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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

NORMANDY VAMOS and FRANKLIN
BOONE, individuals; and on behalf of all others
similarly situated;

Plaintiffs,

vs.

AMERICAN IDOL PRODUCTIONS, INC., a
California corporation; AMERICAN
BROADCASTING COMPANIES, INC., a
Delaware corporation; FREMANTLEMEDIA
NORTH AMERICA, INC., a California
corporation; INDUSTRIAL MEDIA, INC., a
California corporation; 19 ENTERTAINMENT,
INC., a New York corporation; DOES 1-10,
business entities, forms unknown; DOES 11-20,
individuals; and DOES 21-30, inclusive,

Defendants.

Case No.: 23STCV02514

**PLAINTIFF FRANKLIN BOONE'S
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT AND
CERTIFICATION OF A SETTLEMENT
CLASS; MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: May 27, 2025
Time: 10:00 a.m.
Dept.: 7
Judge: Hon. Samantha P. Jessner

Action Filed: February 3, 2023
Trial Date: Not Set

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I. INTRODUCTION

A. Parties to the Action

Plaintiff Franklin Boone (“Plaintiff” or “Plaintiff Boone”), on behalf of himself and all others similarly situated (“Class Members”), by and through his counsel, and pursuant to Civil Code § 1781(f), Code of Civil Procedure § 382, and Rules of Court, Rule 3.769, respectfully submits this Memorandum of Points and Authorities in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and Private Attorneys General Act (“PAGA”) Settlement and Certification of a Settlement Class (“Motion”) to settle Plaintiff’s case against Defendants American Idol Productions, Inc. (“AIP”), American Broadcasting Companies, Inc. (“ABC”), FremantleMedia North America, Inc. (“FremantleMedia”), Industrial Media Inc. (“Industrial Media”), and 19 Entertainment, Inc. (collectively, “Defendants”).

Plaintiff Boone alleges that he was employed with Defendants from approximately November 2019, through approximately at or around May 2020, as a participant on the show, “American Idol,” which airs on ABC and which Defendants produce for television.

Plaintiff Boone alleges that Defendants operate media production and network businesses employing Class Members and Aggrieved Employees to create *for-profit* content for release on television, internet, and/or streaming services.

B. Procedural History

On November 29, 2022, Plaintiff Normandy Vamos provided notice to the California Labor & Workforce Development Agency (“LWDA”) of Plaintiff Vamos’ claims based on the alleged Labor Code violations committed by Defendants, including the facts and theories underlying these claims. Payton Decl. at ¶ 7, Exhibit 3. The LWDA provided no notice to Plaintiff Vamos within 65 calendar days of the postmark date of that notice regarding its intentions to investigate or not investigate Plaintiff Vamos’ claims. *Id.*

On February 3, 2023, Plaintiff Normandy Vamos filed the initial Complaint in this action in Los Angeles County Superior Court, alleging various violations of the following California Labor Code (“Labor Code”), the IWC wage order, Business & Profession Code, and the Private Attorneys General Act (“PAGA”), (referred to herein as the “Action”). Payton Decl. at ¶ 8.

1 On June 21, 2023, Plaintiff Vamos filed a First Amended Complaint in this Action adding
2 Plaintiff Franklin Boone as an additional Plaintiff/Class Representative along with his facts and
3 theories underlying his and Plaintiff Vamos' claims. Payton Decl. at ¶ 9, Exhibit 4.

4 On October 14, 2024, Plaintiff Franklin Boone provided notice to the California Labor &
5 Workforce Development Agency ("LWDA") of Plaintiff Boone's claims based on the alleged Labor
6 Code violations committed by Defendants, including the facts and theories underlying these claims, by
7 amending Plaintiff Vamos' PAGA notice to add Plaintiff Boone as an additional Claimant. Payton
8 Decl. at ¶ 10, Exhibit 5.

9 On or about October 22, 2024, Plaintiff Boone filed a Second Amended Complaint adding
10 himself as a PAGA representative, which is now the "Operative Complaint" in this Action. Payton
11 Decl. at ¶ 11, Exhibit 6.

12 On or about January 19, 2024, the Parties participated in an all-day mediation presided over by
13 Hon. Jeff Winikow (Ret.). This mediation and subsequent discussions, led to the Agreement to settle
14 the Action. Payton Decl. at ¶ 12.

15 **C. Claims Asserted in the Action and Defendants' Defenses**

16 The Operative Complaint alleges the following claims: (1) Labor Code §§ 204, 510 & 1194
17 (failure to compensate employees with all required overtime pay); (2) Labor Code §§ 204, 1194, 1197,
18 & 1197.1 (failure to compensate employees with at least minimum wages for all hours worked); (3)
19 Labor Code § 1194.2 (liquidated damages for failure to pay minimum wages); (4) Labor Code § 226
20 (failure to provide accurate and itemized wage statements); (5) Labor Code §§ 226.7 & 512(a) (failure
21 to provide uninterrupted meal periods); (6) Labor Code § 226.7 (failure to provide uninterrupted rest
22 periods); (7) Labor Code §§ 201, 202, and 203 (failure to pay wages promptly upon termination); (8)
23 Unjust Enrichment; (9) Labor Code § 2802 (failure to reimburse business expenses); (10) Business &
24 Profession Code §§ 17200, et. seq, including all previously listed Labor Code violations; (11) Private
25 Attorneys General Act ("PAGA"), §§2698, et seq. Payton Decl. at ¶ 13, Exhibit 6.

26 The putative class consists of all persons who auditioned before celebrity judges on *American*
27 *Idol* or participated in later rounds of *American Idol* on ABC Seasons 2-7, in California, between
28 February 3, 2019, and the date of preliminary approval. Payton Decl. at ¶ 14. Plaintiff Boone alleges

1 that Defendants illegally and willfully classified Class Members as uncompensated volunteers and not
2 as employees, despite exercising substantial control over the manner, means, and timing of the work
3 they performed. *Id.*

4 Plaintiff Boone alleges that Defendants misclassified Plaintiffs, Class Members, and Aggrieve
5 Employees, including those holding positions as “Contestant,” “Participant,” and similar job titles
6 (together, “Affected Employees”), as uncompensated volunteers and not as employees. Payton Decl.
7 at ¶ 15. Plaintiff Boone further contends that Defendants classified Affected Employees as such despite
8 being a for-profit commercial enterprise that engaged these individuals in commercial performance
9 work and exercised substantial control over the manner, means, and timing of the work performed for
10 Defendants’ reality television series “American Idol” airing on ABC; that Defendants exercised
11 substantial control over every aspect of their lives during production, including their time, access to
12 food and drinks, and sleeping arrangements; and that Defendants did not allow them to move or act of
13 their own free will while the production took place. *Id.*

14 Plaintiff Boone alleges that, during the Class Period, Defendants failed to pay the Class
15 Members and Aggrieved Employees (collectively, “Affected Employees”) for all hours worked,
16 including minimum wage and overtime hours, as a result of maintaining a practice of willfully
17 misclassifying Affected Employees’ employment status as uncompensated volunteers instead of
18 employees.. Payton Decl. at ¶ 16. The alleged uncompensated time includes all hours that Defendants
19 required, suffered, and/or permitted Affected Employees to perform services, including acting and
20 singing, or to be available to film during Defendants’ production of “*American Idol*,” and time that
21 Defendants required, suffered, and/or permitted Affected Employees to spend working during the
22 purported meal breaks that were consistently on-duty and subject to interruption and delay at
23 Defendants’ election. Plaintiff Boone also contends that to the extent meal breaks were provided to the
24 Affected Employees, such breaks were non-compliant. *Id.*

25 During the Action, Defendants have vehemently denied that Boone or anyone he seeks to
26 represent were “employees” or “worked” for Defendants on *American Idol*. Payton Decl. at ¶ 17.
27 Instead, Defendants assert that Boone and others voluntarily participated and auditioned for a contest
28 that was filmed and were fully aware of the terms of their participation. *Id.* Defendants specifically

1 pointed to California statutory law that suggests that musical talent show participants are not
2 employees. *Id.*

3 Defendants also argued that Boone and others were contestants and would-be contestants who
4 auditioned or performed on different days, for different seasons of the show, in different places
5 (including outside California), and under markedly different conditions. Payton Decl. at ¶ 18.
6 Defendants further contend that Boone and all other participants agreed to arbitrate their claims on an
7 individual basis only. *Id.*

8 **D. Standard for Preliminary Approval**

9 The settlement for which Plaintiff Boone now seeks preliminary approval obtains for the class
10 a \$487,514.29 settlement fund, a “checks mailed” payment to class members, and zero reversion to the
11 Defendants of any portion of the fund. Plaintiff Boone asserts that the settlement is fair, adequate, and
12 reasonable, and presents the Court with a form and plan for notice to the class.

13 Counsel for Plaintiff Boone and Defendants (collectively, the “Parties”) have met and
14 conferred, and Defendants do not object to this Motion. Payton Decl. at ¶ 4. For the reasons set forth
15 below, Plaintiff Boone respectfully requests that the Court enter an order: (1) provisionally certifying
16 the Class under Code of Civil Procedure section 382 and California Rule of Court 3.769(c) for
17 settlement purposes; (2) preliminarily approving the Settlement; (3) approving as to form the Notice of
18 Settlement and ordering that the Notice of Settlement be distributed to all Class Members; (4)
19 appointing Named Plaintiff Franklin Boone as the Class Representative; (5) appointing Simpluris as
20 the Settlement Administrator; (6) appointing Payton Employment Law, PC as Class Counsel; and (7)
21 setting this matter for a hearing on the issues of final approval of the proposed Settlement, approval of
22 the enhancement award for Plaintiff Boone, approval of Class Counsel’s attorneys’ fees and costs, and
23 approval of the administration fees and costs.

24 The settlement of a class action requires court approval. (Rules of Court, Rule 3.769; *see also*
25 *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The law favors settlement, particularly
26 in class actions and other complex cases where substantial resources can be conserved by avoiding the
27 time, cost and rigor of prolonged litigation. (*See Bell v. American Title Ins. Co.* (1991) 226 Cal.App.3d
28 1589, 1607 (noting a “strong public policy” in favor of class action settlements); *In re Executive Life*

1 *Ins. Co.* (1995) 32 Cal.App.4th 344, 382.)

2 At the preliminary approval stage, the Court must “make a preliminary determination on the
3 fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice
4 of the certification, proposed settlement, and date of the final fairness hearing.” (Rules of Court, Rule
5 3.769(c), (g); *see also* Manual for Complex Litigation (Fourth) § 21.63.) The Court should grant
6 preliminary approval if the Settlement has no obvious deficiencies and falls within the range of possible
7 approval. (*See, generally, Chavez v. Neoix, Inc.* (Cal. Sup. Oct. 27, 2005) 2005 WL 3048041; A. Conte
8 & H. Newberg, 4 Newberg on Class Actions (4th ed. 2002) (“Newberg”) § 11.25, at pp. 38, 39.) The
9 preliminary approval determination is not an ultimate determination of whether the settlement is fair,
10 reasonable and adequate. Rather, the court must determine whether “there is, in effect, ‘probable cause’
11 to submit the proposal to members of the class and hold a full scale hearing on its fairness.” (*State of*
12 *California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 486 (quoting Manual for Complex Litigation §
13 1.46).)

14 In determining whether a settlement falls within the range of possible approval, courts have
15 considered such factors as whether the negotiations occurred at arm’s length, whether sufficient
16 discovery or investigation took place, and whether the proponents of the settlement are experienced in
17 similar litigation. (*See* 4 Newberg at § 11.41.) Moreover, courts may also consider the risk, expense,
18 and complexity of continued litigation in determining whether a settlement falls within the range of
19 possible approval. (*See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.)

20 If the Court finds that the Settlement is the product of hard-fought arm’s-length negotiations
21 conducted by experienced counsel knowledgeable in complex class litigation, the Settlement will enjoy
22 a presumption of fairness. (*See In re Microsoft IV Cases* (2006) 135 Cal.App.4th 706, 723; *Ellis v.*
23 *Naval Air Rework Facility* (N.D. Cal. 1980) 87 F.R.D. 15, 18 (court accorded “considerable weight”
24 to settlement being reached after hard fought negotiations by experienced counsel); *see also Kullar v.*
25 *Foot Locker Retail Inc.* (2008) 168 Cal.App.4th 116, 128.) Such a presumption exists here.

26 ///

27 ///

28 ///

II. DUNK/KULLAR ANALYSIS

A. Factual Background

1. Defendants' Alleged Wrongdoing

Plaintiff Boone's allegations are as follows:

Plaintiff Boone alleges that *American Idol* is a singing competition show produced by Defendant AIP, currently broadcasted by Defendant ABC, and with participation by the other Defendants. Payton Decl. at ¶ 20. Plaintiff Boone further alleges and believes all of the following:

American Idol promotes itself as a vehicle to discover a new musician-recording superstar from a group of unsigned singing talent. Hundreds of hopeful singer-performers audition for the opportunity to have Defendants film and broadcast their singing performances to the nation on ABC and through the Internet on YouTube and Hulu streaming video platforms. Payton Decl. at ¶ 21.

For each season, Defendants put the contestants through a series of auditions before offering them alleged employment as a singer-performer for the show. Payton Decl. at ¶ 22. After selected, Defendants then directed the contestants to a specific hotel in California where they registered to stay and production would take place. *Id.* For instance, for a portion of his contestant experience, Defendants arranged flights and transportation for Plaintiff Boone to his hotel and the apartment Defendants secured for him in California. *Id.*

During production, Defendants required the contestants to remain on location with Defendants and to always be available for filming or production tasks related to *American Idol*. Payton Decl. at ¶ 23. Defendants did not allow contestants to leave the production location, including the hotel and lodgings, unless Defendants approved it. *Id.* For example, Plaintiff Boone was asked to not leave the premises of his apartment, even to buy groceries, and if he did leave, he was asked to inform Defendants why he was leaving. *Id.* Moreover, Plaintiff Boone was required to attend multiple activities for over eight (8) hours a day, including, without limitation, rehearsals, vocal training, stylist consultations, meetings with Defendants, photo shoots, and other production related tasks. *Id.*

The contestants' movements were also restricted during so-called "meal breaks" that Defendants provided. Payton Decl. at ¶ 24.

///

B. Summary of the Causes of Action

1. Failure to Pay Overtime Wages (L.C. §§ 204, 510, and 1194 and Wage Order 12)

Plaintiff Boone alleges that Class Members regularly worked in excess of eight (8) hours in one workday, and in excess of forty (40) hours in any one workweek and were never paid at least one and one-half (1 ½) times the minimum wage. Payton Decl. at ¶ 25. Plaintiff Boone alleges that Class Members also worked double time hours (hours exceeding twelve (12) per day and over eight (8) per day on the seventh day of work during a workweek) and were never paid at a rate of at least two (2) times the minimum wage. *Id.* Plaintiff Boone claims that Defendants did not pay Class Members any compensation, and in doing so, violated Labor Code §§ 204, 1194, 510, and Wage Order 12 § 3(A). *Id.*

2. Failure to Pay Minimum Wages (L.C. §§ 204, 1194, 1197, 1197.1, and Wage Order 12)

Plaintiff Boone alleges that Defendants required Plaintiff Boone and Class Members to perform work, but did not pay wages, including minimum wages, for the hours spent performing work on behalf of Defendants. Payton Decl. at ¶ 26. Because Defendants did not pay Class Members any wages unless they advanced to the later rounds of the competition (usually the Top 10), Plaintiff Boone further contends that Defendants failed to pay at least the minimum wage to Class Members for each hour that they worked. *Id.* These policies and practices violate Labor Code §§ 204, 1194, 1197, 1197.1, and Wage Order 12. *Id.* Plaintiff Boone and Class Members contend that they are entitled to recover unpaid minimum wages, interest thereon, and attorneys' fees and costs pursuant to Labor Code § 1194. *Id.*

3. Liquidated Damages for Failure to Pay Minimum Wages (L.C. § 1194.2)

As detailed above, Plaintiff Boone alleges that Defendants failed to pay minimum wages and overtime wages for all hours worked. Payton Decl. at ¶ 27. Pursuant to Labor Code § 1194.2, Plaintiff Boone and members of the putative class are entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon, and attorneys' fees and costs. *Id.*

4. Failure to Provide Accurate and Itemized Wage Statements (L.C. § 226 and Wage Order 12)

Plaintiff Boone maintains that as a pattern and practice, in violation of Labor Code § 226(a),

Defendants did not furnish Plaintiff Boone and members of the putative class with accurate itemized statements including among other things, the number of regular, overtime, and doubletime hours worked. Payton Decl. at ¶ 28. Plaintiff Boone and the members of the putative class are, therefore, entitled to recover penalties pursuant to Labor Code § 226(e), along with attorneys' fees and costs. *Id.*

5. Failure to Provide Uninterrupted Meal Periods (L.C. §§ 226.7 and 512 and Wage Order 12)

Plaintiff Boone maintains that Defendants failed and continue to fail to provide legally mandated off-duty meal periods and rest periods because, among other reasons, Defendants maintained a policy and practice of failing to provide meal and rest breaks to Class Members by requiring their constant availability during production shoots. Payton Decl. at ¶ 29. In failing to pay the Class Members any compensation, Plaintiff Boone alleges that Defendants also failed and continue to fail to pay all premiums owed for failing to provide Class Members with the opportunity for timely off-duty meal and rest periods. *Id.*

Plaintiff Boone alleges that Defendants restricted Plaintiff's and other Class Members' movements by not providing the necessary information or accurate times that they needed to be available for performances to restrict them from moving about independently. Payton Decl. at ¶ 30. Plaintiff Boone contends that he and the Class Members' movements were also restricted during these breaks as they could not leave the hotel, travel to an eating establishment (by either walking or driving), order, eat, and get back to the hotel within a 15-minute window of time. *Id.*

Plaintiff Boone alleges that he and other Class Members were forced to request permission from Defendants if they wanted to leave the hotel. Payton Decl. at ¶ 31. Such requests were typically denied unless Defendants wanted any of the Class Members to perform specific tasks outside of the hotel for Defendants' benefit. *Id.* Defendants' alleged failure to permit Plaintiff Boone and Class Members to take legally compliant meal periods violated Labor Code §§ 226.7 and 512, and Wage Order 12.

Pursuant to Labor Code §§ 226.7 and 512, Plaintiff Boone and members of the putative class are alleged to be entitled to a penalty of one hour's pay at their regular rate of pay for each occasion upon which they were denied an uninterrupted, duty-free meal break of at least thirty minutes after five hours and ten hours of work. Payton Decl. at ¶ 32.

6. Failure to Provide Uninterrupted Rest Periods (L.C. § 226.7 and Wage Order 12)

Plaintiff Boone maintains that Defendants failed to permit Plaintiff Boone and Class Members to take a ten-minute rest period for every four hours worked or major fraction thereof, in violation of Labor Code § 226.7 and Wage Order 12. Payton Decl. at ¶ 33. Plaintiff Boone alleges that the only time period somewhat akin to a rest period were bathroom breaks, when permitted. *Id.* Plaintiff Boone further alleges that restroom breaks were not permitted often, and that Class Members were forced to wait until Defendants would allow them to use the restroom or the time period allotted would be extremely short. *Id.*

Pursuant to Labor Code § 226.7, Plaintiff Boone and members of the putative class contend that they are entitled to a penalty of one hour's pay at their regular rate of pay for each workday during which they were denied an uninterrupted, duty-free rest period of at least 10 minutes for each four hours worked or major fraction thereof. Payton Decl. at ¶ 34.

7. Failure to Pay Wages Promptly After Termination (L.C. §§ 201, 202, and 203)

Plaintiff Boone alleges that Defendants violated Labor Code § 201 and 202 by willfully failing to compensate Plaintiff Boone and Class Members for all hours worked and for premiums for on-duty meal and rest periods promptly upon discharge or resignation, as required by Sections 201 and 202, and are, thus, liable for waiting-time penalties pursuant to Labor Code § 203. Payton Decl. at ¶ 35.

8. Unjust Enrichment

Plaintiff Boone alleges that he and Class Members conferred upon Defendants an economic benefit of labor, most notably performing in Defendants' reality show productions of American Idol. Payton Decl. at ¶ 36.

Plaintiff Boone also contends that Defendants' financial benefits resulted from their inequitable conduct, most traceable to their refusal to compensate Plaintiff and Class Members for all hours worked or at all, for noncompliant meal and rest periods with meal and rest periods premiums, for waiting time penalties, for necessary business expenses, and for compelling them to patronize third party businesses along with their refusal to pay for and provide accurate and itemized wage statements. Payton Decl. at ¶ 37.

Furthermore, Plaintiff Boone alleges that Defendants misinformed Plaintiff and Class Members that they were not employees and required them to sign a document that they were “not being considered for an employment position” and required Plaintiff and Class Members to assign all copyright and licenses to Defendants and agree that they were making a “work-for-hire” production without Defendants providing proper compensation for such work. Payton Decl. at ¶ 38. Plaintiff Boone alleges that this agreement and failure to pay Plaintiff and other Class Members also violates Labor Code § 3351.5(c), which establishes that individuals who are involved in a “work for hire” and assign all ownership rights to the other party are employees. *Id.*

9. Failure to Reimburse Business Expenses (L.C. § 2802 and Wage Order 12-2001);

Plaintiff Boone alleges that he and members of the Class have incurred necessary expenses in the course of completing their duties, such as expenses associated with the use of their personal vehicles, which were not reimbursed by Defendants as detailed herein, entitling the class to reimbursement for these necessary expenditures, plus interest and attorneys’ fees and costs, pursuant to Labor Code § 2802. Payton Decl. at ¶ 39.

10. Unfair Business Practices (Bus. & Prof. Code §§ 17200, et seq.)

Based on the alleged conduct described by Plaintiff Boone above, Plaintiff Boone asserts that Defendants have committed unlawful, unfair, and/or fraudulent business acts and practices as defined by Business and Professions Code §§ 17200, et seq., entitling Plaintiff Boone to equitable and other additional relief. Payton Decl. at ¶ 40.

11. Private Attorneys General Act (L.C. §§ 2698, et seq.)

Based on the alleged conduct described by Plaintiff Boone above, Plaintiff Boone believes he and certain putative class members are “aggrieved employees” under PAGA. Payton Decl. at ¶ 41. As such, Plaintiff Boone seeks on behalf of himself and all other current and former aggrieved employees of Defendants, the civil penalties recoverable under PAGA, plus attorneys’ fees and costs incurred from on February 3, 2022 (one year prior to the filing of the original complaint in this Action which was amended to add Plaintiff Boone as a Class and PAGA representative) to the present time. *Id.*

Accordingly, Plaintiff Boone seeks to pursue remedies pursuant to PAGA for violations of the

1 following: Labor Code §§ 201, 202, 203, 204, 226, 432.5, 510, 512, 1194, and 1197. Payton Decl. at ¶
2 42.

3 **C. Summary of Investigation and Discovery**

4 Plaintiff Boone's counsel diligently and extensively investigated the putative class and PAGA
5 claims. Payton Decl. at ¶ 43.

6 Prior to mediation, the Parties engaged in an informal, voluntary exchange of information in
7 the context of privileged settlement discussions. Payton Decl. at ¶ 44. Plaintiff Boone obtained
8 informal discovery from Defendants which included, among other things, the total number of Class
9 Members and Putative Aggrieved Employees at issue; time records and pay data for 60 out of 70 Top
10 10 contestants (approximately 86% of the contestants for which records existed); schedule data,
11 elimination data, and production schedules for 873 out of approximately 1,064 total contestants from
12 Judge auditions and later (approximately 82% of the Class Members for which records existed); copies
13 of all agreements (including arbitration agreements) that the Class Members signed and form emails;
14 and copies of original timecards and copies of original paystubs for 17 of 70 Top 10 contestants (or
15 approximately 24% of contestants). *Id.* At the time of mediation, only data for Class Members in on
16 *American Idol* on ABC Seasons 2-6 within the Class Period was available and produced to Class
17 Counsel since Season 7 production was still in progress. *Id.*

18 Class Counsel analyzed these records and evaluated Defendants' legal positions in conjunction
19 with the evidence that Plaintiff Boone's Counsel secured, researched applicable law and defenses,
20 retained an expert to analyze the documents and records produced by Defendants, and worked with
21 that expert to provide documents, data, and calculate average numbers based on factual information
22 obtained from Plaintiff Boone and Plaintiff Vamos. Payton Decl. at ¶ 45. Plaintiffs' expert thereafter
23 prepared a damages estimate calculating potential classwide damages that took into account multiple
24 scenarios: one based on Defendants' data and another based on average work hours estimates that were
25 provided to Class Counsel by Plaintiffs prior to the mediation. *Id.* Plaintiff Boone's investigation was
26 sufficient to satisfy the criteria for Court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996)
27 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-
28 130 ("*Dunk/Kullar*").

D. Summary of Settlement Negotiations

On January 19, 2024, following informal discovery and the exchange of information, the Parties participated in a mediation session presided over by Mediator Jeff Winikow, an experienced employment law, wage and hour, and class action mediator. Payton Decl. at ¶ 46. Following the mediation, the Parties agreed to resolve the matter for the Gross Settlement amount of \$400,000.00 for a Class that was to include all persons who auditioned before celebrity judges on *American Idol* or participated in later rounds of *American Idol* in ABC Seasons 2-6, in California, between February 3, 2019 and the date of preliminary approval. *Id.* Defendants estimated that class to consist of approximately 873 persons. *Id.* After the completion of Season 7, the Parties agreed to expand the class period and to include Season 7 persons who auditioned before celebrity judges or participated in later rounds of *American Idol* in ABC Season 7, in the settlement and add a proportionate amount to Gross Settlement Amount (*e.g.*, \$458.19 per person added based on the then-estimated class size). *Id.* After spending time negotiating specific settlement terms, the Parties ultimately executed a Class Action and PAGA Settlement Agreement on February 26, 2025, to resolve the claims of all persons who auditioned before celebrity judges on *American Idol* or participated in later rounds of *American Idol* on ABC Seasons 2-7, in California, between February 3, 2019 and the date of preliminary approval. *Id.*

E. Summary of Risks of Further Litigation if the Settlement is Not Approved and of Achieving and Maintaining Class Action Status

For settlement purposes, the theoretical trial recovery must be tempered by litigation risks and uncertainties, which are significant here. Defendants have asserted and continue to assert many defenses and have expressly denied any legal liability arising out of the conduct alleged in the litigation. Payton Decl. at ¶ 47. While Plaintiff Boone feels strongly that the claims alleged here are meritorious, the value of those claims in light of the evidence, coupled with the possibility that one or more of these defenses might be accepted, are important settlement considerations. *Id.*

Defendants have contended throughout the litigation that they are not and never were employers of the Class Members. Payton Decl. at ¶ 48. For example, they argued that California's "ABC test" for determining whether a person is an employee states that whether a singer is considered an employee

1 is determined by the applicable collective bargaining agreement (Labor Code §§ 2780(a)(1), (3), 2780
2 § 4 (A)-(C)), and the applicable SAG-AFTRA collective bargaining agreement explicitly excludes
3 amateur singing competition contestants from employment status. *Id.* It states, “Bona fide Amateur
4 contestants on a bona fide amateur talent opportunity programs and all reality programs which involved
5 a competition out of which winners are chosen on each program or cycle of programs shall be excluded
6 from this Agreement provided that any such contestant shall be limited to one (1) such cycle of talent
7 programs within one (1) year.” See [https://www.sagaftra.org/files/2014-](https://www.sagaftra.org/files/2014-2018_network_television_code_v13.pdf)
8 [2018_network_television_code_v13.pdf](https://www.sagaftra.org/files/2014-2018_network_television_code_v13.pdf) at 195. SAG-AFTRA has long accepted American Idol’s
9 treatment of its competitors. *Id.*

10 Furthermore, to the extent this issue was contested, Defendants assert that the claims would be
11 preempted by federal labor law based on the following authority: *Firestone v. Southern Cal. Gas Co.*,
12 219 F.3d 1063 (state wage and hour claims were preempted under Section 301 because the
13 determination of whether plaintiffs were receiving the proper wage rate fell under the collective
14 bargaining agreement and required its interpretation). Payton Decl. at ¶ 49.

15 Finally, even if those arguments were unsuccessful, Defendants argued forcefully that singing
16 competitors are not employees because the show did not exercise sufficient control over how they
17 performed on stage and “[t]he principal test of an employment relationship is whether the person to
18 whom service is rendered has the right to control the manner and means of accomplishing the result
19 desired.” *Borello & Sons, Inc. v. Department of Industrial Relations* 48 Cal.3d 341, 350 (1989). Courts
20 have excluded from employment protections analogous categories of competitors. See, e.g., *Dawson*
21 *v. Nat’l Collegiate Athletic Ass’n* 932 F.3d 905, 907 (9th Cir. 2019) (under FLSA, “[s]tudent athletes
22 are not employees even though schools and sponsors may profit from their participation”); *Shepherd*
23 *v. Loyola Marymount Univ.*, 102 Cal.App.4th 837, 842 (2002) (student athletes are not employees).

24 Additional concern about the value of the Action was compounded by the fact that several large
25 hurdles stand in the way of a jury verdict. Payton Decl. at ¶ 51. For instance, all of the Class Members
26 signed arbitration agreements, and although Plaintiff Boone believes that he has strong arguments to
27 overcome a motion to compel arbitration, Plaintiff Boone faced the risk that such motion would be
28 granted and that such an order could dispose of all of the class claims and Plaintiff Boone would be

1 forced to arbitrate his claims on an individual basis. *Id.* Also, it may be difficult to certify a class
2 because the competitors performed on different seasons, in different locations, under different
3 conditions. *Id.* Indeed, some of the performers sometimes performed from home, including outside
4 California in some cases. *Id.*

5 Also, the sufficiency of the evidence has not been tested by a summary judgment motion.
6 Payton Decl. at ¶ 51. Plaintiff Boone faces the risk that Defendants could prevail on a pre-certification
7 motion for summary judgment as to some or all of Plaintiff Boone’s claims. *Id.* While Plaintiff Boone
8 believes there is sufficient evidence to support certification of the Class for settlement purposes,
9 winning a motion for class certification is never certain. *Id.* As such, Class Counsel gave serious
10 consideration to the possibility that certification could be denied. *Id.*

11 In addition to Defendant’s anticipated defenses, Class Counsel remained mindful of the fact
12 that PAGA gives the Court discretion to lower the penalties assessed if, based on the facts and
13 circumstances of the particular case, to do otherwise would result in an award that is
14 “unjust, arbitrary and oppressive, or confiscatory.” Payton Decl. at ¶52; see Cal. Labor Code §
15 2699(e)(2); *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal.App.4th 1112, 1136 (2012)
16 (holding that a court may reduce the amount of PAGA penalties awarded to an employee based upon
17 discretionary factors); *Fleming v. Covidien, Inc.* 2011 WL 756304718, at *4 (C.D.Cal. Aug. 12, 2011)
18 (reducing PAGA penalties by 80%); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030 (N.D. Cal. 2016)
19 (indicating that a substantial reduction is warranted where good faith dispute exists in legal
20 obligations). Class Counsel also recognized that there was a significant risk that the Court would
21 decline to assess the cumulative penalties for the maximum number of potential violations, as a
22 significant portion of Defendant’s liability arises from claims that are largely predicated on successful
23 prosecution of Plaintiff Boone’s meal period, rest period, and unpaid overtime and minimum wage
24 claims, and could therefore be considered duplicative by the court. See, *Thurman*, 203 Cal.App.4th at
25 1131 (imposition of both statutory and civil penalties for same conduct is impermissible double
26 recovery); *Aguirre v. Genesis Logistics*, 2013 WL 10936035, at *3 (C.D. Cal. 2013) (“duplicative
27 effect” of penalties is a factor in favor of “reducing ...the PAGA penalty”); *Cotter v. Lyft, Inc.*, 193
28 F.Supp.3d 1030 (N.D. Cal. 2016)(substantial reduction warranted where good faith dispute exists in

1 legal obligations); *Smith v. Lux Retail North America, Inc.* 2013 WL 2932243 at *3 (N.D. Cal. June
2 13, 2013) (declining to stack penalties based on the same conduct); *Castillo v. ADT, LLC*, 2017 WL
3 363108 at *4 (E.D. Cal. Jan. 25, 2017); *Sanchez v. McDonalds Restaurants of California, Inc.*, 2017
4 WL 4620746 (LA Super. Ct. July 6, 2017) (declining to stack penalties arising out of the same conduct).

5 In light of the significant risks of continued litigation, the settlement proposed herein represents
6 the best and most practicable resolution for the Class.

7 **F. Evaluation of the Settlement of Class Claims as Fair, Adequate and Reasonable**

8 **1. Legal Standard**

9 Pursuant to Rule 3.769, the California Rules of Court, court approval of a class action settlement
10 requires three steps: (1) Preliminary approval after submission of a written motion for preliminary
11 approval, of the proposed class settlement, and the proposed class notice; (2) issuance of notice of
12 settlement to class members; and (3) a final settlement approval hearing where class members may be
13 heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy
14 and reasonableness of the settlement is presented to the Court’s broad discretion. *Kullar v. Foot Locker*
15 *Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.

16 **2. The Settlement is Presumptively Fair**

17 A court looks for fairness in the settlement process while it assesses preliminary approval. A
18 “presumption of fairness exists where (1) the settlement is reached through arm’s-length bargaining;
19 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
20 counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *Kullar*, 168
21 Cal. App. 4th at 128.

22 Here, the instant class settlement satisfies all these factors. The settlement resulted from
23 thorough and extensive arm’s length negotiations between experienced counsel with the assistance of
24 a well-respected mediator after sufficient discovery was exchanged to assess the relative strengths and
25 weaknesses of their respective cases and Defendants’ estimated exposure. Payton Decl. at ¶¶ 90-93,
26 53; Declaration of Johnny Darnell Griggs (“Griggs Decl.”) at ¶¶ 4-12, 14.

27 **3. Monetary Relief**

28 The Settlement Agreement provides that Defendants will pay \$487,514.29 to fully resolve the

claims in the Action (the “Gross Settlement Amount”). Payton Decl. at ¶ 54. Assuming the following court-approved deductions, the remaining amount (the “Net Settlement Amount”) will be distributed to the Class Members who do not opt out (“Participating Class Members”). *Id.* Participating Class Members shall receive Settlement Payments in accordance with pages 5-7 of the Agreement. *Id.* The employer portion of putative payroll taxes will be paid separately by Defendants and not from the Gross Settlement Amount, and there is no reversion of any funds to Defendants. *Id.*

1. **Settlement Administration:** The Settlement Administrator shall be Simpluris. Payton Decl. at ¶ 55. From the Gross Settlement Amount, settlement administration fees in a reasonable amount shall be paid to the Settlement Administrator. Settlement administration fees are estimated to be approximately \$10,523.00. *Id.* Given Simpluris’ background and experience, Simpluris is well qualified to serve as the Settlement Administrator in this matter. Decl. of Settlement Denise Islas (herein “Islas Decl.”) at ¶ 2-9.
2. **Attorneys’ Fees and Costs:** Subject to court approval, payment of \$162,488.51 as a contingent fee and payment not to exceed \$20,000.00 as actual costs. Payton Decl. at ¶ 56.
3. **Named Plaintiff Award:** The Settlement states that the Class Representative Service Payment to the Class Representative, Plaintiff Boone, be no more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member or Putative Aggrieved Employee). Payton Decl. at ¶ 57. This amount is entirely reasonable given Plaintiff Boone’s extensive efforts in this Action for over two years, and the risks he undertook on behalf of the Class Members. *Id.*
4. **Settlement of PAGA Claims:** The Parties have agreed to allocate \$16,200.00 (the “PAGA Payment”) from the Gross Settlement Amount towards a release of the PAGA claims. Payton Decl. at ¶ 58. Pursuant to the express requirements of Labor Code § 2699(i), the PAGA Payment shall be allocated as follows: The LWDA will receive \$12,150.00 (75%) of the PAGA Payment for the enforcement of labor laws and

1 education of employers, and 25% (\$4,050) allocated to the Aggrieved Employees. *Id.*

2 After deducting the above amounts from the Gross Settlement Amount, the Settlement
3 Administrator will distribute the Net Settlement Fund to the Class Members. Payton Decl. at ¶ 59. The
4 Settlement Administrator will calculate the individual settlement payments to Class Members who do
5 not submit valid Opt-Outs (“Participating Class Members”). *Id.*

6 Class Counsel have reviewed the records provided by Defendants, and the Settlement
7 Administrator will determine, based on this and other data, an amount each Participating Class Member
8 will be paid a pro rata share of the Net Settlement Amount based on “Participation Points” which will
9 correlate with the extent of each individual’s participation on *American Idol* on ABC Seasons 2-7.
10 Payton Decl. at ¶ 60. “Participation Points” shall be determined as follows: Each Participating Class
11 Member will receive 1 point for auditioning before the celebrity judges, 2 points for participating in
12 Hollywood Week, and 4 points for making it past Hollywood Week. *Id.*, Exhibit 1A (Settlement
13 Agreement) p. 3, § 1.23. Each Participating Class Member will receive a payment based on their points
14 divided by the total number of points times the net settlement amount. *Id.*

15 This system is the best and most equitable way to account for the differences in value amongst
16 the various Class Members’ claims, as the value of each Class Member’s claim is correlated to the
17 duration of that Class Member’s alleged employment with Defendants. Payton Decl. at ¶ 61. The
18 determination of each Class Member’s number of Participation Points will be based on a good faith
19 inquiry and review of Defendants’ records. *Id.*

20 **4. Quantification of Total Maximum Theoretical Recovery**

21 Class Counsel, with the assistance of an expert, analyzed the total maximum theoretical
22 recovery for the class, including prejudgment interest and penalties and the risks of litigation recovery,
23 as required by *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116. Payton Decl. at ¶ 62.
24 Calculating the total maximum theoretical trial recovery for the class is difficult given the allegations.
25 However, Class Counsel has provided an estimate of the total maximum theoretical recovery for the
26 Class based on an analysis conducted by an expert, who calculated the maximum realistic recovery
27 based on records provided by Defendants. The analysis is included in the Declaration of Chantal Payton
28 filed herewith, paragraphs 62 through 68. In the analysis, potential recovery for claims that can be

1 inferred from the production records is evaluated and tallied, so the Court can evaluate and discern the
2 potential cash value of the claims and how much the case was discounted for settlement purposes.
3 Counsel's estimates are supported by sufficient explanation and provide the Court with "an
4 understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."
5 (*Munoz v. BCI Coca Cola Bottling Co.* (2010) 186 Cal.App.4th 399, 409.)

6 The likely value of Plaintiff Boone's alleged claims is set forth in Chantal Payton's Declaration
7 filed herewith. Payton Decl. at ¶ 63. Class Counsel's expert prepared a damages estimate calculating
8 potential classwide damages that took into account multiple scenarios for Class Members who
9 participated in *American Idol* Seasons 2 through 6: one based on Defendants' actual time records and
10 another based on average work hours estimates that were provided to Class Counsel by Plaintiffs prior
11 to the mediation. *Id.*

12 The maximum recovery of each claim asserted in the Operative Complaint for Class Members
13 who participated in *American Idol* Seasons 2 through 6 based on Defendants' actual time records is
14 estimated to total **\$5,996,908.86**. Payton Decl. at ¶ 64. A breakdown of these damages is set forth
15 below:

- 16 1. **Unpaid Minimum Wages:** \$488,765.68
- 17 2. **Interest on Unpaid Minimum Wages:** \$178,856.46
- 18 3. **Unpaid Overtime Wages:** \$247,796.23
- 19 4. **Interest on Unpaid Overtime Wages:** \$89,556.67
- 20 5. **Liquidated Damages:** \$653,963.17
- 21 6. **Meal Period Premiums:** \$22,669.00
- 22 7. **Interest on Meal Period Premium:** \$5,910.41
- 23 8. **Wage Statement Penalties:** \$75,800.00
- 24 9. **Waiting Time Penalties:** \$2,765,750.76
- 25 10. **Private Attorneys General Act Penalties:** \$1,467,840.48 (with stacking for all
26 alleged violations), itemized as follows:
 - 27 i. Labor Code § 226.3 (Wage Statements): \$300,250.00
 - 28 ii. Labor Code § 510/558 (Overtime): \$60,050.00

- iii. Labor Code § 226.7/512 (Meal/Rest): \$120,100.00
- iv. Labor Code § 1194/1197 (Minimum Wage): \$120,100.00
- v. Labor Code § 204/210 (Wages for all hours): \$424,340.48
- vi. Labor Code § 1174.5 (Recordkeeping): \$443,000.00. *Id.*

The \$400,000 settlement that was agreed upon following mediation based on the analysis of data of Class Members who participated in *American Idol* Seasons 2 through 6, represents approximately 6.7% of this estimated total, which is more than reasonable considering the attendant circumstances of this litigation and the fact that the majority of estimated liability consists of penalties. Payton Decl. at ¶ 65. While the exposure assessment above was premised on a stacking of full PAGA penalties for multiple Labor Code violations, a court may reduce PAGA penalties if imposing them would be unjust pursuant to Labor Code § 2699(e)(2). *Id.* Courts routinely exercise this discretion, discounting PAGA penalties by 90% in some cases. (See, e.g., *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 528-529 [affirming trial court's award of only 10% of maximum PAGA penalty for meal break violations].) Without stacking PAGA penalties and allocating one \$100 penalty per pay period, the total maximum estimated potential recovery in this action including the class and PAGA claims is \$4,649,168.38, and the settlement fund of \$400,000 represents approximately 8.6% of this estimated total. *Id.*

The maximum recovery of each claim asserted in the Operative Complaint for Class Members who participated in *American Idol* Seasons 2 through 6 based on average work hours estimates and mileage estimates that were provided to Class Counsel by Plaintiffs is estimated to total **\$7,168,330.19**.

Payton Decl. at ¶ 66. A breakdown of these damages is set forth below:

- 1. **Unpaid Minimum Wages:** \$539,684.00
- 2. **Interest on Unpaid Minimum Wages:** \$204,054.23
- 3. **Unpaid Overtime Wages:** \$392,648.06
- 4. **Interest on Unpaid Overtime Wages:** \$148,191.95
- 5. **Liquidated Damages:** \$801,449.38
- 6. **Meal Period Premiums:** \$67,460.50
- 7. **Interest on Meal Period Premiums:** \$17,854.74

8. **Rest Period Premiums:** \$67,460.50
9. **Interest on Rest Period Premiums:** \$17,854.74
10. **Wage Statement Penalties:** \$75,800.00
11. **Waiting Time Penalties:** \$3,287,296.80
12. **Unreimbursed Expenses (Mileage):** \$1,767.28
13. **Private Attorneys General Act Penalties:** \$1,546,808.02 (with stacking for all alleged violations), itemized as follows:
 - i. Labor Code § 226.3 (Wage Statements): \$300,250.00
 - ii. Labor Code § 510/558 (Overtime): \$60,050.00
 - iii. Labor Code § 226.7/512 (Meal/Rest): \$120,100.00
 - iv. Labor Code § 1194/1197 (Minimum Wage): \$120,100.00
 - v. Labor Code § 204/210 (Wages for all hours): \$473,283.02
 - vi. Labor Code § 1174.5 (Recordkeeping): \$443,000.00.
 - vii. Labor Code § 2802 (Unreimbursed Expenses): \$30,025.00 *Id.*

The settlement fund of \$400,000 represents approximately 5.6% of this estimated total, which is more than reasonable considering the attendant circumstances of this litigation and the fact that the majority of estimated liability consists of penalties. Payton Decl. at ¶ 67.

Without stacking PAGA penalties and allocating one \$100 penalty per pay period, the total maximum estimated potential recovery in this action including the class and PAGA claims is \$5,741,622.17, and the settlement fund of \$400,000 represents approximately 7% of this estimated total. Payton Decl. at ¶ 67. Notably, more than half of that potential recovery comes from Labor Code Section 203 penalties, which requires a showing of “willfulness.” *See Naranjo v. Spectrum Security Services, Inc.*, 15 Cal. 5th 1056 (2022) (confirming that willfulness is a threshold requirement for waiting time penalties). *Id.* Given the difficult standard imposed for awarding such penalties and Defendants’ good faith defenses, it was appropriate to discount those penalties. A similar standard applies to paystub claims (*see Naranjo, supra*), making recovery of those damages similarly difficult. *Id.*

Accordingly, after deducting those penalties, the maximum *realistic* estimated potential

1 recovery is \$2,378,525.37. Payton Decl. at ¶ 68. The settlement fund of \$400,000 represents 16.8% of
2 this estimated total, an excellent result.

3 **5. Benefits Provided to the Class by the Proposed Settlement Agreement**

4 Even without the presumption, Plaintiff Boone has clearly satisfied the standards for
5 preliminary approval of the proposed settlement. The Settlement provides substantial benefits to the
6 Class in the form of meaningful monetary recovery that is more than fair, given the particularities of
7 the case. Since the initial agreed upon \$400,000.00 settlement was increased proportionately for each
8 Class Member added (*e.g.*, \$458.19 per Class Member added), the \$487,514.29 in monetary recovery
9 provided for by the proposed settlement represents approximately 5.6 to 16.8% of the total estimated
10 value of damages, which is well within the benchmark of approved settlements. Payton Decl. at ¶ 69;
11 *See, e.g., 7-Eleven Owners For Fair Franchising v. Southland Corp.* (Cal. Ct. App. 2000) 85
12 Cal.App.4th 1135, 1150 (“The fact that a proposed settlement may only amount to a fraction of a
13 potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate
14 and should be disapproved”); *In re Critical Path, Inc.* (N.D. Cal. June 18, 2002) C 01-00551 WHA,
15 2002 WL 32627559, *5 (approving settlement resulting in 8.75% recovery percentage). Here, the
16 \$487,514.29 recovery achieved by the proposed settlement reflects a good balance of the strength of
17 Plaintiff Boone’s case and risks associated with its weaknesses, is fair and reasonable, and is entitled
18 to preliminary approval. *Id.*

19 Each Participating Class Member will receive a payment based on their points divided by the
20 total number of points times the Net Settlement Amount. Payton Decl. at ¶ 70. The monetary
21 compensation provided for under the Settlement Agreement is a fair and useful form of remedy for the
22 Class Members. *Id.* Plaintiff Boone and Class Counsel believe that these terms provide the maximum
23 value to the Class based on the available evidence and in light of other litigation risks. *Id.*

24 **6. Defenses Asserted by Defendants**

25 Defendants vigorously dispute the validity of Plaintiff Boone’s claims. Payton Decl. at ¶ 71.
26 Defendants raise several factual and legal defenses that, if successful, would defeat or substantially
27 impair the value of Plaintiff Boone’s claims. *Id.* For example, Defendants claim that the Class
28 Members were not employees in any sense of how that term is defined by the Labor Code or case law.

1 *Id.* As such, Defendants will argue that the Class Members were not entitled to wages, meal or rest
2 periods, or any other payments arising from the Labor Code. *Id.*

3 Moreover, Defendants have contended that they allowed time for Class Members to take breaks
4 and that, by nature of the filmed content, Participants necessarily had down time. Payton Decl. at ¶ 72.
5 Managing such claims at trial has become exceedingly difficult. *Forrester v. Roth's I.G.A. Foodliner,*
6 *Inc.* (9th Cir. 1981) 646 F.2d 413; *Jong v. Kaiser Found. Health Plan, Inc.* (2014) 226 Cal.App.4th 39.
7 Plaintiff Boone will depend on sample witness testimony and surveys to prove the claims. *Id.* While a
8 victory with such evidence is certainly possible, relevant case law makes such claims risky from a trial
9 management and due process perspective. *Id.*

10 Separately, Plaintiff Boone's claim for untimely wages is predicated on Labor Code section
11 201 to 203. Payton Decl. at ¶ 73. Like the claim under Labor Code section 226 where a Plaintiff must
12 prove the Defendants knowingly and intentionally failed to provide legally compliant wage statements,
13 under Labor Code 203 Plaintiff must establish that the late payments were willful. *Id.* Any evidence of
14 good faith Defendants put forth would defeat this claim. *Id.* Defendants have alleged that the Class
15 Members are not owed any wage payments and, thus, are not liable for waiting time penalties. *Id.*

16 It is clear that continued litigation of Plaintiff Boone's claims would involve extensive and
17 expensive discovery that would not likely increase the value of the claims. Payton Decl. at ¶ 74. That
18 is, although the attorneys' fees and costs would increase substantially with the continuation of
19 litigation, the damages recovered for the Class Members would not substantially increase. *Id.*

20 Moreover, there are significant legal uncertainties associated with cases such as this as they can
21 be factually complex and require protracted litigation to resolve. Payton Decl. at ¶ 75. A settlement is
22 not judged solely against what might have been recovered had plaintiff prevailed at trial, nor does the
23 settlement have to provide 100% of the damages sought to be fair and reasonable. *Linney v. Cellular*
24 *Alaska Partnership* (9th Cir. 1998) 151 F. 3d 1234, 1242; *Wershba v. Apple Computer, Inc.* (2001) 91
25 Cal.App.4th at 246 & 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal. App. 3d 1117, 1139. Instead,
26 "[c]ompromise is inherent and necessary in the settlement process ... even if the relief afforded by the
27 proposed settlement is substantially narrower than it would be if the suits were to be successfully
28 litigated, this is no bar to a class settlement because the public interest may indeed be served by a

1 voluntary settlement in which each side gives ground in the interest of avoiding litigation.”
2 *Wershba*, supra, 91 Cal.App.4th at page 250.

3 Plaintiff Boone and Class Counsel are also cognizant that the final resolution of the claims
4 could be delayed by one or more appeals, the risk of which can arise at multiple points in the litigation,
5 including with a motion to compel arbitration, during class certification proceedings, during class and
6 merits discovery, and during and after trial. Payton Decl. at ¶ 76.

7 **G. Evaluation of the Settlement of PAGA Claims as Fair to Those Affected**

8 The settlement of PAGA penalties in the sum of \$16,150.00, of which 75% (\$12,150.00) will
9 be paid to the LWDA and 25% (\$4,050.00) will be distributed to the Class, is reasonable and
10 appropriate under the circumstances. Payton Decl. at ¶ 77. The Parties negotiated a good faith amount
11 for PAGA penalties to be paid to the LWDA and to the Class. *Id.* The portion to be paid to the LWDA
12 was not the result of self-interest at the expense of other Class Members. *Id.*

13 Where settlements “negotiated a good faith amount” for PAGA penalties and “there is no
14 indication that this amount was the result of self-interest at the expense of other Class Members,” such
15 amounts are generally considered reasonable. *Id.*; *Hopson v. 7 Hanesbrands Inc.* (N.D. Cal. Apr. 3,
16 2009) No. CV-08-0844 EDL, 2009 WL 928133, at *9 [approving payment of \$1,500 or 0.3% of total
17 settlement amount to the LWDA]; *Chu v. Wells Fargo Investments, LLC* (N.D. Cal. Feb. 16, 2011)
18 Nos. C 05-4526 MHP, C 06-7924 MHP, 2011 WL 672645, at *1 [approving PAGA settlement payment
19 of \$7,500 to the LWDA out of \$6.9 million common-fund settlement]; *Franco v. Ruiz Food Prods.,*
20 *Inc.* (E.D. Cal. Nov. 27, 2012) No. 1:10-cv-02354-SKO, 2012 WL 5941801, at *14 [approving PAGA
21 penalties of \$10,000 in \$2.5 million common fund settlement and noting that amount was in line with
22 settlement approval of PAGA awards in other cases].

23 As required under Labor Code § 2699(1)(2), Plaintiff Boone transmitted a copy of the
24 Settlement and these motion papers to the LWDA at the same time they were filed with the Court.
25 Payton Decl. at ¶ 78.

26 **III. CLASS CERTIFICATION**

27 The class should be certified for the purposes of this Settlement because it meets all
28 requirements for class certification under applicable law. (*Washington Mutual Bank v. Sup. Court*

(2001) 24 Cal.4th 906, 919; *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 819; *Clothesrigger, Inc. v. GTE Corp.* (1987) 191 Cal.App.3d 605, 612-13.) Code of Civil Procedure § 382 has been construed to require an ascertainable class and a well-defined community of interest resulting from common questions of law and fact. (*Sav On Drug Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 326 (stating requirements for maintenance of class action).) “The ‘community of interest’ requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” At the certification stage, the trial court also determines whether a class action would be superior to alternate means for adjudicating the litigation.

Plaintiff Boone contends that a class action is superior to other means of adjudicating the issues in this Action. Payton Decl. at ¶ 79. As discussed in greater detail below, the predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. *Id.* In light of the theoretical alternatives that proposed Class Members could utilize, such as, individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where the claims would be time-consuming to litigate vis-à-vis the money at stake), a class action is plainly superior. *Id.* The monetary compensation provided for under the Settlement is a fair and useful form of remedy for the Class Members. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 333 (California courts often consider a “wide variety of contexts” in order to evaluate whether common behavior towards similarly situated Plaintiffs makes class certification appropriate).

A. Numerosity

Based on a review of its records, Defendants estimate there are approximately 1,064 Class Members as of the date of the Settlement Agreement. Payton Decl. at ¶ 80. Because there are approximately 1,064 Class Members, Plaintiff Boone contends that both the Class and the judicial system would be overburdened if these claims were litigated on an individual basis. (*See Valencia v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1270). Resultantly, Plaintiff Boone contends that the Class Members are, therefore, so numerous that joinder of all members would be impracticable. *Id.*

Granting class certification in this case would be superior to litigating the myriad individual cases that would remain in the absence of class certification. Payton Decl. at ¶ 81. Because there are approximately 1,064 Class Members, many of whom have relatively small claims by virtue of the fact that the period of time that the Class Members participated on *American Idol* on ABC within the state of California during the Class Period was limited to an average of 3.6 days in one season on the low end to an average of 21.4 days in one season on the high end, both the Class and the judicial system would be overburdened if these claims were litigated on an individual basis. Payton Decl. ¶ 81; See *Valencia v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1270. Accordingly, this case meets the superiority requirement for class certification. For all of these reasons, it is appropriate to certify the settlement class for purposes of this Settlement.

B. Ascertainability

Ascertainability is required in order to give notice to putative class members as to whom the judgment will be res judicata. (See *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914.) “The issue of ascertainability of the class is a relatively simple matter.” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 478.) A class is ascertainable when it may be readily identified without unreasonable expense by reference to official records. *Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 (citing *Hypolite v. Carlson* (1975) 52 Cal.App.3d 566, 579). Plaintiffs need only identify evidence from which class members can be located and identified but need not specify specific class members by name. (*Valencia v. San Diego County Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1274 (“[I]t is firmly established [that] a plaintiff is not required at this stage of the proceedings to establish the existence and identity of class members”).)

Here, the Class consists of the readily ascertainable group of all persons who participated on *American Idol* on ABC Seasons 2-7 during the relevant period. Payton Decl. at ¶ 82. Defendants maintain names and contact information for the Class Members. *Id.* Defendants will provide this information to the Settlement Administrator prior to the issuance of the class notice. *Id.*

C. Community of Interest

To justify certification, the class proponent “must show... that questions of law or fact common to the class predominate over the questions affecting individual members...” See *Arenas v. El Torito*

1 *Rests., Inc.*, 183 Cal.App.4th 723, 732 (2010).

2 In this Action, Plaintiff Boone contends that there are questions of law and fact common to the
3 members of the Class that predominate over any questions affecting only individual members,
4 including common issues of fact as to whether all members of the proposed Class: (1) performed work
5 for which they were not compensated; (2) were denied duty-free meal breaks; (3) were denied duty-
6 free rest breaks; (4) did not receive accurate and itemized wage statements, and; (5) did not promptly
7 receive wages upon termination. Payton Decl. ¶ 83.

8 According to Plaintiff Boone's allegations, Class Members were subject to a uniform set of
9 policies resulting in the violations of law alleged in this matter. Payton Decl. at ¶ 84.

10 Plaintiff Boone contends that common issues of law predominate in this case, as well. Payton
11 Decl. at ¶ 85. These issues include: (1) whether Class Members are entitled to unpaid minimum and
12 overtime wages; (2) whether Defendants' meal and rest break policies violated the Labor Code; (3)
13 whether Defendants' failure to provide accurate and itemized wage statements violated the Labor Code,
14 and (4) whether Defendants' failure to pay wages promptly upon termination violated the Labor Code.
15 *Id.*

16 Based upon the facts and circumstances, Plaintiff Boone believes this case presents an
17 overwhelming number of common issues of law and facts, such that certification is warranted. Payton
18 Decl. at ¶ 86.

19 Furthermore, Plaintiff Boone's claims, as set forth in the Operative Complaint, are typical of
20 the claims of the members of the settlement Class. Payton Decl. at ¶ 87. These claims arise from the
21 same general course of conduct that gives rise to the claims of the other Class Members and are based
22 on the same legal theory. *Id.*; *See Classen v. Weller* (1983) 145 Cal.App.3d 27, 45; *Richmond v. Dart*
23 *Industries* (1981) 29 Cal.3d 462, 470.) Class representatives' interests need not be identical to other
24 class members; rather, the named Plaintiffs and class members need only be "similarly situated."
25 (*B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347.)

26 Here, during the class period, Plaintiff Boone was a participant on *American Idol*, and asserts
27 claims on behalf of all of all participants who participated in the production in the State of California
28 of *American Idol* on ABC Seasons 2-7 based on the same allegedly illegal labor practices and policies

1 and worked closely with other Class Members such that he could observe Defendants’ practices and
2 other Class Members’ experiences in relation to the claims. Payton Decl. at ¶ 88.

3 **D. Adequacy of Class Counsel**

4 The named Plaintiff must be represented by counsel qualified to conduct the pending litigation.
5 (*See Richmond, supra*, 29 Cal.3d at 470.) Throughout the process that led to the settlement of this
6 Matter, including analysis of liability, negotiation and mediation, and approval of stipulated settlement
7 terms, Plaintiff Boone was represented by Class Counsel with considerable experience in litigating
8 wage and hour class actions and/or wage and hour matters generally. Payton Decl. at ¶ 89.

9 **1. Chantal Payton, Esq.**

10 Attorney Chantal Payton of Payton Employment Law, P.C. has represented and/or advised
11 several hundred individual clients and obtained millions of dollars in settlements and judgments
12 throughout her career. Payton Decl. at ¶ 94. She has been approved as Class Counsel between 2018
13 and the present in numerous wage and hour Class Action and/or PAGA actions that she has litigated
14 during and prior to that time period. *Id.* Throughout her career, Ms. Payton has been awarded attorneys’
15 fees by various courts within the state of California as Class Counsel in these Class Action and/or
16 PAGA matters and employment trials (including wage and hour trials) where she represented the
17 plaintiff and prevailed. *Id.* A representative list of several of the wage and hour class actions and PAGA
18 actions where Ms. Payton was lead counsel and/or performed substantial work on representing the
19 plaintiff is included in Ms. Payton’s declaration. Payton Decl. at ¶ 96. In addition to these matters, Ms.
20 Payton has prior experience defending employers in several other class action matters. Payton Decl. at
21 ¶ 97. Ms. Payton has also received numerous awards and accolades throughout her career as a result
22 of her work and success as an employment attorney which are further detailed in her Declaration.
23 Payton Decl. at ¶ 95.

24 As such, Ms. Payton is highly qualified to act as Class Counsel in this matter, having extensive
25 experience in wage and hour and class action employment matters well beyond what is required to
26 serve as adequate class counsel. Ms. Payton will continue to represent the class members zealously
27 and ethically in this case and protect the interests of the class.

28 ///

2. **Johnny Darnell Griggs, Esq.**

Attorney Johnny Darnell Griggs, who is a Partner at Payton Employment Law, P.C., has handled all aspects of employment litigation during his 40-plus year career as detailed in the Declaration of Johnny Darnell Griggs. See Griggs Decl. at ¶ 4-10. His career has included defending wage and hour class actions as a defense attorney prior to representing plaintiffs in employment matters. *Id.* at ¶ 8. Mr. Griggs has also worked on class action matters representing the Plaintiff while at Payton Employment Law, PC.; a representative list of wage and hour class actions and PAGA actions that Mr. Griggs performed substantial work on is included in his declaration. *Id.* at ¶ 20. During his career, Mr. Griggs has also published numerous articles on employment law, has lectured extensively on employment-related issues, and has conducted workplace investigations. *Id.* at ¶ 11.

As such, Mr. Griggs is also highly qualified to act as Class Counsel in this matter, having extensive experience in wage and hour and class action employment matters well beyond what is required to serve as adequate class counsel. Griggs Decl. at ¶ 13. Mr. Griggs will continue to represent the class members zealously and ethically in this case and protect the interests of the class. *Id.*

E. Adequacy of Class Representative

The class representative plaintiff's interests cannot be antagonistic to those of the class. (*See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) Plaintiff Boone does not believe he has interests antagonistic to those of the Class or that he is subject to any unique defenses. Payton Decl. at ¶ 101. Plaintiff Boone and the Class Members have strong and co-extensive interests in this litigation because they all participated on *American Idol* on ABC during the relevant time period, suffered the same alleged injury from the same alleged source of conduct, and, resultantly, there is no evidence of any conflict of interest between Plaintiff Boone and the Class Members. Payton Decl. at ¶ 101; Declaration of Franklin Boone ("Boone Decl.") ¶ 15.

Plaintiff Boone agreed to act as a class representative on his own volition and understands his responsibilities as such, including but not limited to adequately representing the class, protecting the interests of the class, participating in litigation, maintaining communication with and cooperating with class counsel, and providing and preserving all evidence that might be necessary to bringing the class claims. Boone Decl. at ¶ 5.

Moreover, Plaintiff Boone has demonstrated his commitment to the Class Members by, amongst other things, retaining experienced counsel, providing counsel with documents and extensively speaking with them to assist in identifying the claims asserted in this case, providing counsel with information before and during mediation, attending the entire mediation, as well as exposing himself to the risk of attorneys' fees and costs awards against himself if this lawsuit had been unsuccessful. Boone Decl. at ¶ 12.

Plaintiff Boone's claims arise from the same general set of facts alleged with respect to the Class. Moreover, Plaintiff Boone has and will continue to fairly and adequately protect the interests of the Class. Boone Decl. at ¶ 9. Accordingly, this Court should find that Plaintiff Boone and Class Counsel are adequate to represent the Class Members as required under Code of Civil Procedure § 382.

IV. MISCELLANEOUS

A. Notice

The Parties agree that the notice sent to Class Members will be English-only. Payton Decl. at ¶ 102. This is an appropriate notice to distribute given that Defendants' productions, *American Idol* Seasons 2-7 on ABC, are English-speaking productions. *Id.* An English-only notice is thus sufficient because all of the Class Members who participated in the productions are English speakers. *Id.*

B. Attorneys' Fees

The Settlement states Class Counsel may seek attorneys' fees of not more than \$162,488.51 (33.33% of the Gross Settlement Amount) and not more than \$20,000.00 for actual reasonable litigation costs and expenses incurred in prosecuting the Action. Payton Decl. at ¶ 103; Exhibit 1A (Settlement Agreement) p. 6, § 3.2.2. These amounts are reasonable under the circumstances present here.

As the Supreme Court of California affirmed in *Laffitte v. Robert Half Intern. Inc.* (2016), under California law, courts in common fund cases "have discretion in to conduct a lodestar cross-check on a percentage fee . . . they also retain the discretion to forgo a lodestar cross-check and use other means to evaluate the reasonableness of a requested percentage fee." *Laffitte v. Robert Half International Inc.*, 1 Cal.5th 480, 506 (Cal. 2016). The *Laffitte* court noted, "all the circuit courts either mandate or allow their district courts to use the percentage method in common fund cases; none require sole use of the lodestar method." *Id.* at 493 (citing *5 Newberg on Class Actions*, § 15.66, pp. 228–231.)

1 Trial courts determine their method of attorney’s fee calculation based on fairness and
2 reasonableness, as “the goal under either the percentage or lodestar approach being the award of a
3 reasonable fee to compensate counsel for their efforts.” *Id.* at 504 (citing *In re Consumer Privacy*
4 *Cases*, 175 Cal.App.4th at pp. 557–558). Both federal and state courts “have increasingly returned to
5 the percent-of-fund approach [in common fund cases], either endorsing it as the only approach to use,
6 or agreeing that a court should have flexibility to choose between it and a lodestar approach, depending
7 on which method will result in the fairest determination in the circumstances of a particular case.” *Id.*
8 at 494 (citing *Strawn v. Farmers Ins. Co. of Oregon, supra*, 353 Or. at p. 219.)
9 In reaching its decision, the California Supreme Court stated:

10 We join the overwhelming majority of federal and state courts in holding that when
11 class action litigation establishes a monetary fund for the benefit of the class
12 members, and the trial court in its equitable powers awards class counsel a fee out
13 of that fund, the court may determine the amount of a reasonable fee by choosing an
14 appropriate percentage of the fund created. The recognized advantages of the
15 percentage method—including relative ease of calculation, alignment of incentives
16 between counsel and the class, a better approximation of market conditions in a
17 contingency case, and the encouragement it provides counsel to seek an early
18 settlement and avoid unnecessarily prolonging the litigation (citations omitted)—
19 convince us the percentage method is a valuable tool that should not be denied our
20 trial courts.

21 *Id.* at 503 (emphasis added).

22 A district court has discretion to apply either the percentage of the fund method or the lodestar
23 method. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *In re Wash. Pub. Power*
24 *Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1295-96 (9th Cir. 1994)); see also *In re Bluetooth*, 654 F.3d at
25 944) (“Thus, even though the lodestar method may be a perfectly appropriate method of fee calculation,
26 we have also encouraged courts to guard against an unreasonable result by cross-checking their
27 calculations against a second method.”).

28 *Laffitte* followed numerous other authorities advocating for the use of the percentage method
because it promotes important values in the administration of justice. See, e.g., *Lealao v. Beneficial*
California, Inc. (2000) 82 Cal.App.4th 19, 27 (recognizing traditional approach in common fund cases
has been to award a percentage of the total fund under the “common fund” doctrine); *In re Consumer*
Privacy Cases, 175 Cal.App.4th 545, 557-58 (2009); *Natural Gas Anti-Trust Cases I, II, III & IV*, 2006
WL 5377849, at *3 (San Diego Super. Ct. Dec. 11, 2006) (“Both California state and federal courts

recognize two methods for evaluating the fairness and reasonableness of attorneys’ fees in class action settlements resulting in the creation of a common fund for the distribution to class members: (1) the percentage-of-the-benefit method; or (2) the lodestar method plus multiplier method.”); *Serrano v. Priest* (1977) 20 Cal.3d 25, 34 (“when a number of persons are entitled in common to a specific fund, and an action brought by a plaintiff or plaintiffs for the benefit of all results in the creation or preservation of that fund, such plaintiff or plaintiffs may be awarded attorney’s fees out of the fund.”)

The percentage method “closely aligns the interests of the counsel and the class, i.e., class counsel directly benefit from increasing the size of the class fund and working in the most efficient manner.” *Lopez v. Youngblood*, 2011 WL 10483569, at *3 (E.D. Cal. Sept. 2, 2011). It also encourages early settlement of meritorious cases and “ensur[es] that competent counsel continue to be willing to undertake risky, complex, and novel litigation.” *Manual for Complex Litigation*, § 14.121 (4th ed. 2004). As a practical matter, use of the percentage method makes eminently good sense—it is easy to administer, conserves judicial resources and rewards counsel for efficiency rather than focusing on the time counsel spent on the case.

Federal district courts in California have also recently discussed the comparative advantages of each method.¹

As such, courts that use the percentage-of-the-fund method to calculate a fee award can apply the lodestar method as a “cross-check.” See *Lealao*, 82 Cal.App 4th at 45-46; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 65-66. Though this is not required, courts can in their discretion “cross-

¹ In *Dekker v. Vivint Solar, Inc.* (2023), the court cited *Laffitte* and maintained that although, “there is no blanket ‘lodestar only’ mandate in California, and every fee-shifting statute must be construed on its own merits, the California Supreme Court has endorsed the lodestar method in fee-shifting cases except in limited circumstances. Despite its primacy, the lodestar method is not necessarily utilized in common fund cases.” *Dekker v. Vivint Solar, Inc.*, C 19-07918 WHA, at *16-17 (N.D. Cal. Aug. 23, 2023)(cits. Omitted.) The court in *Gonzalez v. Xtreme Mfg.* (2023), emphasized trial courts’ “discretion to use either a lodestar or percentage calculation to evaluate a fee request.” *Gonzalez v. Xtreme Mfg.*, 1:20-cv-1704 JLT SKO, at *31 (E.D. Cal. May 5, 2023). The *Gonzalez* court also cited *Laffitte*, stating, “[t]he choice of a fee calculation method is generally one within the discretion of the trial court, the goal under either the percentage or lodestar approach being the award of a reasonable fee to compensate counsel for their efforts.’ Whether the Court applies the lodestar or percentage method, the fees awarded must comply with Rule 23 and be ‘fundamentally fair, adequate, and reasonable.’ *Gonzalez v. Xtreme Mfg.*, 1:20-cv-1704 JLT SKO, at *31 (E.D. Cal. May 5, 2023)(cits. omitted).

check” an award of attorneys’ fees calculated by one method against an award calculated by the other method in order to confirm the award is reasonable. *See Consumer Privacy Cases*, 175 Cal.App.4th at 557. The process should not require undue consumption of judicial resources because “trial courts conducting lodestar cross-checks have generally not been required to closely scrutinize each claimed attorney-hour, but have instead used information on attorney time spent to ‘focus on the general question of whether the fee award appropriately reflects the degree of time and effort expended by the attorneys.’” *Laffitte*, 1 Cal.5th at 505 (cits. omitted).

Here, Plaintiff Boone’s requested attorneys’ fees are reasonable under both the percentage method and the lodestar method. The requested fees of \$162,488.51 represent one-third (33.33%) of the \$487,514.29 Settlement Amount. This falls within the range of percentages awarded in similar class action cases and is justified by the risks involved in the litigation, Class Counsel’s experience and skill in overcoming those risks, and the tremendous result achieved in the case.

Class Counsel believes that the fees requested are reasonable and appropriate because “[t]he Attorneys’ Fees requested by Class counsel are commensurate with 1) the risk Class Counsel took in commencing this action, (2) the time, effort and expense dedicated to the case, (3) the skill and determination they have shown, (4) the results they have achieved throughout the litigation, (5) the value of the settlement they have achieved for class members, and (6) the other cases counsel have turned down in order to devote their time and efforts to this matter.” *See Ingalls v. Hallmark Marketing Corporation*, Case No.: CV08-04342 VBF (Ex) C/W, CV08-05330-VBF (FFMx), CV08-07481-VBF (Ex), at *2 (C.D. Cal. Oct. 16, 2009) (granting Class Counsel’s Motion for an award of Attorneys’ Fees and citing the aforementioned factors in support). Each of these factors are addressed in detail section IV. (B)(1) below.

Under the percentage method, California courts have recognized that “fee awards in class actions average around one-third of the recovery.” *Chavez*, 162 Cal.App.4th at 66 n.11. With respect to the settlement fund amount, “the total fund could be used to measure whether the portion allocated to the class and to attorney fees is reasonable.” *Consumer Privacy Cases*, 175 Cal.App.4th at 554.

Applying these factors, California courts have often approved attorney fee awards under the percentage method of 33.33% or more. *See, e.g., Laffitte*, 1 Cal.5th 480; *In re California Indirect-*

Purchaser Plasticware Antitrust Litig., Case Nos. 961814, 963201 and 963590 (San Francisco Super. Ct. 1995) (approving 33.33% award); *In re Liquid Carbon Dioxide Cases*, J.C.C.P. 3012 (San Diego Super. Ct. 1996) (approving 33.33% award); *In re Facsimile Paper Antitrust Litig.*, Case Nos. 963598, 964899 and 967137 (San Francisco Super. Ct. 1997) (approving 33.33% award); *In re Milk Antitrust Litigation*, Case No. BC070061 (L.A. Sup. Ct. 1998) (approving 33.33% award). A fee award of 33.33% falls on the lower end of the spectrum of fees awarded in common fund cases.² There are also numerous notable examples where courts have approved fee awards greater than 33.33%.³ Attorney Chantal Payton, along with the other attorneys designated as Class Counsel in the particular matters, has also received fee awards of 33.33% and larger in multiple court-approved settlements for class and/or PAGA actions that Ms. Payton has litigated in the past. Payton Decl. at ¶ 104.

As shown below, consideration of the above factors in this case supports the reasonableness of Plaintiff Boone's requested fee award.

1. The Requested Attorneys' Fees are Reasonable, Fair and Appropriate under the Percentage-of-the-Fund Approach

As further detailed below, the amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel

² See *Cicero v. DirecTV, Inc.*, No. ED-CV-07-1182, 2010 WL 2991486, at *6 (C.D. Cal. July 27, 2010) ("Other case law surveys suggest that 50% is the upper limit, with 30-50% commonly being awarded in case in which the common fund is relatively small."), and in the middle of the range of fees courts may and typically do award in wage and hour class actions with a recovery of under \$10 million (see *Martin v. AmeriPride Svs., Inc.*, No. 08-CV-440-MMA-JMA, 2011 WL 2313604, *8 (S.D. Cal. June 9, 2011) ("courts may award attorneys' fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million."); *Cicero v. DirecTV, Inc.*, 2010 WL 2991486, at *6 (C.D. Cal. 2010) ("courts usually award attorneys' fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million."))

³ See *Wren v. RGIS Inventory Specialists*, No. C-06-05778 JCS, at *42 (N.D. Cal. Apr. 1, 2011) ("Plaintiffs' request for an award of \$11,307,449.62 in attorneys' fees - amounting to just under 42% of the settlement amount - is appropriate and reasonable" in wage and hour class and collective action when accounting for "the complexity and duration of the litigation, counsel's skill and experience, the results achieved that include both monetary and injunctive relief, and the positive reaction and low opt-out rate of the class."); *Rippee v. Boston Mkt. Corp.*, Case No. 05cv1359 BTM (JMA), Doc. No. 70, at 7-8 (S.D. Cal. Oct. 10, 2006) (awarding a 40% attorneys' fee in a \$3.75 million wage and hour class action settlement); and *Birch v. Office Depot, Inc.*, No. 06cv1690 DMS, 2007 WL 9776717 at *2 (S.D. Cal. Sept. 28, 2007) (awarding a 40% fee on a \$16,000,000 wage and hour class action settlement).

1 achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class
2 Counsel turned down to devote time to this matter. Payton Decl. at ¶ 105.

3 First, Class Counsel took on substantial risk in prosecuting this class action as they maintained
4 various novel and creative theories on behalf of individuals who participated in or worked on the
5 creation of the non-scripted content production of *American Idol* that have not been litigated. Payton
6 Decl. at ¶ 106. Class Counsel was required to assess, evaluate, and combat Defendants' various novel
7 and creative defenses that have not been tested in court prior to and throughout the resolution of this
8 matter. *Id.* Litigating a matter with such novel theories and defenses being a primary point of contention
9 in this matter made the ultimate outcome of the case uncertain, and thus heightened risk, in many respects
10 as compared with a typical run of the mill wage and hour case. *Id.*

11 Second, Class Counsel also spent significant efforts in investigating the claims during the early
12 stages of this matter prior to mediation as described in further detail hereinabove. Payton Decl. at ¶
13 107. It is these significant efforts and the substantial time that Class Counsel put into prosecuting this
14 matter prior to, during, and after mediation that led Class Counsel to obtain this reasonable settlement
15 for the Class pre-certification and before formal discovery. *Id.*

16 Third, it was also Class Counsel's skill and determination that led them to achieve this fair
17 result. Payton Decl. at ¶ 108. Class Counsel was extremely diligent in gathering evidence, performing
18 extensive legal research, and ultimately compiling extremely useful information that was ultimately
19 used during mediation in negotiating a resolution. *Id.* Class Counsel also expended substantial efforts:
20 meeting and conferring with Defendants' counsel on numerous occasions (including regarding
21 management of the case, mediation, Class data and documents, and the settlement of this matter),
22 engaging numerous internal strategy meetings, reviewing and analyzing data and documents provided
23 by Defendants and obtained through other sources, researching applicable law, and providing estimates
24 of damages for purposes of settlement discussions after spending considerable time working with an
25 expert, among other tasks. *Id.*

26 Fourth, Class Counsel obtained a fair and reasonable settlement value for the class. Payton Decl.
27 at ¶ 109. The gross settlement amount of \$487,514.29 achieved on behalf of a Class of 1,064 individuals
28 averages out to a gross total of \$453.19 per Class Member. *Id.* This is a fair and reasonable outcome in

light of the fact that the period of time that the Class Members participated on *American Idol* on ABC within the state of California during the Class Period was limited to an average of 3.6 days in one season on the low end to an average of 21.4 days in one season on the high end. *Id.* Moreover, of this group of 1,064 Class Members, the majority of them participated on *American Idol* in the state of California for a period of fewer than 7 total days. *Id.* Even after deductions for attorneys' fees, litigation and settlement administration costs, and payment to the LWDA, the Class Members will each receive a monetary payout that is reasonable relative to the length of time that they participated in these shows in California during the Class Period. *Id.* As further detailed above, the Gross Settlement Amount constitutes a significant percentage (approximately 5.6-8.6%) of the maximum theoretical liability calculated by Plaintiff Boone's counsel's expert, which Class Counsel submits is a great result for the Class Members. *Id.*

Fifth, the result is of significant value to the Class. The Gross Settlement Amount is not far below the actual unpaid wages that Class Counsel's expert calculated based on the hours derived from Defendants' data. Payton Decl. at ¶ 110.. Thus, the Settlement as a whole comes close to compensating the Class for all theoretical unpaid wages estimated to be incurred, with only small discounts being taken for risks associated with proving Plaintiff Boone's theories and overcoming the potential hurdles (associated with, for example, a motion to compel arbitration, class certification, etc.) in this case. *Id.* Because Class Counsel obtained this result early, before a Motion to Compel Arbitration or Motion for Class Certification was heard and before substantial litigation costs were incurred, Class Counsel also obviated the risk to the Class that the Class would be dismantled by a negative outcome on such a motion or that substantial additional costs would be incurred and then deducted from the Gross Settlement Amount had a settlement been reached at a later date, which would have lowered the net recovery for the Class as a result. *Id.*

Sixth, Class Counsel's Firm has turned down numerous other cases to devote time to this matter. Payton Decl. at ¶ 111. This was especially so during the periods that Class Counsel spent considerable time investigating the claims at the outset of the case and preparing for mediation. *Id.* As a result, Class Counsel's Firm passed on taking on numerous matters that it may have otherwise been able to take. *Id.* Furthermore, in taking on this matter, Class Counsel has borne all the risks and costs of litigation and

1 will receive no compensation until recovery is obtained. *Id.*

2 In sum, Class Counsel are well-experienced in wage-and-hour class action litigation and used
3 that experience to obtain a fair and reasonable result for the Class. Considering the amount of the
4 attorney fees requested, the substantial work performed, the result achieved, and the risks incurred, the
5 requested fees and costs are reasonable and should be awarded.

6 **C. Class Representative Enhancement**

7 The Settlement states that the Class Representative Service Payment to the Class Representative
8 be no more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA
9 Payment the Class Representative is entitled to receive as a Participating Class Member. Payton Decl.
10 ¶ 112; Exhibit 1A (Settlement Agreement) p. 6, § 3.2.1.

11 Courts routinely approve incentive awards to compensate named plaintiffs for the services they
12 provide and the risks incurred during class action litigation, often in much higher amounts than sought
13 here. *See, e.g., Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 (upholding “service
14 payments” to named plaintiff for their efforts in bringing the case); *Van Vranken v. Atlantic Richfield*
15 *Co.* (N.D.Cal. 1995) 901 F.Supp. 294 (approving \$50,000 enhancement award).

16 The Settlement provides that Plaintiff Boone may seek a Class Representative Service Payment
17 of \$5,000.00. This amount is entirely reasonable given Plaintiff Boone’s efforts in this Action and the
18 risks he undertook on behalf of the Class Members. Boone Decl. at ¶ 7. Plaintiff Boone has devoted
19 many hours advancing the interests of the Class for over two years. *Id.* Plaintiff Boone has done this
20 by, among other things, spending considerable time communicating with his attorneys regarding the
21 events that transpired that compelled him to seek restitution. *Id.*

22 Plaintiff Boone has remained actively involved in the case, providing documents to his
23 attorneys, tracking the status of the case, assisting his attorneys in preparation for the mediation,
24 attending the entire mediation with his attorneys, helping his attorneys to settle the case on a
25 classwide/PAGA basis, reviewing the settlement agreement after mediation, and participating as much
26 as possible to ensure a fair result for the Settlement Class as a whole. Boone Decl. at ¶ 12.

27 In doing so, Plaintiff Boone exposed himself to significant risks, including the risk of being
28 ordered to pay Defendants’ attorneys’ fees and costs if this action had been unsuccessful. (See Labor

Code §§ 218.5-218.6). Boone Decl. at ¶ 7. Plaintiff Boone risks being adversely affected when seeking to obtain future employment since employers who discover that Plaintiff Boone sued Defendants in a class action may avoid hiring Plaintiff Boone. Boone Decl. at ¶14. The significant efforts and risks that Plaintiff Boone undertook on behalf of the Settlement Class show that the proposed Class Representative Service Payment is fair, adequate, and reasonable, and thus warrants preliminary approval. *Id.*

V. CONCLUSION

For all the reasons stated above, Plaintiff Boone respectfully requests that the Court preliminarily approve the proposed Settlement, certify the settlement class for purposes of the Settlement, and approve the plan to provide notice to the settlement class.

Respectfully submitted,

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