”); White
27 v. Experian Information Solutions, Inc. (C.D. Cal. 2011) 803 F.Supp.2d 1086, 1098 (rejecting
28 contention settlement was not fair and reasonable even though it represented 99% discount off the

1 maximum value of the claims). Importantly as well, the proposed settlement is non-reversionary
2 and will provide timely benefits to the Class Members without a claims process. White, 803
3 F.Supp.2d at 1098; c.f., Federal Judicial Center, Managing Class Action Litigation: A Pocket
4 Guide for Judges (3d ed. 2010) at 20, available at
5 <http://www.fjc.gov/sites/default/files/2012/ClassGd3.pdf> (reversionary provisions and/or
6 cumbersome claims process may indicate lack of fairness). Plaintiffs and their counsel submit the
7 settlement is within the “range of reasonableness,” and is fair and adequate for the Class.

8 **V. SETTLEMENT ADMINISTRATION COSTS**

9 The settlement provides for a payment to Rust for its services as the Settlement
10 Administrator. As set forth in the Declaration of Sara Schwermer-Sween, Rust has performed
11 and will continue to perform its required duties through final distribution of the settlement funds
12 and incurred \$26,330 in fees and expenses. [[Schwermer-Sween Decl., ¶ 23.] Plaintiff
13 accordingly requests the Court approve payment of \$26,330 to Rust from the GSA. [Trenner
14 Decl., ¶ 26.]

15 **VI. PLAINTIFFS’ ENHANCEMENT AWARDS**

16 Pursuant to the terms of the settlement, Plaintiffs seek modest incentive awards of \$5,000
17 each for their service in bringing these claims on behalf of the Class. The requests are
18 reasonable given the risks they undertook on behalf of the Class Members, and by contacting
19 and retaining counsel to pursue these claims, Plaintiffs helped make this settlement possible for
20 the absent Class Members, while shouldering the risk of being liable for Defendant’s litigation
21 costs. Plaintiffs also exposed themselves to unwanted notoriety related to filing a public lawsuit
22 (discoverable even through a simple google search) for the benefit of other employees, placing
23 each at risk of discrimination by future prospective employers. As set forth in more detail in
24 their respective declarations filed with the preliminary approval motion, among taking many
25 other actions assisting in the successful litigation of this case, both Plaintiffs provided
26 substantial factual information and documents to counsel, attended numerous meetings/phone
27 conferences with counsel to discuss the case, and kept abreast of all significant developments.
28 [Declaration of Jackie Shilevinatz, ¶¶ 2-9; Declaration of Sandra Bradford, ¶¶ 2-9; Trenner

1 Decl., ¶ 27.] Accordingly, the requested enhancement payments to Plaintiffs are appropriate and
2 justified as part of the settlement. Staton v. Boeing (9th Cir. 2003) 327 F.3d 938, 977 (collecting
3 cases awarding class representatives service and incentive payments ranging from \$2,000 to
4 \$25,000).

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

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

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

20 As addressed in detail above, at the time the parties reached the tentative settlement
21 success for Plaintiffs and the putative class was far from certain. Plaintiffs faced a real risk
22 that some or all the claims would not be certified for class treatment, as Defendants had
23 strong arguments that its compensation policies were legal and properly compensated the
24 class members. Even if Plaintiffs certified some or all of the claims and ultimately prevailed
25 on the merits, it undoubtedly would have taken several years to realize any recovery while
26 they pursued class certification, trial, and an almost certain appeal. [Trenner Decl., ¶¶ 16-22.]

1 Nonetheless, Plaintiffs succeeded and expeditiously obtained the relief they set out to
2 obtain, and the settlement provides substantial cash payments to Class Members, with an
3 average award of about \$435, and with a maximum award of over \$2,500.

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

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

14 As part of the Settlement, Defendants agreed not to object to an award of no more than
15 1/3 of the GSA for attorney's fees, or \$871,666.67, and up to \$20,000 in reimbursement for
16 litigation costs and expenses. Such a fee is commensurate with what the market would
17 provide for similar services and the Court therefore can most certainly enforce the agreement.
18 As California's Court of Appeal has instructed:

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

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

26 Here, the parties did not negotiate the inclusion of attorney's fees until after extensive
27 arms-length bargaining regarding relief to the Class was completed. [Trenner Decl., ¶ 28.]
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.

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

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

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

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

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

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

1 Here, Class Counsel seek a fee award for their successful prosecution and resolution of
2 this action of no more than 1/3 of the GSA, and specifically \$871,666.67. The percentage
3 requested is justified for the reasons set forth further below, and comports with fee awards
4 calculated on a percentage-of-the-benefit basis. Indeed, review of class action settlements
5 shows that courts have historically awarded fees in the range of 20 to 50 percent, depending
6 upon the circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y.
7 1985) 618 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range
8 from 20 to 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14
9 ("Usually 50% of the fund is the upper limit on a reasonable fee award from a common fund
10 in order to assure that the fees do not consume a disproportionate part of the recovery
11 obtained for the class, although somewhat larger percentages are not unprecedented.").

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

13 To ensure the fairness of an attorney's fee award, courts frequently conduct a lodestar
14 cross check of counsel's fees. "A lodestar cross-check thus provides a mechanism for bringing
15 an objective measure of the work performed into the calculation of a reasonable attorney fee."
16 Laffitte, 1 Cal.5th at 504. Here, Class Counsel spent 324.3 hours of time on this matter,
17 resulting in a very reasonable lodestar of \$240,660.

18 Over the two plus years this matter has been pending, Crosner Legal's efforts have
19 included: (1) extensive pre-lawsuit investigation of the claims of Plaintiff and the putative class,
20 including legal research, research into similar claims and claims against other employers in the
21 same industry, and attempts to locate and contact other employees of the Defendants; (2) drafting
22 a PAGA notice letter; (3) drafting the initial complaint and related documents; (4) case
23 management, including communications with defense counsel, meeting and conferring/preparing
24 case management statements, etc.; (5) lengthy discussions with defense counsel regarding
25 settlement/mediation and informal discovery needed for meaningful settlement discussions;
26 (6) engaging in substantial informal discovery, including propounding informal discovery
27 "requests" and reviewing documents and other information produced; (7) working with a
28 consulting expert on the analysis of Defendants' production; (8) drafting a mediation brief and

1 accompanying damages model after review and analysis of defendant's formal and informal
2 discovery production; (9) attending an all-day mediation; (10) negotiating and drafting the
3 settlement agreement and related documents; (11) drafting the consolidated amended complaint to
4 effectuate the settlement; (12) drafting motion for preliminary approval, and attending the hearing;
5 (13) administration of the settlement, including communications with the Settlement
6 Administrator and settlement class members; (14) final approval and attorney's fees, and attending
7 the final approval hearing; and (15) extensive communications with the Plaintiffs regarding case
8 status, case investigation and document review, mediation, and settlement terms. Additionally,
9 Class Counsel will incur additional time following final approval to, inter alia, respond to class
10 member inquiries, attend to distribution of settlement funds, and on the compliance hearing.

11 [Trenner Decl., ¶ 29, Exh. 2.]

12 In pursuing this matter, Class Counsel incurred total attorney's fees of \$240,660, and
13 the lodestar is based on an eminently reasonable number of hours worked to litigate this matter to
14 a successful conclusion (324.3 attorney hours). The requested attorney hourly rates are reasonable
15 and comport with hourly rates charged by other attorneys with similar experience in this practice
16 area in California. On a lodestar basis, the fee request of \$871,666.67 results in a multiplier of
17 3.62, which is a reasonable enhancement entirely in line with California law. [Trenner Decl.,
18 ¶¶ 30-44.] Indeed, courts in California routinely approve multipliers in the in the 2-4 range to
19 compensate for the time and risk of class action cases. Wershba, 91 Cal.App.4th at 255
20 ("Multipliers can range from 2 to 4 or even higher."); Buccellato v. AT&T Operations, Inc.,
21 (N.D. Cal. June 30, 2011) 2011 WL 3348055, at *2 (finding cross-check multiplier of 4.3
22 reasonable); In re Mercury Interactive Corp. Secs. Litig., (N.D. Cal. March 3, 2011) 2011 WL
23 826797, at *2 (cross-check multiplier of 3.08 held reasonable). Class Counsel submits that the
24 requested 3.62 multiplier effectively operates to show that the percentage fee request is
25 reasonable considering the challenges presented in this contingency fee matter, and
26 appropriately compensates Class Counsel for the contingent risk assumed and delay in
27 payment during the nearly 2+ years Crosner Legal has represented Plaintiffs. Thus, the
28 multiplier results in a fee constituting a fair return on the contingency.

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

4 What has now emerged in most fee award decisions is the recognition that fee
5 determinations in both common fund and statutory fee situations are incapable of
6 mathematical precision because of the intangible factors that must be resolved in the court's
7 discretion based on the circumstances of each particular case. Conte, § 207, p. 44. In
8 determining an appropriate fee in a common fund case, a Court must decide, based on the
9 unique posture of each case, what percentage of the common fund would most reasonably
10 compensate Class Counsel given the nature of the litigation and the performance of counsel.
11 Paul, Johnson, Alston & Hunt v. Graulity (9th Cir. 1989 886 F.2d 268, 272) (the benchmark
12 percentage fee may be adjusted to account for the circumstances involved in a case).

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

17 **1. The Results Achieved.**

18 Class Counsel obtained an excellent result in this case for the Class Members. The
19 Settlement provides real monetary benefits to the Class Members, and the Settlement is
20 particularly advantageous to the Class Member because the proceeds will be distributed
21 shortly as opposed to waiting additional years for a similar, or possibly, less favorable result.
22 Considering many individual claims would be very modest and would not be cost-effective to
23 pursue successfully, the Settlement provided them with fair compensation for their claims.
24 Moreover, the absence of any objection to either the Settlement or the attorney's fee request
25 bolsters the excellent results. Indeed, the approval of the Class is overwhelming as indicated
26 by the fact that only 3 out of over 3,800 class members requested exclusion. Additionally, the
27 settlement amounts to a substantial percentage of the maximum value of the amount the Class
28 might have obtained if it had tried the case and recovered on all theories seeking recovery of

1 wages and penalties. "It is well-settled law that a cash settlement amounting to only a
2 fraction of the potential recovery does not per se render the settlement inadequate or unfair."
3 In re Omnivision Techs., Inc., 559 (N.D. Cal. 2008) F.Supp.2d 1036, 1042.

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

5 At the time of filing the complaint, Class Counsel recognized that they would have to
6 expend a substantial amount of time and advance significant costs to prosecute a statewide
7 class action suit with no guarantee of compensation or reimbursement, in the hope of
8 prevailing against a sophisticated company represented by first-rate attorneys. Despite
9 their belief in the validity of Plaintiffs' claims, they also knew they faced substantial risks
10 of class certification and the ability to prove class-wide and individual damages. In light of
11 the highly uncertain nature of this suit, Class Counsel also bore the risk that Defendant would
12 dig in and attempt to bury their small firm in work. Given the small size of Class Counsel's
13 firm, not receiving any compensation for several years while simultaneously advancing
14 litigation costs posed considerable risk and difficulty. [Trenner Decl., ¶¶ 45-46.]

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

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

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

25 There is a substantial difference between the risk assumed by attorneys being paid
26 by the hour and attorneys working on a contingent fee basis. The attorney being paid by
27 the hour can go to the bank with his fee. Powers v. Eichen (9th Cir. 2000) 229 F.3d 1249,
28 1256. The attorney working on a contingent basis can only log hours while working

1 without pay towards a result that will hopefully entitle him to a market fee considering
2 the risk and other factors of the undertaking. Id. at 1257. Otherwise, the contingent fee
3 attorney receives nothing. Id. In this case, Class Counsel subjected themselves to this
4 risk in this all or nothing contingent fee case wherein the necessity and financial burden
5 of private enforcement makes the requested award appropriate.

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

15 Here, the contingent fee practice of Plaintiffs' counsel simply do not accommodate the
16 investment of unnecessary time in a case, and the adverse resolution of any one of several
17 difficult issues present in this matter could have doomed the entire effort. As discussed, the
18 attorney's fees in this case were not only contingent but fairly risky, and there was always a
19 distinct possibility Plaintiff's counsel would receive nothing for any number of reasons.
20 [Trenner Decl., ¶¶ 45-46.] Accordingly, the contingent nature of the fee and the financial
21 burdens on Class Counsel also support the fee requested.

22 5. Awards in Other Cases

23 As discussed, the attorney's fees requested by Class Counsel are within the range of
24 fees awarded in comparable cases, as California courts regularly approve class action fee
25 awards amounting to 1/3 of a common fund, as approved by the California Supreme Court in
26 Lafitte. Additionally, review of class action settlements over the past 10 years shows that the
27 courts have historically awarded fees in the range of 20 to 50 percent, depending upon the
28 circumstances of the case. In re Warner Communications Sec. Litig. (S.D.N.Y. 1985) 618

1 F.Supp. 735, 749-50 (concluding that percentage fees in common fund cases range from 20 to
2 50 percent); Newberg, Newberg on Class Actions (3d ed.) § 14.03, pp. 13-14 ("Usually 50%
3 of the fund is the upper limit on a reasonable fee award from a common fund in order to
4 assure that the fees do not consume a disproportionate part of the recovery obtained for the
5 class, although somewhat larger percentages are not unprecedented."). Class Counsel's
6 requested fees equal to 1/3 the gross amount recovered on behalf of the class and are well
7 within the range of reasonableness under either the percentage of the recovery or the lodestar
8 method in light of the contingent risk assumed, the delay in payment, the result achieved, and
9 the overall quality of the representation.

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

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

21 As explained in the Trenner Declaration, Class Counsel incurred a total of
22 \$34,189.73 in expenses incurred in connection with this litigation. These expenses include
23 the amounts paid for court filing fees, service of process, expert fees, postage, and
24 mediation fees, all of which are costs normally billed to and paid by the client. These
25 costs were reasonably incurred in the prosecution of this matter, and were necessary for
26 the successful prosecution of the case and accordingly Plaintiff's counsel requests
27 reimbursement for costs in the amount of \$20,000, which is the cap imposed under the
28 Settlement Agreement. [Trenner Decl., ¶¶ 47-48.]

1 **VIII. CONCLUSION**

2 For all the foregoing reasons, Plaintiffs respectfully request that the Court grant this
3 motion and grant final approval of the proposed class action settlement and approve the payment
4 of PAGA penalties to the State. Plaintiffs further request the Court approve payment of the
5 Settlement Administrator's fees and expenses, approve the requested class representative
6 enhancement payment, approve the award of attorney's fees and costs as requested, and enter
7 judgment in this action. Finally, Plaintiffs request the Court set a final compliance hearing for
8 December 16, 2025, or a later date convenient for the Court.

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11 Dated: November 21, 2024

CROSNER LEGAL, PC

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